

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE ANANYA BANDYOBADHYAY

WPA 23036 of 2015

Avneesh Bhusan Srivastava

v.

Union of India & Ors.

For the Petitioner : Mr. Ziaul Islam

For the Respondent/UOI : Mr. Tarun Jyoti Tewari
Ms. Kausiki Bose
Mr. Dipankar Bhakta

Heard on : 26.11.2024, 29.01.2025

Judgment on : 19.05.2025

Ananya Bandyopadhyay, J.:-

1. Whether the service of a probationary constable in the Central Reserved Police Force (CRPF) may be dispensed with for overstaying leave in absence of initiation of Disciplinary Proceeding, requires consideration through the instant writ petition.
2. The petitioner had challenged the impugned orders dated 28.01.2008 and 18.11.2008 passed by respondent no.4 and Respondent No.3 respectively, by which the petitioner's services in the Central Reserve Police Force were terminated. The order dated 28.01.2008 issued by the Commandant, 171 Bn, Group Centre, CRPF, Durgapur, terminated the services of the petitioner citing the reason of overstaying from leave. This action was purportedly taken under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, after the issuance

of a one-month notice. The subsequent order dated 18.11.2008 by the appellate authority, Inspector General of Police, CRPF, rejected the petitioner's appeal on similar grounds. These orders were challenged on the grounds that they were passed without conducting any preliminary enquiry, without issuing a show cause notice, and without affording the petitioner any opportunity of hearing, thereby violating principles of natural justice.

3. The petitioner had been appointed to the post of Head Constable (Ministerial) in the Central Reserve Police Force on 28.08.2006. Following his selection, he underwent a mandatory training programme for ninety days at the Central Training College located in Coimbatore, Tamil Nadu. Upon successful completion of the said training, he was posted back to 171 Bn Group Centre, CRPF, Durgapur, West Bengal, where he resumed his duties. The petitioner's engagement in the Central Reserve Police Force was governed by the provisions of the Central Reserve Police Force Act, 1949 and the rules framed thereunder, specifically the Central Reserve Police Force Rules, 1955, enacted in exercise of powers under Section 18 of the 1949 Act.
4. Subsequent to the termination order dated 28.01.2008, the petitioner preferred an appeal before the Inspector General of Police, CRPF, which was rejected by the order dated 18.11.2008. The appellate order recorded that the petitioner had overstayed his leave on two successive occasions without securing prior approval from the competent authority. It further noted that while the petitioner had submitted that he was required to appear in a family court proceeding in Allahabad, he had failed to submit

any documentary evidence or court certificate substantiating his absence during the period of overstay.

5. Challenging the termination, the petitioner filed Writ Petition No. 878 of 2009 before the Hon'ble High Court at Allahabad on 05.01.2009. The matter was heard on 29.11.2012, whereupon the writ petition was dismissed on the ground of lack of territorial jurisdiction. The dismissal was not communicated to the petitioner in a timely manner. The petitioner was in Bombay during this period and had not been informed by his legal counsel, Mr. Ajit Kumar Pandey or Mr. S.K. Srivastava, about the order passed by the Hon'ble High Court at Allahabad.
6. It was only upon returning to his native place on 15.07.2014 that the petitioner came to know about the dismissal of his writ petition. Upon contacting the office of his advocate, he was informed for the first time of the High Court's order dated 29.11.2012. Thereafter, the petitioner applied for a certified copy of the said order on 16.07.2014. The certified copy was issued by the Copying Section of the Hon'ble High Court at Allahabad on 17.07.2014. Subsequently, the petitioner approached this Court at Kolkata seeking to challenge the aforementioned termination orders.
7. The present challenge had been therefore rooted in the grievance that the termination was effected without due process, particularly without affording the petitioner an opportunity to be heard, in contravention of the procedural safeguards envisaged under the Central Civil Services (Temporary Service) Rules, 1965. Further, the petitioner contended that

there was a delay in the knowledge and receipt of the High Court's earlier decision due to circumstances beyond his control.

8. The learned advocate representing the petitioner submitted that the impugned order dated 28.01.2008, issued by the respondent no.4, and the subsequent order dated 18.11.2008, passed by respondent no.3, terminating the petitioner's services from the Central Reserve Police Force (CRPF), was without legal basis and in disregard of the applicable statutory provisions. It was argued that the termination was ostensibly based on the ground of "overstaying from leave". However, the petitioner contended that the termination was neither preceded by any notice, show cause notice, nor was any opportunity of hearing afforded to him. Further, the appeal filed by the petitioner against the termination was rejected without proper appreciation of evidence or adherence to the applicable procedures under the Central Reserve Police Force Act, 1949, and the Central Reserve Police Force Rules, 1955.
9. It was submitted that Rule 5 of the Central Reserve Police Force Act, 1949, confers the status of a member of the Force upon any individual who has served for six months, thereby rendering the application of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, inappropriate in the present case. The petitioner's conduct in overstaying leave was addressed within the scope of Rule 10 of the CRPF Rules, 1955, which categorises such conduct as a "less heinous offence" punishable through penal deductions and not dismissal.
10. The learned advocate contended that the petitioner had been granted casual and earned leave during the period from 26.05.2007 to 10.07.2007

due to personal exigencies, including the illness of his mother and wife. The leave was sanctioned, and his overstay during this period was regularised. However, his subsequent absence from duty following the grant of emergency leave from 29.11.2007 to 04.12.2007, was a result of his obligation to appear before the Family Court in Allahabad in Case No. 473 of 2007 (Smt. Preeti Srivastava vs. Avneesh Bhushan Srivastava), which was fixed for hearing on 10.01.2008 and later adjourned to 31.01.2008. Despite his personal circumstances, the authorities proceeded to issue a termination order without conducting a court of inquiry under Rule 31(b) of the CRPF Rules, 1955, or giving the petitioner an opportunity to present his case.

11. It was further submitted that the petitioner had submitted his resignation letter on 15.10.2007 due to his mental distress caused by the ongoing family court proceedings. The resignation was not acted upon by the authorities. The said family dispute was resolved on 03.05.2008 by way of compromise before the Family Court at Allahabad. In rejecting the petitioner's appeal on 18.11.2008, the respondent no.3 relied on the allegation of unauthorised absence but failed to consider the petitioner's submissions or the documentation related to the family court case. It was pointed out that the termination was punitive in nature and, by bypassing the procedural safeguards under the CRPF Act, 1949, the order contravened the principles of natural justice.
12. In support of the petitioner's case, reference was made to the judgment of the Hon'ble Supreme Court in Chandra Prakash Shahi v. State of U.P. & Ors. [AIR 2000 SC 1706], where it was held that temporary government

servants are equally entitled to protection under Article 311(2) of the Constitution of India. It was observed that courts may look beyond the form of the termination order to ascertain whether it was punitive in nature. The learned advocate also cited *Mathew P. Thomas v. Kerala State Civil Supply Corporation Ltd.* [AIR 2003 SC 1789], in which the Hon'ble Supreme Court noted that an innocuously worded order of termination might conceal a punitive motive and should be scrutinised accordingly.

13. In the matter of *Barun Bandyopadhyay v. Union of India & Ors.*, decided by a coordinate Bench of this Court on 04.12.2008, the Court held that the absence of a disciplinary inquiry before termination rendered the order invalid, even where the language of the order did not indicate its punitive character. Drawing parallels with the present matter, it was submitted that the petitioner's termination was based on allegations which, if proven, would amount to misconduct under the CRPF Act, 1949, and CRPF Rules, 1955. However, no proceedings were initiated to establish such misconduct in accordance with law.
14. Accordingly, it was argued that the impugned orders dated 28.01.2008 and 18.11.2008 were passed in contravention of statutory rules, without observing due process, and were liable to be set aside by this Hon'ble Court.
15. The learned advocate for the respondents, in their reply, submit that the petitioner, Aweesh Bhushan Shrivastava, was appointed to the rank of Head Constable (Ministerial) in the Central Reserve Police Force on a purely temporary basis on 28.08.2006. He reported for duty at the 171 Battalion, CRPF on 17.09.2006, having been transferred from GC, CRPF

Siliguri, and was taken on the strength of the 171 Battalion by office order no. T.IX-7/06-171-EC-1 dated 27.09.2006 while the battalion was posted at Durgapur. During his tenure, he committed repeated acts of overstaying leave without prior sanction or permission from the competent authority. The first instance occurred after he was granted casual leave from 26.05.2007 to 06.06.2007 and failed to report back on the due date, ultimately returning to duty only on 11.06.2007, thereby overstaying for four days. In the second instance, he was sanctioned earned leave from 22.06.2007 to 10.07.2007 and failed to return by 11.07.2007 as required, instead reporting for duty on 25.08.2007 after an overstay of 45 days. A third instance was recorded after casual leave was sanctioned from 29.11.2007 to 04.12.2007, which he availed for the stated purpose of arranging funds to pay training charges in light of a pending resignation. The petitioner failed to return on 05.12.2007 and remained absent without sanction.

16. In view of these habitual instances of overstay, the authorities issued a notice of termination to the petitioner's home address vide notice no. D.II-1/2007-08-171-EC-II dated 28.12.2007, granting one month's time for submission of representation. The petitioner failed to submit any representation in response to this notice. He subsequently reported to the battalion headquarters on 27.01.2008 after 54 days of unauthorised absence. At that time, he informed the authorities that a family court case had been instituted against him at Allahabad, necessitating his appearance on 01.01.2008 and 31.01.2008. However, the authorities contend that he failed to submit any supporting documents

substantiating the cause of overstay. Consequently, his services were terminated with effect from 28.01.2008 under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, through Office Order No. D.II-1/07-08-171-EC-II, on the ground that he failed to produce any material evidence to justify the unauthorised leave.

17. The learned advocate for the respondents have further submitted that the petitioner was at all times aware of the terms of his appointment, which was made on a probationary basis as per Clause 3(a) of the appointment letter, appearing at page 13 of the opposition. Clause 3(a) stipulated that the petitioner's services could be terminated during the initial period of three years without assigning any reason by giving one month's notice, as per the applicable CRPF Rules. They state that the petitioner's conduct throughout his brief tenure displayed indiscipline incompatible with the standards required in a disciplined force. He repeatedly overstayed sanctioned leave without prior permission or sufficient justification and did not submit any documentation to support his absence.
18. The learned advocate for the respondents maintain that the petitioner had submitted a resignation letter and requested leave to collect funds from his home to deposit training charges, with the understanding that the resignation would be processed. This was the context in which five days of casual leave were granted from 29.11.2007 to 04.12.2007. The petitioner did not report back as required and failed to inform his superiors of his court obligations in advance or submit contemporaneous material evidence. The authorities assert that such conduct reflects a lack of

discipline and responsibility, particularly given the requirements of the Central Reserve Police Force.

19. It has been further contended that the respondents duly complied with the applicable procedural requirements. The petitioner was issued a termination notice dated 28.12.2007 and was afforded an opportunity to make a representation within a one-month period. No such representation was received. The petitioner reported for duty one day before the expiry of this period but provided only oral justification and failed to submit any court documentation in support of his claim.
20. The learned advocate for the respondents submit that the scope of judicial review in cases concerning termination during a probationary period is limited, and the appointing authority acted within the bounds of its jurisdiction. Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, expressly provides that the services of a temporary government servant may be terminated at any time by written notice. The same provision was invoked in the instant matter. The respondents refer to Clause 3(a) of the appointment letter, which reiterates the authority of the appointing officer to terminate services without providing reasons.
21. They have also highlighted the repeated unauthorised absences of the petitioner: four days in June 2007, forty-five days between July and August 2007, and a final spell of fifty-four days beginning in December 2007. Such conduct, according to the respondents, reflects a pattern of disregard for service discipline and renders the petitioner unsuitable for continued employment in the force. The absence of supporting evidence, failure to intimate superiors, and submission of the resignation are

factors that were taken into account in the decision to terminate his services.

22. In light of the above, the learned advocates for the respondents submit that there was no illegality or procedural lapse in the issuance of the termination order. The petitioner's grounds are unsupported, and his writ petition is therefore liable to be dismissed.
23. The petitioner, formerly holding the rank of Head Constable (Ministerial) in the Central Reserve Police Force (CRPF), assails the legality of his termination from service by order dated 28th January 2008, issued by respondent no. 4, as well as the subsequent rejection of his departmental appeal by order dated 18th November 2008 issued by respondent no. 3. It is the case of the petitioner that the impugned orders were passed unilaterally, without any prior inquiry, issuance of a show cause notice, or affording him an opportunity of hearing, and are solely premised on allegations of unauthorized overstay of leave. The petitioner, having been appointed on 28th August 2006, underwent requisite training at Coimbatore and was, upon induction, governed by the CRPF Act, 1949 and the Rules framed thereunder. The impugned termination was invoked under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965.
24. The petitioner contended that the leave availed by him had been necessitated for attending a matrimonial proceeding pending before the Family Court at Allahabad. Although he was unable to furnish contemporaneous documentary evidence, he averred that the circumstances were genuine and beyond his control. After receiving no

relief in appeal, he approached the Hon'ble High Court at Allahabad by way of W.P. No. 878 of 2009, which came to be dismissed on 29th November 2012 on the ground of lack of territorial jurisdiction. The petitioner asserted that he remained unaware of the dismissal until 15th July 2014, when he returned from Bombay and contacted his counsel. Upon learning of the dismissal, he obtained a certified copy of the order and approached this Hon'ble Court.

25. The learned advocate appearing on behalf of the petitioner submitted that the invocation of Rule 5(1) of the CCS (Temporary Service) Rules, 1965, was misconceived, as the petitioner, having completed more than six months of service, had attained the status of a regular member of the Force under Rule 5 of the CRPF Act, 1949, and was therefore protected by the statutory safeguards therein. It was urged that the alleged misconduct of overstaying leave amounts, at best, to a "less heinous offence" under Rule 10 of the CRPF Rules, 1955, for which the permissible penalty would be a deduction in pay or other minor punishment, and not termination from service. The petitioner averred that earlier instances of overstay had been condoned and regularized by the authorities on account of genuine medical emergencies concerning his mother and wife. In the final instance, the petitioner was on sanctioned emergency leave but was unable to report on time due to mandatory personal appearance before the Family Court in Allahabad. He claimed to have submitted relevant documentary proof upon his return.

26. It was further submitted that no court of inquiry or disciplinary proceedings were initiated as mandated under Rule 31(b) of the CRPF

Rules, 1955, and the principles of natural justice were violated inasmuch as the petitioner was neither issued a show cause notice nor granted a hearing. His resignation tendered in October 2007, arising from emotional distress and mental duress, was allegedly not considered. Counsel for the petitioner relies on the decisions in *Chandra Prakash Shahi v. State of U.P.* and *Mathew P. Thomas v. Kerala State Civil Supplies Corporation Ltd.*, to contend that a termination order, though facially innocuous, was liable to be struck down if punitive in nature or motivated by allegations of misconduct. Reliance is also placed on *Barun Bandyopadhyay v. Union of India*, wherein termination under similar circumstances was invalidated for being punitive and non-compliant with procedural fairness.

27. Per contra, the learned advocate appearing on behalf of the respondents submitted that the petitioner was appointed on a purely temporary basis and governed by Clause 3a of his appointment letter, which expressly permitted termination without assigning any reason during the probationary period, upon issuance of one month's notice, in terms of Rule 5(1) of the CCS (Temporary Service) Rules, 1965. It was contended that the petitioner had repeatedly overstayed sanctioned leave—on three separate occasions in 2007—for periods of 4, 45, and 54 days respectively, without prior permission or credible justification. It was further asserted the termination was preceded by due notice issued on 28th December 2007, granting the petitioner an opportunity to respond within one month. No representation was received within the stipulated time, and the petitioner's eventual explanation citing a family court case was unsupported by contemporaneous evidence.

28. It was further contended that the petitioner's conduct reflected a pattern of disregard for the discipline expected of personnel in a paramilitary force. The authorities had acted strictly in accordance with the applicable rules, and there was no element of mala fide or arbitrariness. The learned counsel for the respondents emphasized the limited scope of judicial review in matters of termination during the probationary period and submitted that the writ petition was devoid of merit, having been instituted belatedly and with the sole object of reopening settled issues.
29. The Hon'ble Supreme Court held the following in **Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd.**¹:-

“11. An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta [(1999) 3 SCC 60 : 1999 SCC (L&S) 596] and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences [(2002) 1 SCC 520 : 2002 SCC (L&S) 170] after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee [(1999) 3 SCC 60 : 1999 SCC (L&S) 596] after referring to various decisions indicated as to when a simple order of termination is to be treated as “founded” on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of

¹ (2003) 3 SCC 263

termination. In para 21 of the said judgment a distinction is explained, thus : (SCC pp. 71-72)

“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.”

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so-called order of termination simpliciter of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the

services of a probationer. In other words, the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct.”

30. The Hon’ble Supreme Court held the following in **Chandra Prakash Shahi v. State of U.P.**²

“27. The whole case-law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi case [(1976) 4 SCC 52 : 1976 SCC (L&S) 542 : AIR 1976 SC 2547 : (1977) 1 SCR 462] that there was a conflict of decisions on the question of an order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of “motive” and “foundation” was always kept in view.

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

² (2000) 5 SCC 152

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."*

31. The Hon'ble Supreme Court held the following in **ONGC v. Mohd. S. Iskender Ali (Dr)**³:-

"7. The confidential roll reflecting the assessment of the work of the respondent during the period December 31, 1965 to December

³ (1980) 3 SCC 428

30, 1966 clearly shows that the officer was careless and lacking in sense of responsibility. The report also shows that the reporting officer recommended that the period of probation should be extended. In accordance with the recommendation, the period of probation was further extended by six months. The learned Counsel for the respondent submitted that the remarks made in the assessment roll went to show that the intention of the appointing authority was to proceed against the respondent by way of punishment. We are, however, unable to agree with this submission. It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks, in the assessment roll, merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma. In the case of *R.L. Butail v. Union of India* [(1970) 2 SCC 876, 880 : (1971) 2 SCR 55, 62] this Court while indicating the nature of assessment made by the reporting officer observed as follows: (SCC p. 880, para 13)

“These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation, etc. arise.”

8. It was then vehemently contended by the respondent that as the appointing authority chose to institute a departmental inquiry against the respondent for dereliction of duty and negligence in not attending to a baby who died due to his carelessness, the enquiry should have been carried to its logical end and charge-sheet having been framed, the provisions of Article 311 of the Constitution were clearly attracted and therefore it was not open

to the appellants to have terminated the services by giving the order a cover of termination simpliciter. In other words, the contention was that the real motive behind the termination of the service of the respondent was to inflict a punishment on him and as the appellants did not comply with the requirements of Article 311 of the Constitution, the order impugned was illegal. We are, however, unable to agree with this argument. In the first place, it has been clearly pleaded by the Government in its counter-affidavit that although an enquiry was held yet it was not continued and no punishment was imposed on the respondent. In this connection, relevant portion of para 11 of the counter-affidavit before the High Court may be extracted:

“A preliminary enquiry was made before the charge was framed and on the enquiry report a prima facie case having been found against the petitioner, due charge was framed against him. No punishment under Regulation 28 of Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulations was inflicted on the petitioner.”

9. *In these circumstances, therefore, it is obvious that as the respondent was merely a probationer, the appointing authority did not consider it necessary to continue the enquiry but decided to terminate the services of the respondent as he was not found suitable for the job. It is well settled by a long course of decisions of this Court that in the case of a probationer or a temporary employee, who has no right to the post, such a termination of his services is valid and does not attract the provisions of Article 311 of the Constitution. In the case of Shamsher Singh v. State of Punjab [(1974) 2 SCC 831, 851, 852 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814, 837-838] the matter was considered in all its aspects by a Constitution Bench comprising of seven Judges of this Court and the court adumbrated the following propositions: (SCC p. 851, paras 64 & 65 and p. 852, para 67)*

“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 a 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 fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment.... A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311 (2)....

An order terminating the services of a temporary servant or probationer under the rules of employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with, Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct.”

10. *Similarly, the matter was previously considered in Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36 : 1958 SCR 828, 860 : (1958) 1 LLJ 544] where the following observations were made:*

“Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other

benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311. In other words and broadly speaking, Article 311(2) will apply to those cases where the government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules, is, prima facie and per se not a punishment and does not attract the provisions of Article 311.”

11. *All these decisions were reviewed in the case of State of U.P. v. Ram Chandra Trivedi [(1976) 4 SCC 52, 64 : 1976 SCC (L&S) 542 : (1977) 1 SCR 462, 475] where this Court observed as follows: (SCC p. 64, paras 23 & 24)*

“Keeping in view the principles extracted above, the respondent's suit could not be decreed in his favour. He was a temporary hand and had no right to the post. It is also not denied that both under the contract of service and the service rules governing the respondent, the State had a right to terminate his services by giving him one month's notice. The order to which exception is taken is ex facie an order of termination of service simpliciter. It

does not cast any stigma on the respondent nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the respondent could not invite the court to go into the motive behind the order and claim the protection of Article 311(2) of the Constitution.

We, therefore, agree with the submission made on behalf of the appellant that the High Court was in error in arriving at the finding that the impugned order was passed by way of punishment by probing into the departmental correspondence that passed between the superiors of the respondent overlooking the observations made by this Court in I.N. Saksena v. State of M.P. [AIR 1967 SC 1264 : (1967) 2 SCR 496 : (1967) 2 LLJ 427] that when there are no express words in the impugned order itself which throw a stigma on the government servant, the court would not delve into Secretariat files to discover whether some kind of stigma could be inferred on such research.”

12. *The facts of the present case appear to be on all fours with those of the aforesaid decision. From the undisputed facts detailed by us in an earlier part of the judgment, it is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as penalty or punishment.”*

32. A probationer's service is not absolute in absence of job security ensured to a confirmed employee. The employer has the discretion to assess suitability during the probation period and terminate the services if found unsuitable.

33. The termination of a probationary constable in the CRPF (Central Reserve Police Force) for “overstaying leave” or “overstepping leave” without conducting formal disciplinary proceedings depends on the nature of the appointment, the tenures of probation and judicial interpretation of Article 311 of the Constitution of India.
34. Article 311 of the Constitution of India, inter alia stated as follows:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) 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;

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

35. If the petitioner overstayed leave casually or inadvertently and the authority found him unsuitable based on general conduct, termination simpliciter might be valid without an inquiry. However if the termination mentioned misconduct like “unauthorised absence”, “indiscipline” or “dereliction of duty” then being stigmatic demanded an inquiry under CRPF Rules and Article 311 of the Constitution of India, where the “motive” and “intention” of the concerned authority was required to be ascertained and assessed accordingly.
36. Pertinently Rule 27 of the CRPF Rules, 1955 as regards disciplinary action is concerned envelopes all the ranks including the probationers if misconduct is agitated. If the department cited “unauthorised absence” as a ground and it was treated as misconduct, disciplinary proceedings being mandatory should have been conducted, even if the petitioner was on probation.

37. Where the employer cloaks a punitive motive under the garb of suitability the veil must be lifted. The probationer may be dispensed with for want of suitability but not for alleged misconduct without affording him the solemn safeguard of a disciplinary enquiry as enshrined in Article 311 of the Constitution of India. Overstaying sanctioned leave, if viewed as indiscipline cannot be the premises of termination without due process.
38. The foundation of discipline uniformed service is unflinching obedience. Yet when a probationer is ought to be discharged the boundaries between the administrative discretion of constitutional safeguard must be delicately maintained.
39. It is trite that a person appointed on probation does not acquire an indefeasible right to continue in service. The authority is empowered to assess the overall suitability, conduct and aptitude of the probationer and on conclusion of such assessment decide to continue with the service of the probationer warranting requisite standard to render the same or else if found incapable or incompetent, him simpliciter. The fundamental proposition elucidates when the order of discharge is not foundational upon mere unsuitability considering lapse in performance, irresponsibility, negligence in aptitude, the service can be terminated simpliciter. However, effectively if the allegations are of misconduct, then the form of the order becomes subservient to its substance. In such cases, the termination assumes a punitive colour and compliance with the principles of natural justice becomes indispensable. In the instant case, the petitioner obtained a sanctioned leave, however, due to his matrimonial dispute which he had to attend at a Court of competent

jurisdiction overstepped the same. The charge against the petitioner was of misconduct not framed either being punitive in nature nor for any other considerations but he was abruptly dismissed from service without an enquiry or a disciplinary proceeding instituted against him contrary to the provisions enumerated in Article 311 of the Constitution as well as the above citations of the Hon'ble Supreme Court. Applying the aforesaid doctrines to the present scenario, if the termination of the petitioner during probation was grounded solely on a factum of overstaying leave and if the overstay is treated as a matter of concern indicating a lack of discipline or reliability but not as a charge of misconduct then the termination simpliciter might have passed constitutional muster. However, the termination order did not itself used expressions, suggestive of guilt, indiscipline or dereliction of duty to import stigma, the said order is vitiated for want of adherence to the procedural rigorous prescribed by Article 311 of the Constitution of India.

40. The sanctity of service jurisprudence lies not only in protecting those in confirmed employment but also in ensuring that probationers are not thrust or thwarted with consequences disproportionate to their position or in a manner which surreptitiously punishes them without the safeguard of an enquiry.
41. The CRPF as a disciplined force is entitled to enforce rigorous standards of conduct. However, the constitution does not countenance the administrative ingenuity to override the safeguards of fairness. If the overstay of leave is construed as misconduct its incumbent upon the authority to inflict disciplinary proceedings before inflicting termination.

A probationer may be unsuited for uniform but he cannot be condemned, unheard under the guise of discretion. In the instant case the petitioner had been terminated without citing any reasons, as to whether the same was a consequence of evaluated misconduct or dissatisfaction of inadequate performance. Moreover, his past occasions of overstepping of leave had been condoned. If he had been given an opportunity of hearing, the genuinity of his case would have unravelled. The motive or the intention on the part of the authority was not explained for his termination and such termination order deserved to be set aside.

42. In view of the above discussions, the instant writ petition being WPA 23036 of 2015 stands allowed.
43. The impugned orders dated 28.11.2008 and 18.11.2008 are set aside.
44. The concerned authority is, therefore, to initiate appropriate proceedings according to law and conclude the same within three months of initiation.
45. There is no order as to costs.
46. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)