

(2012) 02 DEL CK 0432

In the Delhi High Court

Case No : Writ Petition (C) 58 of 2011

National Board of Examinations

APPELLANT

Vs

Rajni Bajaj and Another

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 311, 311(2)

Citation : (2012) 189 DLT 653

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : J.L. Gupta, Mr. Mukul Gupta, Dr. Rakesh Gosain, Mr. Sanjiv Joshi and Mr. Achit Sharma, for the Appellant; M.K. Bhardwaj, Advocate for Respondent No. 1, Mr. Sachin Datta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—This writ petition is directed against the order dated 29.9.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in M.A. No. 2023/2010 in T.A. No. 1441/2009. The respondent No. 1 before this Court, Ms. Rajni Bajaj was appointed as a Data Entry Operator with the petitioner National Board of Examinations, vide letter dated 4.7.2002 and was put on probation for a period of two years. The appointment letter provided that the period of probation could be extended at the discretion of the competent authority. Vide letter dated 18.5.2005, the probation of respondent No. 1 was extended for a period of six months with effect from 28.4.2005. Vide letter dated 5.12.2005, the services of respondent No. 1 were terminated by the petitioner on the ground that during probation period, her services were not found to be satisfactory. The termination letter was challenged by the respondent No. 1 before this Court by way of Writ Petition No. 1609/2006, which was later on transferred to Central Administrative Tribunal and was registered T.A. No. 1441/2009.

2. The case of the petitioner is that the aforesaid T.A. was listed before the

Tribunal on 11.11.2009 without its knowledge. The Tribunal vide order dated 11.11.2009, set aside the order dated 5.12.2005 and directed the petitioner before this Court to reinstate the respondent No. 1 as Data Entry Operator w.e.f. 5.12.2005 with all benefits, within a period of 3 months. W.P. (C) No. 13475/2009 was filed by the petitioner challenging the order passed by the Tribunal on 11.11.2009. It was contended by the petitioner that when its Counsel appeared before the Tribunal on 4.11.2009, he noted the next date of hearing as 8.12.2009 though in fact, the matter had been adjourned to 11.11.2009.

While passing the order dated 11.11.2009 the Tribunal noted that the performance of the respondent No. 1 during the period of probation had been found to be good. The Tribunal therefore was of the view that holding her performance to be unsatisfactory, without indicating any reason and without producing any material in this regard, the authority concerned had taken a contradictory stand. It was observed by the Tribunal that extension of the probation and discharging the applicant from service, despite the fact that unsatisfactory performance had not been established from the record of the petitioner (respondent before the Tribunal), was not tenable in law and was an illegality.

3. Vide order dated 22.7.2010, this Court felt that the correct step to be taken by the petitioner was to move an application under Rule 16 of Central Administrative Tribunal (Procedure, Rules, 1987 and while dismissing the Writ Petition as withdrawn, directed that if the petitioner was to file an application under Rule 16 of the aforesaid Rules, on the issue of limitation, the Tribunal would take note of the fact that the aforesaid Writ Petition was filed on 26.11.2009 and was disposed of as withdrawn on 22.7.2010. MA No. 2023/2010 was thereafter filed by the petitioner which was dismissed vide impugned order dated 29.9.2010. While passing the impugned order dated 29.9.2010 the Tribunal observed that this was not a case where the concept of deemed confirmation could be applicable. The Tribunal also upheld the jurisdiction of the petitioner (respondent before the Tribunal) to terminate the service of the petitioner before them (respondent No. 1 herein) in the event of her performance being found to be unsatisfactory. The Tribunal noted that there was a gap of 9 months and 23 days between 4.7.2004 when the initial period of probation expired and 28.4.2005 when the probation was extended. The Tribunal took note of the fact that the ACRs of the petitioner before them (respondent No. 1 before this Court) for the years 2002-03, 2003-04 was "very good" whereas for the third year her performance was rated as "good" by the Reporting Officer though the Reviewing Officer assessed her performance to be "average" and also observed that there was need on her part to improve her computer skills. The Tribunal was of the view that the "average" assessment by the Reviewing Officer by the third year had been viewed in isolation without considering the performance for the previous two years in the right perspective and the observations made by the Reviewing Authority for the third year was not preceded by any advisory or warning memo. The Tribunal, therefore, found no ground to change the view

taken vide its earlier order dated 11.11.2009 and dismissed the application filed by the petitioner.

4. Clauses (b) & (c) of the appointment letter dated 4.7.2002 whereby the respondent No. 1 was appointed as Data Entry Operator with the petitioner, read as under:

The post is temporary but likely to continue. You will be on probation for a period of two years from the date of your appointment which may be extended at the discretion of the competent authority.

During the period of probation, you will be required to undergo such training as Board may prescribe. Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to be discharged from service at any time without any notice and assigning any reason. After the satisfactory completion of the period of probation the termination of the appointment will be after giving one month's notice on either side. The appointing authority, however, reserves the right of terminating your services forthwith or before the expiration of the stipulated period of notice by making payment to you of a sum equivalent of the pay and allowances for the period of notice or the unexpired portion thereof.

It would thus be seen that the Appointment Letter did not fix any maximum period upto which the probation of the respondent could be extended. The petitioner was entitled to extend the probation from time-to-time, for such period as was deemed appropriate by it. The Appointment Letter did not envisage deemed confirmation, on failure of the petitioner to extend the period of probation, after the initial period of 2 years was over.

5. In *Sukhbans Singh Vs. State of Punjab*, , the Constitution Bench of Supreme Court took the view that an employee appointed on probation, does not, on expiry of the probation period, automatically become a permanent member of the service to which he was appointed unless the Rules governing his appointment provide for such a result. In *State of Punjab Vs. Dharam Singh*, , the Constitution Bench held that "where on the completion of the specified period of probation an employee is allowed to continue in the post without an order of confirmation, in the absence of anything to the contrary in the original order of appointment or promotion or the Services Rules, the initial period of probation is deemed to be extended by necessary implication". In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is not possible to hold that he should be deemed to have confirmed. In *Pratap Singh Vs. Union Territory of Chandigarh*, , Supreme Court again held that an employee cannot be deemed to be confirmed even at the end of the period for which he was put on probation unless an order of confirmation is expressly issued. In AIR 2000 1706 (SC) , the petitioner was on probation for two years. The regulations governing his service

conditions did not provide for any maximum period beyond which the period of probation could not be extended. Supreme Court held that in absence of such a prohibition in the Rules, the appellant did not acquire the status of a permanent employee even on successful completion of two years" probation period.

Thus, in absence of any Rule to the contrary, an employee continues to be on probation unless he/she is confirmed on the post to which he/she is appointed on probation and there is no deemed confirmation merely on account of failure of the employer to extend the period of probation. Rather, there is a presumption of deemed extension of probation of the employee. The respondent No. 1 before this Court, therefore, continued to remain on probation, till the time her services were terminated.

6. As regards the cases where the rules provide for a maximum period of probation and no order of confirmation is passed and the probationer is allowed to continue even after completion of the maximum period of probation, there have been different lines of thinking in decisions of the Apex Court. The view taken by the Apex Court in *Dharam Singh (supra)* and *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, was that if the Rules prescribe a maximum period of probation and the employer permits the employee to continue in service even after expiry of that period, it may be possible for the Court to infer deemed confirmation of the employee. In *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, , the relevant Service Rules required, besides successful completion of probation, passing of a departmental test as an essential pre-condition for confirmation. It was held that mere expiry of the period of probation did not automatically have the effect of deemed confirmation. In *Chief General Manager, State Bank of India and Another Vs. Bijoy Kumar Mishra*, Supreme Court again held that deemed confirmation can be inferred from the positive act of employer in permitting the employee to continue to work on the post even after completion of the maximum period of probation permitted under the service rules. In *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, , Supreme Court was of the view that unless the terms of appointment clearly indicate that the confirmation would automatically follow at the end of the specified period, or there is a specific Rule to that effect, the expiration of the probation period does not necessarily lead to confirmation and at the end of the period of probation, an order confirming the officer is required to be passed. Somewhat similar view was taken in *Mohd. Salman Vs. Committee of Management and Others*, . These somewhat different lines of thought were noticed by Supreme Court in *Khazia Mohammed Muzammil Vs. The State of Karnataka and Another*, , and the legal proposition in the matter was enunciated as follows:

On a clear analysis of the above enunciated law, particularly, the Seven Judge Bench judgment of this Court in the case of *Samsher Singh (supra)* and three Judge Bench judgments, which are certainly the larger Benches and are binding on us, the Courts have taken the view with reference to the facts and relevant

Rules involved in those cases that the principle of "automatic" or "deemed confirmation" would not be attracted. The pith and substance of the stated principles of law is that it will be the facts and the Rules, which will have to be examined by the Courts as a condition precedent to the application of the dictum stated in, any of the line of the cast's afore noticed.

There can be cases where the Rules require a definite act on the part of the employer before officer on probation can be confirmed. In other words, there may a Rule or Regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction issue an order of confirmation. Where the Rules are of this nature the question of automatic confirmation would not even arise. Of course, every authority is expected to act properly and expeditiously. It cannot and ought not to keep issuance of such order in abeyance without any reason or justification. While there could be some other cases where the Rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties, even in those cases it is difficult to attract the application of this doctrine. However, there will be cases where not only such specific Rules, as noticed above, are absent but the Rules specifically prohibit extension of the period of probation or even specifically provide that upon expiry of that period he shall attain the status of a temporary or a confirmed employee. In such cases, again, two situations would rise: one, that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The Courts have repeatedly held that it may not be possible to prescribe a strait-jacket formula of universal implementation for all cases involving such questions. It will always depend upon the facts of a case and the relevant Rules applicable to that service.

The learned Counsel for the petitioner has relied upon an order dated 27.10.2005 of Division Bench of this Court rendered in LPA No. 1902/2005 Dr. Archana Dayal v. Union of India & Others wherein the appellant was on probation. Her services were terminated on the ground her performance being unsatisfactory. The termination was challenged in a Writ Petition which was dismissed by a learned Single Judge of this Court. Being aggrieved by the order, the appellant filed a Letters Patent Appeal impugning the order passed by the learned Single Judge. It was contended on behalf of the appellant that she having successfully completed her initial period of probation she was deemed to have confirmed in the post to which she was appointed and therefore no order terminating her services could have been passed. The contention was rejected after noting that the appointment letter clearly stipulated that on appointment the appellant would in probation for a period of 2 years from the date of appointment which could be extended at the discretion of the competent authority. Clause (c) of the Appointment Letter in that case also stipulated that failure of the appellant to complete the period of probation to the satisfaction of the competent authority

would render her liable to be discharged from service at any time, without any notice and assigning any reason. Thus, the appointment letter issued to the appellant in the aforesaid case was identical to the appointment letter issued to the respondent before this Court. The Division Bench upheld the view taken by the learned Single Judge that no order having been passed by the respondents confirming the services of the appellant, she continued to be on probation.

7. As regards termination of the services of the respondent No. 1, it is settled proposition of law that an order terminating the services of a probationer on the ground of unsuitability cannot be termed as stigmatic or punitive though in appropriate cases, it is open to the Court to lift the veil in order to ascertain as to what was the real motive and foundation for terminating the services of the employee.

8. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , Supreme Court *inter alia* held as under:

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 v. Union of India (supra)*, 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.

In *Benjamin (AG) v. Union of India*, (1967) 1 LLJ 718 (SC) explaining its decision in *Parshotam Lal Dhingra case (Supra)* supreme Court followed the following two tests mentioned in *Dhingra's* case:

(1) Whether the temporary Government servant had a right to the post or the rank, or

(2) Whether he has been visited with evil consequences.

In this case, a notice had been sent to the employee to show-cause why disciplinary action be not taken against him. This was followed by appointment of an Inquiry Officer, but, before the inquiry could be completed the services of the employee were terminated. The Constitution Bench upheld the order of termination and drew a distinction between preliminary inquiry and a

departmental inquiry holding that a preliminary inquiry has also to satisfy the Government whether there were no reasons to dispense with the services of the temporary employee and such an inquiry should not be mistaken for a departmental inquiry which is held to decide what punitive action should be taken against the employee concerned.

In *H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc.*, , a Munsif appointed as a probationer was discharged from service. The order of termination mentioned that he was "unsuitable" to hold the post of Munsif. Supreme Court held that the order did not cast any stigma on the employee and was not punitive.

In *Samsher Singh Vs. State of Punjab and Another*, Supreme Court was of the view that when a full scale inquiry is held against the probationer, or a temporary appointer and he is found guilty, an order terminating his services for this reason was punitive and bad in law. The Court was of the view that in such cases, the Court could look behind the form of the order, to find out whether the termination was, in substance, punitive or not. The legal position in this regard was enunciated by the Court as under:

Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved, in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an inquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.

In *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, , the termination of the employee was preceded by an inquiry. It was held that such an inquiry did not convert the order of termination into one of punishment.

9. In *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, , Supreme Court was of the view that when the appointment of a probationer is terminated, it would generally mean that he is unfit for the job to which he was appointed. Observing that in a strict sense stigma is implicit in the termination, a simple termination is not stigmatic, the Court was of the view that a simple termination is not stigmatic and that in order to amount to a stigma the order must be couched in a language which imputes something over and above mere unsuitability for the job. Supreme Court held that one of the judicially

evolved tests to determine, whether in substance an order for termination is punitive, is to see whether prior to the termination there was full scale formal inquiry into allegations involving moral turpitude or misconduct, which culminated in a finding of guilt. It was further observed that even where all the three factors referred to above were present, the termination had been held to be not punitive.

10. The legal proposition thus can be summarized as under:

Though, inefficiency, negligence or misconduct of the employee may have been the factors which induced the employer to terminate the services of a temporary employee or a probationer, that by itself does not render the order of termination punitive. However, the Courts can, in appropriate cases, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is actually as innocent as is worded or not. An order of termination does not become punitive merely because of an inquiry having preceded the termination, so long as the real job or purpose of the inquiry was to assess the general unsuitability of the employee. An order terminating the services under the rules of employment does not attract the operation of Article 311 of the Constitution of India. If, however, the order terminating the services visits the public servant with penal consequences or casts aspersion against his character or integrity, it must be held to be one by way of punishment even if the employee or a probationer or a temporary servant at that time. The Court can in appropriate cases examine the circumstances preceding or attending the order of termination and the form of the order would not be conclusive of its true nature, the determinative factor being the foundation and not the form of the order. If an inquiry is held to determine the suitability of a probationer for his continued retention in service or confirmation, the order passed on the basis of such an inquiry would not be punitive in nature. If, however, inquiry is held on allegation of misconduct, the order terminating the services is passed on such an inquiry, the order would be punitive being founded on misconduct. In such a case, it cannot be said that the misconduct was merely a motive and not the foundation for terminating the services of the employee.

11. In the case before this Court, the order dated 5.12.2005 to the extent it is relevant reads as under:

As per the terms of your appointment, you were on probation initially for a period of two years and extendable as per rules.

During your probation period, which had been extended in the interim and continues till date, your services have not been found to be satisfactory.

It would thus be seen that on the face of it, the letter whereby the services of the respondent No. 1 were terminated, does not appear to be stigmatic and appears to be an order for discharge on account of the performance of the respondent No. 1 having not been found to be satisfactory. Admittedly, no inquiry was held against the respondent No. 1 before terminating her services.

Therefore, this is not a case where the inquiry was held against the employee, he/she was found to be guilty and the employer instead of proceeding departmentally chose to terminate the services of the employee and therefore the order of termination carried a stigma attached to it. Even otherwise, there is no material placed before us to indicate that the order was punitive in nature or actuated by any mala fide consideration. There is no material on record to suggest that the order terminating the services of the respondent No. 1 was founded on any charges and misconduct against her. Therefore, it cannot be said that the order whereby the services of the respondent No. 1 were terminated, entailed any evil consequences for the respondent No. 1 or was otherwise punitive in nature.

It is true that the ACR of the respondent No. 1 for the years 2002-03 and 2003-04 were found to be "very good" but, her ACR for the year 2004-05 was available to the petitioner before it decided to terminate the services of the respondent No. 1. The Reviewing Officer whose assessment supersedes that of the Reporting Officer had graded the performance of the respondent No. 1 as "average" and was of the view that she required to improve her computer skills and her overall performance needed to be watched before her services were confirmed. These grounds were recorded on 28.4.2005. As noted earlier, there is no allegation of mala fide against the Reviewing Officer. The order terminating the services of the respondent No. 1 came to be passed after more than 7 months of the aforesaid remarks being recorded by the Reviewing Officer. This indicates that the performance of the respondent No. 1 was watched for more than 6 months after assessment for the year 2004-05. Therefore, it cannot be disputed that the performance of the respondent No. 1 was duly considered by the Competent Authority. Admittedly, the period of probation was extended for 6 months vide letter dated 18.5.2005. By that time, the respondent had completed about 2 years and 10 months of service. Extension of the period of probation by itself was an indicator to her that her performance was not upto mark and that is why she had not been confirmed to the post to which she was initially appointed on probation. It is therefore difficult to say that the respondent No. 1 was taken by surprise and she came to know only on receipt of the aforesaid order that she needed to improve her performance.

12. The learned Counsel for the respondent No. 1, during the course of arguments relied upon para IX of the Office Memorandum dated 15.4.1959 issued by Government of India, Ministry of Home Affairs whereby recommendations of the Government with respect to appointments of probation were forwarded for adoption in respect of services controlled by various Ministries. The aforesaid clause stipulated that the decision whether to confirm an employee or extend his probation should be taken within 6-8 weeks after expiry of the initial probationary period and should be communicated to the employee along with the reasons annexed to explanation. It further stipulated that a probationer who was not making satisfactory progress or who showed himself to be inadequate for the service should be informed of his shortcomings

well before the expiry of the original probationary period so that he could make special efforts at self-improvement. The contention was that no such advice or information was given to the respondent. The learned Counsel for the petitioner however categorically stated that the aforesaid Office Memorandum was not adopted by the petitioner, which is an autonomous organization registered under the Societies Registration Act and which follows its own rules and regulations in respect of all service, administrative, financial and academic matters: A letter dated 30.1.2012 issued by the concerned Deputy Director was also produced before us wherein it has been stated that the contents of the aforesaid Office Memorandum are not applicable to the employees of National Board of Examinations and that the employees of the petitioner are not Government servants. Therefore, the petitioner was not required to follow the aforesaid Office Memorandum before terminating the services of the respondent. The failure of the employer to serve such a note of caution on the employee, in our view, does not by itself render the termination of the services of a probationer illegal. In any case, the order extending the period of probation of the petitioner, by itself was a sort of caution to the respondent No. 1 that her performance was not upto the mark and that is why her period of probation was being extended.

13. The learned Counsel for the respondent has placed reliance upon the decision of this Court in LPA No. 15/2009, *Dr. Vishakha Kapoor v. National Board of Examination & Another*, decided on 3.3.2009. In that case, the appellant before this Court, who had become pregnant after 5 years of her marriage suffered miscarriage and was advised to take bed-rest. She became pregnant once again while on leave and was advised to remain on bed-rest in view of high risk pregnancy induced hypertension and gestational diabetes. She repeatedly applied for leave, accompanied by medical certificates. The respondent did not ask her to take second opinion or re-confirmation from another doctor. After she had given birth to a child on 16.1.2008 her services were terminated vide letter dated 8.2.2008. Termination letter inter alia read as under:

You had attended the office from 9th October, 2006 upto 3rd May, 2007. You had to undergo an abortion and had availed abortion leave of 45 days from 4th May, 2007 till 17th June, 2007. The said leave was granted to you in accordance with Rule 43(3) of CCS (Leave) Rules, 1972. You were expected to join the office on 18th May, 2007. During this period of rest, you became pregnant and have neglected/failed to attend the office till date.

By the office letter dated 6th July, 2007 you were informed about your leave status and in no uncertain terms that your leave was to end on 29th July, 2007. It would be pertinent to mention here that 15 days earned leave was granted and credited to your account in advance for services to be rendered by you for the period 1.7.2007 to 31.12.2007. Since you had failed to resume your duties till date, the earned leave for the period 1.7.2007 to 31.12.2007 so credited in anticipation stands forfeited/cancelled in accordance with CCS (Leave) Rules, 1972.

However, since you had submitted applications for further extension of leave without certification by "Authorized Medical Attendant" as required in accordance with CS (Medical Attendance) Rules, 1944 and as stipulated for Gazetted Government servants, you were granted Extra Ordinary Leave (EOL) for a period of 62 days w.e.f. 30th July, 2007 upto 3rd October, 2007. Despite lapse of all leaves available to you, you have failed to resume your duties till date.

By the office letters dated 7th January, 2008 and 14th January, 2008, you were requested to revert back immediately. However, you have filed an application dated 17th January, 2008 and have sought further maternity leave for 135 days from 26th January, 2008 upto 8th June, 2008.

XXX XXX XXX

Consequently, you have continued to be away from duties illegally after expiry of your leave period.

In view of the aforementioned facts and circumstances your probationary services are discharged with immediate effect.

The Court was of the view that termination of services showed complete insensitivity to basic human rights and values and violated Articles 14 and 21 of the Constitution of India. The Court also found the termination per se stigmatic. It was also held that the termination was also bad in law in view of the provisions of Maternity Benefits Act, 1961 which provided that where a woman absents herself from work in accordance with provisions of that Act it shall be unlawful for the employer to discharge or dismiss her on account of such an absence. It was noted that she was entitled to leave upto 12 weeks but the termination order had ignored this and treated this period as unauthorized leave and therefore was contrary to law. The Court was also of the view that notice of discharge could not have been issued to the petitioner during the period of statutory leave/absence she being entitled to at least 6 weeks leave from the date on which her child was born whereas the respondent had discharged her within 3 weeks of the birth of the child. The facts and circumstances of the case relied upon by the learned Counsel for the respondent No. 1 being altogether different, this judgment would not apply in the case before this Court.

For the reasons given in the preceding paragraphs, we are of the view that impugned order passed by the Central Administrative Tribunal cannot be sustained. We, accordingly, allow the Writ Petition and set aside the impugned orders dated 11.11.2009 and 29.9.2010 passed by the Central Administrative Tribunal in TA No. 1441/2009 and MA No. 2023/2010 in TA No. 1441/2009. In the facts and circumstances of the case, there will be no order as to costs.