

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

% *Judgment Reserved On: May 21, 2013*  
*Judgment Delivered On: May 30, 2013*

+ **W.P.(C) 2559/2012**

GOVT OF NCT OF DELHI ..... Petitioner  
Represented by: Mr.V.K.Tandon, Advocate with  
Mr.Yogesh Saini and  
Mr.D.Rajeshwar Rai, Advocates  
  
versus

JANVED MEENA ..... Respondent  
Represented by: Mr.Sachin Chauhan, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**PRADEEP NANDRAJOG, J.**

1. Respondent Janved Meena was appointed on probation as a Staff Nurse on March 25, 2009, by the Health Department of the Government of NCT of Delhi and was posted at Jag Pravesh Chandra Hospital. A complaint was made by one Rohtash Yadav that respondent was demanding ₹50,000/- for granting medical clearance to him inasmuch as he had been empanelled for appointment as Constable in Delhi Police and therefore he had to be medically examined for medical fitness to be declared prior to letter offering appointment being issued to him.

2. The Anti Corruption Branch of the Government of NCT Delhi to whom the complaint was made laid a trap on July 08, 2010 at which Janved Meena was allegedly caught red handed accepting bribe in sum of ₹15, 000/- from the complainant for which FIR No.29/2010 dated July 08,

2010 for offences punishable under Section 7 and 13 of the Prevention of Corruption Act, 1988 read with Section 120-B IPC was registered. The respondent was arrested the same day i.e. July 08, 2010. Since challan could not be presented within 60 days, respondent was granted statutory bail.

3. On December 11, 2010 services of the respondent were terminated and power vested under Rule 5 of the CCS (Temporary Service) Rules, 1965 was exercised. The order terminating respondent's service is non-stigmatic and simply records that on expiry of one month from date of issue of notice his services shall stand terminated. It may be noted here that upon respondent being arrested on July 08, 2010 and remaining in custody for a period exceeding 48 hours, an order dated July 13, 2010 was issued recording that respondent would be deemed to be suspended with effect from July 08, 2010 in terms of sub-Rule (2) of Rule 10 of the CCS (CCA) Rules, 1965.

4. Respondent questioned his services being terminated by filing OA No.57/2011 which has been allowed vide impugned order dated January 09, 2012, observing that the record produced would reveal that the misconduct of taking bribe and consequential arrest and detention was the reason to terminate respondent's service thereby colouring the termination as punishment. Setting aside the termination order, liberty has been granted to the petitioner to proceed against the respondent as per law for the alleged misconduct. The Tribunal has relied upon the law declared by the Supreme Court in the decisions reported as (2000) 5 SCC 152 Chandra Prakash Shahi Vs. State of UP & Ors. and (2008) 1 SCC (L & S) 457 Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar.

5. With respect to the finding returned by the Tribunal that the termination is founded on the alleged misconduct of demanding and

receiving bribe, the view taken by the Tribunal may be correct at a first blush and especially keeping in view the pleadings of the writ petitioner in the reply filed to the Original Application, wherein the writ petitioner has pleaded:-

*“As demanding, accepting and obtaining the bribe money by a Govt. servant comes under the misconduct, on this ground Shri Janved Meena, Staff Nurse was issued termination notice under Rule 5.”*

6. But this is the lawyer's language. Unfortunately, the lawyer who drafted the reply did not understand the law. The officer of the petitioner who signed the reply filed was not expected to know the nuances of law drawing a distinction between a termination being 'founded' on a alleged wrong and a termination being 'motivated' by an alleged wrong. He was not expected to know the legal distinction and its consequences when there was a live and proximate link with an incident and an order terminating services vis-a-vis a case where the employer loses confidence in the employee for an alleged wrong, but the employer is not acting by way of taking a penal action. Thus, the Tribunal ought to have looked into the relevant record.

7. We had perused the relevant record. The order of termination was preceded by the employer considering on December 03, 2010 the issue of suspension of the respondent and for which we find a noting dated December 03, 2010. The next superior officer took note of the fact that the respondent was still on probation. He penned a note dated December 06, 2010 to consider whether action could be taken under Rule 5 of the CCS (Temporary Service) Rules, 1965. A decision was taken to terminate respondent's service and concededly the decision takes note of the fact that the respondent was appointed on probation on March 25, 2009 and served

only till July 08, 2010 when he was arrested. He remained in custody for 60 days. He was granted statutory bail but was required to be treated as under suspension. The respondent was doing no work and was receiving subsistence allowance.

8. We do not find any live and proximate link with the alleged wrong and order terminating respondent's service.

9. The issue of termination of services of a probationer has cropped up time and again. It has received judicial attention over four decades. Tests have been evolved, found to be difficult to apply; they have been reformulated from time to time.

10. What is the final position of the law?

11. Upon being found meritorious at a selection process, a candidate is offered employment but he cannot claim a right to serve till he attains the superannuation merely because the employer tested his suitability. The reason is that till date no test has been devised where a person's capacity, integrity, suitability, utility and capacity to work in harmony with the others can be tested at one go. Therefore, law vests a right in the employer, to keep under watch the services of the person he has employed, but for a specific duration of time. This is to guard against errors of human judgment in selecting a suitable candidate. The employee remains on test for a specified duration i.e. the period of probation before he gets a right to be permanently absorbed. This period of probation affords to the employer the locus to watch the efficiency, ability, integrity, sincerity, suitability and the competent of the probationer employee. This is the period of reassurance for the employer to reassure that his initial judgment was right. Therefore, an employer has a legal right to dispense with the services

of the employee without anything more, during or at the end of the prescribed period, which is styled as the period of probation.

12. In the light of the aforesaid concept of probation as understood under Service Jurisprudence, termination of the services of the probationer, during or at the end of the period of probation does not affect any right of his, as indeed has no right to continue to hold the post, save and except after confirmation.

13. The period of probation affords an opportunity to an employer to observe the work, conduct, efficiency, utility, integrity and suitability of the probationer to make up his mind whether to permanently absorb the probationer or dispense with his services.

14. In the decision reported as AIR 1962 SC 1711, S.Sukhwant Singh Vs. State of Punjab, the Supreme Court observed:-

*“12. ....But the very fact that a person is a probationer implies that he has to prove his worth, his suitability for the higher post in which he is officiating if his work is not found to be satisfactory, he will be liable to be reverted to his original post even without assigning any reason, it would, therefore, not be correct to say that a probationer has any any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in no better position.”*

15. However, where a probationer is stigmatized, evil consequences flow. He has to live with the stigma all his life. This stigma would affect his future prospects of finding suitable employment elsewhere. Therefore, harmonizing the right of the employer and the right of the employee the service jurisprudence has recognized that where the termination of services of a probationer visits him with a stigma or is penal or mala fide, the probationer would have a right to justify that the cause

which has resulted in his being removed is other than relating to his personal capacity, suitability, utility or capacity to work.

16. In the decision reported as AIR 1958 SC 36 Purshottam Lal Dhingra vs. UOI, the Supreme Court held that it is not the form of the termination order but the substance thereof which would determine whether it is penal and that, in an appropriate case, the Court can tear the veil behind a termination order which is innocuous on its face and is a discharge simplicitor.

17. What is a stigma?

18. In the decision reported as 1987 (1) SCC 146 Kamal Kishore Lakshman Vs. Pan Amercian World Airways it was observed: *According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person..... The Legal Thesuras by Burton gives the meaning of the word 'to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame'.*

19. In the decision reported as AIR 1961 SC 177 State of Orissa Vs. Ram Narayan Dass it was held that the words 'unsatisfactory work and conduct' in the termination order will not amount to a stigma.

20. The reason is obvious. Notwithstanding subjecting a new recruit to the rigors of a selection process, the employer has a right to see whether the recruit is able to perform the duties assigned to him. Being on probation, the recruit is kept under a watch to ascertain his performance. Not only is the recruit under the scrutiny but even the initial judgment of the employer is under a scrutiny for the reason even the employer has to consider and decide whether his initial judgment was correct. Logic demands that where the new recruit is able to discharge the duties assigned to him he should be permanently absorbed. It would be most illogical to say

to the recruit that I find nothing wrong with your work but still I do not permanently absorb you. That is why some decisions have taken the view that it would be unfair not to point out the shortcomings in the work of a probationer thereby depriving him an opportunity to improve himself and all of a sudden discharge him from service stating that his work is not up to the mark.

21. We have only to look to the fact whether by lifting the veil we can determine that the order terminating their services is founded on the fact that they have committed the offences which they were charged of. This process of inquiry would of necessity require us to determine whether the circumstance of they being accused of having committed serious penal offences was the motive propelling the formation of the opinion that it was no longer desirable to retain the two in service.

22. We have enough case law, where pertaining to a misconduct detected during the probation of an employee, a show cause notice is issued to respond as to why on account of the stated misconduct the services be not terminated, but ignoring the show cause notice, a simple order of discharge from service is issued. When questioned in a Court on the plea that the veil be lifted to see as to what was the foundation of the order, it was held that motive and foundation are two different concepts. We may quote only from one decision reported as 1980 (2) SCC 593 Gujarat Steel Tube Vs. Gujarat Steel Tubes Majdoor Sangh. As to foundation, it was observed:-

*“.....a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an*

*alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.”*

23. As to motive, it was observed:-

*“On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.”*

24. Suffice would it be to state that if an inquiry is conducted into an alleged misconduct behind the back of the employee and a simple order of termination is passed, ‘founded’ on the report of the inquiry indicting the employee, the action would be tainted but where no findings are arrived at any inquiry or no inquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received it would be a case of the complaints motivating the action and hence order would not be bad as observed in the decision reported as AIR 1999 SC 983 Dipti Prakash Banerjee Vs. Satvendera Nath Bose National Centre for Basic Sciences (para 22).

25. To conclude on the issue, we note the decision of the Supreme Court reported as AIR 2002 SC 23 Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences & Anr., where in para 28 thereof, how the issue has to be dealt with by Courts was stated. It was held: *Therefore, whenever a probationer challenges his termination the Courts’ first task will be to apply the test of stigma or the form test. If the order survives this examination the substance of the termination will have to be found out.*

26. We may only add by stating that nobody acts for no reasons and indeed if somebody were to act on account of no reasons, that itself would vitiate an action as not only being unintelligible but as being perverse. Obviously, something has to impel or propel an employer to terminate the services of his employee. It is only when the termination is by way of penalty would the principles of natural justice and opportunity to participate at an inquiry where guilt to be determined is the object of the inquiry would come into play. Obviously, where on the finding of guilt an order terminating the services of an employee is passed it can safely be said that the employee has been penalized for a wrong. But where the misdemeanour is not treated as proved and no inquiry is held, and where an inquiry is held, the report is not made the foundation of the order, but what is opined by the employer is that the employee has lost the confidence of the employer, an order of termination cannot be said to be founded on the misdemeanour and the misdemeanour would remain as the motive for the action. This situation would not attract the principle that the termination is penal.

27. Applying the law afore-noted culled out, we hold that the non-stigmatic order terminating respondent's service while respondent was still on probation has to be upheld and thus we allow the writ petition and set aside the impugned order dated January 09, 2012 passed by the Central Administrative Tribunal and as a result dismiss OA No.57/2011.

28. Parties shall bear their own costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(V.KAMESWAR RAO)**  
**JUDGE**

**MAY 30, 2013/mamta**