CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH
(CIRCUIT BENCH AT JAMMU)

O.A.NO.061/01456/2017 Decided On : 19.04.2018

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. P. GOPINATH, MEMBER (A)

Hardeep Singh aged 30 years,

Field Assistant FA (GD) ID No. 09651-X,

SB Amritsar, Group "C",

S/o Sh. Khazan Singh,

R/o Village Lehar, Akhnoor,

Tehsil Akhnoor, District Jammu.

Applicant

By: Mr. Ankush Manhas, Advocate.

Versus

1. Union of India through Secretary Cabinet Secretariat, Special Bureau, Govt. of India, Rashtrapati Bhawan, New Delhi-110004.
2. Under Secretary (Pers), Room No. 1001, B-1 Wing 10th Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
3. Addl., Secretary (Pers), Room No. 1001, B-1, Wing 10th Floor, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi-110003.
4. Deputy Commissioner (Admn), Government of India, Special Bureau 0B-16 Rail Head Complex Panama Chowk, Jammu-180012.

… Respondents

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 17.8.2017 (Annexure A-1), passed by respondent no.3 vide which his service have been terminated, during the probation period and for his reinstatement in service from due date.

2. The facts of the case, as culled out from the pleadings of the applicant, are that he was appointed as Field Assistant FA (GD) with I.D.No. 09651-X SB-Amritsar. He was on duty at his office at Railway Station, Atari Amritsar, when one Manveer Singh FA (GD), senior to him, asked him to join him for ACPI Atari, where due generally used to go for spotting and combing truck drivers hailing from Pakistan. His senior gave him his cell phone and asked applicant to shoot a video which was done ignoring the fact that it was prohibited to do so there. On an enquiry his senior informed him that it was for a reality show namely Big Boss. The petitioner was asked about the incident, he fully cooperated in the investigation and explained the true facts as he had not intentionally shot the video.

3. However, the applicant claims that all of a sudden his services were dispensed with vide memorandum/order dated 13.10.2017 (Annexure B), as such he was left with no alternative except to file representations, that his services cannot be dispensed without conducting any enquiry or service of any charge sheet and he has not been provided with any opportunity of hearing. He claims that even if a probationer is to be terminated, at least an enquiry is warranted before passing such punitive order. However, it was rejected vide memorandum dated 13.10.2017 (Annexure D). Hence, the O.A.

4. We have heard the learned counsel for the applicant at length and examined the pleadings on the file.

5. The solitary contention raised by the learned counsel for the applicant is that the services of the applicant have been terminated as a measure of punishment and it cannot be termed to be a simple termination order as it is based on shooting of unauthorized video for which an enquiry was warranted to prove the charge against the applicant. The reliance in support of the claim is placed on **V.P. Ahuja Vs. State of Punjab**, (2000) 3 SCC 239 and **A.P.State Federartion of Coop. Spinning Mills Ltd. & Another Vs. P.V. Swaminathan**, 2001 (10) SCC 83, to argue that 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 conduct really was the motive for the order of termination or formed the foundation for the same order.

6. On a consideration of the entire matter and oral submissions made by learned counsel for the respondents, we are of the opinion that the O.A. lacks substance and deserves to be dismissed. Appointment to a post on probation does not give a right to a temporary emnployee to hold the post and his services can be terminated without initiating proceedings as per rules governing such appointment. However, if the employer chooses to hold an enquiry into alleged misconduct or for similar reasons then termination of his services would be by way of punishment, since it casts stigma on such employee about his competence and it would necessarily affect his future prospects. However, if the employee is discharged by an order simplicitor or his services are terminated without holding any enquiry on account of any reason and without affording opportunity of hearing, such probationer

cannot have cause of action even though the real motive behind his removal may have been that his employer thought him to be unsuitable to the post he was temporarily holding. In other words, imputation if any has to be discerned from discharge order on such termination. Thus, in a given case, it has to be examined whether the termination is by way of punishment or discharge simplicitor. The test for determining whether the termination of a Government servant from service is by way of punishment or not is to ascertain whether such employee who has suffered termination had right to hold the post.

7. Hon'ble Apex Court in the case of **PURSHOTAM LAL DHINGRA V. UNION OF INDIA**, AIR 1958 SC has opined as under :-

> "26. The foregoing conclusion, however, does not solve the entire problem, for it has yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311(2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment. Again where a person is appointed to a temporary post for a fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Art. 311(2). The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Art. 311(2). Further, take the case of a person who having been appointed temporarily to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi-permanent capacity, such person, under R. 3 of the 1949 Temporary Service Rules, is to be in quasi-
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> permanent service which, under R. 6 of those Rules, can be terminated (i) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated or (ii) when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripens into a quasi-permanent service as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with R. 6 of those Rules will deprive him of his right to that post which he acquired under the rules and will prima facie be a punishment and

regarded as a dismissal or removal from service so as to attract the application of Art. 311. Except in the three cases just mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment. Thus where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant, so appointed, has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment. This aspect of the matter is recognised in the Explanation to R. 49 of the 1930 Classification Rules which correspond to the Note to R. 1702 of the Indian Railway Code and R. 3 of the 1955 Rules and R. 13 of the 1957 Rules, for all those rules expressly say that the termination of such an appointment does not amount to the punishment of dismissal or removal within the meaning of those rules. Likewise if the servant is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, under the general law, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount to dismissal or removal from service. This principle also has been recognised by the Explanations to R. 49 of the 1930 Classification Rules corresponding to the Note to R. 1702 of the Indian Railway Code and R. 5 of the 1949 Rules and R. 3 of the 1955 Rules and R. 13 of the 1957 Rules. Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under, the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi- permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Art. 311. In other words and broadly speaking, Art. 311 (2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Art. 311."

17. If the order of discharge is simplicitor there cannot be any view other than concluding that such order of discharge or removal cannot be subject matter of scrutiny by the Courts in exercise of the power under Article 226 of the Constitution of India. It is trite to say that proceedings arising under Article 226 of Constitution of India are in the nature of judicial review and such review could only be in respect of decision making process and not the decision by itself. If two views are possible, even then, it would not be possible for this Court to interject or substitute its conclusion or views to that of the decision arrived at by the

> parties. Thus, a heavy burden is cast on the Court to discern from the order of termination and to ascertain as to whether termination is by way of punishment and the test to be applied would be to find out as to whether such termination order or discharge would result in visiting such employee with the penal consequences which would result in forfeiture of any of the rights of such an employee.

8. The Hon'ble Supreme Court in the case of **THE STATE OF BIHAR V/S GOPIKRISHORE PRASAD,** AIR 1960 SC has held that a termination founded on inefficiency or other disqualification is a punishment because "it puts indelible stigma on the officer affecting his future career". The word 'stigma' would relate to conduct or character of an employee. Stigma according to dictionary meaning is something that detracts from the character or reputation of a person, a mark sign etc indicating that something is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compulsory retirement of a Government servant, stigma would mean a statement in the order indicating his misconduct or lack of integrity.

9. This aspect has been examined by Hon'ble Apex Court in the case of **DIPTI PRAKASH BANERJEE V. SATYENDRA NATH BOSE NATIONAL CENTRE FOR BASIC SCIENCES, CALCUTTA AND OTHERS** (1999) 3 SCC 60, holding as follows:

> "26. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a "stigma". The other issue in the case before us is whether even if the words used in the order of termination are innocuous, the court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination."
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> "31. Thus, it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to judge whether the words employed amount to a stigma or not. Point 2 is decided accordingly".

10. It has been held by the Hon'ble Apex Court in the case of **SAMSHER SINGH VS STATE OF PUNJAB** AIR 1974 SC 2192, that no abstract proposition can be laid down that where the services of a probationer are terminated it can never amount to a punishment. It has been held as under:

> "63. 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.
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> 64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved, in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. In State of Bihar V. Gopi Kishore Prasad, A.I.R. 1960 S.C. 689 it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy courser, the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer.
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> 65. The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. (See State of Orissa v. Ramnarain Das [1961] 1 S.C.R. 606) = (AIR 1961 SC 177)). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance, (See Madan Gopal v. State of Punjab [1963] 3 S.C.R. 716) = (AIR 1963 SC 531). In R. C. Lacy v. State of Bihar & Ors. (Civil Appeal No. 590 of 1962 decided on 23 October, 1963) it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311 (2). (See B. C. Banerjee v. Union of India [1964] 2 S.C.R. 135 = (AIR 1963 SC 1552). A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311 (See Champaklal G. Shah v. Union of India [1964] 5 S.C.R. 190 = (AIR 1964 SC1854). On the other hand, a statement in the

> order of termination that the temporary servant is undesirable has been held to import an element of punishment (See Jagdish Mitter v. Union of India A.I.R. 1964 S.C. 449)".

11. During the period of probation, the employer is entitled to assess the suitability of the candidates and if it is found that a candidate is not suitable to remain in service, they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties performed by an employee during the period of probation and if they record a finding that during the probationary period, the work and performance of the duties of a probationer were unsatisfactory, employer is entitled to terminate the service in terms of the letter of appointment without conducting any enquiry.

12. It has been held by the Hon'ble Apex Court in the case of **KUNWAR ARUN KUMAR V/S U.P.HILL ELECTRONICS CORPORATION LTD., AND OTHERS** (1997) 2 SCC 191 that recording of unsatisfactory performance is not stigmatic and reason mentioned in the order was motive and not the foundation.

13. The case in hand is very clear that applicant was put on probation for a period of two years, vide memorandum dated 16.5.2016 and as per clause 2(b), the appointment could be terminated at any time by a month's notice given by either side. The appointing authority, reserved right of terminating the services of the appointee forthwith or before the expiry 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 un-expired period thereof. Vide impugned order dated 17.8.2017, Annexure B, passed in pursuance of proviso to sub-rule (1) of Rule 5 of

the Central Civil Services (Temporary Service) Rules, 1965, the services of applicant have been terminated with notice pay and there is no mention of any misconduct or act upon which his services have been terminated. Apparently, it is an order of termination simplicitor, which cannot be interfered by this Tribunal. The decisions relied upon by the applicant do not help him at all, and are in a different context and distinguishable on facts and law. Above all, the applicant has not even challenged the memorandum/order dated 13.10.2017 (Annexure D), vide which his representation had been rejected by the respondents.

14. In the backdrop of aforesaid factual and legal scenario, we have no hesitation in holding that the instant O.A. is devoid of any merit and is accordingly dismissed. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place: Jammu.
Dated: 19.04.2018