



2024:DHC:9024-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 16089/2024, CM APPL. 67596/2024 & CM APPL. 67597/2024

UNION OF INDIA AND ORS.Petitioners
Through: Mr. Neeraj Dubey, SPC

versus

ANIL THOMASRespondent
Through: Mr. B.L. Wanchoo and Mr. G.D. Chawla, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

% **20.11.2024**

AMIT SHARMA, J.

1. The present writ petition under Article 226/227 of the Constitution of India seeks the following prayers:

- “a) To Issue a writ, order or direction in the nature of certiorari, quashing or setting aside the impugned order dated 31.05.2024, passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 2776/2016;
- b) To uphold the termination order dated 21.10.2013, terminating the Respondent's services based on unsatisfactory performance during the probation period;
- c) To issue any other suitable Writ, Order or Direction which this Hon'ble court may deem fit and proper under the circumstances of the case in the interest of the Petitioner.”

2. The case of the Petitioners is that the Respondent was appointed as an M.T. Driver in the Indian Military Academy, Dehradun on probation *vide* appointment letter dated 2nd April, 2012 and was put on

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probation for a period of 2 years. The Respondent's service was terminated *vide* an order dated 21st October, 2013 with effect from the date of order. The aforesaid order was challenged by the Respondent before the Appellate Authority which was upheld *vide* its order dated 24th October, 2014. Thereafter, Revision Petition was preferred by the Respondent which was rejected by the Revisionary Authority as well.

3. The order dated 21st October, 2013 was challenged by the Respondent by way of **O.A. 2776/2016** and *vide* the impugned judgment dated 31st May, 2024 the said order has been set aside.

4. The Id. Tribunal while setting aside the said order has observed and held as under:

“16. To summarize, the Respondents advertised the posts of MT Driver. The applicant had applied and was extended the offer of appointment. In terms of this appointment, he was placed under probation for a period of two years. The applicant's appointment has been terminated on the ground of misconduct, particularly, that he is in the habit of consuming alcohol during working hours and he is a regular absentee, which has been construed as unsatisfactory performance. During the probation period, he has been issued certain warnings and he represented against the same.

17. The contention of the learned counsel for the Respondents that the applicant would be bound by the conditions of offer of appointment (Annexure-A/4) is misplaced. In sum and substance, it runs contrary as on the one hand, it says that the probation of the applicant could be extended for a period of two years and on the other hand it states that his services would be liable to be terminated without any notice or further reasons. The condition is clearly in violation of the principles of natural justice. Though we are in conformity with the learned counsel for the Respondents that his services could be terminated for unsatisfactory performance, while in the present case, the applicant is a Driver and in the impugned order it does not find mention that he was not performing his duties satisfactorily.

18. Further, there are several reasons cited in the impugned order which goes on to establish that the alleged misconduct inspired the Respondents to pass the orders. Even the Appellate Authority while



deciding the appeal, has reproduced that it was the conduct of the applicant that inspired the Respondents to pass the termination order. According to us, the services of the applicant could only be terminated for the reason of unsatisfactory performance as a driver and not misconduct during the probation period without following the principles of natural justice. We may refer to the Master Circular on Probation/Confirmation in Central Services issued through OM dated 11.03.2019 by the DOP&T. Relevant paras 15 to 17 of the said Circular read thus:-

“15. If during the period of probation, a probationer has not undergone the requisite training course or passed the requisite departmental examinations prescribed (proficiency in Hindi, etc.), if any, the period of probation may be extended by such period or periods as may be necessary, subject to the condition that the total period of probation does not exceed double the prescribed period of probation.

16. If the Appointing Authority thinks it fit, they may extend the period of probation of a Government servant by a specified period but the total period of probation should not exceed double the normal period. In such cases, periodic reviews should be done and extension should not be done for a long period at a time.

17. Where a probationer who has completed the period of probation to the satisfaction of the Central Government is required to be confirmed, he shall be confirmed in the Service/Post at the end of his period of probation, having completed the probation satisfactorily.”

19. The impugned order is not only stigmatic but punitive in nature and cannot be sustained. We reiterate that the offer of appointment extended to the applicant, clearly mentioned that he would be on probation for a period of two years and the same may be extended at the discretion of the competent authority for unsatisfactory performance during the period of probation. This confirms that in the event of unsatisfactory performance, the applicant's services would be liable to be terminated at any time without any notice

20. For the reasons explained hereinabove, the O.A. 2776/2016 is disposed of. The impugned order dated 21.10.2013, removing the applicant from the services is quashed and set aside. The Respondents are directed to reinstate the applicant within a period of eight weeks from the date of receipt of a certified copy of this order. However, Respondents shall be at liberty to proceed against the applicant for alleged misconduct, as per the rules and law.”



5. Learned Counsel appearing on behalf of the Petitioners submits that the impugned order passed by the Id. Tribunal is liable to be set aside on the ground that the termination of the Respondent was made in strict compliance with the terms of his appointment and the well settled legal principles governing the probationary employees. It was submitted that the termination was based on an unsatisfactory performance during probation which does not require a formal enquiry.

6. It was further submitted that several times the Respondent had been issued warning letters for reporting to duty in an intoxicated state and despite such letters being issued, the conduct of the Respondent did not change and the same continued to be unsatisfactory. It is the case of the Petitioners that the Respondent continued to exhibit unsatisfactory and unacceptable behaviour, including unauthorised absenteeism and intoxication during duty hours. The Respondent, as per the Petitioners, was also issued a show-cause notice detailing these incidents on misconduct. It was submitted that the Respondent after replying to the show-cause notice and assuring that his conduct and behaviour will improve, continued to report for duty in an intoxicated state. In these circumstances, it is the case of the Petitioners, that they were left with no other alternative, but to terminate the services of the Respondent.

7. Heard the Id. Counsel for the Petitioners and perused the records.



8. The Hon'ble Supreme Court in *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others.*, (1999) 3 SCC 60 while considering in what circumstances the termination of probational services can be founded on misconduct and when can a said order of termination be said to contain stigma had observed and held as under :-

“19. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in *Madan Gopal v. State of Punjab* [AIR 1963 SC 531 : (1964) 1 LLJ 68] there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.* [(1999) 2 SCC 21 : JT (1998) 8 SC 585] and reference was made to the development of the law from time to time starting from *Parshotam Lal Dhingra v. Union of India* [AIR 1958 SC 36 : 1958 SCR 828 : (1958) 1 LLJ 544] to the concept of “purpose of enquiry” introduced by Shah, J. (as he then was) in *State of Orissa v. Ram Narayan Das* [AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 LLJ 552] and to the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and to post-Samsher Singh case-law. This Court had occasion to make a detailed examination of what is the “motive” and what is the “foundation” on which the innocuous order is based.

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21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “founded” on the allegations and will be bad.

But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

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27. As to what amounts to stigma has been considered in *Kamal*



Kishore Lakshman v. Pan American World Airways Inc. [(1987) 1 SCC 146 : 1987 SCC (L&S) 25] This Court explained the meaning of “stigma” as follows: (SCC p. 150, para 8)

“8. According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. *The Legal Thesaurus* by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's *Third New International Dictionary* gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary ‘stigma’ is a matter for moral reproach.” Similar observations were made in *Allahabad Bank Officers' Assn. v. Allahabad Bank* [(1996) 4 SCC 504 : 1996 SCC (L&S) 1037] .

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30. We shall next advert to some more cases and to particular words employed while passing orders of termination of probationers. In *State of Bihar v. Gopi Kishore Prasad* [AIR 1960 SC 689 : (1960) 1 LLJ 577] a show-cause notice was given seeking a reply to the allegation regarding the officer's bad reputation and in regard to certain perverse decisions given by him in his judicial functions during the period of probation. The termination order stated that certain facts were brought to the notice of the Government about his unsatisfactory work and conduct and that grave doubts had arisen about his integrity which indicated that he was a corrupt and an unreliable officer. It was also said that confidential enquiries revealed that he was a corrupt officer and that annual confidential reports of his superior officer referred to his bad reputation and therefore his work during the period of probation was not satisfactory. The Constitution Bench of this Court held that it was a clear case of stigma and the matter indeed required a full-fledged departmental enquiry under Rule 55 of the CCS (CCA) Rules. In *Jagdish Mitter v. Union of India* [AIR 1964 SC 449 : (1964) 1 LLJ 418] the use of the words “undesirable to be continued” in service was held by the Constitution Bench to amount to a stigma. This case was followed in *State of U.P. v. Madan Mohan Nagar* [AIR 1967 SC 1260 : (1967) 2 LLJ 63] where the order said that the officer had “outlived his utility” and such an order was held to amount to a stigma. *Jagdish Mitter* [AIR 1964 SC 449 : (1964) 1 LLJ 418] was approved by the seven-Judge Bench in *Samsher Singh case* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] on this point. But in *Kunwar Arun Kumar v. U.P. Hill Electronics Corpn. Ltd.* [(1997) 2 SCC 191 : 1997 SCC (L&S) 558] the termination order used the word “unsatisfactory” and the same was upheld as it did not amount to a stigma. In two cases



arising under industrial law, one in *Chandu Lal v. Pan American World Airways* [(1985) 2 SCC 727 : 1985 SCC (L&S) 535] and *Kamal Kishore Lakshman v. Pan American World Airways Inc.* [(1987) 1 SCC 146 : 1987 SCC (L&S) 25] where the termination order used the word “loss of confidence”, the said orders were held to contain a stigma and therefore punitive. In *Jagdish Parsad v. Sachiv, Zila Ganna Committee* [(1986) 2 SCC 338 : 1986 SCC (L&S) 267] the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on the charge of corruption and therefore not suitable for appointment. This was held to amount to a stigma. But in *Union of India v. R.S. Dhaba* [(1969) 3 SCC 603] where the order merely said “found unsuitable”, it was held not to amount to a stigma. In *Allahabad Bank Officers' Assn. v. Allahabad Bank* [(1996) 4 SCC 504 : 1996 SCC (L&S) 1037] the order was one of compulsory retirement and said that a Special Committee had unanimously recommended for the officer's compulsory retirement, that the Chairman and Managing Director agreed with the Committee's views regarding “want of application to the Bank's work and lack of potential” and that the officer was also found to be not “dependable”. This Court after referring to a number of cases explained that the words “not dependable” were used in the context of the facts of the case and not as an aspersion on his reputation but in relation to his work and were to be understood in that sense in the setting of the words “want of application” and/or “lack of potential”. It was observed: (SCC p. 513, para 19) “Any person reading the letter or the order of compulsory retirement would not be led to believe that there was something wrong with Appellant 2 as regards his conduct or character. They would only indicate that he had ceased to be useful to the Bank in his capacity as a Manager.” Again, in *High Court of Judicature at Patna v. Pandey Madan Mohan Prasad Sinha* [(1997) 10 SCC 409: 1997 SCC (L&S) 1703 (2)] it was held that termination of a probationer on the basis of uncommunicated adverse remarks was valid.

31. Thus, it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to judge whether the words employed amount to a stigma or not. Point 2 is decided accordingly.”

(emphasis supplied)

9. *Dipti Prakash Banerjee* was subsequently followed by the Supreme Court in *V.P. Ahuja v State of Punjab, (2000) 3 SCC 239,*



in which the principle was again enunciated thus:

“6. Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the appointment order. This plea cannot be accepted.

7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.”

10. Further, the Hon’ble Supreme Court in *SBI vs Palak Modi*, (2013) 3 SCC 607, after reviewing various precedents observed and held as under:

“24. In *Union of India v. Mahaveer C. Singhvi* [(2010) 8 SCC 220 : (2010) 2 SCC (L&S) 602] the three-Judge Bench considered the question whether termination of the Respondent's service who was serving as IFS probationer by way of discharge in accordance with the terms of employment was punitive. The Court noted that the Respondent's service was terminated because he had sought extension to join the Mission at Madrid in Spain because of sudden deterioration in the health condition of his parents and also requested for providing medical facilities and diplomatic passports to them. The Court also noted that the Ministry of External Affairs had taken cognizance of the complaint made by one Mrs Narinder Kaur Chadha that the Respondent had been threatening her entire family and in particular her daughter which was followed by some enquiries conducted into his conduct or character by the Joint Secretary, Foreign Service Institute and a memorandum was issued to the Respondent alleging his unauthorised absence. The Joint Secretary found that the complaint was wholly unfounded. The Court then referred to the principles laid down in earlier judgments and approved the view taken by the High Court that even though the order of discharge did not contain any stigma, the same was not conclusive and the High Court had rightly termed the same as punitive. Some of the observations made in the judgment are extracted below: (SCC p. 233, para 47)

“47. The materials on record reveal that the complaint made by Mrs



Narinder Kaur Chadha to the Minister of External Affairs had been referred to the Joint Secretary and the Director (Vigilance) on 8-2-2002 with a direction that the matter be looked into at the earliest. Although, nothing adverse was found against the Respondent, on 19-2-2002, the Joint Secretary (Vigilance) held further discussions with the Joint Secretary (Admn.) in this regard. What is, however, most damning is that a decision was ultimately taken by the Director, Vigilance Division, on 23-4-2002, to terminate the services of the Respondent, stating that the proposal had the approval of the Minister of External Affairs. This case, in our view, is not covered by the decision of this Court in *Dipti Prakash Banerjee* case [(1999) 3 SCC 60 : 1999 SCC (L&S) 596] .”

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.”**

(emphasis supplied)

11. In *Amar Kumar v State of Bihar*, (2023) 9 SCC 160, the Supreme Court held that *no order terminating a probationer on the ground of misconduct could be passed without holding a proper enquiry.*

12. In view of the aforesaid settled principle of law that if the misconduct is the foundation of such termination, the same would not be sustainable without following the principles of natural justice and conducting a formal enquiry. Similarly, if the words used in the termination order are stigmatic, then the same would again be vitiated without conducting a formal enquiry.



13. At this stage it is apposite to point out that in the synopsis filed in the present petition, it is recorded as under:

“The Respondent was appointed on 02.04.2012 under probation for two years. During the probation period, the Respondent displayed gross misconduct, including habitual intoxication during duty hours and unauthorized absenteeism. Despite multiple warnings, the Respondent’s behaviour did not improve, further worsened with time.”

Thus, there is a candid acknowledgment to the fact that the termination of the Respondent was on the ground of misconduct both in the appellate order, which was under challenge before the Tribunal, as well as in the present writ petition itself.

14. It is further noted that in the letter of termination dated 21st October, 2013, it has been recorded as under:

“4. And whereas it was found that you are addicted to drinking alcohol during duty and remain absent from your duty from time to time. In this regard, your authority (Officer In charge) has given you verbal warning several times and written warning four times but you did not take cognizance.

5. And whereas on 26th September 13 you again repeated your previous mistake and after medical examination it was found that you were drunk while on duty.

6. And **whereas the undersigned after thorough investigation** has come to the conclusion that despite warnings and verbal explanations given to you, **you did not pay any heed**. Thus, it appears that you are not interested in doing the job.”

(emphasis supplied)

This further demonstrates that the misconduct was the foundation of the order which is clearly stigmatic and punitive in nature.

15. Despite being a probationer, it is clear, in law, that the services of the respondent could not have been terminated, *for misconduct*, without holding a proper enquiry. It is a conceded position, at the Bar, that no such proper enquiry was held.



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16. In view of the above discussion and the facts of the present case this Court is of the considered opinion that the order passed by Id. Tribunal suffers from no infirmity. The Id. Tribunal after considering all the aspects has clearly held that the letter of the termination was stigmatic as well as punitive in nature and, therefore, cannot be sustained.

17. In view of the above, the present petition is dismissed *in limine* and disposed of.

18. The directions made by the Id. Tribunal in paragraph 20 with regards to reinstatement of the Respondent be made within a period of 6 weeks of passing this order.

AMIT SHARMA, J.

C. HARI SHANKAR, J.

NOVEMBER 20, 2024

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[Click here to check corrigendum, if any](#)