CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

Pronounced on: 03.04.2019
Reserved on: 05.03.2019

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

OA No. 060/00070/2018

Vijayinder son of Sh. Vijay Kumar age 34 years resident of House No. 12/13, Kind City, P.O. Hazara, Village Dhadda, District Jalandhar – 144 025.

…Applicant

BY ADVOCATE: **Sh. D.R. Sharma**

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Intelligence Bureau, North Block, New Delhi.
2. The Joint Director, Establishment & Head of the Department, Subsidiary Intelligence Bureau, Bandra-Kurla Complex, Mumbai – 400051.
3. The Assistant Director, Establishment, Subsidiary Intelligence Bureau, Bandra-Kurla Complex, Mumbai – 400 051.

…Respondents

BY ADVOCATE: **Sh. Sanjay Goyal**

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

1. Applicant is a person who joined the services of the respondents on 11.05.2015. Applicant was on probation for a period of two years. On completion of training, applicant was posted to the Pune unit. One week before the completion of the two year probation period, order dated 04.05.2017 was passed terminating the services of the applicant in pursuance of proviso to

sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Applicant filed OA No. 1288/2017 which was disposed of on 30.10.2017 with the direction that if the applicant files a representation within one week of the Tribunal order, the respondents shall decide the same within two weeks by passing a reasoned and speaking order. Applicant submitted a representation on 03.11.2017. Respondents passed impugned order Annexure A-1 rejecting the representation.

2. Applicant argues that his termination cannot be termed as termination simpliciter and terms it as stigmatic. The applicant cites Apex court order in Chandra Prakash Shahi Vs. State of UP & Ors., (2000) 5 SCC 152 wherein Apex Court has held that a temporary Government employee or probationer is entitled to protection under Article 311 (2) and the Court can lift the veil to determine real character of termination.

3. Prayer of the applicant is for quashing Annexure A-4 termination order and Annexure A-1 speaking order issued in compliance of order in OA No. 1288/2017. The applicant also prays for reinstatement in service.

4. The respondents in the reply statement clarify that the applicant joined the Bureau on 11.05.2015 and this was the date of his appointment. They also submit that the applicant had deliberately not attached the copy of the appointment order so that his date of appointment can be concealed from the Bench. The respondents also distinguish between the offer of appointment and

the date of joining service. This is on account of the fact that the two year probation period would be 2 years from the date of joining and the applicant's services were terminated on 04.05.2017 while he was still on probation, much before the completion of the two year period of probation. Aggrieved by the order of termination, applicant submitted R-3 representation on 16.05.2017 and Annexure R-4 speaking order was issued to the applicant.

5. The respondents deny that the termination was a punishment or a stigmatic order or has any adverse consequences. To buttress their stand, the respondents cite the case of **State of Punjab and Ors. Vs. Sh. Sukh Raj Bahadur, (1970) ILLJ 373 SC** and further state that the case cited by the applicant in Chandra Prakash (supra) is not relevant to the case of the applicant. The respondents also cite CAT Principal Bench order in OA No. 3478/2009 wherein the Bench had held as follows:-

> "A plain reading of the impugned order does not indicate any reference which could be called stigmatic in nature. Accordingly, it passes the form test. It is the admitted case that no formal and informal inquiry was held against the applicant. It is admitted that a few Memos expressing dissatisfaction about the work of the applicant were issued by the Principal of School, who was the Controlling Authority of the Applicant. In all cases of termination of services of an employee on probation there would be a background including the unsatisfactory work/conduct of the employee. It does not take place in a vacuum. If the Competent Authority, taking into account the overall performance of the candidate decides that the employee cannot be retained in service, it would not make the order punitive. Following the ratio of judgement of the Hon'ble Supreme Court, one has to find whether there was any serious misconduct which formed the foundation for the impugned order or whether the allegations merely provided the motive for the action impugned. Since there was no inquiry and there is no reference to any stigmatic conduct on his part in the order, we are in agreement with the counsel

for the respondents that the impugned order is non-stigmatic in nature and will not have any adverse consequences for the career prospects of the applicant elsewhere. The three judgments referred to by the learned counsel for the applicant do not help the case of the applicant in any way. The applicant has failed to establish that there was any specific act of misconduct involving moral turpitude for which there was a formal inquiry followed by a finding and the respondents, instead of taking that up to its logical end, have taken recourse to the short cut of terminating his services. It was within the rights of the competent respondent authority to pass the impugned order keeping in view the overall work and conduct of the applicant during the probation period. Therefore, we do not find that the impugned orders suffer from any infirmity. In the result, OA is dismissed. No costs."

6. Head the counsel for the applicant and the respondents and have carefully gone through the pleadings on record. The applicant's service was terminated while he was still on probation. Such a termination is admissible under the Temporary Service Rules. On the basis of the CAT order in OA No. 1288/2017, the respondents had passed Annexure A-1, detailed speaking order. The respondents in the said speaking order submit that the applicant was on probation for two years upto 10.05.2017, which is not disputed as it is two years from the date of joining service. The termination order had been issued by the authority competent to issue the same. Under Rule 5 of CCS (Temporary Service) Rules 1965, when such a termination is attracted, the same shall be made after issuing a notice of one month by either side i.e. the appointee or the appointing authority and this had been complied with by the respondents. During the period of probation, if the appointing authority is of the view that the person appointed is not fit for permanent appointment, then, he may be discharged from service.

The applicant had used the opportunity of submitting a representation on his own and also secondly on the direction of the Tribunal a second time and both representations had been addressed and replied to by the respondents.

7. The Bench during the course of hearing on 28.09.2018, directed the counsel for the respondents to produce the original record in which the applicant's case for termination of probation was processed. It was stated by the counsel for respondents that the file in which the impugned order of termination was handled, can only be shown to the Bench in confidence. On a perusal of the above documents produced before the Bench, we observe that there was substantial reason for the termination of the service of the applicant. 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 simpliciter 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 simpliciter. 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.

8. 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-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."
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> 27. If the order of discharge is simpliciter 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.

9. 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.

10. 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".

11. 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)".

12. 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.

13. 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.

14. The case in hand is very clear that applicant was put on probation for a period of two years. His appointment could be terminated at any time by a month's notice given by either side. The authority passed in pursuance of proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 terminating his service and there is no mention of any misconduct or act upon which his services have been terminated. Apparently, it is an order of termination simpliciter, which cannot be interfered by this Tribunal. The decision relied upon by the applicant does not help him at all, and is in a different context and distinguishable on facts and law. The material available on record convinced the competent authority that retention of applicant would not be in interest of the department and as such impugned order was

passed, without attaching any stigma to his work and conduct and as such the order does not warrant any interference by us. The order dated 20.11.2017 passed in pursuance of directions of this Tribunal goes to indicate that it is a speaking order and meets the various averments raised by the applicant in his representation including that he would have completed his probation period on 10.5.2017, on the basis of his joining on 11.5.2015. When action is taken under indicated rule, the reasons for termination are not required to be mentioned in terms of the instructions issued in that connection. The claim of salary equal to notice period has also been settled by issuance of sanction on 7.11.2017 and if one is not fit for permanent appointment the authority is well within its power and authority to dispense with services of a probationer.

15. In view of the above discussion, we are of the view that there arises no occasion or necessity to interfere with the action of the respondents in terminating the probation of the applicant as per applicable service rules.

16. OA, being devoid of merits, is dismissed. There shall be no order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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