

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1100 of 2016

Jay Prakash Suman, Son of Sri Janardan Prasad, Resident of Village - Sonsa,
P.S. - Rahui and District - Nalanda.

.... Petitioner/s

Versus

1. The Union of India through the Chief Secretary, Ministry of Human Resources Development Department, Government of India, New Delhi.
2. The Joint Commissioner (Administration), Appellate Authority, 18, Institutional Area, Shaheed Jeet Marg, New Delhi -110016.
3. The Educational Officer (Establishment), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Marg, New Delhi - 110016.
4. Deputy Commissioner (Admin), Kendriya Vidyalaya Sangathan, 18, Head Quarter, New Delhi.
5. Assistant Commissioner (Admin & Finance), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaeed Jeet Marg, New Delhi-110016.
6. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Sector - J, Aliganj, Lucknow - 226024.
7. Assistant Commissioner - cum - Disciplinary Authority, Kendriya Vidyalaya Sangathan, Regional Office, Dehradun.

.... Respondent/s

Appearance :

For the Petitioner : Mr. Bhola Kumar, Advocate

For the Respondent Nos.2 to 6 : Mr. G. K. Agrawal, Advocate
Mr. Kumar Ravish, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-07-2016

The challenge in the present writ petition is to an order



passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') on 13th January, 2014. The challenge before the Tribunal in an Original Application filed by the petitioner was to the order dated 18th of October, 2010 passed by the competent authority and the order dated 7th October, 2011 passed by the appellate authority.

2. The petitioner was appointed as Junior Stenographer (Hindi) In Kendriya Vidyalaya Sangathan, Regional Office, Lucknow. He joined on 24th of October, 2007. He remained absent from 18th January, 2008 to 2nd March, 2008 and from 10th April, 2009 to 7th July, 2009. The petitioner submitted a leave application on 3rd October, 2010 for earned leave from 3rd October, 2010 to 12th October, 2010 and submitted another request for extension of leave on 13th October, 2010. However, the order of termination was passed on 18th October, 2010 which, according to the petitioner, is without giving an opportunity to hearing.

3. According to the counter affidavit filed by the respondents, the petitioner joined as Junior Stenographer on 24th October, 2007 on probation for a period of two years, but the petitioner's approach towards the duty from the very beginning was not up to the mark and was found very casual to his duties. He left office without prior permission of the competent authority and without



sanction of leave, but later on, he sent an application that he was not keeping well, but without any supporting certificate. He submitted another application on 2nd February, 2008 stating that he has not recovered from his illness, but no medical certificate was produced. A memorandum was issued on 22nd February, 2008 on account of poor performance in the office. The petitioner again left the office on 9th April, 2009 without permission and without sanction of leave. On 22nd April, 2009, a memorandum was issued on account of such absence. Another memorandum was issued on 3rd July, 2009 with instructions to the petitioner to resume his duties, but he did not respond. The petitioner joined the office on 8th July, 2009 and tendered medical certificate which was not accepted by the authorities, but he was accommodated and sanctioned leave without pay from 10th April, 2009 to 2nd July, 2009 and earned leave from 3rd July, 2009 to 7th July, 2009. However, keeping in view the poor performance of the petitioner, his probation period was extended for one year vide office order dated 22nd April, 2009. He was also communicated adverse entries on his annual confidential report ending 31st March, 2009. He was also issued a memorandum on 21st September, 2010 that in violation of the code of conduct, he was making complaints against the officers and staff of the Regional Office directly to the Commissioner and for submitting a copy thereof to the Regional Office after mailing the same. The



petitioner did not respond to the said memorandum. The petitioner again left the office on 4th October, 2010 without informing anybody and without asking for leave. Later on, it was detected that he entered the chamber of the Assistant Commissioner in his absence and placed an application for leave with effect from 4th October, 2010 to 13th October, 2010 on his table and no reason whatsoever was assigned for such leave. A memorandum dated 5th October, 2010 followed by a telegram was issued calling upon the petitioner to report for duty. Keeping in view the conduct of the petitioner, his services were terminated on 18th October, 2010 under Para 5 of the Central Civil Services (T.S.) Rules.

4. Learned Tribunal found that the petitioner was on probation and his services were terminated during the period of probation. It was found that a probationer leaving the office and headquarter without prior permission and remaining on unauthorized leave cannot be taken casually and has its impact on the administration as well as on the office. The adverse entries made in the ACR speak about efficiency of the petitioner and the Department is not duty bound to extend the probation of such irresponsible and below standard stenographer. It was also found that it cannot be said that there was any violation of opportunity of hearing as the petitioner has not turned up in spite of notice. In view of the limited jurisdiction of the Tribunal, it

found no ground to interfere with the order passed by the authorities.

5. Before this Court, learned counsel for the petitioner relies upon an order passed by the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Mahaveer C. Singhvi, (2010) 8 SCC 220, wherein, the Hon'ble Supreme Court set aside the order of discharge of a probationer during the period of probation. The Hon'ble High Court found that the order of discharge is punitive in character and had been motivated by considerations which are not reflected in the said order, and, therefore, set aside the order of discharge. The Supreme Court did not interfere with such order passed by the High Court. The Court noticed that the order of discharge has been issued on account of employee's misconduct and that was the very basis of the said order.

6. We have heard Learned Counsel for the parties and find no merit in the writ petition. The order of discharge passed by the competent authority reads as under:

“ In pursuance of provision of clause 5 of the offer of appointment issued to him vide Memorandum No. F3-Dr. Sel (NTS) 2007-KVS (LR)/6014 dated 09.10.2007, the undersigned being competent authority hereby terminates the services of Shri Jai Prakash Suman, Junior Stenographer, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow with immediate effect. He will be entitled for one month salary for notice period of one month.”

7. Prior to such order of discharge, the petitioner was conveyed adverse remarks recorded in his Annual Confidential report for the year ending 31st March, 2009 which is to the following effect:

“ Part III Assessment by reporting Officer

7-d)- Promptness in disposal of work	Slow
12- Has the officer been reprimanded for indifferent work or for other causes during the period under report? If so, please give brief particulars.	Yes, verbally. Improvement not noticeable.

8. The judgment in Mahaveer C. Singhvi’s case (supra) has been considered in a later judgment reported as State Bank of India and others Versus Palak Modi and another, (2013) 3 SCC 607 wherein the Court examined the circumstances in which the termination of a probationer’s services can be said to be misconduct and the foundation of an order and an order which can be said to be motive before an order of discharge is passed. The Court concluded as under :

“25. The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the

ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.”

9. In Kazia Mohammed Muzzammil v. State of Karnataka, (2010) 8 SCC 155, the Court held that an employee has to show the circumstances supported by cogent material on record that the order of discharge is stigmatic and was intended to overreach the process of law provided under the Rules. The Court held to the following effect:-

“9. A bare reading of the above impugned notification shows that it is ex-facie not stigmatic. It simply discharges the appellant from service as having been found unsuitable to hold the post of District Judge. Until and unless, the appellant is able to show circumstances supported by cogent material on record that this order is stigmatic and is intended to over reach the process of law provided under the Rules, there is no occasion for this Court to interfere on facts. As far as law is concerned, the question raised is with regard to the applicability of the concept of “deemed confirmation”, to the present case under the service jurisprudence.”

10. In the present case, the competent authority has taken into consideration the Annual Confidential Report for the year ending 31st of March, 2009 and the conduct of the petitioner of remaining absent from duty time and again. There was no enquiry conducted which could be said as foundation for taking action. It was the circumstances on record without any further enquiry which led the competent authority to frame an assessment that the continuation of the

petitioner is not conducive to the Organization. It cannot be said to be punitive in nature.

11. Consequently, we do not find any merit in the writ petition. The same is, therefore, dismissed.

(Hemant Gupta, J.)

Ahsanuddin Amanullah, J. I agree.

(Ahsanuddin Amanullah, J.)

Sunil

AFR/NAFR	
CAV DATE	15.07.2016
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