

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

+ W.P.(C) No. 5169/2012 & CM 10566/2012 (stay)

% **19th November, 2013**

GROUP CAPTAIN (T.S) RAJEEV VARSHNEY Petitioner
Through: Mr. V.S.Tomar, Advocate.

VERSUS

INDIAN ROADS CONGRESS & ANR. Respondents
Through: Mr. Santosh Kumar, Mr. Rajiv
Ranjan Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner, who was appointed on probation with the respondent no.1 as Deputy Secretary (Administration), impugns the order of termination dated 9.8.2012, and the same reads as under:-

“No.IRC:13(11)/2010

Dated 09.08.2012

OFFICE ORDER

The Executive Committee of the Indian Roads Congress in its meeting held on 9th August, 2012 examined in detail the performance of Gp. Capt. Rajeev Varshney, Deputy Secretary and his contribution in the work being assigned to him does not

justify for continuing with his services, and after careful consideration of his overall performance and all other factors decided unanimously to dispense with his services with immediate effect. The Committee further decided that termination of his services will not be considered as punishment and will not stand in his future services and career with other employer's.

Accordingly, as per the provisions contained in his Offer of Appointment dated 28th October, 2010, vide Clause 2(ii), his services are terminated with immediate effect. In lieu of one month notice, he will be paid one month salary.

(Arun Kumar Sharma)

Secretary General

2. The facts of the case are that petitioner was given an offer of appointment in terms of the letter dated 28.10.2010 which states that petitioner will be on probation for a period of one year from the date of joining. Petitioner joined the respondent no.1 on 1.9.2011 and therefore probationary period would continue till 31.8.2012. The impugned order dated 9.8.2012 is therefore passed within one year of the probationary period. On behalf of the petitioner, the following grounds are urged before this Court to challenge the termination order dated 9.8.2012:-

(i) Termination of the petitioner is by the Secretary General whereas the appointment of the petitioner was by a higher authority namely the respondent no.1, and therefore, petitioner cannot be terminated by a lower authority than the appointing authority.

(ii) The Minutes of Meeting dated 9.8.2012 are forged and fabricated in that there was no item no. 286 for reviewing the services rendered by the petitioner, and which is said to be clear from an e-mail dated 20.8.2012 addressed by the President Sh. P.N.Jain to the Secretary General Sh. Arun Kumar Sharma.

(iii) The impugned order is stigmatic, and therefore, petitioner could not have been terminated from services without following the principles of natural justice. I may state that there is no specific ground which is urged in the writ petition that termination of the petitioner is by a stigmatic order, but, since the issue is the legal issue arising out of the admitted language of the impugned order dated 9.8.2012, I have permitted the petitioner to raise the same.

3. So far as the issue of petitioner being terminated by an authority lower than the appointing authority is concerned, reliance is placed upon Rule 19 of the Rules and Regulations of the respondent no.1 that the President is an authority higher than the Secretary General. Reliance for the same purpose is also placed upon Rule 18 of the Rules and Regulations of the respondent no.1.

4. On behalf of respondent no.1 it is not disputed that the President is an authority higher than the Secretary General, however, it is argued that it is the Executive Committee of the respondent no.1 which is supreme even as per Rule 19 relied upon by the petitioner, and therefore, there is no illegality in termination of the petitioner because it is the Executive Committee which decided the issue of termination and delegated their power to the Secretary General, who has passed the impugned order dated 9.8.2012.

5. When we read Rule 19 which is relied upon on behalf of the petitioner, no doubt the same states that President is a higher authority than the Secretary General, and which aspect in any case is not disputed by the respondent no.1, however, the self same Rule 19 shows that action of the President, Vice-President etc are subject to approval of the Council and the council functions through the Executive Committee. In the present case, if the Executive Committee's Minutes of Meeting dated 30.5.2012 and 9.8.2012 are accepted by this Court, then, the termination of the petitioner would be valid because Secretary General would have been delegated the necessary authority by the Executive Committee of the respondent no.1. Therefore, this issue will abide by the decision of the second argument urged

on behalf of the petitioner as to validity of the Minutes of Meeting dated 9.8.2012.

6. Let me now turn to the second argument urged on behalf of the petitioner that the Minutes of Meeting dated 9.8.2012 did not have an item no. 286, and which as per the respondent no.1 reads as under:-

“ITEM 286: TO REVIEW SERVICES RENDERED BY DEPUTY SECRETARY (ADMN.) SINCE LAST 11 MONTHS

The issue of continuing/terminating the services of Group Captain. Rajeev Varshney (Retd.) w.r.t the CAG Audit observations of Shri S.C.Kakkar was brought up by the Secretary General under “Any other item”. Being an administrative matter, the Committee authorized the Secretary General to take necessary appropriate action immediately.”

7. On behalf of the petitioner, reliance is placed upon the e-mail annexed as Annexure P-8 to the affidavit dated 11.11.2013, being an e-mail sent by Sh. P.N.Jain, President to the Secretary General Sh. A.K.Sharma which annexes the Minutes of Meeting dated 9.8.2012, and in which there is no item no. 286.

8. In my opinion, the argument urged on behalf of the petitioner does not have substance for the reasons given hereinafter. First reason is that the e-mail which is relied upon alongwith the annexed Minutes of Meeting is not of the Secretary General to the President but of the President

to the Secretary General. The respondent no.1 has filed the Minutes of Meeting which have been circulated by the Secretary General and in which item no. 286 exists. In my opinion, there cannot be any doubt to existence of item no. 286 in the Minutes of Meeting dated 9.8.2012 for two reasons. Firstly, the Minutes of Meeting dated 9.8.2012 are a follow up of the Minutes of Meeting dated 30.5.2012. It is in this meeting dated 30.5.2012 that item no. 286 being an additional item was taken up for reviewing the services of the petitioner. There is no dispute with regard to any alleged manipulation on behalf of the petitioner to the Minutes of Meeting dated 30.5.2012. Once that is so, in the next meeting held on 9.8.2012, it would be logical that the follow up item would be taken up and which is item no. 286. This has been so done as per the relevant portion of the Minutes of Meeting dated 9.8.2012 relied upon by the respondent no.1 and which are reproduce above. The second reason is that the respondent no.1 has filed the attendance sheet of the Minutes of Meeting dated 9.8.2012 which is signed by Sh. P.N.Jain, and more importantly, the copies of the Minutes of Meeting dated 9.8.2012 containing item no. 286, have been sent by registered post to all the persons of the Executive Committee who were present on 9.8.2012 including to Sh. P.N.Jain. Respondent no.1 has filed registered postal receipts, including to Sh. P.N.Jain, and there is nothing on record that Sh.

P.N.Jain has objected to the Minutes of Meeting dated 9.8.2012 that it wrongly contains an item no. 286. Therefore, I am of the opinion that the charge made on behalf of the petitioner of fabrication of the Minutes of Meeting dated 9.8.2012 is not correct and is rejected. I must also at this stage comment that if the petitioner's services stood terminated on his receiving the impugned order dated 9.8.2012, on 30.8.2012 there is no way in which an e-mail of 20.8.2012 would be in the hands of the petitioner, much less an e-mail from a President to the Secretary General of the respondent no.1 and which is not marked to the President. I am not therefore too sure of the authenticity of the e-mail relied upon by the petitioner, but in any case, even if I take the e-mail as correct at best it would be seen that President wants to help the petitioner, however, even with respect to that there does not seem to be any valid basis because Sh. P.N.Jain has not objected to the Minutes of Meeting dated 9.8.2012 which was circulated to all the members of the Executive Committee including Sh. P.N.Jain himself and by registered AD post dated 30.8.2012 as already stated above.

Therefore, the first and second arguments urged on behalf of the petitioner are rejected.

9. The third argument is that whether the impugned order is stigmatic in nature and therefore principles of natural justice had to be followed before terminating the services of the petitioner/probationary officer. I have already reproduced the entire order dated 9.8.2012 and the stigmatic aspect can only be with respect to the fact that it is stated in the impugned order that the services of the petitioner were not satisfactory and his contribution to the work was such that after careful consideration of the over all performance there is no justification of the petitioner continuing with his services. The issue is that whether this language of this order is stigmatic.

10. I have recently had an occasion to consider this aspect in the case of ***Himanshu Bhatt Vs. Indian Railway Catering & Tourism Corporation Ltd. & Ors.*** in W.P.(C) 5293/2013 dated 27.8.2013, to go into both the aspects of whether principles of natural justice are required to be followed and when can a termination order be said to be a stigmatic order. The relevant paras of the judgment in the case are paras 4 to 9 and which read as under:-

4. Law with respect to termination of services of a probationer is now well-settled. Termination has to be by a non-stigmatic order. However, it has been held that stating that the performance is not satisfactory will not amount to the

termination order being a stigmatic one. Also the principles of natural justice have not to be followed before termination of services of a probationer. If an enquiry is held and the enquiry report forms the foundation of termination of services of a probationer, only then, principles of natural justice are required to be followed, however, where the enquiry against a probationer is only for determining his suitability for continuing in service or the enquiry report only forms the motive for removal, as differentiated from a foundation for removal, then a detailed enquiry in terms of the service rule is not necessary. In the recent judgment in the case of *Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava & Anr. (2007) 1 SCC 491* Supreme Court has observed that even if the termination order states that services of a probationer has been terminated on account of the work being not satisfactory, the order cannot be said to be stigmatic. It is also held in this judgment that the principles of natural justice need not be followed for termination of service of the probationer. Paras 44 to 46 of the said judgment are relevant and the same read as under:-

“44. Also in the case of *Registrar, High Court of Gujarat and Anr. v. C.G. Sharma* it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.

45. This Court's decision in the case of *P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences* can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in *State of Madhya Pradesh v. Virendera Kumar Chourasiya* also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.

46 We are also of the view that the award of the Labour Court is perverse as it had directed grant of

back wages without giving any finding on the gainful employment of respondent No.1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of respondent No.1 was in any manner stigmatic. The decision in the case of ***MP State Electricity Board v. Jarina Bee (Smt)*** (supra), this Court held that payment of full back wages was not the natural consequence of setting aside an order of removal. In the instant case, though the termination was as far back as in 1983, the Industrial Adjudicator has not given any finding on unemployment. This Court in a recent case of ***State of Punjab v. Bhagwan Singh*** (2002)9SCC636 has held that even if the termination order of the probationer refers to the performance being “not satisfactory”, such an order cannot be said to be stigmatic and the termination would be valid.”

5. In a very similar case to the facts of the present case, the Supreme Court in the judgment in the case of ***State of W.B. and Others Vs. Tapas Roy (2006) 6 SCC 453*** has held that where the discharge order mentions other instances of unauthorized absence of the probationer and concluding that he was not interested in training and had no respect for discipline, making of such remarks in the termination order cannot be said to make the termination order a stigmatic one. Paras 4,5 7 and 8 of the judgment in the case of ***Tapas Roy (supra)*** read as under:-

“4. The High Court allowed the writ petition holding that Rule 10 of the Rules did not apply in the facts of the case. It was also of the view that the statement, quoted below; in the order of discharge casts a stigma on the respondent. Since no opportunity of hearing had been granted to the respondent, therefore, the order could not be sustained. The decision of the Tribunal was, accordingly, set aside and the appellants were given liberty to take appropriate action against the respondent on the same grounds in accordance with law.

5. The particular passage from the order of discharge which the High Court found to be stigmatic reads as follows:

“I am convinced that he is not likely to make an efficient constable and is unsuitable for the Police Department. His frequent unauthorised absence from training centre also indicates his lack of interest in training and his scant respect for discipline.”

7. The order of discharge has, as we have already indicated, set out several instances of the respondent absenting himself unauthorisedly from the training centre. These facts have been relied upon for the purpose of concluding that the respondent was not interested in the training and had no respect for discipline. This conclusion was a ground for holding that the respondent was unsuitable for the Police Department.

8. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in Pavanendra Narayan Verma v. Sanjay Gandhi Post Graduate Institute Medical Sciences 2002(92)FLR349(SC) that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that a stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. In our view, the language quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly,

of the view that the appeal must be allowed. It is, accordingly, allowed and the impugned order is set aside.”

(emphasis added)

6. Also, the Supreme Court in the judgment reported as ***Chaitanya Prakash and Anr. Vs. H. Omkarappa (2010) 2 SCC 623*** has held that there is no need for following the principles of natural justice while terminating the services of a probationer and even if the termination order refers to the unsatisfactory services of the probationer, the order is not stigmatic. Paras 18 and 21 of this judgment read as under:-

“18. It is no longer *res integra* that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In this connection, we make a reference to the decision of the decision of the Supreme Court in ***Abhijit Gupta v. S.N.B. National Centre, Basic Sciences*** (supra), wherein also a similar letter was issued to the concerned employee intimating him that his performance was unsatisfactory and, therefore, he is not suitable for confirmation. We have considered the ratio in light of the facts of the said case and we are of the considered opinion that the basic facts of the said case are almost similar to the one in hand. There also, letters were issued to the concerned employee to improve his performance in the areas of his duties and that despite such communications the service was found to be unsatisfactory. In the result, a letter was issued to him pointing out that his service was found to be unsatisfactory and that he was not suitable for confirmation, and, therefore, his probation period was not extended and his service was terminated, which was challenged on the ground that the same was stigmatic for alleged misconduct. The Supreme Court negated the said contention and upheld the order of termination.

21. In ***Abhijit Gupta*** (Supra.), this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination i.e whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in ***Allahabad Bank***

Officers Assn. v. Allahabad Bank (1996) 4 SCC 504; where it is stated thus:

“14. ...As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.”

7. In the case of ***Rajesh Kumar Srivastava Vs. State of Jharkhand and Ors. (2011) 4 SCC 447*** Supreme Court has held that while taking a decision to terminate the services of the probationer, no notice is required to be given to the probationer nor is the probationer required to be given any opportunity of hearing. Para 10 of the said judgment reads as under:-

“10. The aforesaid decision to release him from service was taken by the Respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the Appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the Appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.”

8. In the case of ***Abhijit Gupta Vs. S.N.B.National Centre, Basic Sciences & Ors. (2006) 4 SCC 469*** the Supreme Court has held that even when a termination order of a probationer referred to earlier

letters which called the probationer a person of “perverted mind” and “dishonest, duffer having no capacity to learn” yet, the order would not be stigmatic one, and merely that if such an order was read by a prospective employer which would prejudice the probationer’s future employment, the same is not to be a correct test to determine the termination order as stigmatic. Paras 4,5,8,10,13, 15,16 and 17 are relevant which read as under:-

“4. On 20th November 1995 the appellant was served with a letter informing him that his performance during the probationary period was "far from satisfactory" and that it had been observed that he lacked drive, imagination and initiative 'in the performance of his duties'. He was informed that, despite being told time and again to improve performance in the said areas, but with no effect. He was advised to improve "in order to enable us to consider your case for confirmation favourably". He was issued several such letters drawing his attention to the fact that his services left much to be desired. His probationary service came to be extended from time to time, the last such extension being granted till 9th April 1998. Finally, by the letter dated 7.4.1998 the petitioner was informed that his service was "unsatisfactory in the areas of drive, initiative, promptness and leadership" and that despite advised verbally and through letter, what were deficiencies in his work he had shown no improvement. His attendance, office work and attention to the academic work and the affairs of the guest house were also unsatisfactory. The first respondent, therefore, said "your performance, ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have to. The governing body is of the view that your performance was unsatisfactory and you are not suitable for confirmation". For these reasons the appellant's probationary period was not extended on the expiration of his probation period on 9th April 1999.

5. The appellant challenged the order of termination of his service on the ground that it was a stigmatic termination by way of punishment for alleged misconducts. The learned single Judge of the High Court allowed the writ petition and quashed the order of termination and directed re-instatement of the appellant with full back- wages. The Division Bench of the High Court, however, allowed the letters patent appeal and held that the letter dated 7th April 1998 was not stigmatic and that it was a legitimate exercise of assessment of probationer's service by the employer, and, therefore, there was no scope for judicial interference therewith. In this view of the matter, the Division Bench allowed the appeal, set aside the judgment of the learned single Judge and dismissed the writ petition. Hence, this appeal.

8. Heavy reliance was placed on ***Dipti Prakash Banerjee v. Satyendra Nath Bose National center for Basic Sciences, Calcutta and Ors.*** [1999]1SCR532 ,where this Court held that the termination of service of the employee in similar circumstances amounted to misconduct. We may mention here that it is common ground that while the matter was pending before the learned single Judge, sometime in the year 2005, the appellant attained the age of superannuation. The learned Counsel for the appellant contended that in the letter dated 7.4.1998 there is reference to certain earlier letters in which the appellant had been called a person of "perverted mind" and "dishonest, duffer having no capacity to learn". A reading of all the letters referred to in the letter of 7.4.1998 would clearly make out a case of allegations of misconduct against the appellant, in the submission of the learned Counsel.

10. In ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Anr.*** (2002)ILLJ690SC this Court considered what should be the best to determine whether a letter of termination of service was termination simpliciter or stigmatic termination. After referring to a number of authorities including the judgment in ***Parshotam Lal Dhingra v. Union of India*** (1958)ILLJ544SC and ***Dipti Prakash Banerjee*** (supra) the Court observed (vide para 19):

“Courts continue to struggle with semantically indistinguishable concepts like motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.”

13. In the case of the appellant before us, the record in uncertain terms makes it clear that every time the appellants attention was drawn to his deficiencies and he was repeatedly advised to improve his behavior, conduct and discharge of work. True, that in some of the letters there was intemperate language used (the appellant was also equally guilty of doing that). Notwithstanding the intemperate language, we are unable to accept the contention of the appellant's counsel that the letter dated 7.4.1998 indicates that the appellant was being charged with the misconduct and, therefore, being removed from service. Read as a whole, the letter gives the impression that the removal of the appellant from service was only because the respondents, after giving a long rope to the appellant, had come to the conclusion that the appellant's service was unsatisfactory and there was no hope of his improvement.

15. The learned Counsel for the appellant, however, strongly contends that the "stigma" cast on the employee may not be confined to his personal character but may also affect his capacity to work. The test, learned Counsel for the appellant submitted, is that, if what is stated in the order of termination is read by a future employer, it prejudices the future employment of the employee. In the face of the law laid down in the judgment just referred, we are unable to accept this as the correct test.

16. In ***Ravindra Kumar Misra v. U.P. State Handloom Corporation Ltd. and Anr.***(1988)ILLJ73SC this Court pointed out that in a large corporation administration is bound to be impersonal and in regard to public officers assessment of service has got to be in writing for purposes of record, though it cannot be assumed that such an assessment recorded and the order of termination made with reference to that record would automatically take a punitive character.

17. The High Court has carefully considered all the circumstances placed before it and arrived at the conclusion that the respondent's work was under observation during the probationary period and that he was given repeated opportunities to improve his performance for which purpose his probation was extended from time to time. The fact

that the authority did not find him fit for confirmation was also brought to his notice several times and yet he was given opportunities of improving by extending his probationary service. The High Court has correctly found that the letter dated 7.4.1998 was not punitive in nature and stated, albeit in prolix fashion, that the service of the appellant were unsatisfactory. The High Court points out, and we agree, that detailed reference to all other correspondence was not necessary, but it did not reflect any malice or bias. Finally, as this Court pointed out in P.N. Verma's case (*supra*) "a termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic" (underlining added)

9. A reference to the impugned order dated 21.9.2012 shows that the petitioner has been found guilty of taking unauthorized leaves. Nothing could be pointed out to me that the leaves which were taken were sanctioned by the respondent No.1. Therefore, the undisputed position which emerges before me is that the petitioner has decided at his own convenience when to report for duty and when not to, and therefore, there is nothing stigmatic by stating facts in the termination order. In terms of various judgments of the Supreme Court stated above narration of facts and giving the motive for termination cannot make the termination order stigmatic in a case like this where it is an undisputed fact which has emerged on record that the petitioner not once but repeatedly was guilty of taking leaves without sanction. If therefore it is stated in the impugned order that services of the probationer were hence not satisfactory, the termination order will not be stigmatic in view of ratios of the Supreme Court judgments in the cases of *Muir Mills Unit (supra)*, *Tapas Roy (supra)*, *Chaitanya Prakash (supra)*, *Rajesh Kumar Srivastava (supra)* and *Abhijit Gupta (supra)*. However, in the interest of justice, I direct that the respondent No.1 will now issue a formal few lines order of termination of services in terms of para 7 of the appointment letter. The termination order now to be issued by the respondent No.1, which should be a simplicitor termination order, will however operate from 21.9.2012, the date of the original termination order. This I am doing so in the interest of justice and to benefit the petitioner.

11. A reference to the aforesaid paras of the judgment in the case of ***Himanshu Bhatt (supra)*** shows that the Supreme Court in the case of ***Muir Mills (supra)*** has said that observation that services of the probationary officer are not satisfactory cannot make the termination order stigmatic in nature. In the case of ***Tapas Roy (supra)*** Supreme Court has said that if the discharge order mentions that probationary officer was taking unauthorized leaves, the same cannot be said to be stigmatic order except that it only shows unsuitability for the post in question of the probationary officer and which statement thus is not stigmatic. In the case of ***Chaitanya Prakash (supra)***, Supreme Court has held, by reference to an earlier judgment in the case of ***Allahabad Bank Officers Assn. v. Allahabad Bank (1996) 4 SCC 504***, that expressions such as "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee in the termination order would not be sufficient to attract the charge that the order is stigmatic. In fact the Supreme Court in the case of ***Abhijit Gupta (supra)*** has gone far far ahead. It has been held in this case that observations made in the order of termination to earlier letters which calls the probationary officer a person of 'perverted mind', 'dishonest, duffer having no capacity to learn', the same cannot be said to be stigmatic. In fact

Supreme Court has observed the issue with respect to language of order of termination of services as allegedly a stigmatic order cannot be looked into from the point of view of future employment of the probationary officer. I may also state that in the case of ***Rajesh Kumar Srivastava (supra)*** referred to in the case of ***Himanshu Bhatt (supra)***, the fact that while taking a decision to terminate a probationary officer, it is again held that there is no requirement that the officer has to be given any opportunity of hearing.

12. Learned counsel for the petitioner placed reliance upon ***Anoop Jaiswal vs. Government of India and another AIR 1984 SC 636*** to contend that once there is termination of services on account of misconduct, principles of natural justice have to be followed and the order has to be seen in substance and the order of termination cannot be camouflaged to the proposition of law laid down in the case of ***Anoop Jaiswal (supra)***. There can be no dispute to the proposition of law cited on behalf of the petitioner, however, once it is held, and I have held that impugned order is not stigmatic, hence there is no requirement of following the principles of natural justice, and it cannot be said that the order is an order of dismissal on account of misconduct. As already stated above, the Supreme Court in the subsequent judgments has clarified that observations with regard to

performance of a probationary officer not being satisfactory in the order of termination will not make the order of termination stigmatic in nature.

13. Finally for the completion of narration I must reproduce the relevant portion of the Minutes of Meeting dated 30.5.2012, and which summarized the reasons for not continuing with the services of the petitioner. Though there are certain aspects with respect to petitioner having wrongly taken a pay-scale or having taken additional time for joining, however, in my opinion that cannot affect the subsequent portion of the Minutes of Meeting and which are given below, and which show that the respondent no.1 had sufficient reasons to hold that the petitioner's services were not satisfactory. I may note that courts do not substitute their views for that of the employer with respect to satisfactory nature of services or otherwise of a probationary officer. The relevant portion of the Minutes of Meeting dated 30.5.2012 so far as the petitioner is concerned reads as under:-

“His performance during the last 11 months is not satisfactory. Shri Varshney did not show any quality of leadership and competitiveness. During the last 11 months, income of IRC has decreased to an alarming level but he did nothing to revive the income. He is only interested in doing routine work i.e. only to sign on file that come up to him and submit to Secretary General. He contributed nothing for preparation of Agenda and Memoranda and Minutes for Executive Committee and Council etc. In fact, he failed to learn working and functioning of IRC ever after 11 months' service and it seems that he is not interested to understand IRC working and functioning. There is lack of initiation on his part for the

growth of the organization. Even there are several instances when he intentionally ignored the instructions of Secretary General which affected discipline and decorum of office. A list of such instances is given below:

1. Secretary General gave some official work to Mrs. Bharati through DS(A) but he returned the File without assigning work to her and giving the reason that work is not related to her.
2. Secretary General instructed DS(A) to depute Shri Himanshu for six months in Committee Section as some important publications were to be brought out. DS(A) never followed the instructions and he did not send Shri Himanshu as instructed by Secretary General.
3. Shri Varshney was given the instructions to issue a Show Cause notice to Shri S.C.Kakkar on 11.6.2012. However, he had not put up the case so far.
4. Disobeyed to carry out the instructions by Secretary General on many occasions which amounts to insubordination.
5. Shri Naveen Tewari was instructed by Secy. Gen. to go to Press for finalization of IRC:103-2012 by official vehicle. Shri Rajeev Varshney asked Sh. Naveen Tewari to hire Auto/car even when two official vehicles were available. Secy. Gen had to intervene and give instructions to allow Shri Naveen Tewari to go by official vehicle.

In the appointment Order to Shri Varshney, it is clearly mentioned that he would be on probation for a period of one year from the date of joining. It is further stated that the appointment is temporary and may be terminated at any time by giving a month's notice by either side viz. the appointee or appointing authority without assigning any reasons. The appointing authority, however, reserves the right of termination of services before the expiry of the stipulated period of notice by making payment of a sum equivalent to pay and allowances for the period of notice or the balance of expired portion thereof.

Shri Rajeev Varshney had joined IRC office on 1st September, 2011 and yet to complete the one year of probation period.

The Executive Committee may kindly consider the case on merit and take appropriate decision.”

14. In my opinion, therefore, I do not find any illegality in the action of the respondent no.1 in terminating the services of the petitioner as a probationary officer. The Minutes of Meeting dated 30.5.2012, and which

are really not questioned, show that petitioner so far as his services left a lot to be desired, and consequently his services were not confirmed.

15. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.

NOVEMBER 19, 2013
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VALMIKI J. MEHTA, J.