

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2588/2013

Order Reserved on: 30.05.2015
Order pronounced on 01.06.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Rahul Bhardwaj
S/o Sh. Ved Prakash Bhardwaj
H.No.C-27-A, Shiv Vihar
Karala, Delhi – 110 081. ... Applicant

(By Advocate: Ms. Priyanka Bhardwaj)

Versus

1. Union of India
Ministry of Health & Family Welfare
Nirman Bhawan C-Wing
New Delhi – 110 001.
2. The Director
CGHS
Nirman Bhawan
New Delhi.
3. The Additional Director 9HQ)
CGHS Government of India
9, Bikaner House
Shahjahan Road,
New Delhi – 110 001. ... Respondents

(By Advocate: Mr. A.K.Singh)

ORDER**By V. Ajay Kumar, Member (J):**

The applicant, a Pharmacist (Ayurvedic) and on Probation, filed the OA, seeking quashing of the impugned Annexure A1-Office Order, dated 22.03.2012 in terminating his services w.e.f. the date of expiry of a period of one month from the date on which the said order is tendered to him.

2. The applicant was offered a post of Pharmacist (Ayurvedic) under the Central Government Health Scheme, Delhi vide the Annexure A2-Office Memorandum, dated 01.07.2010 on the terms and conditions mentioned therein. Accordingly, the applicant joined as such on 16.08.2010. As per the terms of the said offer of appointment, the applicant will be on probation for a period of 2 years from the date of appointment, which can be extended at the discretion of the competent authority. It was further provided in the said letter that the appointment of the applicant may be terminated at any time by a month's notice given either side, i.e., the applicant or the appointing authority, without assigning any reason. Further, the appointing authority reserves the right of terminating the services of the applicant forthwith or before the expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. It was also provided that during the period of probation the services can be terminated at any time without any notice or assigning any reasons.

3. The respondents vide the Annexure A4-Office Order dated 28.12.2011 placed the applicant under suspension under sub-rule(1) of Rule 10 of CCS (CCA) Rules, 1965 by stating that disciplinary proceedings against the applicant are contemplated based upon a series of serious complaints against him. The representations preferred by the applicant against the said suspension were unanswered.

4. The respondents further by way of the impugned Annexure A1-Office Order dated 22.03.2012, in pursuance of the provision of sub-rule(II) of Para 2 of the offer of appointment dated 01.07.2010, issued notice to the applicant that his services shall stand terminated w.e.f. the date of expiry of a period of one month from the date on which the said notice is tendered to him. Aggrieved by the same the applicant filed the present OA.

5. Heard Mrs. Priyanka Bhardwaj, the learned counsel for the applicant and Shri A.K.Singh, the learned counsel for the respondents and perused the pleadings on record.

6. The learned counsel for the applicant Smt. Priyanka Bhardwaj submits that the impugned notice of termination cast stigma and the respondents instead of conducting a regular departmental inquiry, in terms of the CCS (CCA) Rules, 1965 against the applicant, illegally resorted to the termination simplicitor, on the ground that the applicant is under probation. The impugned order is punitive in nature

as the same is preceded by the Annexure A4, a suspension order, dated 28.12.2011 whereunder the respondents while placing the applicant under suspension in exercise of the power conferred on them by sub-rule (i) of Rule 10 of CCS (CCA) Rules, 1965, categorically stated that a disciplinary proceeding is contemplated based upon a series of serious complaints received against the applicant.

7. The learned counsel further submits that the respondents have conducted an inquiry behind his back and without following the due procedure and rules and without providing any opportunity to the applicant and by pre-judging the issue, terminated the services of the applicant, as a punishment.

8. The learned counsel further submits that if the termination was punitive and was brought about on the ground of misconduct, Article 311(2) of the Constitution of India would be attracted and in such a case a departmental inquiry would have to be conducted, before terminating the services of a probationer.

9. The learned counsel placed reliance on the decisions of the Hon'ble Apex Court in **Union of India & Others v. Mahaveer C. Singhvi**, 2010 (7) SCALE 623 and in **Nehru Yuva Kendra Sangathan v. Mehbub Alam Laskar**, (2008) 2 SCC 479.

10. Per contra, Shri A.K.Singh, the learned counsel appearing for the respondents would contend that the applicant admittedly is on probation and that the terms and conditions of his appointment

empower the respondents to terminate the services of the applicant during the period of probation by issuing a month's notice and without assigning any reasons. The impugned Annexure A1-termination notice, dated 22.03.2012 is an innocuous order and since no allegations of any nature were mentioned therein, the same cannot be said to be punitive or stigmatic. According to the learned counsel, the decisions relied upon by the applicant have no application to the applicant's case, as the facts are different.

11. It is not in dispute that the applicant is still on probation and his service conditions are governed by the Annexure A2-offer of appointment, dated 01.07.2010. It is also not in dispute that the respondents, in exercise of their power under sub-rule(i) of Rule 10 of CCS (CCA) Rules, 1965, placed the applicant under suspension, vide Annexure A4-Office Order dated 28.12.2011 by stating that disciplinary proceedings against the applicant are contemplated based upon a series of serious complaints received against him.

12. Further, the respondents in their counter stated that the behaviour of the applicant since joining was not upto the mark, conducive and various complaints were received from CGHS beneficiaries regarding his involvement in illegal activities, rude behaviour and misbehaviour, and in spite of transferring him from South Zone to Janakpuri, the behaviour of the applicant was not improved. Various memos have been issued to the applicant. He was again transferred from Janakpuri to Gurgaon and at every place

complaints were received against him. When there was a Starred Parliament Question in Rajya Sabha regarding non-initiation of strong disciplinary action against the applicant based on the series of serious complaints received against him, on instructions of the competent authority, the services of the applicant were placed under suspension vide Order dated 28.12.2011.

13. The aforesaid sequence of facts clearly indicates that the applicant's services were terminated during the period of probation basing on his alleged misconduct. However, the impugned termination order is an innocuous one and does not contain any reasons for the said termination.

14. Hence, whether the respondents are right in not holding a regular departmental inquiry before dispensing with the services of the applicant, a probationer, especially when his services are terminated by an innocuous order, which does not cast any stigma on him?

15. In **Mahaveer C. Singhvi** (supra), the respondent a probationary officer of Indian Foreign Service, was discharged from service, by way of termination simplicitor. The Hon'ble Apex Court in order to appreciate the question whether the innocuous order of discharge simplicitor of a probationer, is punitive and whether a regular inquiry is to be conducted before the said discharge, considered the background of the said discharge order. After considering its decision in **Purshottam Lal Dhingra v. Union of India**, (1958) SCR 828 and various other decisions, and after noticing the submissions made on

behalf of the respondent held that the discharge order was punitive in character and had been motivated by considerations which are not reflected in the said order and accordingly dismissed the appeal of Union of India, as under:

"22. Several other decisions on the same question, namely, (1) Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences [JT 2001 (9) SC 420:2002 (1) SCC 520], (2) State of Haryana v. Satyender Singh Rathore [JT 2005 (8) SC 192 : 2005 (7) SCC 518], (3) Oipti Prakash Banerjee (supra); (4) Jai Singh v. Union of India [JT 2006 (7) SC 533 : 2006 (9) SCC 717]; (5) Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [AIR 1980 SC 1896], (6) Life Insurance Corp. of India v. Shri Raghvendra Seshagiri Rao Kulkarni [JT 1997 (8) SC 373]; and (7) State of Punjab v. Shri Sukh Raj Bahadur [1968 (3) SCR 234] were also referred to by Mr. Malhotra. In the two latter cases, this Court relying on the principles laid down in Purshotam Lal Dhingra's case (supra), reiterated the law that the requirement to hold a regular departmental enquiry before dispensing with the services of a probationer cannot be invoked in the case of a probationer, especially when his services are terminated by an innocuous order which does not cast any stigma on him. However, it was also observed that it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination was punitive and was brought about on the ground of misconduct, Article 311(2) would be attracted and in such a case a departmental enquiry would have to be conducted.

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27. Mr. Bhushan submitted that, as has been rightly held by the High Court, the case of the Respondent was fully covered by the series of decisions of this Court which have also been referred to on behalf of the petitioners. Mr. Bhushan, however, laid special emphasis on the following decisions of this Court, some of which have also been cited on behalf of the petitioners, namely, (1) State of Bihar v. Shiva Bhikshuk Mishra [1970 (2) SCC 871]; (2) Shamsher Singh (supra); (3) Gujarat Steel Tubes Ltd. (supra); (4) Anoop Jaiswal v. Government of India & Anr. [1984 (2) SCC 369]; (5) Nehru Yuva Kendra Sangathan v. Mehbub Alam Laskar [JT 2008 (2) SC 163 : 2008 (2) SCC 479], wherein it has been repeatedly observed that if a discharge is based upon misconduct or if there is a live connection between the allegations of misconduct and discharge, then the same, even if couched in language which is not stigmatic, would amount to a punishment for which a departmental enquiry was imperative. Various other decisions were also cited by Mr. Bhushan, which reflect the same views as expressed by this Court in the above-mentioned decisions.

28. From the facts as disclosed and the submissions made on behalf of the respective parties, there is little doubt in our minds that the order dated 13th June, 2002, by which the Respondent was discharged from service, was punitive in character and had been motivated by considerations which are not reflected in the said order."

16. In a recent decision of the Hon'ble Apex Court in **Ratnesh Kumar Chaudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar**, (2015) 10 SCALE 740, the Hon'ble Apex Court, after considering the entire case law on termination simplicitor, held as under:

"The ratio of the above noted Judgements 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 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."

17. In view of the aforesaid conspectus of the facts and law, it is luculent that the allegations of misconduct against the applicant only constitutes the foundation for his termination, and hence, the same is invalid and liable to be set aside.

18. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned Annexure A1-termination order, dated 22.03.2012 is quashed, and the respondents are directed to reinstate the applicant into service forthwith. In view of the serious allegations against the applicant, the respondents are directed to conduct a regular departmental inquiry, and to pass appropriate orders, as per rules. The applicant shall co-operate with the enquiry and disciplinary authorities, without indulging in any dilatory tactics. This exercise shall be completed within six months from the date of receipt of a copy of this order. The confirmation and continuation of services of the applicant and the treatment of the break period and the consequential

arrears, if any, are dependant upon the orders to be passed by the respondents in the disciplinary proceedings. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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