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

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Judgment reserved on: 04.07.2024
Judgment pronounced on: 18.07.2024+ **W.P.(C) 15248/2022****UNION OF INDIA & ORS**

.....Petitioners

Through: Mr. Vineet Dhanda, CGSC with Mr.
Abhishrut Singh Kadyan and Mr.
Abhijit Singh, Advocates.

versus

SANJEEV KUMAR & ANR.

.....Respondents

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. R.S. Kundu, Mr.
Ashish Pandey, Mr. Mukesh Kumar,
Mr. Shree Kant, Mr. Shashank
Gusain, Mr. Anmol Goyal and Mr.
Rinku Parewa, Advocates.**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:**

1. By way of this writ petition brought under Article 226 of the Constitution of India, the petitioners Union of India and postal authorities of Delhi and Jalandhar have assailed judgment dated 10.03.2022 of the learned Principal Bench, Central Administrative Tribunal, New Delhi, passed in OA No.2756/2019. On service of notice, the respondents entered appearance through counsel.

1.1 We heard learned counsel for both sides and examined the record



including their written submissions.

2. Briefly stated, circumstances leading to the present proceedings are as follows.

2.1 On 25.02.2014, the Department of Posts, Union of India issued an advertisement in the daily newspapers for filling up posts of Postal Assistant (PA)/Sorting Assistant (SA). The respondents successfully participated in the recruitment process and after completion of requisite formalities, offers of appointments were issued to them by the petitioners, in pursuance whereof the respondents joined services vide charge reports dated 17.01.2015 and 14.02.2015.

2.2 On 27.04.2015, petitioner no.3 namely Sr. Superintendent of Post Offices, Jalandhar Division, issued a memorandum, thereby holding in abeyance till further orders appointments of those successful candidates of PA/SA examination for the year 2013-14, who had not been issued appointment letters. Thereafter, on 09.09.2015, committees were directed to be constituted by the circle heads of postal authorities for the purposes of verification of personal details submitted by the said candidates at various stages of the PA/SA examination. On 17.09.2015, the Divisional Level and High Power Committees were constituted for verification of personal details of all selected candidates.

2.3 The High Power Committee constituted by CPMG, Punjab Circle, Chandigarh submitted report dated 21.01.2016 observing that in case of the



present respondents, their signatures on their respective OMR sheets did not tally with those on the registration forms. For the purposes of forensic analysis, cases of both respondents were forwarded by the petitioners to the Central Forensic Laboratory, Chandigarh and the latter submitted reports dated 17.03.2017 and 02.06.2017 to the effect that the sample signatures of the respondents did not tally with those on the OMR sheets. On the basis of the said forensic reports, services of the respondents Sh. Sanjeev Kumar and Sh. Dhirender Singh were terminated on 01.06.2017 and 11.07.2017 respectively.

2.4 The respondents approached the learned Central Administrative Tribunal, Chandigarh Bench through Original Applications, which were allowed vide order dated 19.03.2019, thereby quashing the termination orders on the ground that in view of orders passed by the Hon'ble Supreme Court in the case of *Monu Tomar vs Union of India & Ors.*, Civil Appeal No.10513 of 2016 decided on 13.07.2017 the present petitioners were bound to but failed to supply to the present respondents the documents on the basis whereof the termination orders had been passed, so that they could submit their defence. Accordingly, on 10.05.2019 all documents were supplied to the respondents, granting them 10 days to submit their defence. On 17.05.2019, the respondents submitted their representations, after which on 29.05.2019 and 06.06.2019, services of the respondents were again terminated.

2.5 Therefore, on 10.07.2019 both respondents filed common OA 2756/2019 before the learned Principal Bench, Central Administrative



Tribunal, New Delhi, which Original Application was partly allowed by way of the impugned order 10.03.2022, thereby remanding their cases to the petitioners to reconsider them for reinstatement in the light of the contents of the impugned order after following principles of natural justice. Hence, the present petition by the Union of India and the postal authorities.

3. During arguments, learned Standing Counsel for Union of India contended that the impugned order is not sustainable in the eyes of law and is liable to be set aside. Learned Standing Counsel in his arguments extensively relied upon the forensic reports of FSL, Chandigarh to impress upon us that in case of both the respondents, impersonation was committed by someone who appeared and wrote examination representing themselves as the respondents. The learned Standing Counsel also argued that in the case of **Monu Tomar** (supra), the Hon'ble Supreme Court had not directed the present petitioner to conduct a detailed departmental enquiry and had directed only to supply the necessary documents to the present respondents so that they could submit their defence, and the same having been done, there was no violation of principles of natural justice, therefore, the impugned order is liable to be set aside. In support of his arguments, learned Standing Counsel placed reliance on the judgments in the cases titled **Chatrapal vs The State of Uttar Pradesh & Anr.**, 2024 INSC 115 and **State Bank of India & Ors. vs Palak Modi & Anr.**, Civil Appeal No.7841-7842 of 2012, decided by the Hon'ble Supreme Court on 03.12.2012. Besides, learned Standing Counsel also placed heavy reliance on the order of the Hon'ble Supreme Court in the case of **Monu Tomar** (supra), taking us through the directions of the apex court to supply the necessary documents



to the present respondents and contended that same having been done, no further enquiry was called for.

4. On the other hand, learned Senior Counsel for respondents strongly contended that termination of services of the respondents solely on the basis of forensic reports, without testing the same through a departmental enquiry is not sustainable in the eyes of law. The learned Senior Counsel for respondents placed reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.*, (2015) 4 SCC 334. The learned Senior Counsel for respondents also took us through order dated 11.10.2022 of the predecessor bench in the cases of other similarly placed candidates and pointed out that the petitioners failed to produce the DVD/CD of the examination in support of their allegation of impersonation and also argued that the forensic report is not reliable because no effort was done to get the thumb marks of the candidates compared.

5. To begin with, it would be apposite to examine the similarly worded orders dated 29.05.2019 & 06.06.2019, whereby services of the respondents were terminated. The termination order passed against the first respondent is extracted below, and the termination order passed against the other respondent is similarly worded.

"This is regarding implementation of CAT Case orders dated 19.03.2019 received in this office on 15.04.2019 in OA No 060/01158/2017 titled Sanjeev Kumar V/S UOI & others. Whereas Sh Sanjeev Kumar was terminated from service on 01.06.2017 vide Memo No B-2/21/2013-14 dated 11.07.2017 vide Sub Rule of the CCS (Temporary Service) Rules, 1965. Aggrieved by the said order the



matter was agitated in the Hon'ble CAT Bench Chandigarh and in Hon'ble CAT its order in OA No 0060/01158/2017 as quoted in the subject above the order of Judgment is as under:-

“Quashing of the impugned order will not entitle the applicant for reinstatement and he will not be entitled to other benefits as we have quashed the impugned order only on the ground that Hon'ble Supreme court has given a window to the respondents and they have to comply with the directions given to them in the case of Monu Tomar (Supra). Respondents are also directed to supply the documents to the applicant based on which they have passed termination order so that he can submit his defense.”

On the analogy of SPL Case Monu Tomar (Supra), Aggrieved Sh Sanjeev Kumar was given personal hearing vide this office letter No B-2/ CAT Case dated 30.04.2019 to avail the opportunity of heard in person which seems as personal hearing. He attended the meeting in the chamber of undersigned on dated 10.05.2019 at 11.00 hrs. All the related documents were examined by him and the photocopies of the same were handed over to him with full opportunity to submit representation/defense with if any to this office with in 10 days.

The representation was received in office on 17.05.2019 the put forth from pleas:-

i). That As per the term and conditions under which his appointment was made, he had remain on probation for a period for two year from the date of appointment. I had rendered more than 2 years' service due to which I had acquired “Permanent Status” and come under the purview of CCS(CCA) Rules 1965, due to this his services could not be terminated by invoking the aforesaid provision of CCS (Temporary Services) Rules 1965, as these rules were no longer applicable in my case.

ii) As per Article 311 of the constitution of India no person who is a member of a civil service of the Union or all India or a civil service of a state or holds a civil post under the union or a state shall be dismissed or removed by the authority subordinate to that by which he was appointed and no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable, opportunity of being heard in respect of those charges.

iii) That the perusal of your letter No B-2/21/2013-14/Sanjeev Kumar dated 10.05.2019 reveals that the termination order was passed merely



on the basis of the report of the Central Forensic Science Laboratory Chandigarh which held my signature s on various documents as mentioned therein as disputed. That I do not agree with the observations of the aforesaid Laboratory due to the following reason and vehemently contend that I had personally appeared in all the examinations/ test.

a) the observation of the CFSL Chandigarh as per their “Result of Examination” dated 02.06.2017 denote that

1) The person who wrote the signature in the enclosed portions stamped and marked S1 to did not write the signature in the enclosed portion stamped and marked Q2.

2) The signatures in the enclosed portions stamped and marked Q3, S1 to S4 have written by one and the same person.

3) Signature marked Q1 is scanned reproductions, its original is needed for examination

iv) That there is no rule or departmental/ government order, nor any has been quoted in the letter No B-2/ 21/2013-14 Sanjeev Kumar dated 10.05.2019 vide which the Opinion of the Central forensic science Laboratory has to be treated as final, irrefutable and absolute. Hence termination the services solely on the report of aforesaid Laboratory is unconstitutional and against the law of the land. It is emphatically averred that no importance can be attached to the report of handwriting expert regarding forged signatures unless he/ she is examined.

v) It is further averred that the report of the CFSL/ handwriting expert is admissible only under the provisions of section 293 of the Code of Criminal Procedure, 1973 if any trial, inquiry or other proceeding are conducted under the aforesaid Code and present case was neither an outcome of nor was a criminal proceeding under the aforesaid code. Hence laying reliance solely on the report of CFSL, without giving a further opportunity in the instant case is ultra vires and against the law of land as quoted above.

vi) I vehemently contend that it was indisputably I who attempted the OMR sheet (Q2) and I can prove this if a detailed inquiry as envisaged in Rule 14 of CCS {CCA} Rules, 1965 is held. In that even I will be able to examine and cross examine the staff/invigilators and others who has allows me to appear in the examination after



establishing my identity as per the hall permit as well as per the various other identity proofs which were examined before allowing entry into the examination hall. Moreover the OMR test might have been conducted under the CCTV surveillance and footage to that effect can also establish as to who appeared in the said examination. I accordingly pray for holding a detailed inquiry in the above matter enabling me to prove the bonafides of my above averment.

*vii) It is averred that the present controversy has its origin to be report/ minutes of the Regional Level High Powered Committee. The perusal of the detail of the Discrepancies attached as Annexure-1 with aforesaid report reveals that my name has been mentioned at serial number 47 of the aforesaid Annexure. The following discrepancy has been mentioned against that serial "the Appearance of the signature on OMR Sheet does not tally with resignation form." The signature on the OMR sheet have been marked as Q1 by the CFSL, the report of the CFSL, states that Signature marked Q1 is scanned / reproduction, its original is need for examination. **This means that the original registration form was not forwarded to the CFSL for verification of signature marked as Q1 hence no report on the questioned document viz the registration form, which was the bone of contention has been got confirmed form CFSL. This proves that the proceeding of the Regional Level high level committee qua Q1 were not confirmed form the CSFL cannot be held as authentic as it lacks the confirmation of the apprehensions of the Regional level high powered committee qua Q1. Hence no action for the termination of my services was supposed to be taken on the basis of the report of the said High powered Committee as well as that of the CFSL.***

viii) It is further averred that after successful competition of induction training at PTC Saharanpur I had secured 80.6% marks into the final test which proves and substantiates that my ability and capability was above board and this can be well associated with the fact that it wa I who has appeared in the theory test and signature on OMR sheet marked as Q2 are very much mine.

I have gone through the case file, representation of the official and other relevant record of the case and do not agree with the defense/ representation submitted by Sh Sanjeev Kumar the aggrieved:-

*1. The Plea put for in the Para No 1 of representation by the aggrieved is not tenable, As Per CCS (Temporary Service) Rules do not specifically exclude probationers or person on probation as such. **In this case the appointment of the applicant was on temporary basis and was on probation for a period of two years which has clearly been mentioned in the***



clause No 3 of appointment letter dated 16.01.2015. as per Recruitment Rules circulated vide Directorate letter No 60- 37/2011 dated 11.02.2014, the period of probation for direct recruits is 2 years. **Further as per OM NO 280201/1/2010 Estt @dated 21.07.2014, probation should not be treated as mere formality. No Normal declaration shall be necessary in respect of appointment on probation. The probation shall stand successfully completed on issue of orders in writing . The confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. As long as no specific order of confirmation or satisfactory completion of probation is issued to a probationer, such a probationer shall be deemed to have continued on probation.**

2. The Plea put for in the Para No 2 of representation by the aggrieved is not tenable, as **the official was neither dismissed nor removed from service, he was terminated from service vide this office Memo No B-2/21/2013-14dated 11.07.2017. on the basis of the report of the said High powered Committee as well as that of the CFSL.**

3. & 4 The Plea put for in the Para No 3& 4 of representation by the aggrieved is not tenable, The Plea put for the by the aggrieved is not tenable, as the case was reviewed by the Regional Level High Power Committee and **the report was called from the Central Forensic Science Laboratory Chandigarh that the person who wrote the specimen signature/ handwriting did not tally with OMR Sheet.**

5. The Plea put for in the Para No 5 of representation by the aggrieved is not tenable, as this is the service matter and Department can issue any Inquiry for the verification of matter. The matter is only to be decided by the department that what type of inquiry is required and what action is to be taken by for come to be conclusive point.

6. The Plea put for in the Para No 6 of representation by the aggrieved is not tenable, as the Rule is applicable on Permanent/Confirmed employee of the Department .

7. The Plea put for in the Para No 6 of representation by the aggrieved is not tenable, as **the applicant is submitted his representation without any supporting documents but the Regional Level high level committee was confirmed from the CSFL with supporting documents.**

So, I Narinder Kumar, after considering the report of Regional Level High Power committee that the appearance of the signature on OMR sheet did not tally with the registration form and also the report of CFSL that the person who wrote the specimen signature/



handwriting did not tally with OMR Sheet. I have examined all the related documents thoroughly and after considering the representation of Sh Sanjeev Kumar dated 17.05.2019, come to conclusion that the representation is not convincing and tenable to grant any relief to the aggrieved applicant in the order of termination issued vide this office Memo No B-2/21/2013-14 dated 01.06.2017. He will not be entitled for any benefit as per Hon'ble CAT Chandigarh orders dated 19.03.2019 in his case. Hon'ble CAT orders dated 19.03.2019 are "Quashing of the impugned order will not entitle the applicant for reinstatement and he will not be entitled to other benefits as we have quashed the impugned order only on the ground that Hon'ble Supreme court has given a window to the respondents and they have to comply with the directions given to them in the case of Monu Tomar (Supra)". I Narinder Kumar , Sr Supdt of Post offices, Jalandhar Division, Jalandhar therefore hereby terminate forthwith the services of Sh Sanjeev Kumar S/o Sh Rajbir Singh PA Goraya vice sub-rule (1) of Rule (5) of Central Civil Services (Temporary Service) Rules, 1965 with immediate effect.

(emphasis supplied)

6. In view of the above extracted letters terminating the services of the respondents, there can be no dispute that the said termination of services of both respondents was stigmatic. Neither of these terminations was a termination *simpliciter* ordered during the probation period. Both these terminations were clearly based upon the allegation that the respondents adopted unfair means in the recruitment exam by making someone impersonate. This stigma attached to the termination of the respondents shall not only cause against them serious prejudice *qua* future employment efforts, but would also continue with them till their last breath. And they have not been given fair opportunity to establish that the allegation against them is false, because no departmental enquiry was conducted against them. Rather, the said stigma in itself also has not been established through a departmental enquiry.



7. The issue of termination of services of a government employee during probation period has been examined by the courts across the country in plethora of disputes. The legal position that has emerged is that once a person is recruited through a proper selection process, she cannot claim that her competence has been tested by the employer, so she has a vested right to permanently settle in the service. The employer cannot be denied opportunity to test during service the capacity, integrity, suitability and utility of the employee. Therefore, the employee must remain on test for a specific period, known as probation period, before she can permanently settle in the service. The period of probation gives the employer an opportunity to watch and test the efficiency, ability, integrity, sincerity and suitability of the employee. Where the employer, during the period of probation of the employee feels not satisfied with the work and conduct of the employee or where the nature of employment being such that it comes to an end, the employer would be within her right to simply terminate services of the employee. But such termination of services has to be a termination *simplicitor* without insinuating the employee in any manner whatsoever, so that her future prospects to try for some other employment do not get hampered.

8. However, where the employer considers it necessary to record the termination of services of employee for some misconduct, the termination would cease to be termination *simplicitor*. Since such termination on the grounds of some misconduct gets recorded in the service book/record of the employee, it would be extremely unfair to deprive her an opportunity to respond and establish her innocence. At the same time, it would also deprive



the employer an opportunity to test the veracity of such allegation and lose an otherwise competent employee. An employee facing termination of her services by way of stigmatic order cannot be denied a right to establish that the allegation against her is not truthful and/or the justification in that regard.

9. In the case of ***Purshottam Lal Dhingra vs UOI***, AIR 1958 SC 36, the Supreme Court held that it is not the form of termination order but the substance thereof that must be examined by the court to ascertain if the same is a penal or stigmatic order in nature and in appropriate cases, the court can tear the veil behind the termination order which is innocuous on its face and is a discharge *simplicitor*.

10. In the case of ***Pavanendra Narayan Verma vs Sanjay Gandhi PGI of Medical Sciences & Anr.***, AIR 2002 SC 23, the Hon'ble Supreme Court held that whenever a probationer challenges termination of her services, the first task for the court is to apply the test of stigma or the form test and if the order survives this examination, then substance of the termination would have to be ascertained; and that where the language of the termination order imputes something over and above mere unsuitability of the employee for the job, the order is stigmatic one.

11. In the case of ***Samsher Singh vs State of Punjab***, (1974) 2 SCC 831, the Hon'ble Supreme Court observed thus:

“64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of



any rules governing the probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an enquiry. But in those cases the authority may not hold an enquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.”

12. In the case of **Prithipal Singh vs State of Punjab & Ors**, (2002) 10 SCC 133, the Hon’ble Supreme Court held thus:

“7. The aforesaid record plainly reveals recording of misconduct of the appellant. It records, he has disobeyed the order of his superiors. Once this is recorded in the service record, which is disclosed by the respondent, it cannot be said that there is no stigma attached to the order of discharge. Once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an order of discharge looks innocuous, but on close scrutiny, by looking behind the curtain if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room for doubt that any consequential order, even of discharge, would be construed as stigmatic. Then opportunity has to be given.....”

13. In the present case, not just the substance but even the form of the termination orders is clearly stigmatic and the same are more in the nature of dismissal rather termination.

14. As reflected from the said termination orders, the petitioners, on the basis of their understanding of the order of the Hon’ble Supreme Court in the case of **Monu Tomar** (supra), provided copies of the relevant documents



to the respondents, who submitted their detailed representations, challenging extensively the forensic reports of FSL, Chandigarh and claimed that they could demolish the same if a detailed enquiry was held. Despite that, the petitioners in their wisdom opted not to test the veracity of those forensic reports through a departmental enquiry granting an opportunity to the respondents to cross examine the authors of those FSL report, and thereby they deprived the respondents a fair opportunity to be heard.

15. It is trite that expert evidence is a weak piece of evidence. In the present case, except the said expert evidence (*which, strictly speaking, is not even an evidence because the forensic reports were not got proved through authors thereof by calling them into the witness box and giving opportunity to the respondents to cross examine them*) there is no other evidence at all to show that the respondents resorted to any unfair means in the recruitment exam.

16. During final arguments, we asked the learned counsel for petitioners as to whether any criminal complaint followed by police investigation was got lodged and conducted, going by their allegation of impersonation. It was submitted on behalf of petitioners that no police complaint was lodged by any of the authorities. But the reason for their having not done so remains unanswered. And that raises doubts about the veracity of the case set up by the petitioners to terminate services of the present respondents and many more. Thus, the FSL report, which is the solitary evidence relied upon by the petitioners was not tested in accordance with law through even investigation by police, what to say of a court conducting criminal trial.



17. Coming to the argument of petitioners that the Hon'ble Supreme Court in the case of **Monu Tomar** (supra) directed only supply of relevant documents, on the basis whereof the successful candidates had to submit representations and the same was complied with, the Hon'ble Supreme Court did not direct that no departmental enquiry be conducted against those successful candidates who had joined service, even if a stigmatic order of termination of services had to be passed. Further, it appears from order dated 13.07.2017 of the Hon'ble Supreme Court in **Monu Tomar** (supra) that what was presented before the Hon'ble Supreme Court was that some of the candidates appearing in the examination had resorted to malpractices; and it was not disclosed that some of the successful candidates had already been issued appointment letters and they had joined the services. The said order of the Hon'ble Supreme Court dealt with basically those successful candidates who were yet to be issued appointment letters. It is under those circumstances that the Hon'ble Supreme Court in the said case directed that a formal show cause notice to those candidates was dispensed with and that they be personally called and explained the allegations so that they may submit their representations for final decision.

18. In the case of **Palak Modi** (supra) relied upon by learned counsel for petitioners, the Hon'ble Supreme Court traversed through plethora of judicial pronouncements including the decision of the Constitution Bench in the case of **Samsher Singh** (supra) and reiterated 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 probation period on account of his general unsuitability; that if the competent authority holds inquiry for judging the suitability of the



probationer, and on basis thereof his services are terminated, action of the authority cannot be castigated as punitive; and that if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision of the competent authority can be nullified on the grounds of violation of principles of natural justice. The judgment in the case of *Chatrapal* (supra) can be of no help to the petitioners because the same dealt with scope of the High Court while examining the report of the Inquiry Officer in domestic inquiries.

19. To conclude, the present respondents had already joined services after being declared successful in the recruitment process but their services were terminated under probation period by way of a detailed stigmatic order without conducting a departmental enquiry and that too on the basis of only a weak piece of evidence in the form of unproved FSL report, therefore, termination of services of the present respondents cannot be sustained.

20. In view of above discussion, we are unable to find any infirmity in the impugned order of the learned Tribunal, so the same is upheld and the petition is dismissed.

**GIRISH KATHPALIA
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

JULY 18, 2024/as/ry