

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

% *Date of decision : August 20, 2015*

+ **LPA 78/2014**

GROUP CAPTAIN (T.S) RAJEEV VARSHNEY Appellant
Represented by: Mr.Santosh Kumar, Mr.Rajiv
Ranjan Mishra, Advocates.

versus

INDIAN ROAD CONGRESS & ANR Respondent
Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated November 19, 2013 dismissing the writ petition filed by the appellant being W.P.(C) No. 5169/2012 challenging his order of termination dated August 09, 2012 Rajeev Varshney prefers the present appeal.

2. Rajeev Varshney was appointed as Deputy Secretary (Administration) with Indian Road Congress (in short the IRC)/ respondent No.1 herein vide the letter of offer dated October 28, 2010 which provided that Rajeev Varshney would be on probation for a period of one year from the date of joining. Since Rajeev Varshney joined on September 01, 2011 his probation was to continue till August 31, 2012 however a termination order dated August 09, 2012 was passed before the said date, which 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."

3. Challenging the order dated August 09, 2012 the writ petition was filed urging three grounds before the learned Single Judge i.e. termination was by an authority lower than the appointing authority, the Minutes of Meeting dated August 09, 2012 were forged and fabricated and that the termination order was stigmatic passed without following the principles of natural justice.
4. The learned Single Judge vide the impugned order held that since the Executive Committee of the IRC decided to terminate the service of Rajeev Varshney and delegated the said authority to Secretary General who passed the order on August 09, 2012 thus he was not removed by an authority lower in rank than the appointing authority. The learned Single Judge also noted that the Minutes of Meeting dated August 09, 2012 were not forged and fabricated and the termination order as noted above cannot be held to be stigmatic; thus dismissing the writ petition.
5. Before this Court two issues have been raised by learned counsel for

Rajeev Varshney. In relation to the first, it is urged that the Minutes of Meeting dated August 09, 2012 are forged and fabricated the contention of learned counsel for Rajeev Varshney is that there was no Item No.286 in the agenda and the Minutes on the strength of which he has been removed are thus forged and fabricated. We have called for the original Minutes record. A perusal of the agenda and memorandum of the 5th Meeting of Executive Committee held at IRC HQ, R.K.Puram on August 09, 2012 at 5.00 PM noted items No.273 to 285. Item No.285 was “Any other item”. However the agenda wrongly gave Item No.284 to two items i.e. “to consider filling up the post of Under Secretary in IRC” and “increasing the retirement age of Secretary General IRC with tenure of three years”. Thus while the Minutes were drawn the item relating to consideration of filling up of the post of Under Secretaries in IRC was mentioned at Item No.284 and the item for increasing the retirement age of Secretary General IRC with tenure of three years was numbered as Item No.285. Thus the additional item initially noted as Item No.285 had to be re-numbered as 286 and the following Minutes were thus passed on the said Item No.286:

“ADDITIONAL ITEM

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.”

6. To buttress the contention of the Minutes being forged and fabricated

learned counsel for Rajeev Varshney contends that in fact Shri P.N.Jain President IRC had pointed out the fabrication in the Minutes. We find that Shri P.N.Jain President IRC was present and had chaired the meeting of the Executive Committee on August 09, 2012 and he duly approved the Minutes. It is not disputed that the Minutes was circulated and confirmed in the next meeting and there are no objections to the same. Thus the contention that the Minutes relating to the decision to terminate the services of Rajeev Varshney are forged and fabricated deserves to be rejected.

7. The second contention of learned counsel for Rajeev Varshney that the termination order was stigmatic and in violation of the principles of natural justice also deserves to be rejected. It is well settled that during probation the appointing authority is within its right to terminate the services of the employee if his work or conduct is found unsatisfactory and no enquiry or no show cause notice is required to be given to terminate the services during probation. The Office Order dated August 09, 2012 only states that on examining the performance of Group Captain Rajeev Varshney, his contribution on the work assigned to him does not justify continuing his services and after careful consideration of his overall performance and all the other factors it was decided unanimously to dispense with his services with immediate effect. The Office Order also states that the Committee decided that the termination of his services will not be considered as punishment and will not stand in his future services and career with other employees. The very purpose of keeping an employee on probation is to assess his suitability. Thus while terminating the service during probation if the termination order notes that the overall performance of the candidate has not been suitable, the said order cannot be said to be

stigmatic.

8. In the decision reported as (2010) 2 SCC 623 Chaitanya Prakash and Anr. Vs. H. Omkarappa the Supreme Court following its earlier decision in (2006) 4 SCC 469 Abhijit Gupta Vs. S.N.B. National Centre, Basic Sciences and Ors. held that there is no need to institute departmental proceedings or afford an opportunity of hearing while terminating services on probation and even if the termination order refers to the unsatisfactory services of the probationer, the order is not stigmatic.

9. Thus we find no merit in the present appeal. Appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 20, 2015
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