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**(1987) 07 MP CK 0012**  
**In the Madhya Pradesh High Court**  
**Case No : L.P.A. No. 30 of 1984**

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|---------------------------------------------|----|------------|
| Deonarayan Deo Kumar Patel                  | Vs | APPELLANT  |
| Madhya Pradesh Electricity Board and others |    | RESPONDENT |

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**Date of Decision :** 09-07-1987

**Acts Referred:**

Contract Act, 1872 — Section 23  
Letters Patent Act, 1865 — Clause 10

**Citation :** (1988) MPLJ 459

**Hon'ble Judges :** N.D. Ojha, C.J.; C.P. Sen, J

**Bench :** Division Bench

**Advocate :** R.K. Pandey, for the Appellant; Y.S. Dharmadhikari, for the Respondent

**Final Decision :** Dismissed

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## Judgement

C.P. Sen, J.

This is an appeal under Clause 10 of the Letters Patent against the order of a learned Single Judge dismissing appellant's writ petition M.P. No. 903 of 1979 on merits on 27-9-1984.

The appellant was selected as a Graduate Trainee in the Generation Wing of M.P. Electricity Board along with 33 others vide order dated 26-11-1976 subject to the terms and conditions given in the order on a fixed stipend of Rs. 425/- per month. The trainees were required to get themselves medically examined before joining. They were to undergo training for two years. The Chief Engineer may terminate a trainee without notice and without assigning any reason. A separate agreement was also to be executed. There were other conditions that they will be eligible to be considered for appointment as Assistant Engineer on satisfactory completion of training. They will have to pass departmental examination in Accounts before appointment and to undergo medical examination and produce fitness certificate of the Medical Board before joining and if the result is adverse their appointment will be liable to be terminated without notice. An agreement

will have to be executed giving an under-taking that they will have to serve the Board for a period of 3 years as Assistant Engineer. The appellant successfully completed his training on 12-1-1978 and when he was being interviewed by the Appraisal Committee on 13-1-1978 for being appointed as Assistant Engineer, it was noticed that he was hard of hearing and, therefore, he was directed to get himself examined by Divisional Medical Board. Though the appellant was selected but this was subject to medical fitness. The appellant appeared before the Board which gave a certificate dated 1-4-1978 that the appellant is suffering from Conductive Deafness. It appears that this certificate did not satisfy the Board and, therefore, it directed the appellant to appear before Central Medical Board, Bhopal. The appellant was examined by the Central Medical Board which gave a report on 8-8-1978 that he was suffering from High Myopia Fundus Myopic Degeneration, vision BE 6/60, with Glasses BE 6/18 and in its opinion this was a disqualification for appointment in M.P. Electricity Board. In view of this adverse report, the agreement was terminated on 29-8-1978. However, the appellant got examined by Dr. Santosh Singh, Ophthalmic Surgeon of Bhopal on 5-9-1978 who recommended certain medicines and his report was slightly better. The appellant made certain representations against this termination which were rejected on 20-11-1978. He then served a notice on the respondents and then filed the writ petition which was opposed by the respondents saying that he being medically unfit, his agreement was terminated as per terms and conditions of his appointment as a trainee.

The learned Single Judge held that the appellant has alleged that he was an employee of the Board and his services could not be terminated without any notice or without giving any reason and he has been discriminated inasmuch as no other Graduate Trainee was required to appear before the Medical Board again. It has been held that by no stretch of imagination the appellant could be treated to be an employee of the, Board. The appellant was appointed only as a Graduate Trainee and on satisfactory completion of training, he was eligible for appointment as Assistant Engineer and his agreement was liable to be terminated at any time without giving any reason or showing cause. He was also required to pass departmental examination in Accounts and other examinations before being appointed. The appellant was also required to execute a bond to serve the Board for a period of 3 years. There was no order appointing the appellant as Assistant Engineer. At the time of interview by the Appraisal Committee, it was detected that the appellant was hard of hearing. Therefore, he was directed to appear before the Medical Board which reported that he was suffering from High Myopia Fundus-Myopic Degeneration and was unfit for appointment, hence the agreement was terminated and no appointment was made. It is true that during his training period, he was paid certain D.A. and T.A. but that did not make him a regular employee because he was entitled to D.A. & T.A. for going out on rotational training. As the appellant was unfit for appointment because he was suffering from High Myopia Fundus-Myopic Degeneration, therefore, it could not be said that he was similarly situated as

other Graduate Trainees. There was no question of discrimination simply because the appellant was required to appear before the Medical Board twice. This became necessary because the Appraisal Committee felt that the appellant was suffering from hearing defect and should be examined by the Medical Board. The petition was accordingly dismissed but it was observed that in all fairness the Board should consider giving some suitable employment to the appellant for which defect in eye-sight may not be an impediment in case the appellant makes an application to the Board to this effect.

Having heard the learned counsel for the parties, we are of the opinion that there is no merit in this appeal. The learned counsel for the appellant mainly relied on the additional ground raised at the time of hearing to the effect that the Hon'ble Single Judge should have held that the respondent is a State within the meaning of Article 12 of the Constitution and its term No. 2 of the agreement, under which the discharge order has been passed is arbitrary and contravenes Art. 14 of the Constitution on the principle laid down in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, and cases cited therein. Hence the order of discharge is non est. The order of discharge gives no other reason and no other can be supplied by way of return. The Supreme Court in *Central Inland Water Transport Corpn. Ltd. vs. Brojo Nath*, (supra) held that the rule empowering Central Inland Water Transport Corporation to terminate services of permanent employees without giving any reason and by giving notice is void u/s 23 of the Contract Act as being opposed to public policy. It is also ultra vires Art. 14 of the Constitution and also violative of Directive Principles contained in Arts. 39(a) and 41. This decision has no application to the facts of the present case. There, the services of a permanent employee were terminated by giving 3 months' notice without giving any reason as per Rule 9(i) which has been held to be void. It is not the appellant's case that he was a permanent employee. His agreement for Graduate Trainee itself provided that the agreement was liable to be terminated at any time without any notice and without giving any reason. The appellant was not a permanent employee, even he was not an employee. What has been terminated is his agreement. Under the agreement, on successful completion of the training, the appellant was eligible for being considered for appointment as Assistant Engineer provided he had passed necessary departmental examinations. In fact, the appellant in his letter dated 7-7-1978 requested for issuance of an appointment order, showing thereby that he himself admitted that he was yet to be appointed. The next contention is that no reasons have been disclosed in the impugned order terminating the agreement and, as such, it is arbitrary. As per the agreement of the apprentice training, the training could be terminated at any time without any notice and without giving any reason, so it was not necessary to give any reason. According to the learned counsel, the impugned order has to go by its recital and it cannot be presumed that the impugned order was passed because the appellant was declared medically unfit. The Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi*

and Others, , held that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons, so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out". In that case, the Election Commission had cancelled the election of Ferozepore Parliamentary Constituency on certain grounds stated in the notification, but subsequently tried to justify the cancellation on other grounds and in that light the aforesaid observations were made while dealing with a case under Representation of the People Act, 1951. Here, we are concerned with the termination of the agreement as per terms thereof which did not require any reasons to be disclosed for termination. It is then contended that assuming that the termination is on the ground of medical unfitness, therefore, a stigma is cast and there can be no termination without giving a reasonable opportunity to the appellant. Again, this argument is devoid of any merit because the learned counsel relied on a decision of this Court in S.P. Srivastava now known as S. Prasanna Vs. State of Madhya Pradesh, , which has been held to be overruled by another decision of this Court in State of Madhya Pradesh Vs. Dr. Chamanlal Nagrath, , in view of decision of the Supreme Court in Mohammad Sagiruddin Vs. The Distt. Mechanical Engineer, North East Frontier Railways and Others, , that if a Government servant is found medically unfit for a post, it could not be said that either he was punished or any stigma was cast on his character and Art. 311 is not attracted. Reliance has also been placed on a decision of the Supreme Court in The Manager, Government Branch Press and Another Vs. D.B. Belliappa, . That was a case of termination of service without any reason and it was held that the termination was made arbitrarily and not on ground of unsuitability or any other reason. Here, the termination was on account of unsuitability because of medical unfitness. Another case cited is of Workmen, Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others, , which held that if the decision of the employer is to dispense with the enquiry, it must satisfy the Court that holding of the enquiry will be either counter-productive or may cause irreparable and irreversible damage. Here there is no case of dispensing with any enquiry, on the other hand the appellant was directed to appear before the Board who declared him medically unfit.

The learned counsel for the appellant also based his case under Apprentices Act, 1961. Admittedly, this Act applies to the employees of M.P. Electricity Board. His first objection is that Section 7 has not been complied with which provides that the contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training; either party to the contract may make an application to the Apprenticeship Adviser for termination of the contract, a copy of which will be sent to the other party and after considering the contents of the application and the objections, the Apprenticeship Adviser may, by order in writing, terminate the contract. Section 18 provides that apprentices are trainees and not workers. The appellant had completed his apprenticeship and thereafter he was

considered for being appointed as Assistant Engineer as per the agreement. Since he was found medically unfit, his agreement was terminated; As per Section 7, the contract of apprenticeship came to an end on completion of the apprenticeship training, so there was no question of making any application to Apprenticeship Adviser. Such an application would have been necessary if apprenticeship was terminated prematurely which is not the case here. His next contention is that there is non-compliance to Section 22(2) of the Act which provides that where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period as may be specified in the contract. Reliance has also been placed on a decision of the Supreme Court in *Narinder Kumar and Others Vs. State of Punjab and Others*, , in support of the contention, wherein it has been held that in view of the non obstante clause contained therein, sub-section (2) of Section 22 of the Apprentices Act leaves no doubt that despite the provision contained in sub-section (1) the employer is under an obligation to offer suitable employment to the apprentice if the contract of apprenticeship contains a condition that the apprentice shall serve the employer after the successful completion of the training and on such an offer being made, the apprentice on his part is bound to serve the employer in the capacity in which he was working as an apprentice. In the present case, the contract only provided that on successful completion of the training, candidate, will be eligible for being considered for appointment. As such, there was no obligation to give employment to the appellant, even after, successful completion of the apprenticeship. The appellant was also required to appear before Medical Board and to obtain fitness certificate from the Board. Here the appellant did appear before the Central Medical Board but it was found that he was suffering from High Myopia Fundus-Myopic Degeneration and was disqualified for appointment. As such, the Board was not bound to take the appellant in the employment. Rightly, therefore, he was not given any appointment.

The last contention without any pleading is that the action of the Board was highly discriminatory in singling out the appellant and asking him to appear before one Medical Board after another while the other trainees were not so required. When the appellant was being interviewed by the Appraisal Committee for being selected for appointment as Assistant Engineer, it was noticed that he was hard of hearing. He was, therefore, asked to appear before Divisional Medical Board, who found the appellant to be suffering from Conductive Deafness and found vision to be 6/12 in both the eyes but in the report it was not mentioned that the eye-sight was weak. Rule 4 of Apprenticeship Rules, 1962, framed u/s 37 of the Apprentices Act, lays down standards of physical fitness. Schedule II appended therein gives standard of vision to be BE 6/18 in each eye or BE 6/12 in one eye and BE 6/24 in the other eye, or BE 6/9 with glasses in, both eyes. Report of the Divisional Medical Board itself gave out that the

appellant's vision was-defective. Therefore, the Board was not satisfied with this report and directed the appellant to appear before Central Medical Board which again found his vision in both eyes to be BE 6/60 and BE 6/18 with glasses. It was, therefore, reported that he was suffering from High Myopia Fundus-Myopic Degeneration and was unfit for being given employment in the Board.

With the result, the appeal fails and it is dismissed. Under the circumstances, there shall be no order as to costs.