

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2348/2013

Order Reserved on: 08.01.2016

Order pronounced on: 10.02.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Parmanand Verma, Age 26 years approx

S/o Shri Phool Singh

R/o Village Kanharka

P.O. Kotkasim, Distt. Alwar

Rajasthan – 301 702.

... Applicant

(By Advocate: Sh. J.S.Chillar for Shri Susheel Sharma)

Versus

1. Government of N.C.T. of Delhi
Through Chief Secretary
Delhi Administration, Delhi
Old Secretariat
Delhi.
2. Director of Education
Directorate of Education
(Government of N.C.T. of Delhi)
Old Secretariat
Delhi – 110 054.
3. Deputy Director of Education
Distt. South (Vigilance Branch)
C-Block, Defence Colony
New Delhi.

4. HOS,
Govt. Boys' Secondary School
JJ Colony
Madanpur Khadar Ext.
New Delhi – 110 076.

... Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

By V. Ajay Kumar, Member (J):

The short question in the present case is whether even though the impugned Order Annexure A1 dated 24.06.2013 may be innocuous terminating the services of the applicant in pursuance to the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the same, in fact and reality, is punitive in nature and, therefore, before any action could be taken against the applicant and his services terminated, he ought to have been heard in the matter and asked to quit only if the misconduct alleged against him was proved in an inquiry properly held on that behalf.

2. The seminal facts of the case are that the applicant, on his selection on merit through the DSSSB, was offered the post of TGT (Sanskrit) vide Memorandum No.DE3(20)/E-III/DR/2011/1393 dated 22.02.2011 issued by Directorate of Education, Govt. of NCT of Delhi, and was appointed to the said post vide Order dated 11.07.2011. As per the terms of his appointment, the probation period is two years which can be extended, at the discretion of the appointment authority.

3. The relevant paragraphs of the said Offer of Appointment dated 22.02.2011 read as under:

" MEMORANDUM

**Sub: Offer of appointment to the post of
TGT(SKT.).**

Shri/Smt./Km **PARMANAND VERMA** a nominee of the Delhi Subordinate Service Selection Board (DSSSB) is hereby given an offer to a temporary post of **TGT(SKT.)**, in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4600 (pre-revised scale of Rs.5500-175-9000) plus usual allowances as admissible under the rules and on the following terms and conditions:-

1. That this offer is for appointment purely on temporary basis for a period of two years which is likely to be made regular after two years after completion of the probation successfully and following verifications:-
 - (i) Date of Birth
 - (ii) Educational Qualifications, NOC etc.
 - (iii) Category, status, Caste/Tribe Certificate.
2. That the Candidate would be on Probation for a period of two years which can further be extended at the discretion of the appointing authority.
3. The appointment may be terminated at any time by one month's notice given by either side viz. The appointee or the appointing authority without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of stipulated period of notice by making payment to him a sum of equivalent to the pay and allowances for the period of notice or the unexpired portion thereto."

4. It is submitted that due to certain disputes between the applicant and his wife, on a complaint made by his wife, an FIR was lodged against the applicant under Section 498A IPC and in connection with the same he was arrested and remained under custody w.e.f. 02.12.2012 to 06.12.2012. Again, on a complaint made by his wife to the respondents, vide Memorandum dated 14.01.2013 of the 4th Respondent, the applicant was informed to submit the bail orders within three days from the date of receipt of the said letter, failing

which disciplinary proceedings shall be initiated against him. After receipt of the required information, the 4th Respondent vide Memorandum dated 16.01.2013, while informing him that the applicant remained in police custody from 02.12.2012 to 06.12.2012, but he neither given any information about this to the School office nor submitted any documents pertaining to the case, called him to submit a reply within three days, failing which disciplinary proceedings will be initiated against him. However, the 3rd Respondent-Deputy Director of Education, vide proceedings dated 14.01.2013 itself, placed the applicant under deemed suspension and the said order reads as under:

"GOVT OF NCT OF DELHI
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTT SOUTH-C-BLOCK DEFENCE COLONY NEW DELHI
VIGILANCE, BRANCH

No.F.DE.50(10)/VIG/South/2011/33 Dated:

ORDER

Whereas, a case against Sh. Parmanand Verma, TGT (Skt) (Emp.ID 20110360) of G.B.Sec School, J.J.Colony, Madanpur Khadar Ext. New Delhi (Scg.I.D-1925229) with regard to criminal offence is under investigation against him in a FIR No.565 dated 15.11.2012 lodget at P.S. Tapukra, Alwar, Rajasthan.

Whereas, the said Sh. Parmanand Verma was arrested on 2.12.2012 at 7.15 PM and was detained in police custody up 6.12.2012.

Now, therefore the said Sh. Parmanand Verma, TGT (Skt) is deemed to have been suspended with effect from the date of detention i.e., 2.12.2012 in terms of Sub-rule(2) of Rule 10 of the Central Civil Services (Classification Control & Appeal) Rules 1965 and shall remain under suspension till further orders.

Further, in accordance with the provision contained in FR-53(1)(II)(a) the Competent Authority hereby sanctions Subsistence Allowance of an amount equal to leave salary on the half average pay & allowance if admissible, on the basis of such leave salary till further order.

Sd/-

(RENU SHARMA)
DY. DIRECTOR OF EDUCATION
DISTT: SOUTH

No.F.DE.50(10)/VIZ/South/2011/33 Dated 14/1/2013..."

5. Though the applicant submitted his detailed reply to the Memorandum issued by the School authorities on 16.01.2013 itself, the 2nd Respondent-Director of Education issued the impugned termination order dated 24.06.2013 which reads as under:

"DIRECTORATE OF EDUCATION
ESTABLISHMENT BRANCH-III
OLD SECTT. DELHI-54

No.DE.3(55)/E-III/Misc./2013/1196-1205 Dated: 24/06/2013

ORDER

Order of termination of service issued under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965

In pursuance to the proviso to sub-rule() of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the services of Sh. Permanand Verma, TGT (Sanskrit) Emp. ID-20110360) of GBSS, JJ Colony, Madanpur Khadar Extn., New Delhi (Sch.ID-1925339) shall stand terminated at the end of 30 days from the date of issue of this order.

Further, the period of suspension of the said Sh. Permanand Verma, TGT (Sanskrit) w.e.f. 02-12-2013 shall be treated as *dies non*.

Sd/-
20.06.2013
(AMIT SING. A)
Director of Education

No.DE.3(55)/E-III/Misc./2013/1196-1205 Dated:24/06/2013
.."

The date of deemed suspension was later corrected by Corrigendum dated 28.06.2013, as 02.12.2012.

6. This Tribunal while issuing notices to the respondents, as an interim measure, stayed the impugned order dated 24.06.2013 for a period of 14 days, initially by an order dated 17.07.2013 and the same

has been extended from time to time till date. As a result, the respondents have taken back the applicant into service, however, continued him under suspension as he was under suspension as on the date of impugned termination order.

7. Heard Sh. J.S.Chillar, proxy of Sh. Susheel Sharma, learned counsel for the applicant and Shri Vijay Pandita, the learned counsel for the respondents and perused the pleadings on record.

8. The learned counsel for the applicant contended that the basis for terminating the services of the applicant was the arrest of the applicant and that is why the respondents placed the applicant under suspension and, hence, though the impugned termination Order is innocuous, the same is liable to be quashed being violative of principles of natural justice. The respondents cannot terminate the services of the applicant without conducting a proper inquiry and without following due procedure as per the CCS (CCA) Rules, 1965 as they have already invoked the said rules when they placed the applicant under deemed suspension under Rule 10(2) of the said Rules.

9. The learned counsel drawn our attention to the the decisions of two Coordinate Benches of this Tribunal in OA No.3580/2010 dated 24.01.2012 (**Dharmender Kumar v. Government of NCT of Delhi & Others**, and OA No.366/2008, dated 22.08.2008 (**Ashok Kumar v.**

Union of India & Others), which he has placed reliance also, in support of his contentions.

10. Per contra, the learned counsel for the respondents, *inter alia*, contend that the applicant is still under probation and the respondents are entitled to discharge/terminate the applicant if they found that he is not suitable for confirmation of his services. Further, it is the stand of the respondents that since the impugned termination order is innocuous and no stigma cast upon the applicant, the same is legal and valid.

11. The learned counsel also placed reliance on a decision of the Hon'ble Apex Court in **H. F. Sangati v. Registrar General, High Court of Karnataka and Others**, (2001) 3 SCC 117, the relevant paragraph of which reads as under:

"8. It is well settled by a series of decisions of this Court including the Constitution Bench decision in *Parshottam Lal Dhingra v. Union of India*, 1958 SCR 828 : (AIR 1958 SC 36) and 7-Judges Bench decision in *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192 : (1974 Lab IC 1380), that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In *Shamsher Singh's* case it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post; the competent authority may come to conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation. Recently, in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta*, (1999) 3 SCC 60 : (1999 AIR SCW 605 : AIR 1999 SC 983 : 1999 Lab IC 1114), having reviewed the entire available case law on the issue this Court has held that termination of a probationer's services, if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence would be

valid. In *Satya Narayan Athya v. High Court of M. P.*, AIR 1996 SC 750 : (1996 AIR SCW 55 : 1996 Lab IC 757) the petitioner appointed on probation as a Civil Judge and not confirmed was discharged from service in view of the non-satisfactory nature of the service. This Court held that the High Court was justified in discharging the petitioner from service during the period of probation and it was not necessary that there should have been a charge and an enquiry on his conduct since the petitioner was only on probation and it was open to the High Court to consider whether he was suitable for confirmation or should be discharged from service."

12. In the backdrop of the aforesaid facts and submissions on principles of law, it is useful to refer, hereinafter, a recent Judgement of the Hon'ble Apex Court, elaborately, wherein the entire case law on the subject is considered.

13. In **Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors.**, 2015 (10) SCALE 740, the issue considered by the Hon'ble Apex Court is whether the order of termination passed by the authority is stigmatic or not; and whether there had been violation of principles of natural justice, for no regular enquiry was conducted. After discussing various case laws, it was held as under:

"16. To appreciate the controversy, we may refer to certain authorities which are pertinent to appreciate the controversy. In *Samsher Singh v. State of Punjab*[(1974) 2 SCC 831], a seven-Judge Bench was considering the legal propriety of the discharge of two judicial officers of the Punjab Judicial Service who were serving as probationers. The majority laying down the law stated that:-

"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. 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 his discharge it may

in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.”

And again:-

“The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside.”

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23. A three-Judge Bench in Union of India and Others vs. Mahaveer C. Singhvi[(2010) 8 SCC 220], dwelled upon the issue whether the order of discharge of a probationer was simpliciter or punitive, referred to the authority in Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences[(1999) 3 SCC 60] and came to hold thus:-

“It was held by this Court in Dipti Prakash Banerjee case that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the cause of the termination are the motive or foundation. It was observed that if findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, a simple order of termination is to be treated as founded on the allegations and would be bad, but if the enquiry was not held, and no findings were arrived at and the employer was not inclined to conduct an enquiry, but, at the same time, he did not want to continue the employee's services, it would only be a case of motive and the order of termination of the employee would not be bad.”

24. At this juncture, we must refer to the decision rendered in Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Another[(2002) 1 SCC 520], wherein a two-Judge Bench struck a discordant note by stating that:-

“Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the

stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

25. The said decision has been discussed at length in *State Bank of India and Others vs. Palak Modi and Another*[(2013) 3 SCC 607] and, eventually, commenting on the same, the Court ruled thus:-

"The proposition laid down in none of the five judgments relied upon by the learned counsel for the appellants is of any assistance to their cause, which were decided on their own facts. We may also add that the abstract proposition laid down in para 29 in *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences* is not only contrary to the Constitution Bench judgment in *Samsher Singh v. State of Punjab*, but a large number of other judgments-*State of Bihar v. Shiva Bhikshuk Mishra*, *Gujarat Steel Tubes Ltd. v. Mazdoor Sabha* and *Anoop Jaiswal v. Govt. of India* to which reference has been made by us and to which attention of the two-Judge Bench does not appear to have been drawn. Therefore, the said proposition must be read as confined to the facts of that case and cannot be relied upon for taking the view that a simple order of termination of service can never be declared as punitive even though it may be founded on serious allegation of misconduct or misdemeanour on the part of the employee."

We respectfully agree with the view expressed herein-above.

26. In *Palak Modi's* case, the ratio that has been laid down by the two- Judge Bench is to the following effect:-

"The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

27. In the facts of the case, the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of

the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct."

14. As held by the Hon'ble Apex Court the important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his/her services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post. If for the determination of suitability of the probationer for the post he/she is holding or for his/her further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his/her services, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

15. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him/her, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his/her back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

16. On an anxious appreciation of the facts narrated above, it is luculent that the reason for terminating the services of the applicant was not that his unsatisfactory performance but his remaining in custody for four days in connection with an alleged offence, under 498A IPC registered against him. A fortiori, the respondents have placed the applicant under suspension by invoking the powers under the CCS (CCA) Rules, 1965 and have been continuing him as such till date. Therefore, it is clear that remaining in custody and pendency of a criminal case against the applicant were considered by the respondents as a misconduct, misbehaviour or misdemeanour and the same forms the foundation for termination of his services. In view of the aforesaid principles as laid down by the Hon'ble Apex Court and in

the circumstances of the case, the respondents cannot terminate the services of the applicant without following the due procedure provided under the CCS (CCA) Rules, 1965.

17. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned termination Order dated 24.06.2013 is quashed with all consequential benefits. This order shall not preclude the respondents from proceeding against the applicant in accordance with the applicable disciplinary rules, if circumstances warrant. The respondents shall also take independent decision about revoking or continuing the applicant under suspension, in accordance with the rules, within a reasonable period. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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