
(2012) 02 DEL CK 0421

In the Delhi High Court

Case No : Writ Petition (C) No. 1007 of 2012

Bhanwar Lal

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 226, 311(2)

Citation : (2012) 02 DEL CK 0421

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Asish Nischal, for the Appellant; Sachin Datta, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner who was enrolled as a Vehicle Mechanic with the respondents, the Border Roads Organisation, for a period of two years on probation up to 7th June, 2013 has challenged the order dated 10th December, 2011 passed by the respondents terminating his service under the Provision of Sub Rule (1) of Rule 5 of Central Civil Service (Temporary Service) Rules, 1965. While terminating the service of the petitioner, it was also held that he would be entitled to claim a sum equivalent to the amount of his pay plus the allowances for the period of notice, at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

2. The brief facts to comprehend the disputes are that the petitioner was enrolled on 8th June, 2011 and was granted the service No. GS-196381W, while being initially put on probation for a period of two years w.e.f. 8th June, 2011 up to 7th June, 2013. According to him, at that time an inquiry was conducted into the alleged irregularities/malpractices committed during the recruitment by the Boards/Centers and GREF Centers. Reliance has also been placed by the petitioner on the communication dated 17th October, 2011 issued by the

Secretary Ministry of Road Transport and Highways, respondent No. 1, to the Director General, Border Roads, respondent No. 2, disclosing that pursuant to the inquiries held in respect of the recruitment of MT Drivers/Electricians/Vehicle Mechanics in BRO, it was noticed that the recruitment had not been conducted in a transparent manner and thus, the entire selection process was to be vitiated. The petitioner had also referred to another letter dated 18th November, 2011 by the Secretary Ministry of Road Transport and Highway issued to the Director General, Border Road, directing him to proceed in accordance with Rules 5(1) of the CCS (Temporary Service) Rules, 1965 pursuant to which, the Director General had issued a letter dated 22nd November, 2011 to the respective units for the termination of the services of the recruits enrolled pursuant to the advertisement issued in the month of June, 2010.

3. Thereafter on 10th December, 2011 the respondents issued the impugned Termination Order, whereby the services of the petitioner was terminated.

4. The petitioner has challenged this order of termination by filing the present writ petition on the ground that it casts a stigma and is punitive in nature and thus it could only be effected after conducting a proper inquiry against him and after affording the petitioner a reasonable opportunity of being heard in compliance with the principles of natural justice.

5. According to learned counsel for the petitioner, the respondents should have conducted an inquiry in order to ascertain as to what was the foundation for terminating the service, and that termination could not be imposed by way of a punishment. Thus it is urged that the termination of the petitioner's service is not a discharge simplicitor. According to the petitioner, since the termination of the petitioner was based on the inquiry conducted by the respondents, however, since the petitioner was not involved in the inquiry, therefore, the termination is in violation of the various decisions of the Courts, as it causes a stigma on the petitioner and is also punitive in nature and thus the principles of natural justice have not been complied with.

6. Learned counsel for the petitioner has also relied on a decision of the Division Bench of this Court in the case of Union of India (UOI) Vs. Shri Nand Kishor Aggarwal and The Central Administrative Tribunal Principal Bench, wherein the Division Bench had noted that as per the law laid down by the Supreme Court, if the termination is punitive in nature, 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, then the discharge being discharge simplicitor, there is no necessity of holding a departmental enquiry.

7. The learned counsel for the respondents who has appeared pursuant to an advance notice has contended that the writ petition against the order of the termination deserves to be dismissed since the said order is not at all punitive in nature and that it only amounts to a discharge simplicitor. According to the

learned counsel, the enquiry referred to by the petitioner did not impute any misconduct against the petitioner and that consequently it cannot be contended that the termination order has been passed against the petitioner as a punishment nor does it cast any stigma on the petitioner. It has also been pointed out that all other employees who had been selected pursuant to the recruitment for the year 2011 as stipulated in the enquiry had been terminated along with the petitioner. Thus it is urged that the order of termination has not been arbitrarily imposed on the petitioner alone, but was a necessary consequence of an administrative decision taken by the respondents.

8. This Court has heard the learned counsel for the parties in detail. The bone of the contention in the present matter is undoubtedly whether the termination order dated 10th December, 2011 is punitive or not. If indeed the termination order is punitive in nature, as contended by the learned counsel for the petitioner, then the law contemplates that the employee concerned could only be discharged after holding an inquiry as per Article 311(2) of the Constitution of India. Whereas, if on the other hand, the said order would only tantamount to a discharge simplicitor as per the pleas of the respondents, then no inquiry was required and the order in itself would suffice.

9. The factors to be considered while analyzing whether a termination order is punitive or not, has been crystallized by the Supreme Court in numerous cases. Consideration of few of these cases at this stage would elaborate the law already laid by the Courts in this regard.

10. In the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, the Supreme Court had held as follows :

34. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in The State of Orissa and Another Vs. Ram Narayan Das, . It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal Chimanlal Shah Vs. The Union of India (UOI), . The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed - if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in State of Punjab and

Another Vs. Shri Sukh Raj Bahadur, and in Benjamin case (1967) 1 LLJ 718 (SC). In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, the employer was entitled to say that he would not continue an employee against whom allegations were made, the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

35. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee - even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.

11. In The State of Orissa and Another Vs. Ram Narayan Das, it was held by the Supreme Court that one should look into the "object or purpose of the enquiry" and not merely hold the termination to be punitive because of an antecedent enquiry. Whether the order of termination amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. On the facts of that case, the termination of a probationer was upheld by the Supreme Court since it was concluded that the purpose of the enquiry was not to find out if the concerned employee was guilty of any misconduct, negligence, inefficiency or other disqualification, but instead the purpose of the inquiry was to find out if the employee could be confirmed.

12. Similarly in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, , the Supreme Court laid down the test to determine the nature of the termination order, i.e. whether the termination is punitive or simplicitor. The Apex court had observed as follows:

21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has to be upheld.

13. It was further observed that the Court has to firstly ascertain if the order of termination imputes any stigma on the employee concerned. The relevant para of the said judgment of the Supreme Court is as follows:

28. Therefore whenever a probationer challenges his termination, the courts first task will be to apply the test of stigma or the "form" test. If the order survives this examination the "substance" of the termination will have to be found out.

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

14. Thus, it is imperative to ascertain if any stigma has been imputed against the petitioner by the impugned termination order. The said termination order is as under:

Orders of Termination of Service Issued Under The Provision To Sub Rule (1) of Rule 5 of The Central Civil Services (Temporary Service) Rule 1965

1. In pursuance of the provision to sub rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rule 1965, I Ram Milan, SE (Civ) FS Commander 763 BRTF (GREF) hereby terminate forthwith the services of GS-196381W Veh/ Mech Bhanwar Lal of 117 RCC/763 TF and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service or, as the case may be, for the period by which such notice falls short of one month.

15. A perusal of the said order makes it amply clear that the same does not impute any stigma on the petitioner nor does it divulge the cause of the termination as being any kind of misconduct, negligence, inefficiency or other

disqualification on the part of the petitioner. Prima facie, the termination letter only amounts to a discharge simplicitor.

16. However, the petitioner has contended that the language of the said order is misleading as it is not a case of discharge simplicitor but in fact is punitive in nature, as it was a consequence of the enquiry that preceded it. Reliance has also been placed on the communication dated 17th October 2011 to contend that the contents of the said letter clearly divulge that the inquiry was the reason for the termination of the petitioner from the service. The order relied on by the petitioner is as follows:

Subject: Irregularities in recent recruitment for the posts of MT Drivers, Electricians and Vehicle Mechanics in BRO-cancellation of selection process reg.

Reference this Sectt. ID Note of even number dated 26th August, 2011 and Dte. GBR No. 1240/Complaint/DGBR/EG2 dated 12th September, 2011 regarding the above subject.

2. The undersigned is directed to state that consequent to the inquiry conducted into the alleged irregularities/malpractices in recent recruitment for the posts of MT Drivers, Electricians and Vehicle Mechanics in BRO, it has been proved that the said recruitment has not been committed by the Recruitment Boards Centres and GREF Centre and thus the entire selection got vitiated, it has therefore been decided as under:

(a) The entire selection of Electrician, Vehicle Mechanic and MT Driver (Orc Gde) carried out against BRO Advertisement No. 1/2010 is hereby cancelled and the services of all those Veh. Mech candidates who have been inducted in GREF Centre, Pune for training be terminated forthwith under Rule 5 of CCS Temporary Service Rule by giving them one month's pay in lieu of notice as per the said Rule.

(b) The Officers responsible for vitiated selection process for these 3 test especially at Rishikesh and Pune centres should be punished under relevant rules, especially the concerned Board of Officers who took interview/Viv voice, practical/written tests, the then Commandant GREF Centre Pune and in charge of these tests as well as Chief Engineer (Rishikesh) for lack transparency and gross irregularities/malpractices. 3. Accordingly, DGBR is requested to take action on the above decision immediately and furnish an action taken report urgently.

4. This issues with the approval of Hon"ble Raksha Mantri.

17. As held in Pavanendra Narayan Verma (supra), firstly it is imperative to ascertain the "nature of enquiry" i.e. whether the termination was preceded by a full scale formal enquiry into the allegations of misconduct on the part of the employee concerned, which culminated in the finding of guilt. It is clear that in the present facts and circumstances no such inquiry specifying any allegations of misconduct against the petitioner were initiated. It is also not the case of the petitioner that he had been made party to the above mentioned inquiry wherein

a finding of his guilt had been arrived at. Secondly, perusal of the above stated communication also reveals that the "purpose of the enquiry", was to inquire into the alleged irregularities/malpractices in the recruitments to the post of MT Drivers, Electricians and Vehicle Mechanics in BRO committed by the Recruitment Boards and officers in certain centers, and not the candidates including the petitioner who had appeared for the same. It is further stipulated in the communication that a decision was taken to vitiate the selection due the malpractices and to initiate action against Officers who were responsible for vitiating the selection process for the tests especially at Rishikesh and Pune centers. It is also evident that the entire selection has been cancelled and thus it is not the petitioner alone who had been terminated pursuant to the said enquiry, but in fact all the candidates who had appeared for the said recruitment had been terminated as well. The petitioner also has been unsuccessful in contenting any cogent grounds for substantiating his plea that the impugned order has cast a stigma on him.

18. In the facts and circumstances, it is clear that the impugned termination order is a case of discharge simplicitor and that it was due to administrative reasons that the respondents had deemed it necessary to terminate the services of all the candidates who had appeared for the said recruitment, as malpractices and irregularities on the part of the Recruitment Board had been detected by the concerned authorities. The nature of the enquiry conducted prior to the termination order also was only preliminary in nature and not a full scale formal enquiry against the petitioner so as to lead to the inference that the object of the enquiry was to determine the guilt of the petitioner. No specific allegations were made against the petitioner nor any specific lapses or connivances had been attributed to the petitioner. Therefore, the order of termination cannot be held to be punitive in nature and consequently there was no requirement to conduct an inquiry before terminating the services of the petitioner. In the facts and circumstances, it also cannot be inferred that the foundation of termination of the services of the petitioner was the preliminary enquiry conducted by the respondents in the process of selection.

19. For the foregoing reasons and in the totality of facts and circumstances, there are no grounds for this Court to exercise its jurisdiction under Article 226 of the Constitution of India and to interfere with the termination of the petitioner. The writ petition is without any merit and it is, therefore, dismissed.