

**(2013) 10 DEL CK 0472**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 5996 of 1998

Shri Syed Mohiuddin Ashraf and Another

APPELLANT

Vs

M/s. Central Electronics Limited

RESPONDENT

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**Date of Decision :** 04-10-2013

**Acts Referred:**

**Citation :** (2013) 10 DEL CK 0472

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Valmiki J Mehta, J.—By this writ petition, petitioners challenge the impugned letters dated 6.11.1998 terminating their services in the probationary period. The termination letters of both the petitioners are identical and it would suffice to reproduce the termination letter of petitioner No. 1 which reads as under:-

CENTRAL ELECTRONICS LIMITED

4, Industrial Area

Sahibabad,

Dist.-Ghaziabad

U.P.-201 010

No. 2(1510)/98-Pers.

Vide offer of appointment No. C-5(b)/II-103/ELEX dated December 16, 1997, Shri Syed Mohiuddin Ashraf, Code No. 15102 was appointed to the post of Probationary Engineer w.e.f. January 15, 1998. After initial induction training, Shri Ashraf was posted to PF division.

Vide the performance assessment report obtained from the concerned HOD, it has been made out that Shri Ashraf is unfit for continuing in the service.

In accordance with Clause 3(a) of his offer of appointment, Shri Syed Mohiuddin Ashraf, Code No. 15012 is terminated from the services of the company with immediate effect. A cheque No. 779665 dated 05.11.1998 for Rs. 6,998.00 (Rupees Nine hundred ninety eight only) being one month's notice pay is enclosed.

Sd/-

CHAIRMAN & MANAGING DIRECTOR

SHRI SYED MOHIUDDIN ASHRAF,

PROBATIONARY ENGINEER, Through: JT. GENERAL MANAGER (PF)

CODE NO. 15102

Syed Mohiuddin Ashraf,

S/o. Shri S.M. Ashraf,

268/19, DMS Colony,

Hari Nagar,

New Delhi-110064

It is contended on behalf of the petitioners that the impugned orders are void as they are violative of principles of natural justice, arbitrary, stigmatic, punitive in nature and without any reason because petitioners had otherwise rendered satisfactory services. It is also contended that services of the petitioners were in fact permanent from inception.

2. Taking the last aspect first, the contention of the petitioners is misconceived that appointments were permanent because the letters of appointment dated 16.12.1997 and 20.3.1998 show that appointments of the petitioners were as probationers and the services could be terminated within the probationary period without any reason and without any compensation.

3. On the aspect of the impugned orders being violative of principles of natural justice, it may be noted that the Supreme Court in the judgments in the cases of Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, , State of West Bengal and Others Vs. Tapas Roy, and Chaitanya Prakash and Another Vs. H. Omkarappa, has held that principles of natural justice have not to be followed before terminating the services of a probationary officer. This contention of the petitioners is also therefore rejected.

4. Petitioners have also raised a ground that termination orders are stigmatic. The impugned orders of termination only state that petitioners are unfit for continuing their services. This expression is not stigmatic and in fact Supreme Court has held that language which is far worse is not stigmatic. Some of the judgments of the Supreme Court in this regard are as under:-

(i) Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others, . Paras 4, 5, 8, 10, 13, 15, 16 and 17 are relevant which read as under:-

4. On 20th November 1995 the appellant was served with a letter informing him that his performance during the probationary period was "far from satisfactory" and that it had been observed that he lacked drive, imagination and initiative "in the performance of his duties". He was informed that, despite being told time and again to improve performance in the said areas, but with no effect. He was advised to improve "in order to enable us to consider your case for confirmation favourably". He was issued several such letters drawing his attention to the fact that his services left much to be desired. His probationary service came to be extended from time to time, the last such extension being granted till 9th April 1998. Finally, by the letter dated 7.4.1998 the petitioner was informed that his service was "unsatisfactory in the areas of drive, initiative, promptness and leadership" and that despite advised verbally and through letter, what were deficiencies in his work he had shown no improvement. His attendance, office work and attention to the academic work and the affairs of the guest house were also unsatisfactory. The first respondent, therefore, said "your performance, ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have to. The governing body is of the view that your performance was unsatisfactory and you are not suitable for confirmation". For these reasons the appellant's probationary period was not extended on the expiration of his probation period on 9th April 1999.

5. The appellant challenged the order of termination of his service on the ground that it was a stigmatic termination by way of punishment for alleged misconducts. The learned single Judge of the High Court allowed the writ petition and quashed the order of termination and directed re-instatement of the appellant with full back-wages. The Division Bench of the High Court, however, allowed the letters patent appeal and held that the letter dated 7th April 1998 was not stigmatic and that it was a legitimate exercise of assessment of probationer's service by the employer, and, therefore, there was no scope for judicial interference therewith. In this view of the matter, the Division Bench allowed the appeal, set aside the judgment of the learned single Judge and dismissed the writ petition. Hence, this appeal.

8. Heavy reliance was placed on Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, where this Court held that the termination of service of the employee in similar circumstances amounted to misconduct. We may mention here that it is common ground that while the matter was pending before the learned single Judge, sometime in the year 2005, the appellant attained the age of superannuation. The learned Counsel for the appellant contended that in the letter dated 7.4.1998 there is reference to certain earlier letters in which the appellant had been called a person of "perverted mind" and "dishonest, duffer having no capacity to learn". A

reading of all the letters referred to in the letter of 7.4.1998 would clearly make out a case of allegations of misconduct against the appellant, in the submission of the learned Counsel.

10. In Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, this Court considered what should be the best to determine whether a letter of termination of service was termination simpliciter or stigmatic termination. After referring to a number of authorities including the judgment in Parshotam Lal Dhingra Vs. Union of India (UOI), and Dipti Prakash Banerjee (supra) the Court observed (vide para 19):

Courts continue to struggle with semantically indistinguishable concepts like motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents.

13. In the case of the appellant before us, the record in uncertain terms makes it clear that every time the appellants attention was drawn to his deficiencies and he was repeatedly advised to improve his behavior, conduct and discharge of work. True, that in some of the letters there was intemperate language used (the appellant was also equally guilty of doing that). Notwithstanding the intemperate language, we are unable to accept the contention of the appellant's counsel that the letter dated 7.4.1998 indicates that the appellant was being charged with the misconduct and, therefore, being removed from service. Read as a whole, the letter gives the impression that the removal of the appellant from service was only because the respondents, after giving a long rope to the appellant, had come to the conclusion that the appellant's service was unsatisfactory and there was no hope of his improvement.

15. The learned Counsel for the appellant, however, strongly contends that the "stigma" cast on the employee may not be confined to his personal character but may also affect his capacity to work. The test, learned Counsel for the appellant submitted, is that, if what is stated in the order of termination is read by a future employer, it prejudices the future employment of the employee. In the face of the law laid down in the judgment just referred, we are unable to accept this as the correct test.

16. In Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another, this Court pointed out that in a large corporation administration is bound to be impersonal and in regard to public officers assessment of service has got to be in writing for purposes of record, though it cannot be assumed that such an assessment recorded and the order of termination made with reference to that record would automatically take a punitive character.

17. The High Court has carefully considered all the circumstances placed before it and arrived at the conclusion that the respondent's work was under observation during the probationary period and that he was given repeated opportunities to

improve his performance for which purpose his probation was extended from time to time. The fact that the authority did not find him fit for confirmation was also brought to his notice several times and yet he was given opportunities of improving by extending his probationary service. The High Court has correctly found that the letter dated 7.4.1998 was not punitive in nature and stated, albeit in prolix fashion, that the service of the appellant were unsatisfactory. The High Court points out, and we agree, that detailed reference to all other correspondence was not necessary, but it did not reflect any malice or bias. Finally, as this Court pointed out in P.N. Verma's case (supra) "a termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic

(underlining added)

(ii) Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, . Paras 44 to 46 of the said judgment are relevant and the same read as under:

44. Also in the case of Registrar, High Court of Gujarat and Anr. v. C.G. Sharma it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.

45. This Court's decision in the case of P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in State of Madhya Pradesh v. Virendera Kumar Chourasiya also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.

46 We are also of the view that the award of the Labour Court is perverse as it had directed grant of back wages without giving any finding on the gainful employment of respondent No. 1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of respondent No. 1 was in any manner stigmatic. The decision in the case of MP State Electricity Board v. Jarina Bee (Smt.) (supra), this Court held that payment of full back wages was not the natural consequence of setting aside an order of removal. In the instant case, though the termination was as far back as in 1983, the Industrial Adjudicator has not given any finding on unemployment. This Court in a recent case of State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636 has held that even if the termination order of the probationer refers to the performance being "not satisfactory", such an order cannot be said to be stigmatic and the termination would be valid.

(emphasis added)

(iii) State of West Bengal and Others Vs. Tapas Roy, Paras 4, 5, 7 and 8 of the judgment in the case of Tapas Roy (supra) read as under:-

4. The High Court allowed the writ petition holding that Rule 10 of the Rules did not apply in the facts of the case. It was also of the view that the statement, quoted below; in the order of discharge casts a stigma on the respondent. Since no opportunity of hearing had been granted to the respondent, therefore, the order could not be sustained. The decision of the Tribunal was, accordingly, set aside and the appellants were given liberty to take appropriate action against the respondent on the same grounds in accordance with law.

5. The particular passage from the order of discharge which the High Court found to be stigmatic reads as follows:

I am convinced that he is not likely to make an efficient constable and is unsuitable for the Police Department. His frequent unauthorised absence from training centre also indicates his lack of interest in training and his scant respect for discipline.

7. The order of discharge has, as we have already indicated, set out several instances of the respondent absenting himself unauthorisedly from the training centre. These facts have been relied upon for the purpose of concluding that the respondent was not interested in the training and had no respect for discipline. This conclusion was a ground for holding that the respondent was unsuitable for the Police Department.

8. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that a stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. In our view, the language quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly, of the view that the appeal must be allowed. It is, accordingly, allowed and the impugned order is set aside.

(emphasis added)

(iv) Chaitanya Prakash and Another Vs. H. Omkarappa, . Paras 18 and 21 of this judgment read as under:-

18. It is no longer res integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be

stigmatic. In this connection, we make a reference to the decision of the decision of the Supreme Court in *Abhijit Gupta v. S.N.B. National Centre, Basic Sciences* (supra), wherein also a similar letter was issued to the concerned employee intimating him that his performance was unsatisfactory and, therefore, he is not suitable for confirmation. We have considered the ratio in light of the facts of the said case and we are of the considered opinion that the basic facts of the said case are almost similar to the one in hand. There also, letters were issued to the concerned employee to improve his performance in the areas of his duties and that despite such communications the service was found to be unsatisfactory. In the result, a letter was issued to him pointing out that his service was found to be unsatisfactory and that he was not suitable for confirmation, and, therefore, his probation period was not extended and his service was terminated, which was challenged on the ground that the same was stigmatic for alleged misconduct. The Supreme Court negated the said contention and upheld the order of termination.

21. In *Abhijit Gupta* (Supra.), this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination i.e. whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, where it is stated thus:

14....As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.

(emphasis added)

5. In view of the above legal position, in my opinion, language that petitioners are unfit to render services cannot be said to be stigmatic in nature.

6. Finally the petitioners contend that they rendered satisfactory services. In my opinion, this aspect with respect to services being satisfactory in nature or otherwise is to be decided by the appropriate authority and this Court cannot substitute the decision of the appropriate authority in this regard. There is nothing placed on record that the impugned orders have been passed for reasons other than the services not being satisfactory, and this Court therefore would not substitute its decision for the decision taken by the competent authority with respect to lack of satisfactory services of the petitioners.

This contention of the petitioners is also accordingly rejected.

In view of the above, there is no merit in the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.