

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve : 14.02.2013

Date of Decision : 08.04.2013

+ LPA 808/2004 & C.M. APPL. 10564/2004

**PREM KISHORE**

..... Appellant

Through : Sh. G.D. Gupta, Sr. Advocate with Sh. Sanjiv  
Joshi and Sh. Piyush Sharma, Advocates.

versus

**CENTRAL WAREHOUSING CORPORATION** ..... Respondent

Through : Sh. K.K. Tyagi and Sh. Iftikhar Ahmad,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. The present appeal – by an unsuccessful writ petitioner (referred to as “the petitioner”) is directed against the judgment and order of a learned Single Judge, dated 20-2-2004, dismissing WP 662/1984.

2. The Petitioner was selected for appointment to the post of Junior Technical Assistant. His letter of appointment, dated 17.10.1983, stated that:

*“(iii) For probation and other terms and conditions his, her services will be governed by the CWC (Staff) Regulations as enforced from time to time.”*

3. The Petitioner accepted the letter of offer; consequently, sometime in December, 1983, the respondent (hereafter “CWC”) issued an office order appointing him to the post of Junior Technical Assistant. The office order

indicated that the petitioner would be *“on probation for a period of one year which may be further extended for a period not exceeding one year in all.”*

4. By order dated 15<sup>th</sup> June, 1984, the Petitioner was given additional charge of Godown Nos. III and IV in addition to the charge of Godown Nos. I and II, which was already with him. On 28<sup>th</sup> June, 1984, a Memo was issued to him, demanding explanation that some damaged empty burnt tins had been thrown out of the godown by him on 27<sup>th</sup> June, 1984. This Memo, dated 28<sup>th</sup> June 1984 was received by him with second memo dated 2<sup>nd</sup> August, 1984 wherein an explanation regarding some allegations was asked from the petitioner. The allegations here were that the petitioner had refused to receive the Zinc Ingots in Godown No. IA to which he gave his reply on 24<sup>th</sup> August denying allegations made in the first Memo. By an order dated 6<sup>th</sup> September 1984, issued by the CWC, the petitioner was placed under suspension initially pending the initiation of the disciplinary proceedings. However, none were initiated and the said suspension order was revoked on 16<sup>th</sup> February, 1985. A regular departmental enquiry was thereafter held against Shri P. P. Singh, Superintendent, Central Warehousing Corporation, Patparganj. In the said proceedings against Shri P. P. Singh, the petitioner appeared as a witness and the Enquiry Officer held Shri P. P. Singh guilty in the report and made certain observations qua the working of the petitioner as well.

5. In the meanwhile, a year's probationary period of the petitioner ended in December, 1984. No formal order was issued extending the probation, nor was one confirming the petitioner's service, issued by CWC. In this background, after the suspension order was revoked on 16<sup>th</sup> February, 1985, the CWC, on 22.10.1985 acting under sub Regulation (1) of Regulation 10 CWC (Staff) Regulations 1966, terminated his services. The office order dated 22.10.1985 reads as under:-

“OFFICE ORDER

*In terms of the provisions contained in Sub Regulation (1) of Regulation 10 of Central Warehousing Corporation (Staff) Regulation 1966. Shri Prem Kishore, Jr. Tech.Asstt. Central Warehouse. Gurgaon, is hereby terminated from the service of the Corporation with immediate effect in public interest. He is also paid a cheque bearing No. OS-100-922961 dated 18.10.1985 for Rs.1116/- (Rs.one thousand one hundred sixteen only) being the amount equivalent to one month's pay in lieu of one month's notice required there-under.”*

6. The petitioner represented against termination of his service, but without any success. He challenged the order of termination in the writ petition, filed before this court, urging that as no order was passed extending his probation period, which was initially for a period of one year as per the office order dated December, 1983, he would be deemed to have been confirmed w.e.f. December, 1984. It was argued also, that the termination order was *ex facie* penal in as much as it cast a stigma upon the petitioner. The words ‘*in public interest*’ used in the order of termination would cast aspersion upon the capability of the petitioner and therefore is penal. Alternatively, it was contended that the facts preceding the issuance of the order revealed that what has motivated and was the foundation of the order was a finding of guilt against the petitioner in an enquiry without any notice to him and without given him an opportunity of being heard.

7. The CWC resisted the petition, and contended that the order impugned was not penal. It also contended that the termination order was an innocuous one, and entirely based on the petitioner's unsuitability, determined on the basis of a *bona fide* evaluation of his work and performance. The CWC relied on Regulation 7 of the CWC (Staff) Regulations 1966 which stipulated that:

“7. PROBATION;

*(1) Every employee shall, on appointment to any post, be on probation in that post for a period of one year commencing from the date of appointment.*

*Provided that such period may be further extended for a period not exceeding one year in all at the discretion of the appointing authority.*

*Provided further that any continuous service rendered by an employee immediately before being placed on probation in a post may be counted towards the probationary period.*

*(2) Nothing in this regulation shall apply to the post of Managing Director or persons employed on deputation from the Central Govt. or any State Govt. or an Institution.”*

8. It was also argued that the CWC invoked its power under Regulation 10 and there were no facts or circumstances which could lead to the inference that the termination order was for anything other than the Petitioner’s performance, which the employer had a right to assess, and objectively decide not to continue him further in its service. Regulation 10 of the CWC (Staff) Regulations 1966 reads as under:

“10. TERMINATION OF SERVICE BY THE CORPORATION

*“(1) The Corporation may, at any time and without assigning any reasons, terminate the services of any temporary employee after giving one month’s notice or one month’s pay in lieu thereof.”*

9. The learned Single Judge, after considering the submissions of the parties, and taking note of the materials on record, held that the petitioner’s arguments were meritless, and that the enquiry proceedings held against someone else did not amount to holding an inquiry into his conduct. It was

held that the overall circumstances revealed that the CWC exercised its power *bona fide*, and terminated the petitioner from its employment, on the basis of its assessment of his unsuitability.

10. Counsel for the petitioner contended that the impugned judgment is in error of law. The learned Single Judge, it was contended, failed to look into the circumstances surrounding and leading up to the termination order. Reliance was placed on the decision reported as *Shamsher Singh v State of Punjab* 1975 (1) SCR 814, and other decisions of the Supreme Court, to say that courts should not be guided by the face of an innocuous termination order made against a probationer or a temporary government servant, but should satisfy themselves that the real basis or foundation of the order is not assumed misconduct. If so, a termination order not preceded by any fair procedure entailing opportunity of hearing to rebut such charges would be unjustified and illegal. It was emphasized that the illegality and unfairness in the present case were self-evident, because the petitioner was asked to depose in an inquiry against his superior officer, P.P. Singh. The inquiry report which led to the imposition of penalty against that official contained findings adverse to the petitioner; these formed the basis of the termination order. It was also stressed that the Memos said to be the real basis for termination of the petitioner (allegedly indicating his unsuitability) had been adversely commented by the Inquiry Officer, who discarded them as false, and issued by Shri. P.P Singh to save himself.

11. Counsel for the CWC had urged that the termination order in this case was not based on any allegation of misconduct, but on the assessment of suitability of the writ petitioner, to be continued in its services. It was urged that there was no obligation in the Regulations of the CWC, or any rule or condition governing the service of the writ petitioner to hold an inquiry. If during the career and service of an employee, the employer received reports,

which could be acted upon, no inference can be drawn that such genuine and *bona fide* assessment of lack of suitability had to necessarily be preceded by some formal inquiry. Imposition of such preconditions would hamper decision making and fetter broad discretionary power which extends to deciding not to retain officers or employees who are unsuitable for public employment with the Corporation.

12. Learned counsel relied on the decisions reported as *Krishnadevaraya Education Trust v. L.A. Balakrishna* (2001) 9 SCC 319, *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences* (2002) 1 SCC 520, *Progressive Education Society v. Rajendra* (2008) 3 SCC 310 and *Rajesh Kumar Srivastava v. State of Jharkhand* (2011) 4 SCC 447. In *Pavanendra Narayan Verma* it was held that:

“29. ... 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.”

13. Similarly, in *Progressive Education Society* (supra), the Court held that:

“The assessment has to be made by the appointing authority itself and the satisfaction is that of the appointing authority as well. Unless a stigma is attached to the termination or the probationer is called upon to show cause for any shortcoming which may subsequently be the cause for termination of the probationer's service, the management or the appointing authority is not required to give any explanation or reason for terminating the services except informing him that his services have been found to be unsatisfactory.”

14. Learned counsel sought to stress that the petitioner's termination was not preceded by any inquiry; he was a witness in the inquiry held into an incident of misconduct in respect of charges levelled against one P.P. Singh, a godown Superintendent, under whom he (the petitioner) had worked. The inquiry officer's report revealed some materials which led the competent authority to conclude that retaining the petitioner in its services did not benefit the interests of the corporation. No preliminary or formal inquiry was held; it was not even essential to do so. The Corporation therefore took a *bona fide* decision to dispense with Petitioner/Petitioner's employment. Therefore, the learned Single Judge did not commit any error of law which warrants this Court's interference in the present appeal.

15. The issue whether an innocuously worded order terminating the services of a probationer, even if based on allegations of misbehaviour which may necessitate an inquiry, was addressed by a seven judge larger Constitution Bench of the Supreme Court, in *Shamsher Singh* (supra), where it was held that:

*“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”*

Other decisions in *R.S. Sial v. State of U.P.* (1974) 3 SCR 754, *State of U.P. v. Ram Chandra Trivedi* (1976) 4 SCC 52 and *I.N. Saksena v. State of M.P.* (1967) 2 SCR 496 were considered, along with *Shamsher Singh*, in *Anoop Jaiswal v Union of India* 1984 (2) SCC 369, where the Supreme Court held that if after examining the attendant circumstances of an order of termination

served on probationer, it the “*court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.*”

16. Much later, in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences* (1999) 3 SCC 60, a two Judge Bench of the Supreme Court considered a challenge to the termination of services after adverting to the various communications sent by the Head of the Organization to the petitioner and while considering the circumstances surrounding the termination of a probationer's services can be said to be “founded” on misconduct held that:

*“If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “founded” on the allegations and will be bad. But if the enquiry was not held, 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 against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”*

17. In a recent judgment of the Supreme Court (*State Bank of India v Palak Modi* 2012 (11) SCALE 542) the Court considered the law declared in all the previous rulings, and held that:

*“20. The ratio of the above noted 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 suitability 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.”*

Speaking about *Progressive Education Society* (supra), the Court held (in *Palak Modi*) that:

*“33. 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 paragraph 29 of the judgment in Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences (supra) is not only contrary to the Constitution Bench judgment in Samsher Singh v. State of Punjab (supra), but large number of other judgments - State of Bihar v. Shiva Bhikshuk Mishra (supra), Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (supra) and Anoop Jaiswal v. Government of India (supra) 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 misdemeanor on the part of the employee.”*

18. Besides the above ruling, this court notices that in *Pavanendra Narayan Verma* (supra), the factual backdrop appeared to be that the employer had held some form of inquiry to assess or evaluate suitability of the candidate, before terminating him from its services. The Court had commented in that case as follows:

*“We are also not prepared to hold that the enquiry held prior to order of termination turned this otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge sheet merely details the*

*allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post.”*

19. The facts of the present case are that the petitioner was appointed as a probationer, in the CWC, on in 1983. His probationary service would have ended in December, 1984. However, some aspersions were cast on his conduct, and his complicity in an incident in a godown he was working in, under the supervision of one P.P. Singh. Consequently, the petitioner was placed under suspension, by order dated 06-09-1984. A full-fledged disciplinary proceeding was initiated against Shri. P.P. Singh; the petitioner was cited as a witness. Before the conclusion of those disciplinary proceedings, the petitioner's suspension was revoked, (on 16<sup>th</sup> February, 1985) and he was reinstated in the services. He had been served with some warnings, by the said P.P. Singh. The Inquiry officer submitted his report to the Corporation, on. At this stage, it would be relevant to notice some of the observations of the Inquiry officer, made in his Inquiry Report, as to allegations against P.P. Singh. These observations were adverse to the petitioner, and in the nature of findings. The petitioner, it must be emphasized, had not been issued with any charge sheet, or asked to explain his conduct; rather he was asked to depose about the fire incident, as the subordinate officer who worked under the charged official, Shri. P.P. Singh. The relevant observations in the Inquiry Report, dated 18<sup>th</sup> October 1985, which were made available to this Court, at the stage of hearing of this appeal, are extracted below:

*“11.4 The next matter to be considered is the fire incident. The prime witness, in this regard is Prem Kishore. He deposed in a manner that leaves much to desire about. Perhaps he tried to conceal some information and he had not given the full information, of which he should have knowledge. He had stated that he was asked by the C.O. to take out the tins and destroy it, but he had refused to do so. However, at one stage*

*he said he was with the labourer when they took out the oil tins and burnt them. At a later stage he said that he went to the spot along with other staff members. He had stated that he had noticed some excesses tins and the same was informed to the W.M. Later he stated that he does not know as to why they were taken out and destroyed. Kapil Dev and Sadhu Ram have stated that Prem Kishore was in the godown when the said material was taken out by the labourer and Prem Kishore closed the shutters after this. The witnesses have also stated that one of the Surveyors present there, confronted Prem Kishore as to why they were being taken out and to that Prem Kishore had replied that he should ask the W.M. The other witness, N.K. Sharma, has stated when he and other staff questioned Prem Kishore, he replied that as per WM's orders, he was destroying them.*

*11.5 So in the light of these evidence it has to be concluded that Prem Kishore has been responsible for taking out these tins and burning them and also that this was done with the knowledge of the W.M. His claim that he was not responsible, cannot be given full credit as the nature of his deposition would show that he had tried to hide some information. Further the witnesses tried to hide some information. Further the witnesses from CW, Sahibabad have conveniently stated that they have witnessed this incident, in which Prem Kishore had a major role.*

*XXX*

*XXX*

*XXX*

*11.9 It is also to be noted that the C.O. did not report the fire incident to the higher authorities either on the same date or on the next date. As per the standing instructions, the details of excess stocks are to be intimated to RO/HO and to be brought in suspense A/c; which was not done by him either before the incident on the basis of report of Birpal Singh or after the fire incident on the basis of report of STC officials. He also did not sent any report subsequently about this incident would show that Shri P.P. Singh was involved in this incident and as such bitten by guilty consciousness he mention one day leave and remained on unauthorized absence till 14.7.1984. Perhaps when he was confronted by such a situation, he did not know what to do. Had he no part in this incident he could have definitely taken the only possible step of intimating the higher ups and the police immediately and asking for suitable*

*directions. As none of this was done by him, it is obvious that he was involved in this incident.*

*11.10 The C.O. argued in his defence brief, that the evidence of STC witnesses was false, because why 16 excess tins should have been left out, when Prem Kishore destroyed other tins; that had the CO had bad intention, he would have destroyed the excess tins by himself after office hours, instead of directing Prem Kishore to do so. This type of argument does not sound logical. It has been made clear by the evidences available, that Prem Kishore was directed by the C.O. to destroy the excess tins, when he could do only partially; because while he was remaining there with the help of labourers, he was questioned by two Chowkidars and STC surveyors and subsequently by other staff members; so obviously he had left the job unfinished. One, who does an unauthorized work, would not prefer to do it by himself; this is applicable here in the case of the C.O; here he found an accomplice in Prem Kishore, and that explains why he did not do the work himself.*

*11.11 The next part of the charge is that he tried to create false record by issuing a memo dated 28.6.1984 regarding burnt tins to Prem Kishore on 30.6.1984 and wanted the same to be acknowledged by Prem Kishore as if he received it on 28.6.84. It has been stated by Prem Kishore that the WM asked him to acknowledge the memo by putting the date as 28.6.1984, on 30.6.1984 and he did the same. But after going through the memo he asked for a copy. He was not given and the original was retained by the W.M. The argument of the P.O. is that this memo, produced by the C.O. during the inquiry, shows that this was the original and the same was retained by P.P. Singh and was not at all issued to Prem Kishore. The C.O. argued that the acknowledgement used to be given only in the office copy. This claim cannot be agreed to as it was not marked as office copy; further on a perusal, it appears as the original and not copy; and there was also no signature of Prem Kishore. As such the CO's argument that he came to know about the incident only on 28.6.1984 and immediately issued memo to Prem Kishore does not hold any water. It has also not been established that the same was sent to RM, RO, Lucknow, through a copy of this was shown marked to R.M. Even the matter found in D-I, the memo in question, would show that this was prepared in a haphazard manner. The matter, which was certainly serious in nature, definitely does not deserve to be*

*treated in this manner. In the Chargesheet it is also alleged that on 2.8.1984 he issued a second memo to Prem Kishore and asking for a reply to the first memo enclosing there with a copy of the first memo, under reference. C.O. has also not contested this point. As such it is to be held that he has created a false record in this regard.”*

20. The CWC, in its counter affidavit filed in response to the writ petition *inter alia*, alleged that:

*“4. In response to para-4 it is stated that during the course of Preliminary investigation, it was revealed that 23 tins of Palm Oil belonging to STC were excess in his godown and instead of taking these into account an attempt was made to get these tins burnt to dispose off the excess stocks in connivance with Shri Prem Kishore, JTA who was the godown incharge having got to know this incident the Corporation placed him under charge. Having got to know this incident the Corporation placed him under suspension vide order No. CWC/XIII-8/64/84/AV dt.6.9.1984 as a prima-facie case existed against him. The Disciplinary Authority has also ordered, subsequently to revoke the suspension order in respect of Shri Prem Kishore, JTA as the departmental inquiry initiated against WH Manager may take some time. The suspension was revoked vide order dt. 16.2.85 with the conditions that this revocation of suspension order is without prejudice to the final orders that may be passed by the DA in the departmental proceedings against the WH Manager incidentally Shri Prem Kishore was made the prosecution witness.*

*The Inquiry Officer submitted his report against the WH Manager on 18.10.85. The Disciplinary Authority in the above case while analyzing the report and passing the orders against the WH Manager had arrived at a finding wherein the complicity of Prem Kishore was also found in the incident of taking out and burning the tins who later on put the blame on WH Manager to save himself. IT would not be out of place to mention here that Shri Prem Kishore was under probation during the period when this incident had taken place and the Appointing Authority had all the rights under Regulation 10 (1) of CWC (Staff) Regulations, 1966 to terminate his services in public interest and accordingly the services of Shri Prem*

*Kishore, JTA were terminated vide order no. CWC/106590/Estt. Dated 22.10.85 without casting any stigma.”*

21. During the hearing, it was argued by Counsel for the CWC that Shri P.P. Singh, against whom the disciplinary action was taken, was dealt with much later, when he was imposed with penalty of stoppage of two increments. However, the Petitioner’s services were terminated much earlier, on 22 October, 1985, without reference to any action proposed against Shri P.P. Singh, on the basis of his unsatisfactory service record, which included warnings administered, to him.

22. The extracts of the Inquiry Report, though ostensibly issued in respect of the conduct of Shri P.P. Singh, show that there were allegations of serious misconduct of setting certain stock on fire, against the petitioner; the inquiry officer also recorded that this appeared to be at the behest of Shri. P.P. Singh. He doubted the credibility of the petitioner, who had deposed as a witness. The petitioner had no notice of the fact that such findings would even be contemplated, much less returned against his conduct and functioning; he was merely asked to depose as a witness in a departmental proceeding. These materials cannot be characterised as evidence to judge suitability. If such explanation were to be uncritically accepted, every material or proceeding – even if it pertains to alleged misconduct, would ultimately reflect on an employee’s suitability. The issue which has escaped notice of the learned Single Judge in this case, is that the Inquiry report which definitely was part of the material, commented adversely on the conduct, character and behaviour of the petitioner; the comment was directly relatable to what undeniably were allegations of misconduct. The petitioner was a witness, and not the employee asked to face charges. Such comments amounted to findings of misconduct and were not preceded by any kind of notice or hearing.

23. The Corporation's argument that the reason for the Petitioner's termination was not the so-called misconduct, but his performance – by relying on the warnings given to him, reflects a similar non application of mind. The extract of the inquiry report in the preceding part of this judgment shows that the memos and warnings administered upon the petitioner were by the charged official, Shri. P.P. Singh. The Inquiry Officer rejected the genuineness of those memos/ warnings, by the said P.P. Singh, as an attempt by him to conceal his role in the fire incident, and lay the blame upon the petitioner. Those findings against P.P. Singh were accepted, and a penalty was imposed on him. In the circumstances, reliance on those warning memos, against the petitioner, betrayed complete non-application of mind. The Court is further of the opinion that there is no material on the record to otherwise support the impugned termination order as having been made on a *bona fide* assessment of the petitioner's suitability. In fact, the sections of the counter affidavit reproduced in a preceding portion of this judgment would show that the serious allegations and findings which are unmistakable findings of misconduct, without following any rudimentary fair hearing proceeding against the petitioner, were the basis for his termination.

24. In view of the above discussion, this Court is of the opinion that the impugned termination order was not an innocuous one, nor was it based on a genuine or *bona fide* evaluation of the Petitioner's suitability; the surrounding circumstances reveal that the innocuously worded order was in reality based on allegations of serious misconduct, for which the petitioner was not charged, or made to face any form of inquiry or granted hearing. The other officer, whose complicity was alleged, was in fact afforded a hearing and a penalty of withholding of two increments was imposed. Consequently, the impugned judgment of the learned Single Judge is set aside.

25. As to the relief, in ordinary circumstances, the natural relief would have been quashing of the termination order, with an attendant direction to reinstate the petitioner with all consequential benefits. However, the Court would have to, in a case like this, take into consideration several factors. The petitioner had worked for barely two years, and the order of termination was issued about 28 years ago. A direction to reinstate and grant full arrears of salary and consequential benefit would undoubtedly address the petitioner's plea for full restitution. At the same time, the Corporation's concern of having to pay a colossal amount (towards arrears of back salary and continuity of service) and also grant higher pay scales and subsequent promotions, without the employee having worked at all, or shown that he deserved such promotions, cannot be brushed aside altogether. Another overriding concern which the Court should not ignore is that the petitioner's not being in public employment does create complications as to his suitability to discharge functions attached to the higher posts, third party rights to seniority, etc.

26. Taking into account all these factors, and balancing the two seemingly competing public interests, this Court is of the opinion that the most equitable course would be to award 40% of the back salary and allowances that would have been paid to the petitioner, had he continued in the same post from the date of his termination, till date. The back salary and allowances shall be calculated by adding the total emoluments admissible in respect of the post which the petitioner occupied, on the assumption that he would continue to occupy it all these years – and granting him increments. 40% of the amount of such aggregate would be given to the petitioner, who shall have no right to reinstatement or any other benefit. These amounts shall be paid to the petitioner, within six weeks from today; an affidavit of compliance shall be filed in Court, immediately thereafter.

27. The appeal, LPA No. 808/2004 is allowed in the above terms. There shall be no order as to costs.

**S. RAVINDRA BHAT  
(JUDGE)**

**SUDERSHAN KUMAR MISRA  
(JUDGE)**

**APRIL08, 2013**