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

+ **W.P.(C) 9675/2015**

% *Date of Judgment : 12th October, 2015*

RAJ PAL Petitioner

Through : Mr. S. N. Sharma, Advocate.

Versus

DTC & ANR. Respondents

Through : Ms. Avnish Ahlawat and Ms. Latika Chaudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. By way of the present Writ Petition, the Petitioner challenges the order dated 29.05.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1727/2013, whereby the Tribunal has rejected the prayer of the Petitioner for reinstatement on termination of his services w.e.f. 26.11.2010 under Clause 9 (a) (i) of the DRTA (Condition of Appointment and Service) Regulation, 1952 also by which the Respondents rejected the representation of the Petitioner by order dated 14.01.2013 and also charge sheet dated 25.06.2010.
2. To appreciate the controversy at hand, it would be necessary to give a brief gist of the facts.

“The short issue in this case is whether the termination of the applicant during the extended period of probation, while a departmental enquiry had been ordered on the charge of concealment of the fact of

pending criminal case in the attestation form, was an illegal exercise of power by the respondents.”

3. The learned Counsel for the Petitioner argued that the Petitioner had not disclosed the criminal case pending against him in the belief that once the Petitioner had entered into a compromise with his wife who was the complainant in that case and divorce had also been effected, it would not be construed to be a case pending against him. Further, the Respondents issued a show cause notice on the charge of concealment of information and after considering his reply ordered a detailed enquiry on 15.11.2010. The enquiry officer had fixed the first date of hearing on 6.12.2010 at 11 hours. Without waiting for the enquiry to be completed the Respondents issued the order of his termination on 26.11.2010 under Clause 9 (a) (i) of DRTA (Conditions of Appointment and Service) Regulations, 1992 which deals with the power to terminate the service during probation. Considering that a departmental inquiry had already started against the applicant, it was clear that the motive behind the termination was the allegation contained in the charge sheet and not the unsatisfactory completion of probation
4. The learned Counsel for the Petitioner further relied **on *Commissioner of Police v. Sandeep Kumar, (2011) 4 SCC 644.***
5. The learned Counsel for the Respondents, on the other hand, have taken a stand that the termination of the Petitioner under Clause 9 of DRTA (Conditions of Appointment of Service Regulations), 1952 was due to unsatisfactory completion of probation and it was not motivated by the charge levelled against the applicant. The learned

Counsel for the Respondents further argued that exercise of powers under Clause 9 of the Regulations is not affected by any parallel disciplinary proceedings that may be in progress against the applicant.

6. The learned counsel relied on *Municipal Corporation, Raipur v. Ashok Kumar Mishra, (1991) 2 SCR 320* and *Radhey Shyam Gupta v. U.P.State Agro Industries Corporation Ltd. and another, (1999) 2 SCC 21*.
7. We have considered the facts and submissions made by the learned counsel for both the parties.
8. The question which arises for our consideration is whether the Respondents were motivated by the charges against the Petitioner while taking the decision to terminate him. In order to assess the motive of the Respondents the noting in the original file was directed to be produced in the case of *Anoop Jaiswal vs. Govt. of India, (1984) 2 SCC 369* wherein it has been held that noting in the file of the Government may be irrelevant, however the cause for the order cannot be ignored. The Hon'ble Apex Court held that :

“Even though the order of discharge may be non-committal, it cannot stand alone, Though the nothing in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read alongwith the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was cause of the order and that but for that incident it should been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been

afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.”

9. The original records produced by the Counsel for the Respondents show that the note submitted to the competent authority had highlighted the factual position with regard to the pending charge sheet case for concealment of facts against the Petitioner and the fact that he was on leave for long periods without pay or on medical grounds, during the first year of his probation (28.11.2008 to 27.11.2009) and the extended periods of probation. The competent authority while noting the fact that the Petitioner had concealed the facts in CVR and the long periods of absence during the probation period, had relied on the circular no. PLD III/12/7/5510 dated 20.09.1974 and the report of the reporting officer, while taking the decision to terminate the services of the applicant. The relevant note is reproduced below:

“Sh. Raj Pal son of Sh. Kanwar Lal was appointed as Retainer Crew Conductor, B.No.26326, Pay T. No.61494 w.e.f. 1.1.1999 vide letter No. PLD III/Cond. Appointment/98/4494 dated 31.12.1998 (page 12/Cr, Flag- ‘X’.

He was brought on monthly rates of pay w.e.f. 28.11.98 vide letter No. PLD III/RC Cond./Regular/2008/3391 dated 27.11.2008 and placed on probation for a period of one year, extendable for another one year (page 78/Cr), Flag- ‘Y’.

His CVR not received during the one year of his period of probation. He availed 55 days leave without pay during 1st year of his probation, therefore his probation period was extended by six months i.e. upto 27.5.2010 vide letter

No.VVD/CO/PFC(Cond)/09/3693 dated 27.11.09 (page 81/Cr). His period of probation was further extended for another six months i.e. upto 27.11.10 on account of chargesheet case for concealment of facts in CVR was pending and availed 24 days leave without pay during extended period of six months (page 85/Cr).

He availed 68 days leave without pay during second extended period of six months i.e. 28.5.10 to 16.11.10 which include 40 days on medical ground. The chargesheet case for concealment of facts in CVR is also pending against him. The Progress report in regard to his work and conduct for the period from 28.5.10 to 27.11.10 has been filled in by the Reporting officer and reviewed by the Reviewing Officer (page 102/Cr) Flag- 'A'.

Submitted please.

Sd/-

D. Asstt.

A.I.(A)

He has concealed the facts in CVR and availed 68 days L.W.P. during the extended period of probation of six months i.e. 28.5.10 to 16.11.10 which include 40 days on medical ground from private practitioners. Page 86 to 93/Cr.

As per circular No.PLD-II-3(12)/74/5510 dt. 29.1.74, if an employee availed L.W.P. more than 60 days during one year of probation, his services will be terminated.

The Reporting Officer in para 1 of his progress report has recorded not to be continued and employed on long term basis.

In view of the report of Reporting Officer and his excessive L.W.P., his services may be terminated w.e.f. 27.11.10 under clause 9 (a) (i) of D.R.T.A.

*(Conditions of appointment and Services),
Regulations 1952, if agreed to pl.*

*Sd/-
A.I.(A)*

Acct. ”

10. From the records produced before us we also find that in the Progress Report of the Employees on Probation in respect of the Petitioner, the reporting officer during the period 28.11.2008 to 27.11.2009 had recorded that the Petitioner was irregular, his output was average, his work was average and made categorical recommendation for extending the probation period of the Petitioner. In response to the question “Based on a try during the period for which the report pertains, should the employee be continued and employed on a long terms basis, the reporting officer has stated No.” In the progress report for the period 28.11.2010 to 27.11.2011 also the reporting officer has given similar assessment and recommendations. The fact of the Petitioner being absent for long periods during the probation has also been brought on record. We are in consonance with the view of that the learned Tribunal that the service of the Petitioner during the extended period of probation, in the background of the facts of this case is a termination simplicitor and cannot be said to be motivated by the charges pending against the applicant.
11. The other fact arises for our consideration is that the charge sheet was given to the applicant on 29.11.2010 and the competent authority had ordered enquiry on 15.11.2010 and the date for the first hearing was fixed for 06.12.2010. The enquiry officer had not proceeded beyond

fixing of date of the enquiry. A termination order issued at that stage cannot be considered as punitive. Hon'ble Apex Court in **Radhey Shyam Gupta (supra)** held thus:

“Even in a case where a regular departmental inquiry is started, a charge-memo issued, reply obtained, and an enquiry Officer is appointed -- if at that point of time, the inquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry Officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur's case : (1970)ILLJ373SC and in Benjamin's case (1967 Lab LJ 718) (SC). In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee.”

12. The propositions in this behalf, as to what constitutes a motive, and what constitutes a foundation for the action were once again crystallized in the judgment of this Court in Chandra **Prakash Shahi Vs. State of U.P. & Ors. reported in 2000 (5) SCC 152**, where in paragraph 28 and 29 of the judgment of this Court laid down the relevant propositions which are as follows:-

“28. The important principles which are deducible on the concept of motive and foundation, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for

his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of motive.

29. Motive is the moving power which impels action for a definite result, or to put it differently, motive is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.”

13. On the perusal of facts and submissions of both the Counsels for the parties we are of the view that the facts of the present case does not show that the motive that impelled the Respondents to issue the charges against the Petitioner was the very fact that the probation of the Petitioner had to be extended twice and the reports during the period of probation did not recommend him for long term retention in the organisation.
14. Therefore, we find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 12, 2015/gr