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

% Date of Decision : September 28, 2015

+ **LPA 881/2013**

HIMANSHU BHATT Appellant
Represented by: Mr.Anando Mukherjee, Advocate
with Ms.Divya Anand, Advocate

versus

INDIAN RAILWAY CATERING
AND TOURISM CORPORATION & ORS Respondents
Represented by: Ms.Raavi Birbal, Advocate with
Mr.Ravindra Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.18475/2013

Allowed.

LPA No.881/2013

1. We find a contradiction in the impugned judgment dated August 27, 2013. On the one hand the learned Single Judge has held that order dated September 21, 2012, terminating appellant's service during probation is non-stigmatic and on the other hand a direction has been issued in paragraph 9 that the respondent would issue a fresh termination order '*which should be a simplicitor termination order*'. The two cannot obviously stand.
2. Learned counsel for the appellant gives up the point concerning appellant's deemed confirmation. The reason is that the view taken by the

learned Single Judge on said aspect of the matter is correct.

3. The surviving issue is : ‘*Whether order dated September 21, 2012 is non-stigmatic*’. By the order the service of the appellant was terminated while he was still under probation.

4. The order was preceded by a show cause notice dated June 05, 2012 which reads as under:-

“You are engaged as Assistant Supervisor (SI), Tourism in IRCTC/NZ and presently reporting to Manager/Maharajas’ Express. The record reveals that you absented yourself unauthorizably without any sufficient cause w.e.f. 09.05.2012. You even failed to respond, in spite of my emails dated 28.05.2012 and 30.05.2012.

It was mentioned in your offer of appointment that you will initially be on probation for a period of 2 years during which you will not have any right or lien on the job/post assigned to you and you cannot claim regular employment against the post in the Corporation. If your services are found to be satisfactory based on your performance on the job and other parameters as laid down by the company at the end of the probation period, you will be confirmed. This will be done through a formal written confirmation order, otherwise the probation period may be extended further or your services will be terminated. In case of termination during probation, no notice or salary in lieu of notice period will be payable. Until and unless expressly confirmed in writing, you will be deemed to be on probation.

Your unauthorized absence from duty itself shows your gross carelessness and non-devotion to duties. You have acted like an unbecoming IRCTC official and have violated General Conditions of Service. This kind of behaviour is highly uncalled for and unwarranted from an employee who is still on probation.

You are, therefore, called upon to show cause notice as to why

action contemplated under the terms and conditions of offer of appointment may not be taken against you.

Reply to this notice shall be submitted within a period of ten (10) days from the date of issue of this notice failing which it will be presumed that you have no explanation to make and decision shall be taken ex-parte as per terms and conditions of offer of appointment letter being on probation period.”

5. The appellant submitted a reply dated June 15, 2012 to the show cause notice, controverting the allegations contained against him in the show cause notice.

6. With reference to the show cause notice and the reply received, vide order dated September 21, 2012 appellant's services were terminated. The order reads as under:-

“Your representation No.2012/IBM/Personal/IRCTC dt. 15.06.2012 in reply to the show cause notice of even number dt. 05.06.2012 has been carefully considered. In this connection, I am directed to communicate you the following orders passed by the Competent Authority:-

“The record reveals that Shri Himanshu Bhatt, absented himself unauthorizedly w.e.f. 09.05.2012. He did not respond despite email dated 28.05.2012 and 30.05.2012. Accordingly, JGM/Tourism issued a show cause notice to him vide letter no.2009/IRCTC/NZ/PF-433 dated 05.06.2012 to take action contemplated under the terms and conditions of offer of appointment. The employee submitted a detailed reply through his email ‘Himanshu.bhatt@hotmail.com’ dated 15.06.2012.

In order to examine the said reply, a committee comprising of Manager/HRD, Manager/Fin and Manager/Tourism was appointed on 11.07.2012.

The committee submitted its report on 03.08.2012 wherein it was found that Shri Bhatt is not serious to discharge his duties and observed that he violated general conditions of service and committed serious misconduct. The committee recommended that the services of the said employee can be dispensed with/without holding any enquiry giving him one month's notice as required in general conditions of service.

I have examined the case file and gone through the record. Admittedly, Shri Himanshu Bhatt absented himself from duty without any sufficient cause. He neither applied for leave nor took permissions of any authority. The defence put forth in the reply in no way related to his unauthorized absence as the employee was under obligations to provide requisite details of expenses incurred by him against any advance taken from the corporation. It is not in dispute that the employee is still on probation and extra vigilance is required from an employee to discharge his duties. The record prima-facie establish unauthorized absence of the employee especially when no cogent reason has been narrated in the reply.

As per general condition of Service, one month notice is required to terminate the employee during probation. The employee was given show cause notice on 09.05.2012 and more than one month period has already elapsed. The employee is still not attending the office. So I treat the intervening period as a notice period and terminate the service of the employee under clause No.13 of the Conditions of Service with immediate effect. The official may be informed.

Charges and Recoveries, if any, due against him

may be recovered from the amount payable. Since the official has absented wilfully within a period of three years, the bank guarantee stands forfeited to IRCTC and may be encashed.”

7. With reference to the law declared in the decisions reported as 2006 (6) SCC 453 State of West Bengal & Ors. Vs. Tapas Roy, (2007) 1 SCC 491 Muir Mills Unit of NTC (UP) Ltd. Vs. Swayam Prakash Srivastava & Anr., 2010 (2) SCC 623 Chaitanya Prakash & Anr. Vs. H.Omkarappa and (2011) 4 SCC 447 Rajesh Kumar Srivastava Vs. State of Jharkhand & Ors., the learned Single Judge has held that an order terminating services of a probationer which records that the service has been found to be not satisfactory is not a punitive order.

8. We need not list the decisions which give the reason why an order terminating the service of a probationer, if stigmatic, is a penal order. We simply note that the legal principle is that where the order affects the reputation of the employee it would hinder future prospects of a job and therefore would be penal. A stigma is a mark of disgrace and hence stigmatic would mean ‘of or relating to a stigma’.

9. Law treats reputation as a property. Law also treats reputation as an honour and if understood as an honour it signifies the estimation which a person receives from society. Reputation is also treated in law as dignity for the reason a person’s dignity depends on whether others in the community give him the deference that is his desert as a full member of the society.

10. An imputation which disparages a person in his profession, calling, trade or business is bound to be stigmatic, and therefore any imputation which is disparaging *in the way* of a person’s occupation would be stigmatic.

The test whether an imputation against a person is disparaging/stigmatic would be : whether the words used tend to lower the person in the estimation of right thinking members of the society. In the context of defamation/liable in the decision reported as (1970) 1 All ER 1094 Drummond-Jackson Vs. British Medical Association, imputation of incompetence in the conduct of one's business was held capable of being defamatory even though such an imputation does not expose such a person to hatred, ridicule or contempt or cause others to shun or avoid him.

11. The order dated September 21, 2012, contents whereof have been reproduced by us in paragraph 6 above records : '*The committee submitted its report on 03.08.2012 wherein it was found that Shri Bhatt is not serious to discharge his duties and observed that he violated general conditions of service and committed serious misconduct.*'

12. The order of termination records that the appellant was found not to be serious in discharging his duties as also was not observing the general conditions of service. The order additionally records that a Committee has found that the appellant committed serious misconduct.

13. The learned Single Judge has clearly overlooked one facet recorded in the order dated September 21, 2012. Whilst the first part regarding appellant not being serious in discharging duties and not following the general conditions of service may not be stigmatic in light of the decisions of the Supreme Court noted by the learned Single Judge, but the second part, which records that the appellant committed a serious misconduct, cannot be overlooked.

14. Learned counsel for the respondent states that the show cause notice issued to the appellant was limited to unauthorized absence from duty and

thereby violating the general conditions of service, and therefrom would urge that the order of termination should be given colour with reference to the show cause notice.

15. The argument has to be rejected for the reason it is the order of termination which has to be considered by us, and we find that though in the show cause notice the only allegation against the appellant was of unauthorized absence, but in the termination order a reference has been made to serious misconduct committed by the appellant. Now, what matters is the language of the order terminating the service of the appellant for the reason when the future prospective employer who, would want to know the reason why appellant's service was not confirmed during probation, would look into the order in question, he would find therein an imputation which disparages the appellant and would come in the way of the appellant's occupation.

16. For record we note that the Committee referred to in the order of termination has gone into financial irregularities statedly committed by the appellant and has made a reference thereto in its report dated August 03, 2012.

17. The appeal is allowed. Impugned order dated August 27, 2013 dismissing W.P.(C) No.5293/2013 filed by the appellant is set aside. The order dated September 21, 2012 terminating appellant's service is quashed. The appellant shall be reinstated in service with 50% back wages to be paid. Other consequential benefits shall flow to the appellant. Learned counsel for the respondent wants it to be noted, and therefore we do. The respondent would be free to take disciplinary action against the appellant in respect of the alleged misconduct committed by the appellant which may include

unauthorized absence from duty, failure to abide by the code of conduct as also financial issues. Parties shall bear their costs in the writ petition as well as the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 28, 2015
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