
(2008) 10 PAT CK 0039
In the Patna High Court
Case No : CWJC No. 7269 of 2006

Hari Kant Choudhary

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (2009) 3 PLJR 369

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, Jayant Kumar Karn, Hemant Kumar Karn and Nishant Choudhary, for the Appellant; K.K. Jha for the Respondent Nos. 1 to 4 and Mr. S.K. Bariar for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

1. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner takes exception to the order dated 8th December, 2005 passed by the Central Administrative Tribunal, Patna Bench, Patna, whereby the Tribunal allowed the original application filed by the present respondent no, 5 and set aside the appointment of petitioner to the post of Extra Departmental Mail Carrier in the Postal Department and direction has been given to reinstate the present respondent No. 5 with the continuity of service. Bereft of unnecessary details, the facts in brief are that the Sahiyara Branch Post Office advertised for appointment of Extra Departmental Mail Carrier (now Gramin Dak Sewak Mail Carrier) through the Employment Exchange, Sitamarhi, somewhere in the month of December, 1998. The petitioner, the present respondent No. 5 and one Hari Kishore Prasad participated and ultimately the petitioner was appointed to the post of Extra Departmental Mail Carrier vide order dated 10th March, 1999. He was found to have given false date of birth and, accordingly, he was terminated from service vide order dated 4th April, 2000. He challenged the order of termination before the Central Administrative Tribunal. During pendency

of the original application the present respondent No. 5 was appointed to the post of Extra Departmental Mail Carrier. The services of respondent No. 5 came to be terminated vide order dated 10th September, 2002. By a separate order of the even date, the present petitioner was given fresh appointment to the post of Extra Departmental Mail Carrier. The present respondent No. 5 (original applicant) challenged the order of his termination before the Central Administrative Tribunal and the appointment of the present petitioner. The order of termination dated 10th September, 2002 was principally challenged on the ground of non-compliance of the relevant rules before termination of the petitioner's services.

2. The postal authorities set-up a stand before the Central Administrative Tribunal that the termination of the original applicant (present respondent No. 5) was termination simpliciter under Rule 8 of Gramin Dak Sevak (Conduct and Employment) Rules corresponding to Rule 6 of Post & Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, and, therefore, there was no necessity to hold any disciplinary enquiry.

3. The Central Administrative Tribunal was of the view that even though the order of termination is termination simpliciter, the veil was required to be lifted and upon lifting the veil, the termination order is found to be punitive in nature and since the order was passed without holding an enquiry, it was bad in law. Consequently, the Tribunal vide its order dated 8th December, 2005 quashed and set aside the termination order dated 10th September, 2002. Since the present petitioner (respondent No. 5 therein) was appointed in place of the original applicant, the Tribunal quashed and set aside the order of appointment of the respondent No. 5 (present petitioner).

4. Post & Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, inter alia, provides for termination of service of an employee, who has not rendered more than three years of continued service, by giving him a notice of one month or by payment of basic allowance plus dearness allowance in lieu thereof.

Rule 6 of the Rules of 1964 reads thus:--

"6. Termination of Services.-- (a) The services of an employee who has not already rendered more than three years" continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

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

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his Basic Allowance plus Dearness Allowance 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."

5. The Rules of 1964 have been replaced by G.D.C. (Conduct and Employment) Rules, 2001. The nomenclature of Extra Departmental Agents has been changed to Gramin Dak Sevaks. Rule 8 thereof provides for termination of employment of Gramin Dak Sevak. It is exactly identical to erstwhile Rule 6 of Rules of 1964 and reads thus:--

"8. Termination of Employment.-- (1) The employment of a Sevak who has not already rendered more than three years" continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rate at which he was drawing them immediately before the termination of his employment or, as the case may be, for the period by which such notice falls short of one month."

6. The order dated 10th September, 2002, whereby the services of the present respondent No. 5 came to be terminated reads thus:--

"Department of Post. India

O/o the Inspector Posts, Sitamarhi West Sub-Division, Sitamarhi.

Memo No. A--Sahiara/99 Dtd. at Sitamarhi the 10.9.2002.

In pursuance of the provision to Rule 8 of G.D.S. (Conduct and Employment) Rules, 2001, I, Umesh Pandey, Inspector Posts, West Sub-Division, Sitamarhi hereby terminate (forthwith) the services of Shri Sitaram Prasad G.D.S.M.C. Sahiara B.O. in a/c with Majorganj S.O. (Sitamarhi). The due amount of basic allowance plus dearness allowance at the same rates at which he was drawing thereon immediately before the termination of his service is being remitted in lieu of notice of one month or for the period by which such notice falls short of one month by M.O.

To, Shri Sitaram Prasad G.D.S.M.C. Sahiara B.O. Via- Majorganj S.O. Distt.- Sitamarhi

Inspector Posts West Sub-Division, Sitamarhi

Copy to:

(1) The Postmaster, Sitamarhi, H.O. He will kindly remit the basic allowance plus D.A. to Shri Sitaram Prasad by M.O. immediately.

(2) The G.D.S.B.M. Sahiara B.O. Via-Majorganj S.O.

(3) The S.P.M., Majorganj S.O. (Sitamarhi).

(4) The Superintendent of Post Offices, Sitamarhi Division with reference to his No. A-384 dtd. 9.9.2002.

Inspector Posts West Sub-Division, Sitamarhi"

7. Upon reading of the order dated 10th September, 2002 it is apparent that the service of respondent No. 5 has been terminated by invoking Rule 8 of Rules of 2001. Alongwith the notice, due amount of basic allowance plus dearness allowance at the same rate has been forwarded to him. That the respondent No. 5 has not completed three years of continuous service from the date of his appointment is not in dispute. From its text, the order dated 10th September, 2002 seems to be nothing but an order of termination simpliciter. However, the question that needs to be considered by us is: whether in view of some enquiry having been made against the present respondent No. 5 in respect of the complaints received from the present petitioner that he (respondent No. 5) procured service by submitting forged documents and false date of birth, whether the order of termination was punitive in nature and not simpliciter?

8. It is an admitted position that no disciplinary enquiry as contemplated in Rule 10 of GDS (Conduct and Employment) Rules, 2001 was instituted against the present respondent No. 5. The procedure for imposing a penalty has been contemplated in Rule 10 and it is as follows:--

"10. Procedure for imposing a penalty,--(1) No orders imposing a penalty shall be passed except after--

(a) the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make; and

(b) such representation, if any, is taken into consideration by the Appointing Authority:

Provided that the penalty of dismissal or removal from employment shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges:

Provided further that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry.

(2) The record of proceedings shall include--

(i) a copy of the intimation to the Sevak of the proposal to take action against him;

- (ii) a copy of the statement of allegations, alongwith a list of evidence in support thereof, communicated to him;
- (iii) his representation, if any;
- (iv) the records of the enquiry proceedings alongwith the enquiry report of the appointing authority or Enquiry Officer, if any, appointed in a case whereas formal enquiry is necessary;
- (v) the representation, if any, of the Sevak on the Inquiry Officer's report;
- (vi) findings of the appointing authority in respect of the allegations, with reasons therefore; and
- (vii) the order imposing the penalty."

9. The notice that was given to the present respondent No. 5 has been placed on record as Annexure-11, which reads thus:--

Regd.A/D.

"Department of Posts, India. Memo No. A-Sahara 130/02 O/o the Inspector of Posts Sitamarhi Post Sub. Dn. Dated at Sitamarhi-10.5.02

In pursuance of D.O., Sitamarhi Letter No. A-384 dt. 10.5.02 a show cause notice proposing termination of appointment of Sri Sitaram Prasad, IDS vide Sahara B.O. India with Majorganj S.O. under Sitamarhi Dn., is hereby issued and Sri Sitaram Prasad is given an opportunity of making representation of the issue of termination on the following counts:--

The date of birth of Sri Sitaram Prasad is 4th February, 1973 according to S.L.A. submitted by him at the time of appointment while the concerned board and the Headmaster, Sahyogi High School, have reported his date of birth as 8th February, 1973.

Any representation which he may wish to make against the proposal of termination will be considered by the undersigned. Such a representation, if any, should be made in minutes and submitted so as to reach to the undersigned not later than fifteen days (15) from the date of receipt of this Memorandum by Sri Sitaram Prasad.

The receipt of this memorandum should be acknowledged.

To

Sri Sitaram Prasad Sub-Mail Carrier Sahara, B.O. Via-Majorganj S.O. Distt.- Sitamarhi.

Sd/- Illegible Inspector of Posts Sitamarhi West Sub-Dn. Sitamarhi-843301"

10. Pursuant to the aforesaid notice, the present respondent No. 5 sent his response and set-up the plea that due to clerical error in his school leaving

certificate, date of birth was mentioned as 4th February, 1973 in place of 8th February, 1973. Ultimately, the services of respondent No. 5 came to be terminated under the provisions of Rule 8 of the Rules of 2001 and no enquiry into Rule 10 of the Rules was held.

11. Although there is long line of cases on the subject, we do not deem it necessary to refer to all these decisions. A reference to few decisions will suffice.

12. The Constitution Bench of the Supreme Court in the case of Champaklal Chimanlal Shah Vs. The Union of India (UOI), made these weighty observations:--

"Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already Government does not usually take action of this kind without any reason. Therefore, when a preliminary enquiry of this nature is held in the case of a temporary employee or a Government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the Government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Art. 311(2) for that enquiry is really for the satisfaction of Government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Art. 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the Government servant gets the protection of Art. 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting

on the Government servant one of the three major punishments indicated in Art. 311 that the Government servant is entitled to the protection of that Article. That is why this Court emphasized in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, that the motive or the inducing factor which influences the Government to take action under the terms of contract employment or the specific service rule is irrelevant."

13. In the case of *State of Punjab and Others Vs. Balbir Singh*, , the Supreme Court referred to some of its previous decisions and considered the matter thus:--

"4. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, this Court said (SCR pp. 861-64)

"The position may, therefore, be summed up as follows:--Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in *Satish Chandra Anand Vs. The Union of India (UOI)*, . Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, . In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J. has said in *Shrinivas Ganesh Vs. Union of India*, , wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within

Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowance or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely: (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

5. Thus, the order of discharge simpliciter, prima facie, is not punitive, it being in terms of Punjab Police Rule 12.21 but the question still is whether the incident which led to the passing of that order was motive or inducing factor or was the foundation of order of discharge.

6. The test to determine whether the misconduct is "motive" or the "foundation" of an order of discharge was laid down after exhaustively dealing with the case-law on the topic in the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, as follows: (SCC pp. 35-36, paras 33-34).

"33. 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 case* (*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 *Sukh Raj Bahadur case* (*State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, , and in *Benjamin case* (*Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, . 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 case*, [*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.

34. 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."

(emphasis supplied)

7. Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of *State of Orissa vs. Ram Narayan Das*. It was held that one should look into "object or purpose of the enquiry" and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (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 inasmuch as the purpose of the enquiry was held to be to find out if the employee could be confirmed. The purpose of the enquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.

8. In the case of *Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Others*, , it was observed that the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process, it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from the service on the foundation of his misconduct. In this case the respondent-Corporation, in terms of Clause 2 of the appointment order terminated the services of the appellant, who was a probationer, on charges of grave misconduct and repeated dereliction of duty tantamounting to unsatisfactory performance. It was his duty to inspect all the commodities received by the Corporation at the depots and to verify the quality of goods in conformity with the specifications given by the head office. It was alleged that he had betrayed the confidence reposed in him as a responsible officer of the Corporation by accepting substandard quality goods in collusion with suppliers for undue pecuniary benefits. The termination orders were upheld by this Court.

9. In the case of *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, , this Court laid down the test to determine the nature of the

termination order i.e. whether the termination is punitive or simpliciter. The Court observed that one of the judicially involved 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 facts is missing, the termination has to be upheld.

10. Krishna Iyer, J. in the case of Gujarat Steel Tubes Ltd. vs. Mazdoor Sabha observed that a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal. If there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations but if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad.

11. In the light of the above legal position, we will now determine whether, in substance, the order of discharge in the present case is punitive in nature. For this purpose it would be necessary to ascertain, firstly, the "nature of enquiry" i.e. whether the termination is preceded by a full-scale format enquiry into allegations involving misconduct on the part of the respondent, which culminated in the finding of guilt, and, secondly, the "purpose of the enquiry" i.e. whether the purpose of the enquiry is to find out any misconduct on the part of the employee or it is aimed at finding out as to the respondent being unlikely to prove as an efficient police officer.

12. According to the facts on record, no enquiry of the nature specified above was held in the present case. It is a case of discharge simpliciter. Nothing much turns upon the observations made by the Deputy Inspector General of Police in his order dated 8.10.1993 while deciding the appeal of the respondent. The respondent consumed liquor and misbehaved with a lady constable. He was medically examined. On this basis, coming to the conclusion that he was unlikely to prove himself an efficient police officer, an order of discharge under Punjab Police Rule 12.21 was passed. There was no enquiry. There was no stigma of punishment. It seems that while deciding the appeal of the respondent, the Deputy Inspector General of Police has referred to prima facie finding out of

approved facts as a departmental enquiry and the observations of the Deputy Inspector General of Police have been misconstrued by courts below."

14. The legal position is well settled that mere holding of preliminary enquiry or the explanation called from the employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. In the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, , it was held that 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 the three factors are present, it has been held that the termination would be punitive irrespective of the form of the termination order. Conversely, if any of the three factors is missing the termination would not get affected.

15. Applying aforesaid principle of law to the facts of the present case, it would be seen that neither a full-fledged formal enquiry under Rule 10 of the Rules of 2001 was initiated against the present respondent No. 5 nor any enquiry culminated in a finding of guilt. The enquiry was in the nature of preliminary enquiry, which at best might have been held for a formal departmental enquiry. As has been clarified by the Constitution Bench of the Supreme Court in the case of Champaklal vs. Union of India, a preliminary enquiry is not to be confused with the regular department enquiry (which usually follows such a preliminary enquiry).

16. The finding of the Central Administrative Tribunal, thus, that the order of termination dated 10th September, 2002, is punitive in nature is not in conformity with settled law and cannot be sustained.

17. The order dated 10th September, 2002 plainly suggests that it is an order of termination simpliciter casting no stigma nor misconduct, and, therefore, cannot be held to be punitive in nature.

18. Consequently, writ petition has to be allowed and is allowed and the order dated 8th September, 2005 passed by the Central Administrative Tribunal is quashed and set aside. As a result thereof, the original application filed by the respondent No. 5 before the Tribunal stands dismissed. Parties shall bear their expense lilies.