

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Gaurang Kanth

W.P.C.T. No. 33 of 2023
with
IA No. CAN 1 of 2023

The Union of India and Others
Vs.
Sri Soumitra Dey and Another

For the Petitioners : Mr. Billwadal Bhattacharyya, Adv.
Mr. Pramod Kumar Drolia, Adv.,
Mr. Santosh Kumar Pandey, Adv.

For the Respondent No. 1: Mr. P. C. Das, Adv.

Hearing concluded on : 11th December, 2023.

Judgment on : 15th December, 2023.

Gaurang Kanth, J.

1. The petitioners, in the present writ petition, are challenging the order dated 13th September, 2022 passed by the learned Central Administrative Tribunal, Kolkata Bench, Kolkata (in short, learned Tribunal) in OA No. 350/1469/2018 titled as Soumitra Dey Vs UOI. *Vide* the impugned order, the learned Tribunal was pleased to set aside the termination order dated 13th July, 2018 passed by the petitioner no.3, wherein the service of the respondent no. 1 as a probationer, was terminated by invoking Para 2 & 3 of the appointment letter dated 27th November, 2017.

2. Brief facts leading to the present case are as follows:

3. The respondent no. 1, *vide* appointment letter dated 27th November, 2017, was appointed as a Civil Motor Driver (CMD), Group C at Army Recruiting Office, Gopalpur under Headquarters recruiting Zone, Kolkata with effect from 1st December, 2017. As per Para 2 of the appointment letter, the respondent no. 1 was on probation for a period of 2 years from the date of assumption of duty. It was further mentioned in the said appointment letter that on successful and satisfactory completion of the probationary period, he will be considered for the appointment for the post of CMD on permanent basis. As per Para 3 of the said appointment letter, the '*services are liable for termination on rendition of one month notice either by employee to the appointing authority or by the appointing authority to the employee even without communicating reasons for termination*'.

4. The respondent no. 1 was assigned the duty in the recruiting rally held at Krishnanagar of Army Recruiting office, Berhampore from 6th February, 2018 to 15th February, 2018. It is the allegation of the petitioners that during his duty on 12th February, 2018, the respondent no. 1 was caught interacting with two candidates and handing over them his mobile number with instruction to contact him on his mobile number after their pre-medical test was over. It is the case of the petitioners that the respondent no. 1 shared his mobile number with the said two candidates

with ulterior motive. Hence, the petitioners deputed '*Board of Officers*' to inquire into the alleged misconduct committed by the respondent no. 1.

5. The Board of Officers conducted a full-fledged enquiry and submitted their report opining that '*suitable disciplinary action must be taken against CMD Soumitra Dey by the competent authority for his unfair and illegal act of passing on his cell No written on chits to two candidates to influence them during recruitment rally on 12 Feb 2018*'.

6. The said report was forwarded to the Headquarters recruiting zone, Kolkata by Director, Army Recruiting Office, Sambalpur. Thereafter, the said report was further forwarded to Integrated Headquarters of Ministry of Defence (Army). On examination of the said report, the Integrated Headquarters of Ministry of Defense (Army) directed to initiate necessary action against the respondent no. 1 as per Para 3 of the appointment letter.

7. Hence based on the said direction of the Integrated Headquarters of Ministry of Defence (Army), notice of termination of service dated 11th June, 2018 under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 was issued to the respondent no. 1. The respondent no. 1 preferred a representation dated 13th June, 2018 before the Director General Recruiting/Recruiting 5 (OR)B, Civil, IHQ of MoD (Army), C/o 56 APO at R.K Puram, Sector-1, New Delhi with a copy to the appointing authority. It is the contention of the respondent no. 1 that notice of termination was served upon him without assigning any reason. However, without considering the said representation, the petitioners, *vide* letter dated 13th July, 2018 terminated the service of the respondent no. 1 as per Para 2 & 3 of the appointment letter dated 27th November, 2017.

8. Being aggrieved by the said termination letter dated 13th July, 2018, the respondent no. 1 herein preferred an appeal dated 17th July, 2018 before the competent authority. However, the competent authority of the petitioners failed to take any decision on the said appeal.

9. The respondent no. 1 preferred the original application before the learned Tribunal. The petitioners herein filed their counter affidavit in which

it was highlighted the alleged misconduct committed by the respondent no. 1 and the enquiry conducted by the '*Board of Officers*'.

10. Learned Tribunal, after hearing both sides, *vide* the impugned order, was pleased to set aside the termination order dated 13th July, 2018 with all consequential benefits and also granted liberty to the petitioners to initiate proceedings against the respondent no. 1 if found necessary.

11. Being aggrieved by the said impugned order, the petitioners preferred the present writ petition.

Submission on behalf of the Petitioners

12. Learned counsel for the petitioners submits that the respondent no. 1 was a probationer, and his services were terminated as per Para 2 & 3 of the appointment letter dated 27th November, 2018. Learned counsel for the petitioners further submits that when an appointment is made on probation, it pre-supposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. If the decision is taken to terminate the service of an employee during the period of probation, after taking into consideration the overall performance of the employee, then it cannot be said that it amounts to his removal from service as punishment.

13. Learned counsel for the petitioners further submits that the enquiry conducted by the department was a fact-finding enquiry of a preliminary nature. Since the respondent no. 1 was on probation, no disciplinary enquiry as per the CCS Rules was required and hence his services were terminated by invoking Para 2 & 3 of the appointment letter.

14. Learned counsel for the petitioners further vehemently argued that it was a termination simpliciter based on Para 2 & 3 of the appointment letter and no stigma was attached to it. While referring to the impugned order, learned counsel pointed out that the learned Tribunal has erred in setting

aside the termination order dated 13th July, 2018 on the ground that '*moral turpitude/discipline case/drop in performance is not substantiated*'.

15. In order to substantiate his argument, the learned counsel relied on ***Avinash Nagar Vs Navodaya Vidyalaya Samiti and Others***, reported in **1997 (2) SCC 534**, ***Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs Dr Pandurang Godwalker and Another***, reported in **1992 (4) SCC 719**.

16. Based on these submissions by the learned counsel for petitioners, the petitioners pray for setting aside the impugned order.

Submission on behalf of the Respondent No. 1.

17. Learned counsel for the respondent no. 1 submits that the petitioners terminated the services of the respondent no. 1 without following the due process of law and without affording an opportunity of hearing. It is the submission of the learned counsel for the respondent no. 1 that the petitioners terminated the services of the respondent no. 1 by invoking Central Civil Services (Temporary Services) Rules, 1965, however, the said rules are not applicable in the case of the probationers. The inquiry was initiated against the respondent no. 1 alleging misconduct and hence it cannot be termed as the inquiry conducted for the purpose of determining the suitability of the respondent no. 1 as a probationer. The termination order dated 13th July, 2018 was based on the alleged misconduct of the respondent no. 1 and hence it is in the nature of punishment. Learned counsel for the respondent no. 1 further submits that the termination order dated 13th July, 2018 casts aspersions against the character and integrity of the respondent no. 1 and hence the Court can interfere with such orders. Learned counsel relies upon the judgment delivered in the case of ***Shamsher Singh & Anr. Vs State of Punjab*** reported in **1975 (1) SCR 814**.

18. Based on this submission, learned counsel prays for the dismissal of the present writ petition.

Legal Analysis

19. This Court had heard the arguments advanced by both the parties and perused the records and judgments relied on by the parties.

20. The crucial question to be determined in the present writ petition is whether the termination order dated 13th July, 2018 can be termed as an innocuous termination simpliciter as per Para 2 & 3 of the appointment letter dated 27th November, 2017 or it is an order of punishment based on the alleged misconduct of the respondent no. 1. Before advertng to the facts of the present case, it is useful to discuss the law in this regard.

21. The law regarding the termination of service of a probationer is no more *res integra*. The Hon'ble Supreme Court, as early as in 1968, in **State of Punjab Vs Sukhraj Bahadur** reported in **1968 (3) SCR 234** laid down the legal propositions to be taken into consideration while determining the issue with regard to the termination of a probationer. The said propositions are as follows:

- ‘1. The services, of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.*
- 2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.*
- 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.*
- 4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain*

whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311 i. e. an Enquiry Officer is appointed, a chargesheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article.'

22. The seven Judges Bench of the Hon'ble Supreme Court, subsequently, in ***Shamsher Singh & Anr. Vs State of Punjab***, reported in **1975 (1) SCR 814**, clarified that '*No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount of removal from service within the meaning of Art. 311 (2) of the Constitution*'.

23. The facts of the present case need to be examined on the backdrop of the above-mentioned legal proposition. The relevant facts emerge from the record of the present case are as follows:

- (i) The respondent no. 1 was appointed as a Civil Motor Driver *vide* appointment letter dated 27th November, 2017 with a probation period of two years.
- (ii) During the said probation period, the respondent no. 1 was assigned the duty in the recruiting rally held at Krishnanagar of Army Recruiting office, Berhampore from 6th February, 2018 to 15th February, 2018.
- (iii) It is the allegation of the petitioners that during his duty on 12th February, 2018, the respondent no. 1 was caught interacting with two candidates and handing over them his mobile number with instruction to contact him on his mobile number after their pre-medical test was over. It is

the case of the petitioners that the respondent no. 1 shared his mobile number with the said two candidates with ulterior motive.

- (iv) The petitioners deputed '*Board of Officers*' to inquire into the circumstances under which the respondent no. 1, working as probationer, was caught influencing candidates in Recruitment Rally on 12th February, 2018 at Krishnanagar.
- (v) The '*Board of Officers*' conducted a full-fledged enquiry and submitted their report opining that '*suitable disciplinary action must be taken against CMD Soumitra Dey by the competent authority for his unfair and illegal act of passing on his cell No written on chits to two candidates to influence them during recruitment rally on 12 Feb 2018*'.
- (vi) On examination of the said report, the Integrated Headquarters of Ministry of Defense (Army) directed to initiate necessary action against the respondent no. 1 as per Para 3 of the appointment letter.
- (vii) Based on the said direction of the Integrated Headquarters of Ministry of Defence (Army), the petitioners, *vide* letter dated 13th July, 2018 terminated the service of the respondent no. 1 as per Para 2 & 3 of the appointment letter dated 27th November, 2017.

24. From the facts of the present case, it is clearly evident that the petitioners conducted an enquiry to determine the guilt of the respondent no. 1. After conducting the detailed enquiry, the '*Board of Officers*' recommended for initiating disciplinary action against the respondent no. 1. Since the respondent no. 1 was a probationer, the Integrated Headquarters of Ministry of Defence (Army) recommended to take action against the respondent no. 1 as per para 3 of the appointment letter. Hence from the facts of the present case, it is clear that the petitioners conducted the

enquiry not to determine whether the respondent no. 1 should be retained in service, but to determine the alleged misconduct. Even though, the termination order dated 13th July, 2018 was made under the camouflage or cloak of an order of termination simpliciter as per the terms of the appointment letter, it was actually a punishment on the ground of alleged misconduct. The termination letter dated 13th July, 2018 was issued without affording an opportunity of hearing to the respondent no. 1 and hence it is in violation of Article 311 (2) of the Constitution of India.

25. In view of the detailed discussions hereinabove, this Court is of the considered view that the real circumstances as well as the basis and foundation of the termination order dated 13th July, 2018 was the alleged misconduct committed by the respondent no. 1. The said termination letter was issued without affording an opportunity of hearing to the respondent no. 1 and in violation of the mandatory provisions of Article 311 (2) of the Constitution of India. Hence the learned Tribunal rightly quashed the termination order dated 13th July, 2018 with all consequential benefits.

26. The present writ petition is dismissed along with other pending applications. Needless to state, the petitioners would be at liberty to initiate disciplinary proceedings against the respondent no. 1, in accordance with law, if so advised.

27. No order as to cost.

28. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Gaurang Kanth, J.)

(Tapabrata Chakraborty, J.)

Later

After delivery of the judgment Mr. Drolia, learned advocate appearing for the petitioners prays for stay of operation of the same.

Such prayer is considered and rejected.

(Gaurang Kanth, J.)

(Tapabrata Chakraborty, J.)