

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.100/1232/2014

New Delhi this the 10th day of August, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Shri Jaibir Antil
S/o Shri Rajmal Antil
Age 33 years
Office In charge/Superintendent,
R/o H.No. D-59, MCD Colony,
Azadpur, Delhi.Applicant

(Argued by: Shri Manu Parashar, Advocate)

Versus

1. Director,
Department of Women & Child Development,
Government of NCT of Delhi,
1, Canning Lane, K.G. Marg,
New Delhi-110001.
2. Department of Women & Child Development,
Through Secretary,
Government of NCT of Delhi,
1, Canning Lane, K.G. Marg,
New Delhi-110001.
3. Superintendent,
O.H.B.-II,
Seva Kutir Complex,
Kingsway Camp,
Delhi-110009. ...Respondents

(By Advocate: Ms. Sangeeta Tomar)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by applicant, Jaibir Antil, is to the impugned order dated 11.11.2013 (Annexure A-1), whereby his services were terminated on the recommendation of the Inquiry Report

submitted by Dy. Director (CPU), regarding escape of inmates from Observation Home for Boys-II (OBH-II), Kingsway Camp, Delhi.

2. The compendium of the facts and material, exposted from the record, which needs a necessary mention for the limited purpose of deciding the instant OA, as claimed by the applicant, is that, he was appointed as Officer-in-charge/Superintendent, on contract basis in the month of January, 2013 along with 7 (seven) other candidates in consultation with the Director, Women and Child Development (WCD). He was posted at OHB-II, Kingsway Camp, Delhi in night and early morning shift to discharge the primary responsibility of maintaining the institution and perform other duties, depicted in letter dated 17.01.2013 (Annexure A-2).

3. According to the applicant, although he was discharging his duty efficiently, honestly, sincerely, with utmost devotion and having unblemished service record, but he was served with the impugned order dated 11.11.2013 (Annexure A-1) (received on 26.11.2013), whereby his services were terminated with immediate effect without following the due procedure. It was pleaded that all the 8 (eight) selected candidates, including the applicant were engaged on contractual basis as Supervisor/Officer-in-charge. Even after the expiry of contractual period, all such officers are continuing into the service and

discharging their duty, but the services of the applicant were abruptly terminated without issuing any Show Cause Notice (SCN) or any enquiry, vide impugned order (Annexure A-1) by the competent authority.

4. The applicant has preferred the instant OA challenging the impugned order dated 11.11.2013 (Annexure A-1), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:-

(I) Because the impugned termination order dated 11.11.2013 is unsustainable in law as the same has been passed in gross violation of the principles of natural justice in as much as the applicant has not been granted an opportunity to present its sand before the respondents.

(II) Because the respondents grossly erred in law by acting on the recommendation of the inquiry report of Deputy Director (CPU) pertaining to the escape of the inmates of the observation home which has been prepared without giving an opportunity to the applicant to show cause before such authority in (sic) conducting inquiry.

(III) Because the respondents while acting on the enquiry report has terminated the service of the applicant as a measure of punishment without providing any opportunity of hearing.

(IV) Because it is well settled law and has also been reiterated by the Hon'ble Supreme Court in catena of judgments (sic) that when termination from the service is as a measure of punishment then in that case an opportunity of hearing must be provided to person so terminated.

(v) Because respondents cannot be permitted to apply different set of standards to deal with the similar set of events and/or incidents and discriminate among the equals. It is submitted that the respondents in (sic) any other incidents whether it happened prior to the said incident of 15th October or thereafter has taken any action either terminating, suspending or dismissing from the service persons found responsible for the incidents.

(VI) Because the acts of the respondents are in clear violation of the settled (sic) laws and the principle of natural justice and the termination order so passed is in gross violation of Article 14, 16 & 21 of the Constitution of India.

(VII) Because vide impugned order the applicant has been terminated and the termination is only applicable to the persons who are in service and the respondents have (sic) accepted the applicant to be in the service.

(VIII) Because no disciplinary proceeding as permissible under the law was ever initiated nor the applicant was afforded any opportunity to present its side and the inquiry report which has been passed without communicating any of the staff present on night duty

in a most arbitrary, illegal, biased manner is non-est and deserves to be quashed.

(IX) Because the cause of escape of the juveniles in conflict with law is attributable to the negligence on the part of superintendent/officials and the administration of the OHB-II who did not bother to correct the shortcomings and the deficiencies despite the same being repeated brought to their knowledge by the applicant.

(X) Because there cannot be different set of policy to deal with the similar incidents within the same employment as no action has been taken against any of the staff/employee of OHB-II present on duty at the time of incident by the respondents in regard to the 5th October incident, a major incident wherein a large number of the inmates had escaped by damaging the main entry/exit gates and the walls of the building.

(XI) Because the 15th October incident took place owing to the negligence on the part of the respondents who failed to take action on the letter of the applicant vide which it had categorically requested to the superintendent to get the broken doors and locks of the dormitory to get repaired and replaced.

(XII) Because there had been shortage of the staffs and respondents did not bother to consider and act upon the request of applicant for providing the welfare officer during the night hours for a better and efficient discharge of the duties and functions.

(XIII) Because the lax security arrangement was attributable only to the negligent administration of the OHB-II which failed to take caution and deploy more number of security guards despite the repeated incidents of arson, rioting and escapes from the observation home.

(XIV) Because the applicant and other staffs on duty at the time of incident tried their best to foil the attempt of the two juveniles who were escaping the one of them was caught by the staffs on duty.

(XV) Because after the said incident of 15th October once again in the month of December 2013 over 38 juvenile offenders of the home had escaped and no disciplinary action has been taken by the respondents till date.

(XVI) Because the NHRC (National Human Rights Commission) after conducting a surprise inspection of the OHB-II has found that the security measures are not proper and are ineffective and asked the Delhi Police to review the security and ensure safety arrangements there.

(XVII) Because the Hon'ble High Court of Delhi concerned with the lax security and the repeated incidents of arson, rioting and escape of the inmates has taken suo moto cognizance and the proposal for setting up a cell specifically tasked to monitor the security of the observation homes has been mooted.

(XVIII) Because the then Director Mr. Rajiv Kale, Department of Women and Child Development in the W.P. No.5137/2013 before the Hon'ble High Court of Delhi has himself stated that due to the lack of Standard Operating Procedure such incidents are taking place repeatedly and hence the applicant cannot be held responsible for such incidents and the termination order is liable to be quashed.

(XIX) Because the representations made against the illegal and arbitrary termination has neither (sic) been considered till date nor any communication has been received by the applicant in this regard.

(XX) Because in the instant case the Doctrine of parity and Doctrine of legitimate expectation is applicable in view of the fact that seven others who were also appointed on contract basis for the same contractual period are still continuing into the service.

(XXI) Because the applicant who had been eking out his livelihood for himself and his family members has been subjected to great hardship by such arbitrary and illegal termination from the service and the same is liable to be set aside and quashed”.

5. Levelling a variety of allegations and narrating the sequence of events in performance of his duty, in all, the applicant claimed, that the impugned order is stigmatic, illegal, arbitrary and without jurisdiction. On the strength of the aforesaid grounds, the applicant sought quashing of the impugned order, in the manner indicated hereinabove.

6. Sequel, the respondents have refuted the claim of the applicant and filed the reply, wherein it was pleaded that decision of termination was taken on the basis of enquiry conducted by the senior authority of the department, keeping in view the sensitive nature of the institution and a very irresponsible approach of the official/officer. He has never approached the Head Quarter to convey the shortcomings, including available facilities/amenities and issues related to security. This shows his lack of devotion to duty, which led to the situation and escape of intimates. There is no violation of any human and fundamental rights provided to the citizens of India. It will not be out of place to mention here, that the respondents have filed their vague reply to the grounds pleaded by the applicant in the OA. However, virtually reiterating the validity of the impugned

order (Annexure A-1), respondents have prayed for dismissal of OA.

7. Controverting the allegations of reply filed by the respondents and reiterating the grounds contained in the OA, the applicant filed the rejoinder. That is how we are seized of the matter.

8. At the very outset, the learned counsel for the applicant has contended with some amount of vehemence, that the service of the applicant was terminated vide impugned order (Annexure A-1), on the recommendation of the enquiry report submitted by Dy. Director (CPU), regarding escape of inmates from OHB-II, Kingsway Camp, Delhi, which is a stigmatic and punitive in nature. The argument is that, the services of the applicant cannot be terminated without issuing SCN, without affording opportunity of being heard, without conducting an enquiry and without following the due procedure.

9. On the contrary, the learned counsel for the respondents has vehemently urged that, although the services of the applicant were terminated on the basis of some preliminary enquiry, but since he was engaged on contract basis, so no departmental enquiry was required. His services were rightly terminated, vide impugned order (Annexure A-1). In this regard, she has also placed reliance on the judgments of Hon'ble High Court of Delhi in case **Suresh Chand Jain Vs. Director General and Another**

in W.P. (C) No.5603/2013 decided on 11.02.2015 and *Raju Chaudhary Vs. The U.O.I. & Others in W.P. (C) 45/2015* decided on 05.01.2015.

10. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the instant OA deserves to be accepted, for the reasons mentioned hereinbelow.

11. In *Suresh Chand Jain's case* (supra), the termination order (therein), did not attract any specific misconduct, negligence, inefficiency or dereliction of duty on the part of the petitioner (therein). On the peculiar facts and in the special circumstances of that case, it was observed, that termination of duty due to unsatisfactory performance of probation, cannot be termed as stigmatic or punitive in nature.

12. Similarly, in case of *Raju Chaudhary* (supra), petitioner (therein) deserted the Central Reserve Police Force (CRPF) on 01.08.2013, when he was still on probation. He returned back on 24.08.2013, only, but to desert for a second time on 09.09.2013. Warrants of arrest to apprehend and produce him before the Commandant of the nearest CRPF battalion, was issued. In that view of the matter, it was observed that the power has been exercised bona fide to terminate the services of petitioner (therein), and he cannot claim the benefit of Rule 108 of CRPF Rules.

13. There can hardly be any dispute with regard to the aforesaid observations, but the same would not come to the rescue of the respondents, in the present controversy, for the following reasons.

14. Thus, it would be seen that the facts of the case are neither intricate nor much disputed. Such thus being position on record, now the short and significant question that arises for determination is, whether the impugned order (Annexure A-1) is stigmatic and punitive in nature or not. As is evident from the record, that the services of the applicant were terminated, vide impugned order dated 11.11.2013 (Annexure A-1), which reads as under:-

“DEPARTMENT OF WOMEN & CHILD WELFARE
GOVT. OF NCT OF DELHI
1, CANNING LANE, K.G. MARG, NEW DELHI-110001.

F.No. 6(53)/DWCD/Admn./2013/21589-595 Dated:11.1.2013

ORDER

On recommendation of the Inquiry Report submitted by Dy. Director (CPU) regarding escape of inmates from OHB-II, Kingsway Camp, Delhi & subsequent approval of the same, the services of Shri Jaiveer Singh Antil, Night Superintendent (on contract) working in OHB-II, Kingsway Camp is hereby terminated with immediate effect”.

15. Meaning thereby, a bare perusal of impugned order would reveal, that the services of the applicant were terminated on the recommendation of the enquiry report submitted by the Dy. Director (CPU), regarding escape of inmates from OHB-II, Kingsway Camp, Delhi. Not only that, the respondents have specifically admitted in their reply that the decision of termination was taken on the basis of enquiry conducted by senior authority of the department

keeping in view the sensitive nature of the institution and applicant exhibited lack of devotion in discharge of his official duty, which led to the grave situation and escape of inmates.

16. Therefore, even if the contents/substance of the impugned order (Annexure A-1), indicating attending circumstances pleaded in the written submission and the basis of termination order are taken into consideration, are put together, then no one can escape to come to a definite conclusion, not only that the impugned termination order is smeared with stigma, but also passed on the alleged misconduct of lack of devotion to duty, which led to escape of inmates. Thus, the impugned termination order is held to be stigmatic and punitive in nature. Naturally, such stigmatic and punitive order should not have been passed, without following due procedure. Moreover, it is not a matter of dispute that no SCN was issued or opportunity of being heard was provided or any enquiry was held against the applicant, before terminating his services, which is not legally permissible.

17. Faced with the situation, learned counsel of respondents then submitted that applicant was not a confirmed employee, so there was no requirement to issue SCN or hold a departmental enquiry against him.

18. We are afraid, we cannot accept this contention of learned counsel for the respondents, in view of ratio of law

laid down by the Hon'ble Apex Court in case **Anoop Jaiswal Vs. Government of India and Another (1984) 2 SCC 369** wherein it was ruled that even in case of probationer, court can go behind the formal order of discharge to find the real cause of action. Simple order of discharge of **probationer** on ground of unsuitability passed before his completion of probation period, which is based on report/recommendation of the concerned authority, indicating commission of alleged misconduct by the probationer, then order is punitive in nature, which in the absence of any proper enquiry amounted to violation of Article 311(2) of the Constitution of India.

19. Again, the same view was reiterated by Hon'ble Apex Court in case **Andhra Pradesh State Federation of Coop. Spinning Mills Ltd. and Another Vs. P.V. Swaminathan (2001) 10 SCC 83** wherein it was held that "the legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by court. But, at the same time, the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact,

the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed”.

20. Therefore, once it is proved on record that the services of the applicant were terminated by virtue of impugned stigmatic and punitive order, on the basis of misconduct, then the protection under Article 311 of the Constitution of India is available to him and his services cannot be terminated on speculative grounds, without holding any enquiry. This matter is no more res integra and is now well settled.

21. An identical question came to be decided by the Hon’ble Apex Court in the **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others JT 2015 (9) 363**. Sequel, the same view was followed by this Tribunal in cases **Jaibir Antil Vs. Director, Department of Women and Child Development, Govt. of NCT of Delhi and Others** in **OA No.100/1232/2014** decided on 10.08.2016, **Mahavir Singh Vs. DTC & Others** in **OA No.100/2903/2013** decided on 08.09.2016 and **Jasbir Singh Vs. DTC** in **OA No.100/3760/2013** decided on 24.10.2016. wherein having considered the previous judgments of Hon’ble

Supreme Court in cases ***Samsher Singh v. State of Punjab* (1974) 2 SCC 831, *Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another* (1999) 2 SCC 21, *State of U.P. vs. Kaushal Kishore Shukla* (1991) 1 SCC 691, *Triveni Shankar Saxena vs. State of U.P.*(1992) Supp (1) SCC 524, *State of U.P. vs. Prem Lata Misra* (1994) 4 SCC 189, *Samsher Singh (supra)*, *Parshotam Lal Dhingra vs. Union of India* AIR 1958 SC 36, *State of Bihar vs. Gopi Kishore Prasad* AIR 1960 SC 689, *State of Orissa vs. Ram Narayan Das* AIR 1961 SC 177, *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, *Anoop Jaiswal vs. Govt. of India* (1984) 2 SCC 369, *Nepal Singh vs. State of U.P.* (1980) 3 SCC 288, *Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena* (1994) 5 SCC 177, *Commissioner, Food & Civil Supplies vs. Prakash Chandra Saxena* (1994) 5 SCC 177, *Chandra Prakash Shahi vs. State of U.P. and Others* (2000) 5 SCC 152, *Union of India and Others vs. Mahaveer C. Singhvi* (2010) 8 SCC 220, *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences* (1999) 3 SCC 60, *Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another* (2002) 1 SCC 520] and *State***

Bank of India and Others vs. Palak Modi and Another (2013) 3 SCC 607, it was ruled by the Apex Court that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311 (2). Hence, a show cause notice was required to be issued and opportunity of being heard has to be provided to such employees in departmental enquiry before passing any adverse order. In the absence of which, the termination order would be inoperative and non-est in the eyes of law.

22. Therefore, such impugned stigmatic and punitive order of termination, passed on account of lack of devotion to duty leading to escape of inmates from OHB-II, Kingsway Camp, Delhi, against the applicant by the competent authority would be inoperative and cannot legally be sustained. Thus, the contrary arguments of the learned counsel for the respondents *stricto sensu* deserve to be and are hereby repelled. On the other end the ratio of law laid down in the indicated judgments by Hon'ble Apex Court is

mutatis mutandis applicable to the facts of the present cases and is a complete answer to the problem in hand.

23. Thus, seen from any angle, the impugned orders cannot legally be sustained in the obtaining circumstances of the case.

24. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

25. In the light of the aforesaid reasons, OA is accepted. The impugned termination order dated 11.11.2013 (Annexure A-1), is hereby quashed. The respondents are directed to reinstate the applicant in service forthwith, with all consequential benefits. However, he would be entitled to 50% of amount of his back wages in view of the judgment of the Hon'ble Apex Court in ***Ratnesh Kumar Choudhary's case*** (supra). However, the parties are left to bear their own costs.

Needless to mention, the respondents would be at liberty to initiate appropriate proceedings against the applicant for his alleged misconduct, after following due procedure, in view of aforesaid observation and in accordance with law.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)
10.08.2016