
(2007) 05 DEL CK 0109

In the Delhi High Court

Case No : Writ Petition (C) No. 23898 of 2005

Dr. Sarita Sarangi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 3(1)(ii)
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1), 5(2)
Constitution of India, 1950 — Article 226
Rehabilitation Council of India (Conditions of Service of the Member-Secretary, Officers and other than Employees) Regulations, 1998 — Regulation 9(4)
Rehabilitation Council of India Act, 1992 — Section 18, 3, 8, 8(2)

Citation : (2008) 3 SLJ 445

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : K.T.S. Tulsi and Geeta Luthra, for the Appellant; Suresh Kait and V. Shekhar and Anju Saxena, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—By way of the present petition, the petitioner has impugned her termination order dated 7th May, 2001 and has sought directions to the respondents to reinstate her back into service and to treat the period of her service from the date of the termination to the date of her reinstatement, as period spent on duty and that all service dues and other service benefits be released to her, as per her entitlement.

2. To begin with, facts leading to the filing of the present petition need to be culled out. An advertisement was published by the respondent No. 2, the Rehabilitation Council of India in the Employment News dated 20-26th March, 1999, inviting applications for the post of Deputy Director (Technical/Program Officer). The petitioner applied for the post and appeared for an interview on 14th May, 1999. Vide letter dated 22nd June, 1999, the petitioner was appointed to the said post on a temporary basis on probation for a period of two years.

According to the respondent No. 2, the petitioner, while working at the said post, was granted 4 days' leave with effect from 26th December, 2000 to 29th December, 2000, to join her husband who was posted in Andamans but she overstayed for a period of 120 days with effect from 30th December, 2000 to 30th April, 2001 without obtaining necessary sanctions. On 11th April, 2001, a memorandum was issued by the respondent No. 2. to the petitioner, rejecting her request for leave for the reason that she had not specified the period of leave which is mandatory for a Govt. servant and also due to the fact that no leave was granted to her from after 30th December, 2000. On 12th April, 2001, another memorandum was issued to the petitioner stating that she had violated Conduct Rule 3 Clause (ii) of Sub-rule (1) of the CCS (CCA) Rules i.e. devotion to duty and was asked to show cause as to why disciplinary action be not initiated against her. Finally, vide letter dated 7th May, 2001, i.e., within a period of two years of her appointment, and well within her probationary period, the services of the petitioner were terminated under Rule 5(i)(b) of CCS (Temporary Services) Rules, 1965 (hereinafter referred to as 'the Rules'). The termination letter was accompanied with a cheque for Rs. 15,065/- towards one month's salary in lieu of notice. On 11th June, 2001, the respondent No. 2 received a letter of request dated 7th June, 2001 from the Andaman and Nicobar Administration seeking cadre clearance for the appointment of the petitioner to a Group-"A" post in Andaman and Nicobar Administration, on deputation. Upon receipt of the said request, the matter was placed before the then Minister of State for Social Justice and Employment, Govt. of India (hereinafter referred to as "the 1st Minister"), who made the following remarks in the relevant file on 21st June, 2001:

Even if she is reinstated, she, I learn cannot go on deputation. Since she is not a person to be trusted with dedicated work, let the termination stand.

3. On 24th July, 2001, the petitioner filed an appeal against the order of her termination under the provisions of Rule 5(2) of the Rules, read with Regulations 9(4) and 18 of the Rehabilitation Council of India (Conditions of Service of the Member-Secretary, Officers and other than Employees) Regulations, 1998 (hereinafter referred to as 'the Regulations') before the Minister in the capacity of an Appellate Authority under Regulation 9 of the Regulations. Incidentally, at the time of filing of the appeal, the 1st Minister had changed and the file was placed before the newly appointed Minister (hereinafter referred to as "the 2nd Minister"), who allowed the appeal of the petitioner on 27th August, 2001 on the ground that she was not afforded an opportunity of hearing in accordance with the principles of natural justice. The termination order of the petitioner was forwarded to the Ministry of Law and Justice for advise and the said Ministry vide note dated 7th April, 2003 opined that the termination order was valid and the petitioner had failed to make out a strong case for review of the decision of respondent No. 2 or those taken by the 1st Minister. The said opinion was reiterated by the Law Department vide note dated 5th November, 2003, while dealing with another representation of the petitioner dated 6th October, 2003.

4. As the petitioner was not reinstated and she kept making representations, on 1st September, 2003, the 2nd Minister again directed the respondent to implement his earlier orders dated 27th August, 2001. In the meantime, on the basis of a VIP reference made by a Member of Parliament, the respondent No. 1 reconsidered the matter and sought the advise of the Department of Legal Affairs, vide note dated 26th February, 2004. The Department of Legal Affairs vide note dated 27th July, 2004, sought to modify its earlier advise given on 7th April, 2003 and on 5th November, 2003 on the ground that the correct factual position as to non-approval of the Central Government was not brought to its knowledge and then opined that the termination order was not valid in law. On the written representation of the petitioner made on 9th September, 2005, the Chairman of the respondent No. 2 allowed her to make a detailed representation of her case and granted her a personal hearing. However, vide letter dated 24th October, 2005, the Member Secretary of respondent No. 2 informed the petitioner that her matter was being treated as closed as nothing new had been found in her case, after her representation to the Chairman. Aggrieved by the aforesaid action of the respondent No. 2, the petitioner has approached this Court by filing the present petition.

5. Counsel for the petitioner contended that the order dated 7th May, 2001, by which the services of the petitioner were terminated, is void ab initio, the same having been issued by an authority lower than her appointing authority. By referring to Regulation 4(1) and (4) of the Regulations, he submitted that even if the authority subordinate to the authority competent to make the appointment signs the order of appointment, yet, the terminating authority can only be the competent authority and not the person signing the order of appointment. It was stated that as the appointment in the case of the petitioner was to be made by the Chairman with the previous approval of the Central Government, the said termination under Rule 5(1) of the Rules was illegal, the Chairman of the Respondent No. 2, having failed to obtain prior approval before terminating the services of the petitioner. Much stress was also laid on the opinion of the Law Ministry, dated 27th July, 2004, in favor of the petitioner. Reliance was placed on the following judgments of the Supreme Court to state that termination of services cannot be made under the orders of an authority subordinate to the appointing authority:

- (i) State of Assam etc. Vs. Kripanath Sarma and Others etc.,
- (ii) The Management of Delhi Transport Undertaking Vs. B.B.L. Hajeley and Others,
- (iii) Ansuya Parshad Vs. Secretary, Ministry of Home Affairs and Another,

6. It was further stated that so far as the meaning of the term "appointing authority" is concerned, the same is to be understood in its plain and natural meaning, as explained by the Supreme Court in the case of Om Prakash Gupta Swadheen v. Union of India and Ors. reported as 1975 (2) SLR 226, to be

"authority which appoints the official" and in the present case, the same is the Chairperson with the prior approval of the Central Government, as is specified in Clause 4(1) of the Regulations. In this backdrop, it was urged that the appointing authority not being the terminating authority in the present case, the termination under Rule 5 of the Rules was illegal.

7. Flowing from the aforesaid arguments, was the next contention of the counsel for the petitioner, that the inherent defect of not having taken the necessary previous approval cannot be sought to be rectified by obtaining an ex-post facto approval from the Central Government. Counsel for the petitioner submitted that the services of the petitioner were terminated in May 2001, and an approval from the Central Government was obtained only in June 2001 which renders such a termination order void. He relied on the following judgments in support of the said contention:

(i) Union of India and others Vs. Vinod Kumar and others,

(ii) Tagore Home Junior College, Secunderabad Vs. P.P.A. Christian and others,

8. In this regard, much emphasis was laid on the term "shall" as appearing in Regulation 4 of the Regulations, to state that it was mandatory for the respondent No. 2 to take the approval of the Central Government prior to terminating the services of the petitioner. Reliance in this respect was placed on the judgment of the Supreme Court in the case of Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others, . It was also averred that the very fact that the approval of the Central Government was taken ex-post facto, shows that there was non-application of mind by the respondent No. 1 and support was sought to be drawn from the following judgments:

(i) Mansukhlal Vithaldas Chauhan Vs. State of Gujarat,

(ii) Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others,

9. It was also canvassed that the order of termination of the petitioner was in violation of the principles of natural justice, as it was not a reasoned/speaking order, passed after application of mind and due consideration of the relevant facts and further that non-communication of the said order to the petitioner also renders it illegal. By relying on the judgment in the case of Anoop Jaiswal Vs. Government of India and Another, and the case of Sirsi Municipality by its Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, it was contended that the court before which the order is challenged can always go behind the form to ascertain the true character of the order so as to give effect to the rights conferred by law upon the employee and in case of violation of the mandatory procedural requirements, the court may exercise its discretion to declare the act of dismissal to be a nullity.

10. On the other hand, the stand taken by the learned Counsel for the respondent No. 2 was that the order of termination of the petitioner's services was passed by the competent authority, well within the period of her probation,

and the same being a case of termination simplicitor, it was purely a matter of subjective satisfaction of the respondent No. 2 who was under no obligation to give a personal hearing to the petitioner before passing such an order. It was submitted that it is only when the termination of a probationer's services is found to be stigmatic, that any interference by the court is warranted. Reliance was placed on a number of judgments of the Supreme Court, including the following:

- (i) State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, .
- (ii) Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr,
- (iii) Municipal Committee, Sirsa Vs. Munshi Ram,
- (iv) Registrar, High Court of Gujarat and Another Vs. C.G. Sharma,
- (v) Om Prakash Mann v. Director of Education (Basic) and Ors. (2006) 7 SCC 558.

11. Counsel for the respondent No. 2. argued that the order of termination of the petitioner was in accordance with the relevant rules and as per her appointment letter dated 22nd June, 1999, and being only a probationer, she was governed by the CCS(Temporary Services) Rules, 1965.

12. It was further stated that that this Court ought not to interfere with the order of termination duly passed by respondent No. 2 pursuant to the proviso to Rule 5(1) of the Rules, when the legality and/or validity of the said Rule itself was not challenged by the petitioner. It was further stated that in view of Rule 5(2) of the Rules, no appeal lies against the order of termination, and the Central Government can reopen or review the case subsequently, either on its own or otherwise. However, once the 1st Minister had approved the order of termination passed by respondent No. 2, then there was no scope of review under the Rules and as the power of review exercised by the 2nd Minister had no sanction of law, the same was Therefore void. As a consequence thereto, any direction given or order passed by the 2nd Minister, purportedly in exercise of the powers of review, cannot be sustained since the said power could not be exercised twice unless it is expressly so provided for under the statute, which is not the case here.

13. Counsel for the respondent No. 2 further submitted that as there is an express bar in the proviso to the Rule 5(2) of the Rules, for any case to be re-opened under the said Rule after the expiry of 3 months from the date of termination of service, the order passed by the 2nd Minister on 27th August, 2002 and the directions issued thereafter in September 2003 and May 2004 on which much reliance was placed by the petitioner, cannot be sustained, the same being contrary to the express provision of the Rules.

14. Counsel for the petitioner countered the arguments of the respondent that Rule 5(2) of the Rules did not permit reopening or reviewing action taken by the

Appellate Authority, by urging that the noting of the 1st Minister was made in the context of a cadre clearance sought by the Andaman and Nicobar Administration for the appointment of the petitioner to a Group A post with the said Administration and could not be termed as an approval of the action of the respondent No. 2 for terminating the services of the petitioner. Therefore the subsequent order dated 27th August, 2001 issued by the 2nd Minister, did not amount to reopening and reconsideration of the termination order of the petitioner by the Central Government as prescribed under Rule 5(2)(a) of the Rules.

15. I have heard the submissions of the learned Counsels for the parties and considered the arguments advanced by the respective counsels.

16. To enable the court to decide the issues in hand, it is necessary to refer to the relevant provisions of the Regulations and Rules which are reproduced hereinbelow:

Rehabilitation Council of India (Conditions of Service of the Member-Secretary, Officers and other than Employees) Regulations, 1998

4. Appointing authority :- (1) All appointments to the posts maximum of the pay scale of which is rupees Thirteen Thousand and Five Hundred or above shall be made by the Chairperson with the previous approval of the Central Government.

(2) Appointments to the other posts shall be made by the Member-Secretary.

9. Conduct - (1) Member-Secretary, every officer and every employee shall at all times maintain absolute integrity, devotion to duty and do nothing which is unbecoming of an officer or an employee. The conduct and behavior of the Member-Secretary, officers and other employees shall be governed by the provisions of the Central Civil Services (Conduct) Rules, 1964 and orders issued there under by the Central Government from time to time.

(2) The classification of the posts of the Member-Secretary, officers and other employees and the matters relating to discipline, imposition of penalty, inquiry, appeal of other related things shall be governed in accordance with the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

(3) The authority competent to impose a penalty shall be -

(a) in the case of Member-Secretary and Group "A" Officers, the Chairperson;

(b) in the case of other employees, the Member-Secretary.

(4) An appeal against the order of the Chairperson imposing a penalty shall be to the Central Government and against the order of the Member-Secretary to the Chairperson.

CCS (Temporary Services) Rules, 1965

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 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.

17. The first contention on behalf of the petitioner was that as Regulation 4 mandates appointments to the post to which the petitioner was appointed to be made by the Chairperson of respondent No. 2, with the previous approval of the Central Government, hence any order of removal of the petitioner could not be issued without taking the previous approval of the Central Government. The record however, reflects to the contrary, as is apparent from a perusal of the letter of appointment of the petitioner dated 15th June, 1999 contained in the original files relating to the petitioner, and produced by respondent No. 2 followed by the appointment order dated 22nd June, 1999 issued by the Member Secretary of respondent No. 2. In continuation of an earlier memorandum dated 25th May, 1999 for considering the case of the petitioner for appointment to the

post of Deputy Director (Technical/Program Officer), vide memorandum dated 15th June, 1999, the Chairman of respondent No. 3 conveyed the acceptance to the terms and conditions of the appointment of the petitioner on a purely temporary basis to the aforesaid post, strictly in accordance with the terms and conditions as contained in the annexure to the earlier memorandum.

18. A perusal of the aforesaid memorandum dated 15th June, 1999 shows that the same was issued by the Chairman of respondent No. 2. There is no dispute on the fact that in the terms and conditions of the appointment of the petitioner, it was clearly stated that her appointment was purely temporary and that she would remain on probation for a period of two years which could be curtailed or extended and that her appointment was liable to be terminated with one month's notice given by either side without assigning any reasons whatsoever.

19. Both, the memorandum dated 15th June, 1999 as well as the termination order dated 7th May, 2001 of the petitioner, have been issued by the Chairman of respondent No. 2. Considering that the aforesaid memorandum does not make any reference to having obtained any prior approval of the Central Government at the time of appointment of the petitioner, the plea raised on behalf of the petitioner that at the time of issuance of her termination order, the previous approval of the Central Government was mandatory, falls to the ground. In fact, the aforesaid argument of the petitioner is self defeating for the reasons that if it is taken to its logical end, there will be no option but to arrive at a conclusion that as the initial appointment of the petitioner was itself contrary to the provisions of Regulation 4, there being no prior or for that matter, post facto approval taken from the Central Government in her case, her appointment itself was invalid and illegal. Further, even assuming that prior approval of the Central Government is necessary, it does not mean that the Central Government would become the appointing authority of the petitioner. Her appointing authority would remain the Chairman of respondent No. 2. Nor can the provisions of Regulation 4 held to be mandatory in nature as claimed by the petitioner, given the fact that her appointment was purely temporary and was governed by her appointment letter. Having held so, it cannot be countenanced that the order of termination of the petitioner was bad or that the same was not issued by the person signing her letter of appointment.

20. There is force in the submission of the learned Counsel for respondent No. 2 that the provision of Rule 5(1) of the Rules empowers the Chairman of Respondent No. 2 to terminate the services of the petitioner and for exercising the said power of termination, no prior approval of the Central Government was required. It may also be noted that the judgment in the case of State of Assam (*supra*), relied upon by the petitioner, in fact supports the respondents as it observes as below:

Para 13: Now as we read Section 14(3)(iii) of the Act, it is obvious that the power of appointment is only in the Assistant Secretary, though that power has to be exercised on the advice of the Committee constituted u/s 16 of the Act.

Even assuming that the recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the Committee, which appoints, and the appointment is made only by the Assistant Secretary. Even if the word "advice" in this provision is equated to the word "recommendation", it is still clear that the Committee only recommends and it is the Assistant Secretary who is the appointing authority on the recommendation of the Committee. It may be that the Assistant Secretary cannot make the appointment without the advice or recommendation of the Committee. Even so, in law, the appointing authority is only the Assistant Secretary, though this power is to be exercised on the advice or recommendation of the Committee. In these circumstances, it cannot be said that there is any different intention appearing from the fact that the appointment has to be made on the recommendation or advice of the Committee. The appointing authority would still be the Assistant Secretary and no one else, and there is no reason why, if he is the appointing authority, he cannot dismiss those appointed by him with the aid of Section 18 of the Act. We cannot, Therefore, agree with this view of the High Court.

21. Thus reference made by the petitioner to para 21 of the aforesaid judgment by the Supreme Court is misplaced for the reason that the observations of the Supreme Court made in the said para have been read out of context, as in the said case, the respondents therein were appointed under a different Act, which was repealed later. It was in such a background of facts that it was held that the post of Assistant Secretaries which was created under the new Act would not govern teachers appointed under the earlier Act and nor could the said Assistant Secretaries be held to be their appointing authority. Similarly, the judgment of the Single Judge in the case of Ex-Subedar Ansuya Parshad (*supra*) was overturned by the Division Bench of this Court reported as *The Secretary, Ministry of Home Affairs and Others Vs. Ex-Subedar Ansuya Parshad*, where it was held as below:

Para 14: According to Rule 7(b), the Appointing Authority is the Commandant and the respondent was removed from service by the Deputy Inspector General of Police who is higher in rank than Commandant. Therefore, there is no illegality in the order passed by the Deputy Inspector General of Police.

Para 15: We are also of the opinion that just because the approval of the Inspector General of Police is required it would not change the Appointing

Authority who is the Commandant in the instant case. Once the respondent was appointed by the Commandant he could be removed from service by the Deputy Inspector General who is admittedly higher in rank than the Appointing Authority, i.e., the Commandant.

In this context, a useful reference may also be made to the judgment in the case of *State of Bihar and Others Vs. Prashant Kr. Sharma and Others* .

22. Taking the next argument on behalf of the petitioner that the relevant

Regulations made it mandatory for respondent No. 2 to obtain the prior approval of the Central Government before terminating the services of the petitioner, it is relevant to note that the order of termination of the petitioner dated 7th May, 2001, was duly taken note of by the 1st Minister on 21st June, 2001. While putting up a note dated 15th June, 2001 to the said Minister stating inter alia that the services of the petitioner, who was working in a temporary capacity and was still within two years of her probation period, were terminated due to the fact that her performance was found dissatisfactory, it was also mentioned that the Department had received a letter in June, 2001 from the Andaman and Nicobar Secretariat to consider appointing the petitioner to a Group A post in its Social Welfare Department and her cadre clearance was sought for the said purpose. While considering the aforementioned note, the 1st Minister rejected the case of the petitioner and made observations reproduced in para 2 hereinabove to the effect that respondent No. 2 should let her termination stand. Having taken note of the fact that the petitioner failed to place on record any documents to establish that her appointment orders were issued with the prior consent or concurrence of the Central Government, even if it is assumed that there was some kind of consent by the Central Government at a later date for her appointment, then the subsequent approval of the termination of her services accorded by the Central Government cannot be faulted, the same having cured the irregularity, if any.

23. For the reasons stated hereinabove, the judgments relied upon by the learned Counsel for the petitioner in the cases of Vinod Kumar (*supra*) and Tagore Home Junior College (*supra*) are of no avail, particularly since the petitioner has failed to establish from her letter of appointment or any other document that prior approval had been obtained by respondent No. 2 from the Central Government before issuing the said letter, in terms of the relevant Regulations.

24. There is also no force in the argument of the petitioner that there was non-application of mind by respondent No. 1 at the time of granting ex post facto approval or that the noting was made only in the context of cadre clearance sought for the petitioner. A perusal of the noting file shows otherwise. The 1st Minister duly considered the case of the petitioner before arriving at the conclusion that her termination order ought to stand in view of her dissatisfactory service. As the order of her termination was upheld, there was no question of giving the petitioner cadre clearance for proceeding on deputation to Andamans.

25. The next plea taken on behalf of the petitioner was that the principles of natural justice were violated at the time of terminating the services of the petitioner as the termination order was neither a reasoned, nor a speaking order and that she was not afforded an opportunity of hearing at the time of passing of the same and nor was it communicated to her. Reliance was placed by the petitioner on the noting of the 2nd Minister dated 27th August, 2001 who

allowed the appeal of the petitioner on the ground that she was not afforded an opportunity of hearing in terms of the principles of natural justice. It cannot be lost sight of that the appointment of the petitioner was undoubtedly made on a purely temporary basis. Further, her letter of appointment itself made it clear that initially she was appointed on probation for a period of two years. In the present case, two years were to expire on 21st June, 2001. However, well before the said time, the order of termination was passed qua her in terms of Rule 5(1) of the relevant Rules which govern the services of the petitioner, she being a temporary employee.

26. It is settled law that if the order of termination is a termination implicate and not punitive in nature, then no opportunity of hearing needs to be given to a probationer. In the present case, since the overall performance of the petitioner was found to be unsatisfactory by respondent No. 2 during the period of her probation, it was decided that her services be terminated and perusal of her termination order shows that it was a discharge simplicitor. It is held by the Supreme Court in the case of C.G. Sharma (supra) that "the law of appointment is crystalised that the probationer remains a probationer unless he has been confirmed on the basis of work evaluation."

27. In the case of Munshi Ram (supra), while examining the case of termination of services of a probationer in the context whether the same was punitive in nature or a discharge simplicitor, by referring to the earlier judgments in the cases of Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, , H.F. Sangati v. Registrar General, High Court of Karnataka reported as AIR 2001 SC 1148 and Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and it was held as below:

Para 10: It is clear from the above that if the order of termination indicates that it is a termination implicate and does not cast any stigma on the employee by the said order of termination the mere fact that there was an inquiry into his conduct earlier would not by itself render the termination invalid. Applying the said principle, if we see that the order of termination in the present case is an order of discharge simplicitor. But in the course of the inquiry, the Labour Court noticed that on an earlier day, there was some incident where the administrative officer found some lacunae in the working of the respondent but based on that no charge-sheet was served nor inquiry was conducted. However, the appellant came to the conclusion that it is not in its interest to continue respondent's services, hence, discharged him. In the background, the mere fact that there was a misconduct on the part of the respondent which was not enquired into ipso facto does not lead to the conclusion that the order of the termination is colourable and in fact is a punitive order.

xxx xxx xxx

Para 14. From the above, it is seen that in the absence of the three facts as mentioned therein, namely,

- (a) a full-scale formal enquiry;
- (b) into allegations involving moral turpitude or misconduct which;
- (c) culminated in a finding of guilt the termination cannot be held to be bad.

28. In the case of Pavanendra Narayan Verma (supra), while discussing as to when an order of termination amounts to stigma, it was held that even a preliminary enquiry to assess the suitability of the probationer, followed by orders of termination would not be stigmatic as long as the order of termination does not impugn something more than suitability. Holding so, the Supreme Court observed as below:

Para 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.

Para 32: We are also not prepared to hold that the enquiry held prior to order of termination turned this otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of three factors catalogued above for holding that the termination was in substance punitive exist here.

29. Same was the line of reasoning adopted in the case of State of Punjab and Others Vs. Sukhwinder Singh, wherein, while observing that even making of enquiries for the purpose of determining whether the employee concerned should be continued in service or not, it was held that the same would not make an otherwise innocuous order of termination or discharge, punitive in nature. Reference was made to the case of Ajit Singh and Others Vs. State of Punjab and Another, wherein it was observed as below:

Para 20: ...There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh and Ors. etc. v. State of Punjab and Anr. (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity

and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where Explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules.

30. In the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, where the facts were that a delinquent Laboratory Assistant who was granted two years' extraordinary leave for joining a foreign university applied for a further extension of leave for three years and the university while granting only one year's extension had forewarned the delinquent that no further extension would be granted and that in case he fails to resume duty he would be deemed to have vacated his post and the delinquent despite the forewarning given, accepted a further service contract with the foreign university and failed to resume duty in time, the Supreme Court held that the action of the university in holding that the delinquent had deemed vacated his post even if it was without show cause notice to him, cannot be faulted. It was observed as below:

Para 26: ...In other words, he was put on advance notice that it would not be possible to give any further extension i.e. beyond one year on the ground of continuance in the job at Libya and he was to resume duty by 18-4-82. In fact, thereafter some special consideration was still shown in his favor by way of granting him joining time up to 1-7-82. It was clearly said that otherwise he would be deemed to have vacated the post. If he had, in spite of this warning, gone ahead by accepting a further contract in Libya, it was, in our view, his own unilateral act in the teeth of the advance warning given. That conduct, the learned single Judge thought and in our view rightly to be sufficient to deny relief under Article 226.

Para 28: On the above facts, the absence of notice to show cause does not make any difference for the employee has already been told that if his further overstay is for continuing in the job in Libya, it is bound to be refused.

31. In the present case also, absence of notice to show cause or of affording an opportunity of hearing to the petitioner before passing the order dated 21st June, 2001 does not make any material difference inasmuch as the petitioner had been repeatedly informed by the respondent that her request for extension of leave could be considered only if she reported to duty and underwent a medical examination, followed by a memorandum rejecting her request for leave. The aforesaid being the admitted and undisputed position, no prejudice can be stated to have been caused to the petitioner, more so, when despite the memorandum dated 11th April, 2001 and show cause notice dated 12th April, 2001, the petitioner failed to satisfy the respondent No. 2 about a valid reason for

remaining on leave without prior sanction. Considering that the petitioner decided to join her husband at Andamans and took leave only for four days, from 26th to 29th December, 2000 but thereafter overstayed for a period of 120 days from 30th December, 2000 to 30th April, 2001, without any sanction and inspire of receiving a memorandum calling upon her to present herself for medical examination, it cannot be held that the petitioner was not given advance notice or that the principles of natural justice were violated by the respondents in any manner.

32. There is force in the contention of the learned Counsel for respondent No. 2 that the order of termination having been passed by respondent No. 2, pursuant to the proviso to Rule 5(1) of the Rules and the same having been upheld by the 1st Minister, there was no scope of review thereof by the 2nd Minister, particularly when the said Rule has not been challenged in the present proceedings. The services of the petitioner were terminated with effect from 7th May, 2001. The said order was upheld by the 1st Minister on 21st June, 2001. Proviso to Rule 5(2) of the Rules stipulates that no case shall be reopened after the expiry of three months from the said date. Thus a subsequent order of the 2nd Minister passed on 21st August, 2001 was without the authority of law.

33. Thus the plea of the learned Counsel for respondent No. 2 that there was no scope of a second review of the order being passed either by the Central Government of its own motion or otherwise, deserves to be upheld as the settled position of law is that quasi judicial authority cannot review its own order beyond the parameters of the power of review expressly conferred by the statute under which it derives its jurisdiction. Once the said power was exercised in the case of the petitioner by the competent Minister which is apparent from the note of the 1st Minister, then there was no scope of a second review by the 2nd Minister. The law on power of review has been enunciated in a number of cases, including the following:

- (i) Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji,
- (ii) State of Assam and Another Vs. J.N. Roy Biswas,
- (iii) R.R. Verma and Others Vs. Union of India (UOI) and Others,
- (iv) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others,
- (v) Indian National Congress (I) Vs. Institute of Social Welfare and Others,

34. The observations made by the 2nd Minister to the effect that the petitioner was not given an opportunity of hearing in accordance with the principles of natural justice, cannot stand in the light of the earlier memoranda and notice to show cause served on the petitioner by respondent No. 2, nor can the said observations made by the 2nd Minister be considered sufficient for carving out an exceptional case or special circumstances in favor of the petitioner so as to invoke the provisions of Rule 5(2) of the Rules, thus directing reopening of the

case of the petitioner, either on his own motion or on the basis of her representation, to pass orders for her reinstatement.

35. As the petitioner has sought support of the opinion of the Law Ministry, the court cannot but help take note of the manner in which the said Ministry has a probated and reprobated in giving opinions with regard to the legality of the termination orders of the petitioner. The Law Ministry gave three opinions in the matter. The first one dated 7th April, 2003 upheld the order of termination of the petitioner after duly taking note of the order of the 2nd Minister dated 27th August, 2001. In the second opinion dated 5th November, 2003, the Ministry reiterated its earlier stand, despite another order of the 2nd Minister dated 1st September, 2003 passed on the earlier lines, directing reinstatement of the petitioner. However, in the third note dated 27th July, 2004, a complete somersault was done in the legal opinion rendered on the very same facts and circumstances. In the last opinion, under the garb of claiming that the factual position of non-approval of the Central Government of the termination order of the petitioner was not brought to its notice, it was stated that the termination order of the petitioner could not be treated as valid in law. However, upon perusal of the relevant file, particularly the earlier notes of the Law Department dated 7th April, 2003 and 5th November, 2003, it is manifest that the Law Department has backtracked from its earlier opinions for invalid and unjustified reasons. In the first noting, there was a detailed discussion not only of the relevant facts which were required to be examined for giving an opinion, but also with regard to the powers of the respondent No. 2. The aforesaid note dated 7th April, 2003 is reproduced hereinbelow:

The issue under consideration is whether the Central Government is competent to interfere in the matter of termination of services of Dr. Mrs. Sarita Sarangi, Deputy Director, in Rehabilitation Council of India (RCI) under Rule 5 of the CCS (Termination Services) Rules, 1965.

2. The Rehabilitation Council of India was constituted in terms of Section 3 of the Rehabilitation Council of India Act, 1992. The RCI is thus, a statutory body and interference of the Central Government is permissible only to the extent as provided under the RCI Act. u/s 18 of the Act the Central Government is competent to appoint the Member Secretary of the Council whereas the Council, with the previous sanction of the Central Government is competent to appoint such officers and other employees as it deems necessary to carry out the purpose of this Act. Dr. Sarangi was appointed by the Council in terms of Section 8 of the said Act. That means the Council is the competent authority/appointing authority in the matter of the employment of Dr. Sarangi.

3. Regulation 18 of the RCI (Conditions of Service of the Member Secretary, Officers and Other Employees) Regulations 1998 provides the general conditions of service, which includes the application of CCS (Temporary Services) Rules, 1965 to its employees. It may be recalled that the CCS (Temporary Services) Rules 1965 shall apply to the employee of the Council subject to the provisions of

RCI Act. In other words, the Council can adopt the Temporary Service Rules with such modifications and exceptions to bring them in conformity with the RCI Act empowers the Council to appoint the officers and staff, with the previous sanction of the Central Government, it does not imply that the Central Government should be consulted on all the disciplinary matters including the matters relating the termination of services of its employees. For the purpose of Rule 5(2) of Temporary Service Rules the chairperson of the Council should be taken as the Central Government if it is an authority superior to the Council for the purposes of review/recalling of the matter. In other words, the Central Government has no role to play in the matter of termination of services of the officers and staff under Rule 5 of the Temporary Service Rules.

4. It may also be recalled that Dr. Sarangi has made a representation to the Minister of Social Justice and Empowerment after termination of her services under Rule 5 of the Temporary Services Rules. The then Minister for Social Justice and Empowerment after examining the matter in great detail had expressed her inability to modify the order of termination passed by the RCI. Therefore, even if assuming that the Central Government is having the power under Rule 5 of the Temporary Service Rules, then that power has to be exercised once and not twice. This power to interfere under Rule 5(2) of the Temporary Service Rules has been exercised by the Central Government and at this stage Dr. Sarangi has not made out any strong case for review of the decision of the Council of the decision taken by the then Minister for Social Justice and Empowerment.

36. In the light of the aforesaid detailed discussion reiterated as late as in November 2003, there was no justification whatsoever for the Ministry to have reneged later on and claim that non-approval of Central Government of the termination order of the petitioner was not brought to its notice earlier. No wonder, the then Joint Secretary(DD) took pains to highlight the said conduct of the Law Ministry in the note dated 1st October, 2004, as below:

16. In this second instant opinion of JS(RLK) as to non-disclosure of facts is not correct since initially when the file was referred to Minister of Law vide on 5.11.2002 (page 12/ante), a copy of RCI Act 1992, RCI (Amendment) Act, 2002 RCI regulations dated 27.3.1997 and 22.4.1998 along with personal file of Dr. Sarangi were provided. Additionally, discussions were held with Dir.(JM). The first opinion was given on points even beyond the simple point of reference i.e. Competence of the Central Government in the matter of termination of Dr. Sarangi under RCI Rules etc. Law then opined that "for the purpose of Rule 5(2) of Temporary Service Rules the chairperson of the Council should be taken as the Central Government if it is an authority superior to the Central for the purposes of review/recalling of the matter. In other words, the Central Government has no role to play in the matter of termination of services of the officers and staff under Rule 5 of the Temporary Service Rules."

17. Even if the latest opinion of Law (as given) is taken cognisance of, the sum

and substance of it seems to be that on account of non-approval of Central Government to the termination order "the said termination order is invalid," is not based on the full appreciation of facts. The facts are:

(i) No prior, or subsequent approval, of Government as contemplated in Sub-section (2) of Section 8 RCI Act 1992 was taken by RCI in appointing Dr. Sarangi. The whole appointment (and consequently monies paid to her and appointment (and consequently monies paid to her and services taken from her) is irregular and illegal.

(ii) While no prior approval for termination was taken in the matter of termination the order of the then MOS (SJandE) dated 21/6/2001 is in the nature of a post-facto ratification and confirmation of the termination Order in its categorical statement "...Let the termination stand.

18. The order of the MOS (SJandE) was not passed on a representation for review of the termination order dated 7.5.2001 for by that date Dr. Sarangi had made no representation. When Dr. Sarangi did make her representation on 24.7.2001, in recording the categorical order, "file" the representation would deem to have been disposed of.

19. The subsequent application made by Dr. Sarangi after a gap of 7 months and a change of Minister and JS(DD) appears to have been made to ensure the appropriate non-recalling of institutional memory. This file suffers from a continuous change of dealing hands/JS, Secretaries etc. leading to an ambiguous situation which has been sought to be taken advantage of by Dy. Sarangi.

37. In the light of the aforesaid discussion, this Court has no hesitation in concluding that the termination order of the petitioner who was appointed on a purely temporary basis and whose services were terminated well within the period of her probation, does not suffer from any infirmity or illegality. Knowing that the chances of change of heart in the case of the 1st Minister were remote, the petitioner sought change of fortune with the change of the concerned Minister and the 2nd Minister apparently turned out to be more favorably inclined to review her case, notwithstanding the fact that the Rules did not provide for reviewing/reopening the case after a period of three months from date of the order of termination and that in the given facts and circumstances, in any case, there existed no special circumstances that warranted the case of the petitioner to have been reviewed/reopened. There were no grounds made out for carving out special circumstances to reopen the case of the petitioner under Rule 5(2) of the Rules and those that were recorded by the 2nd Minister in the noting dated 27th August, 2001 with regard to violation of principles of natural justice, are not borne out from the record as the respondent No. 2 had served upon the petitioner, a memorandum dated 11th April, 2001 rejecting the request of the petitioner for leave and a notice dated 12th April, 2001 calling upon her to show cause as to why disciplinary action be not initiated against her. Hence the petitioner as put to notice and ample opportunity was afforded to the petitioner

to explain her case. 38 For the reasons stated above, it is held that the termination order dated 7th May, 2001, terminating the services of the petitioner within the probationary period, is legal and valid. The writ petition Therefore fails and stands rejected. No orders as to costs.