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

+ **W.P.(C) 6818/2015**

Date of Judgment : 20.07.2015

RAVINDER KUMAR

..... Petitioner

Through : Ms. Smita Bankoti and Mr. Ashish
Sheoran, Advocates.

versus

DELHI TRANSPORT CORPORATION AND ORS..... Respondent

Through : Ms. Latika Chaudhary, Adv. for
Ms. Avnish Ahlawat, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

CM APPL. 12468/2015 (condonation of delay)

1. This is an application seeking condonation of delay in filing the present writ petition.
2. For the reasons stated in the application, the delay in filing the present writ petition is condoned. Application stands disposed of.

W.P.(C) 6818/2015

3. Aggrieved by the order dated 03.02.2015 passed by the Central Administrative Tribunal has led to the filing of the present writ petition. The petitioner was employed by the DTC as a Driver on 04.02.2009, initially on probation for two years. His services were terminated on 02.02.2011 under Clause 9 (a) (I) of the DRTA (conditions of appointment and service) Regulations 1952. The appeal filed by the petitioner was rejected by an order dated 26.04.2012. Another appeal filed by him on 03.05.2012 was also rejected on 06.06.2012, which forced him

to knock the doors of the Central Administrative Tribunal for justice.

4. Learned counsel for the petitioner submits that the service of the petitioner was in fact considered as a regular employee which is evident from the fact that a charge was issued to him for withholding necessary information at the time of making an application seeking employment. It is contended that after holding an enquiry vide order dated 20.04.2010, the punishment of stoppage of one increment with cumulative effect was passed in the departmental proceedings. It is thus contended that the petitioner cannot be punished twice for the same offence i.e. suppression of material documents.
5. Counsel for the petitioner submits that the order passed by the Central Administrative Tribunal is arbitrary and unjust as all the facts have not been appropriately and duly considered. It is submitted that the Central Administrative Tribunal has failed to take into consideration that the termination order dated 02.02.2011 was not only unjust but also prejudicial, as the same was passed just a day prior to the completion of the probation period of the petitioner, and that too on the basis of the charge memo issued to the petitioner on 29.09.2009 which was for non-disclosure of correct information by the petitioner, for which the petitioner had already been penalized with stoppage of one increment with cumulative effect. It is also contended that the petitioner was never issued any memo or warning during the probation period for any misconduct during the course of service and therefore the termination order dated 02.02.2011 passed just a day prior to the completion of the probation period of the petitioner smacks of malafides. It is further submitted that the Central Administrative Tribunal has failed to appreciate that the orders dated 26.04.2012 and 06.06.2012 are non-speaking orders, and the same therefore, are liable to be set aside.

6. Counsel for the petitioner submits that the termination of the petitioner is against the principles of natural justice, as the petitioner has been penalized twice on the same grounds as the termination order does not state any reasons whatsoever as to why the petitioner is being terminated and the same was issued without even affording an opportunity to the petitioner as no show cause notice was issued entailing as to why the petitioner is being terminated.
7. Counsel also contends that the order of termination of the petitioner from service is unwarranted and unlawful, as the respondent had failed to point out any grounds of unsatisfactory service, misconduct or any other reason whatsoever for issuing the order of termination. It is also contended that the Tribunal in recent orders have observed that where the appeals are placed before the Appellate Authority, the same cannot be dismissed by way of a non-speaking order and such cryptic orders are not legally sustainable.
8. Ms. Latika Chaudhary, learned counsel for the respondents has entered appearance on an advance copy and submits that the petitioner's period of probation has not been extended for which the respondent is not required to give detailed reasons. Additionally, it is submitted that the petitioner had failed to disclose that three criminal cases were pending against him when he applied to the DTC which vital piece of information was suppressed by him. It is pointed out that he was acquitted in two cases and released on probation in the third case. The respondent also took into account his attendance record. The petitioner was found irregular in his duties however, while relying on Rule 9 (a) (I) of the DRTA learned counsel for the respondent submits that respondents were well within their right not to extend the period of probation and to terminate his services without any reasons thereof.

9. We have heard counsel for the parties considered their rival submissions and also perused the order passed by the Tribunal. The law with regard to the termination of service of a probationer during the period of probation is well settled. The present case is to be decided on the touchstone of the law laid down by the Apex Court.
10. In the case of **Rajesh Kohli Vs. High Court of Jammu & Kashmir & Anr.**, reported at (2010) 12 SCC 783, the Supreme Court has discussed in detail the scope and ambit with regard to the law relating to probationers. In the case of **Rajesh Kohli (Supra)** during the period of probation personal record of the petitioner therein revealed that there was a criminal complaint against him for his conduct when he was an advocate; complaint of misbehaviour and problem causing in District of posting; and the petitioner had not joined his place of posting for certain period for which an explanation had been sought from him. In this backdrop the period of probation of the petitioner therein was not extended and his services were terminated. Paragraphs 18 and 19 of **Rajesh Kohli (Supra)**, read as under:

“18. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself.

19. The aforesaid resolution taken by the full court on its administrative side clearly indicates that the matter regarding his confirmation or otherwise or extension of his probation period for another one year was considered by the full court but since his service was not found to be satisfactory on consideration of the records, therefore, the full court decided not to confirm him in service and to dispense with his service and accordingly recommended for dispensation of his service. On the basis of the aforesaid recommendation of the High Court, an order was passed by the Government of Jammu & Kashmir dispensing with the service of the petitioner.”

11. In the case of **Rajesh Kumar Srivastava Vs. State of Jharkhand and Ors.** reported at (2011) 4 SCC 447, while taking the records of the petitioner into consideration, the period of probation was not extended. It was held that a person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. Paragraphs 9 and 10 of the judgment read as under:

9. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probation (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job.

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 is he 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.”

12. In the case of *Chaitanya Prakash and Anr. Vs. H. Omkarappa* reported at (2010) 2 SCC 623, it was held that the termination of service during the period of probation cannot be held to be stigmatic.
13. In the case at hand, it is not in dispute that the employment of the petitioner was initially on probation for a period of two years. It is during this period, it came to light that petitioner was involved in three cases (i) under Section 392/397 of the Indian Penal Code; (ii) under Section 392 of the Indian Penal Code and (iii) under Section 294 of the Indian Penal Code. In the case registered under Section 294 of the Indian Penal Code, the petitioner was convicted by the court on 20.11.2006 but released on probation on furnishing a bond of Rs. 5,000/- and one surety of the like amount. Although there was no necessity on the part of the respondent to conduct an enquiry as the petitioner was on probation and it would have been well within the rights of the respondents to terminate his services, if they so desired. However, the impugned order dated 02.02.2011 does not give any background with regard to the enquiry. It would be useful to reproduce the rule 9(a)(I) of the DRTA, as the respondents have relied upon the aforesaid rules while issuing the notice of termination. Rule

9(a)(I) reads as under:

The Rule 9 (a) (I) reads as under :

“9. Termination of Service (a) Except as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice –

(I) During the period of probation and without assigning any reasons thereof.”

14. The submissions made by counsel for the petitioner, in our view are without any force for the reason that the order dated 02.02.2011 is not stigmatic in nature. The order dated 02.02.2011 reads as under:

“NO.IPD/PFC (Dr.) Terminate/11/688 Dated : 2/2/11

The services of Shri Ravinder Kumar S/o Shri Ved Pal, Driver, B. No. 23078, PT. No. 65039 is hereby terminated w.e.f. 02.02.2011 (AN) under clause 9 (a) (i) of the DRTA (Conditions of Appointment and Services) Regulations, 1952.

He is directed to deposit the all DTC articles within 24 hrs. With the Livery Clerk of this unit. Non deposit of all the DTC articles (Identity Card-cum-Bus pass and Medical Card etc.) by Shri Ravinder Kumar, Driver in accordance with the instructions contained in O.O. No. 27.01.1954 will rendered him liable to pay penalty of Rs. 2/- per day for the days he kept any of the DTC articles in his possession after the specific period of 24 hrs. And subsequent Office Order N.I dated 21.01.1992 respectively.

Sd/-
DEPOT MANAGER

Shri Ravinder Kumar S/o
Shri Ved Pal, Driver, B. No. 23078, PT. No. 65039
Thro : TI sch IPD”

15. The order of termination passed by the respondents is not whimsical for the reason that the respondents have taken into account the fact that the petitioner had suppressed the vital information with regard to the pendency of a criminal case against him at the time of making an application seeking employment. The respondents also took into account his attendance record. The respondents in our view were well within their right to look into the conduct of the petitioner and have then passed the impugned order of termination of his services. We find no infirmity in the judgment of the Central Administrative Tribunal, which requires interference in the proceedings under Articles 226 / 227 of the Constitution of India. Accordingly, the writ petition is dismissed.

CM APPL. 12467/2015

16. In view of the order passed above, the application stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 20, 2015
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