(2008) 11 DEL CK 0176

Delhi High Court

Case No: Writ Petition (Civil) No. 2646 of 1999

Union of India (UOI)		APPELLANT
	Vs	
Shri Nand Kishor Aggarwal		RESPONDENT

Date of Decision: Nov. 3, 2008

Acts Referred:

- Central Civil Services (Temporary Service) Rules, 1965 - Rule 5

Citation: (2008) 155 DLT 202 : (2009) 2 ILR Delhi 717

Hon'ble Judges: Suresh Kait, J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Avnish Ahlawat, for the Appellant; Lalit Bhardwaj, for the Respondent

Final Decision: Allowed

Judgement

Madan B. Lokur, J.
The Petitioner is aggrieved by an order dated 13th January, 1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2440 of 1997.

2. The Respondent was selected for the post of Provisional Sub Inspector (PSI) in the Delhi Police. He was sent to the Police Training School on 15th May, 1995 to undergo the mandatory training.

3. During the training period, it was noted that the Respondent was taking some treatment for mental depression. Apart from this, it was noted that he was not able to eat properly or perform any outdoor activities; he could not sit the full duration of the class or concentrate on his studies. From 17th May, 1995 till 27th June, 1995, the Respondent was absent from training on as many as seven occasions. On one occasion, he was absent from training for as long as eleven days. During the training period, the Respondent even requested for exemption from training but this was rejected by the concerned authorities on 14th June, 1995. From 27th June, 1995, the Respondent was on continuous medical rest.

4. On 15th July, 1995, the Respondent was called by the Additional Commissioner of Police (Training) apparently to discuss the training programme with him. In that meeting, the Respondent informed his officer that he could not cope with the training. Under these circumstances, the training of the Respondent was cut short and his services were dispensed with under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 by an order dated 15th July, 1995.

5. The Respondent challenged his termination as casting a stigma on him and the Tribunal allowed his original application. That is how the Petitioner is now before us. We find that the Tribunal has come to the conclusion that the termination of the services of the Respondent was punitive in nature and, therefore, an enquiry should have been held.

6. Learned Counsel for the Respondent vehemently supported the view expressed by the Tribunal and cited a series of judgments but mainly relied on three of those decisions which were rendered by the Supreme Court during the course of this year itself. We may state at the outset that none of these judgments, relied upon by learned Counsel for the Respondent, are applicable to the facts of the present case.

7. In Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, the services of a probationer were terminated on the ground of certain prima facie allegations of financial irregularities. In this context, the Supreme Court concluded that since the overt act alleged against the employee amounted to an allegation of misconduct, an opportunity of hearing was imperative before terminating the services of the employee. There is no clear allegation of any patent or latent misconduct by the Respondent in the present case.

8. In Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corporation 2008 (1) SLJ 333 the language used in the order terminating the services of the probationer were found to be ex facie stigmatic. The order referred to earlier orders containing allegations of misconduct on the part of the employee and that he had been found guilty of the alleged misconduct, being absent from duties, guilty of negligence, carelessness and showing absolute disregard towards his duties. Under these circumstances, the Supreme Court held that the discharge of the services of the employee was not a discharge simplicitor and since the principles of natural justice were not followed, the order terminating his services was set aside. In so far as the present case is concerned, there is no dispute that the termination order is innocuously worded and does not cast any stigma on the Respondent.

9. Finally, learned Counsel relied upon State of Uttaranchal and Others Vs. Kharak Singh, . The services of the employee in this case were terminated after an enquiry and it was found that the enquiry had not been conducted in accordance with law. This decision is clearly inapplicable to the facts of the case that we are dealing with.

10. From the various decisions that have been referred to by learned Counsel for the Respondent, it is clear that in the case of a probationer or a temporary servant, the

law laid down by the Supreme Court is quite unambiguous. What is required to be determined is whether the motive for the termination of services was by way of punishment or was it a discharge simplicitor. If the termination was punitive in nature, obviously an enquiry is required to be held and the principles of natural justice are required to be followed. But, where the discharge order and the motive for the discharge is simply unsatisfactory work, the discharge being a discharge simplicitor, there is no necessity of holding a departmental enquiry.

11. In the present case, the order of discharge, ex facie, does not cast any stigma on the Respondent. In fact, the order terminating the services of the Respondent reads as follows:

In pursuance of the proviso to Sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I Seva Dass, principal, Police Training School, Jharoda Kalan, New Delhi hereby terminate forthwith the services of temporary SI Nand Kishore, No. D/1105 and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one months notice, at the same rates at which he was drawing immediately before the termination of his services.

He is not in possession of any government accommodation.

12. Learned Counsel for the Respondent has contended that we may go behind the order of discharge to find out whether it is a discharge simplicitor or a discharge by way of punishment. He submitted that if we do so, it would be clear that the discharge casts a stigma on the Respondent.

13. In State of West Bengal and Others Vs. Tapas Roy, the Supreme Court observed that "Stigma in the wider sense of the word is implicit in every order of termination during probation." Keeping this in mind, the Supreme Court referred to Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and reiterated the view that in order to constitute a stigmatic order necessitating a formal enquiry, "it would have to be seen whether prior to the passing of the order, there was an enquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt." It was said that if any of these factors are absent, the order would not be punitive.

14. Similarly, in State of U.P. and Others Vs. Ashok Kumar, the Supreme Court observed that if there is no enquiry, but only a termination order, the complaint is the motive of the order of termination. On the other hand, if the complaint leads to an enquiry resulting in a termination order, it is the foundation of the order of termination. Reliance was placed on Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, wherein it was pithily stated that if an employer was not inclined to conduct an enquiry but at the same time did not wish to continue the employee against whom there was a complaint, it would only be a case of motive and the order of termination would not be bad.

The following passage from that decision is worth quoting:

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.

15. Finally, reference may be made to State of U.P. and Another Vs. Ram Kishore and Another, wherein it was held that if the services of a probationer were discharged on the ground that his services were not satisfactory, it cannot be said that the order of termination was bad in law.

16. In so far as the present case is concerned, there is no doubt that no enquiry was held into the conduct of the Respondent. There was also no allegation of any moral turpitude or any misconduct against him. All that the employer concluded was that the Respondent would not make an efficient officer since he appeared to be incapable of completing his training. This was fortified by the manner in which the Respondent took his training, that is, by not participating in the training programme on several occasions in a span of less than a month and a half, the depression that he was going through, his inability to eat properly or perform any outdoor duties and his inability to sit the full duration of the class or concentrate on his studies. In fact, as noted above, the Respondent himself informed the Additional Commissioner of Police (Training) on 15th July, 1995 that he could not cope with the training.

17. Under these circumstances, we are of the opinion that the Petitioner was fully justified in coming to a conclusion that the Respondent would not be a person fit enough to remain in the police force. This assessment appears to have been made on the basis not of his conduct but on the basis of the manner in which he went about with the training, which he was apparently unable to cope with. That being the bona fide assessment made by the Petitioner, we do not think that the Tribunal was right in coming to a conclusion that the services of the Respondent were dispensed with by way of punishment. In our opinion, there was no necessity for the Petitioner to hold an enquiry into the conduct of the Respondent, since that was not even the question before the Petitioner - the only question being whether the Respondent could complete his training and whether he would be an efficient officer after completion of his training.

18. The Tribunal has noted that the salary and allowances were not tendered to the Respondent along with the order terminating his services and, therefore, the termination is even otherwise not valid. In this regard, Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 reads as follows:

5. Termination of Temporary Service

(1)(a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

(2) (a) Where a notice is given by the Appointing Authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit, -

(i) confirm the action taken by the Appointing Authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months:

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where

no notice is given.

(b) Where a Government servant is reinstated in service under Sub-rule (2), the order of reinstatement shall specify:

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination

of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

19. A perusal of the aforesaid rule makes it abundantly clear that a Government servant shall be entitled to claim a sum equivalent to his pay and allowances for the notice period but there is no requirement that the pay and allowances must be paid simultaneously or even forthwith along with the order of termination. Indeed, this is also the view taken by the Supreme Court in Municipal Corporation of Delhi Vs. Prem Chand Gupta, (2000) 10 SCC 115 (paragraph 9 of the Report). Of course, the Supreme Court has observed that the payment must be made within a reasonable period of time.

20. No controversy has been raised in the present case about non-payment of pay and allowances within a reasonable period of time. That being so, we do not find any substance in the second reason given by the Tribunal for deciding in favour of the Respondent.

21. In our opinion, the impugned order passed by the Tribunal has proceeded on an erroneous appreciation of the facts and the law and, therefore, it cannot be sustained. Accordingly, the writ petition is allowed and the impugned order passed by the Tribunal is set aside.

22. No costs.