

(2013) 07 KAR CK 0313

In the Karnataka High Court

Case No : Writ Petition No. 12480 of 2010 (S-DIS)

Sidagouda N. Patil

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 3 AKR 34 : (2014) ILR (Kar) 1044 : (2014) 1 KarLJ 459 : (2014) LabIC 2852

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : M.R. Rajagopal, for the Appellant; Mruthyunjaya Tata Bangi, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Petitioner was selected and appointed as a Constable in Central Industrial Security Force (hereinafter referred to as CISF) and posted to the unit of 4th respondent w.e.f. 19-4-2003. After completion of basic training he reported to CISP Unit, Nalco, Angul (O) on 25-4-2004. Petitioner was under probation for a period of two years and his probation was due to be completed on 18-4-2005. Subsequently, it was extended on 18-4-2005 for a period of six months and thereafter from 18-10-2005 to 17-4-2006 and from 18-4-2006 to 17-10-2006 and by an order of termination dated 15-3-2007 under the provisions of Rule 25(2) of Central Industrial Security Force Rules, 2001 as amended by Rules 2003 petitioner was discharged from service. Petitioner submitted a representation for review of termination order under Rule 26(1)(iii) of CISF Rules, 2001 vide Annexure-H. Said representation came to be considered and by an order dated 18-6-2008 as per Annexure-L1 came to be rejected as being devoid of merits. Same was communicated to the petitioner by communication dated 9-7-2008 Annexure-L. Order dated 15-3-2007 Annexure-F passed by fourth respondent, order dated 18-6-2008 Annexure-L1 and order dated 9-7-2008 Annexure-L passed by 2nd respondent are sought for quashing

by the petitioner in these proceedings.

2. I have heard the arguments of Sri M.R. Rajagopal, learned Counsel appearing for petitioner and Sri Mruthyunjaya Tata Bangi, learned Central Government Standing Counsel appearing for respondents. Perused the case papers and the file made available by learned Central Government Standing Counsel.

3. The contention of Sri M.R. Rajagopal, learned Counsel appearing for petitioner can be crystallised as under:

(a) The termination of the petitioner though mentioned as discharge simpliciter it is not so, inasmuch as he has been discharged from the service on account of absence from duty which is with imputation and stigma and as such enquiry ought to have been held.

(b) When the period of probation is not expressly extended after two years it is deemed that petitioner has been confirmed and as such without holding an enquiry petitioner could not have been discharged.

(c) Since proviso to Rule 25(1) of CISF Rules makes it clear that no member of the Force shall ordinarily be kept on probation for more than twice the period prescribed under Recruitment Rules, it would mean that on completion of the probationary period the member of Force shall be deemed to be on further probation and Rule 25(3) empowers the authority to pass an order confirming the member of the force after completion of such period of probation.

4. He would further contend that even exercise of power under Rule 25(2), it is necessary for respondents to form an opinion namely by Appointing Authority to the fact that member of Force is found to be not fit for permanent appointment and therefore such an opinion is required to be formed by Appointing Authority and such an opinion having not been formed but on the other hand the very Appointing Authority had issued a call notice to the petitioner to report duty immediately and on the very same day passed an order of termination and as such it is contended that there is total non-application of mind by respondents and as such order of termination is erroneous. He would submit that action of respondent discharging petitioner is arbitrary and unreasonable since petitioner had been granted leave from 3-1-2007 to 2-3-2007 and before the said period had expired request for extension was made by petitioner on 15-3-2007 which was declined and petitioner was called upon to report for duty and even before petitioner could report to duty he was terminated on 15-3-2007 itself and as such order of termination is bad. If before forming an opinion that petitioner was found to be unfit for being continued respondents ought to have extended an opportunity to the petitioner and such opportunity not being given there is violation of principles of natural justice. Hence, order of termination is bad in law.

5. Discharge of the petitioner is not a discharge simpliciter but a discharge with stigma and as such it has taken away the right of the petitioner and it is in violation of Article 21 of the Constitution of India. In support of his submission he

has relied upon the following judgments:

- (i) Samsher Singh Vs. State of Punjab and Another, ;
- (ii) Dayaram Dayal Vs. State of M.P. and another [OVERRULED], ;
- (iii) State Bank of India and Others Vs. Palak Modi and Another etc., .

6. Per contra, Sri Mrutyunjaya Tata Bangi, learned Central Government Standing Counsel appearing for respondents would support the impugned order by reiterating the contentions raised in the statement of objections. He would contend that petitioner was a regular absentee and out of total number of 1060 working days petitioner has remained absent for 503 days and was always reported to be sick and despite extending sufficient opportunity to improve there was no improvement and to afford full opportunity to the petitioner probation period was extended twice and despite granting such opportunities, petitioner did not improve his performance and as such his services was terminated under Rule 25(2) without any stigma against him and respondent-authorities are empowered to discharge the petitioner without assigning any reason and there being no stigma attached while discharging petitioner order of discharge has to be held as discharge simpliciter.

7. Elaborating his submissions he would contend that Appellate Authority on re-appreciation of entire material relating to discharge of the petitioner found there was no merit in his prayer and as such it has rejected his appeal by taking into consideration that service of the petitioner was not found to be satisfactory and in view of Rule 26 of CISF Rules, the Appointing Authority being employer of the petitioner, after issuing notice of one month and after giving one month's salary in lieu of such notice, order of discharge has been passed and there is no provision for conducting any enquiry under extant Rules for discharging an employee during probationary period. As such, he contends that Appellate Authority found the action of Appointing Authority being in consonance with CISF Rules, as such it did not interfere with the order of the Appointing Authority and order of discharge passed against petitioner came to be affirmed by the Appellate Authority. He has also made available the records relating to performance appraisal of petitioner to substantiate the contentions raised in the statement of objections and to contend that petitioner was found not suitable and had not improved even after extending the period of probation and the performance of the petitioner being found not suitable he came to be discharged. He would also contend that provisions of CISF Rules have been followed and principles of natural Justice have been extended to the petitioner and the order of discharge is in accordance with well-established principles and the law laid down by the Apex Court. On these grounds he contends that order impugned in the writ petition does not call for interference and prays for dismissal of the writ petition.

8. Having heard the learned Advocates appearing for the parties and on perusal of the case papers and records made available by the learned Central

Government Standing Counsel, I am of the considered view that following points would arise for my consideration:

1. Whether the order of termination dated 15-3-2007 Annexure-F as confirmed by Reviewing Authority by order dated 18-6-2008 Annexure-L1 is contrary to CISF Rules and it is not a "discharge simpliciter" but a discharge with "stigma"?

2. Whether the respondent-authorities ought to have held enquiry against the petitioner before discharging him from services?

or

3. Whether respondents were empowered to terminate the petitioner by discharging him without holding an enquiry on the ground that he was on probation?

BACKGROUND OF THE CASE:

9. Petitioner was appointed as a Constable by respondent after selection on 19-4-2003. He was on probation from 19-4-2003 to 18-4-2005 and subsequently probationary period was extended from 18-4-2005 to 18-10-2005, from 18-10-2005 to 17-4-2006 and from 17-4-2006 to 17-10-2006 and thereafter he was continued on probation till the date of order of termination came to be passed on 15-3-2007. Being aggrieved by the order of termination petitioner submitted a review petition to the higher authority on 15-2-2008. Said representation/petition came to be considered and Reviewing Authority by order dated 18-6-2008 Annexure-L1 dismissed the review petition and by communication dated 9-7-2008 Annexure-L communicated the said order of dismissal to the petitioner. Subsequently, petitioner filed a mercy petition before the third respondent on 25-8-2008, Annexure-M. Same came to be examined. Simultaneously petitioner had also approached the Member of Parliament, Belgaum, Karnataka requesting for reinstatement into service and said M.P. forwarded the representation of the petitioner to the Minister of State, Ministry of Home Affairs which came to be considered and by communication dated 9-3-2009 said Member of Parliament was informed by the Ministry about the order passed on 18-6-2008 by Reviewing Authority and claim of petitioner being devoid of merits vide Annexure-N. Subsequently present writ petition is filed on 15-4-2010. These facts are not in dispute.

10. Since the learned Advocates appearing for the parties have relied upon Rule 25 and Rule 26 of CISF Rules, to buttress their respective contentions, I am of the considered view that said rules are required to be examined and as such they are extracted hereinbelow:

CHAPTER VII

25. Probation.--(1) Every member of the Force except those appointed on deputation/absorption, shall be on probation for the period specified in relevant column of the Recruitment Rules:

Provided that in the absence of a specific order of confirmation or a declaration of satisfactory completion of probation, a member of the Force shall be deemed to be on probation:

Provided further that no member of the Force shall ordinarily be kept on probation for more than twice the period prescribed in respective Recruitment Rules.

(2) If during the period of probation the Appointing Authority is of the opinion that a member of the Force is not fit for permanent appointment, the Appointing Authority may discharge him (or terminated the services) from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department, as the case may be.

(3) On successful completion of probation by a member of the Force, the Appointing Authority shall pass an order confirming the member of the Force in the grade in which he joined the Force.

26. Termination.--(1) Where the Appointing Authority has terminated the services of probationer, the Inspector General may on his own motion or otherwise, reopen the case and after making such enquiry as he thinks fit may: (i) confirm the action taken by the Appointing Authority; (ii) withdraw the notice; (iii) reinstate the probationer in service; or (iv) make such other order in the case as he 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 expiry of three months.--

(a) from the date of notice, in a case where notice is given;

(b) from the date of termination of service in a case where no notice is given.

(2) Where a probationer is reinstate in service under above rule, the order of reinstatement shall specify (i) the amount of proportion of pay and allowances, if any, to be paid to the probationer for the period of his absence between the date of termination of his services and date of his reinstatement; and (ii) whether the said period shall be treated as a period (spent) on duty for any specified purpose or purposes.

(3) Where the Inspector General has terminated the service of a probationer, acting as Appointing Authority, all the powers prescribed in sub-rules (1) and (2) above shall be exercised by the Director General and where the Director General has issued the order of termination by the Central Government.

(4) During the period of probation or its extension thereof, as the case may be, the Appointing Authority may without assigning any reason terminate the services of a member of the Force on the grounds of furnishing false or incorrect information at the time of appointment of that member of the Force or for his

failure to pass the basic training or repeat course, by tendering a notice of one month to that effect or one month's pay in lieu thereof.

ANALYSIS OF CISF-RULES:

11. A perusal of Rule 25 would indicate that a member of CISF force appointed of deputation or absorption would be on probation as specified in the relevant column of recruitment rules. The first proviso would indicate that in the absence of any specific order of confirmation or declaration of satisfactory completion of probation the member of force shall be deemed to be on probation. The second proviso indicates that no member of the force shall be "Ordinarily" be kept on probation for more than twice the period prescribed in respective recruitment rules. If the Appointing Authority is of the view that a member is not fit for permanent appointment it is empowered to discharge such member of the force by issuing one month notice or after giving one month's pay in lieu of such notice or repatriate to his parent department or revert him back to the rank which he was promoted under sub-rule (2). Sub-rule (3) provides for the authority to pass an order confirming the member of the force in the grade in which he joined the force on successful completion of the probationary period.

12. Under Rule 26 the Inspector General either suo motu or otherwise can reopen the case where the Appointing Authority had terminated the services of a probationer and after making such enquiry, confirm the action taken by the Appointing Authority or withdraw the notice or reinstate the probationer in service or make such other order as it may deem fit and proper in the circumstances of the case. The limitation prescribed for suo motu reopening by the Inspector General is three years from the date of notice in a case where notice has been given or three years from the date of termination of service in case where no notice has been given unless there are special circumstances.

13. Appointment to the post on probation would not give a right to a probationer to the post and his services can be terminated without initiating proceedings as per rules prevailing and governing such probationer. On the other hand, if the employer were to choose to hold an enquiry into alleged misconduct or for similar reasons then termination of his services would be by way of punishment, since it casts stigma on such employee about his competence and it would necessarily affect his future prospects. However, if the employee is discharged simpliciter or his services are terminated without holding any enquiry on account of unsatisfactory performance and not affording opportunity to show cause, such probationer cannot have cause of action even though the real motive behind his removal may have been that his employer thought him to be unsuitable to the post he was temporarily holding. In other words, imputation if any has to be discerned from discharge order on such termination.

14. Thus, in a given case, it has to be examined whether the termination is by way of punishment or discharge simpliciter. The test for determining whether the termination of a Government servant from service is by way of punishment or

not is to ascertain whether such employee who has suffered termination had right to hold the post.

ANALYSIS OF CASE-LAWS RELATING TO DISCHARGE SIMPLICITER AND DISCHARGE WITH STIGMA

15. It has been held by the Apex Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), as under:

26. The foregoing conclusion, however, does not solve the entire problem for it has yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2) of the Constitution of India. Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment. Again where a person is appointed to a temporary post for a fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Article 311(2). The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Article 311(2). Further, take the case of a person who having been appointed temporarily to a post has been in continuous service for more than three years or has been certified by the Appointing Authority as fit for employment in a quasi-permanent capacity, such person, under Rule 3 of the Central Civil Services (Temporary Service) Rules, 1949 is to be in quasi-permanent service which, under Rule 6 of those Rules, can be terminated (i) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated or (ii) when the Appointing Authority certifies that a reduction has occurred in the number of post available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripens into a quasi-permanent service as defined in the 1949 Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with Rule 6 of those Rules will deprive him of his right to that post which he acquired under the rules and will prima facie be a punishment and regarded as a dismissal or removal from service so as to attract the application of Article 311. Except in the three

cases just mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment. Thus where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant, so appointed, has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment. This aspect of the matter is recognised in the Explanation to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930 which correspond to the Note to Rule 1702 of the Indian Railway Code and Rule 3 of the All India Services (Discipline and Appeal) Rules, 1955 and Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, for all those rules expressly say that the termination of such an appointment does not amount to the punishment of dismissal or removal within the meaning of those rules. Likewise if the servant is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, under the general law, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount to dismissal or removal from service. This principle also has been recognised by the Explanations to Rule 49 of the 1930 Classification Rules corresponding to the Note to Rule 1702 of the Indian Railway Code and Rule 5 of the 1949 Rules and Rule 3 of the 1955 Rules and Rule 13 of the 1957 Rules. Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under, the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311. In other words and broadly speaking, Article 311(2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for

wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Article 311.

16. If the order of discharge is simpliciter there cannot be any view other than concluding that such order of discharge or removal cannot be subject-matter of scrutiny by the Courts in exercise of the power under Article 226 of the Constitution of India. It is trite to say that proceedings arising under Article 226 of Constitution of India are in the nature of judicial review and such review could only be in respect of decision making process and not the decision by itself. If two views are possible, even then, it would not be possible for this Court to interject or substitute its conclusion or views to that of the decision arrived at by the parties. Thus, a heavy burden is cast on the Court to discern from the order of termination and to ascertain as to whether termination is by way of punishment and the test to be applied would be to find out as to whether such termination order or discharge would result in visiting such employee with the penal consequences which would result in forfeiture of any of the rights of such an employee.

17. The Apex Court in the case of *The State of Bihar Vs. Gopi Kishore Prasad*, has held that a termination founded on inefficiency or other disqualification is a punishment because "it puts indelible stigma on the officer affecting his future career".

18. The word "stigma" would relate to conduct or character of an employee. Stigma according to dictionary meaning is something that detracts from the character or reputation of a person, a mark sign etc., indicating that something is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compulsory retirement of a Government servant, stigma would mean a statement in the order indicating his misconduct or lack of integrity.

19. This aspect has received consideration by Hon"ble Apex Court in the case of *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, and it has been held as follows:

26. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a "stigma". The other issue in the case before us is whether -- even if the words used in the order of termination are innocuous, -- the Court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination?

.....

31. Thus, it depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to Judge whether the words employed amount to stigma or not. Point 2 is decided accordingly.

20. It has been held by the Hon''ble Apex Court in Samsheer Singh's case that no abstract proposition can be laid down that where the services of a probationer are terminated it can never amount to a punishment has been held as under:

63. No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

64. 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 enquiry 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 *The State of Bihar Vs. Gopi Kishore Prasad*, , it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course, the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and Incompetent Officer.

65. The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. (See *The State of Orissa and Another Vs. Ram Narayan Das*,). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance (see *Madan Gopal Vs. State of Punjab*,). In *R.C. Lacy v. State of Bihar and Others*, Civil Appeal No. 590 of 1962 decided on 23 October, 1963, it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was

in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2). (See *Ranendra Chandra Banerjee Vs. Union of India (UOI)*,). A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311. (See *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*,). On the other hand, a statement in the order of termination that the temporary servant is undesirable has been held to import an element of punishment (See *Jagdish Mitter Vs. The Union of India (UOI)*,).\\

21. During the period of probation, the employer is entitled to assess the suitability of the candidates and if it is found that a candidate is not suitable to remain in service, they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the Appointing Authority has to look into the performance of the work and duties performed by an employee during the period of probation and if they record a finding that during the probationary period, the work and performance of the duties of a probationer were unsatisfactory, employer is entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. It has been held by the Apex Court in the case of *Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others*, , that recording of unsatisfactory performance is not stigmatic and reason mentioned in the order was notice and not the foundation. It has been held as under:

5. The petitioner XXX termination simpliciter. We do not agree with the learned Counsel. The reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the Appointing Authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities, a different complexion would arise. In this case, they have recorded the finding that the petitioner was regularly absent on one ground or the other.

Keeping the principles enunciated by the Apex Court in above judgments, facts on hand are examined to answer the points formulated hereinabove.

RE: POINTS 1 AND 2:

22. These two points being interlinked to each other and contentions raised by Sri MR. Rajagopal, learned Counsel appearing for petitioner and the arguments advanced by Sri Mruthyunjaya Tata Bangi, learned Counsel appearing for respondents would overlap and as such I am of the considered view that these two points are to be taken up together for consideration for being answered and accordingly they are taken up.

23. Petitioner in the instant case was discharged from service on 15-3-2007 on the ground that he was not found fit for further retention in service. At no point of time he was informed about his appointment having been confirmed. In the instant case to terminate the services of petitioner or discharge him from service respondent-authority has invoked Rule 25 of CISF Rules. One of the prime contentions raised by Sri M.R. Rajagopal, learned Counsel for petitioner is that in view of the petitioner's probationary period having been extended beyond two years it is deemed that his probation is completed satisfactorily and as such petitioner is deemed to have been appointed permanently by relying upon second proviso to Rule 25. Rule 25 has to be read in its entirety and proviso cannot be read in isolation to sub-section (1) to which the proviso applies. First proviso to Rule 25 specifically provides that in the absence of a specific order of confirmation or a declaration of satisfactory completion of probation, member of the force would be deemed to be on probation. The language employed in the first proviso is clear, specific and unambiguous. Merely because in the second proviso it has been provided that a member of force shall not be kept on probation for more than twice the period prescribed in reinstatement rules it would not entitle such member of the force to contend that he is deemed to have been permanently appointed on completion of two years of probation. The words used in the second proviso being "ordinarily" it has to be read "ejusdem generis" as otherwise the probation period would become otiose or nugatory. As such the contention raised in this regard by learned Counsel appearing for the petitioner cannot be accepted and it stands rejected.

24. In the instant case, petitioner had remained absent for a period of 503 days out of total number of 1060 working days from the date of reporting to duty till date of discharge. Petitioner was on sick leave that too on certain occasions without even furnishing the medical certificates. The details of absence of petitioner are as under.--

*Corrected vide Court order dated 9-12-2013

25. It can be noticed from the above table that petitioner was appointed as a Constable on 19-4-2003 and even during the basic training i.e., immediately after four days of his appointment he went on leave from 23-4-2003 to 10-5-2003 (for 18 days) and from 14-7-2003 to 9-9-2003 (sick leave). Records made available by the learned Central Government Standing Counsel would also indicate that petitioner was a habitual absentee for duty and he had remained absent most of the time during his period of probation. Even performance of the petitioner was not satisfactory and upto the mark. The appraisal authority have

entered appraisal forms relating to the petitioner from time to time. This Court cannot loose sight of the fact that petitioner was appointed to a disciplined force namely Central Industrial Security Force and he was required to discharge the duty of a Constable. Hence, performance of the petitioner was required to be assessed by the authorities periodically and it has been done. As already noticed hereinabove, on completion of two years probationary period on 18-4-2005, his probationary period was further extended upto 17-10-2005. On account of unsatisfactory performance it was further extended to 17-4-2006 from 18-10-2005 and again from 18-4-2006 the probationary period was extended to 17-10-2006.

26. Undisputedly petitioner was continued on probation even after extending the period of probation on 17-10-2006 and his services were not confirmed or the probationary period was not declared as satisfactory. It is in this background the first proviso to Rule 25 comes to into operation and until and unless it has been declared that petitioner had satisfactorily completed the period of probation he is deemed to be on probation. On account of probationary period having been continued even after the period of two years it cannot be construed that he is deemed to have been absorbed as a permanent employee. Petitioner does not dispute that he was appointed on 19-4-2003 and his probationary period was two years. Petitioner nowhere disputes in his writ petition that his period of probation was not for two years. In other words he has accepted the probationary period was for a period of two years. When so construed the second proviso which has been pressed into service by Sri MR. Rajagopal, to contend that on account of probationary period not having been extended after 17-10-2006 and as such the petitioner is deemed to have been absorbed as permanent employee of CISF cannot be accepted. Yet one another reason is second proviso to Rule 25 would indicate that no member of the force shall be ordinarily kept on probation for more than twice the period prescribed in the respective Recruitment Rules.

27. In the instant case as noticed hereinabove the period of probation of the petitioner was for two years and it means that the period of probation could not have been extended beyond the period of four years. Petitioner herein having been appointed in the year 2003, was on probation for a period of two years i.e., upto 18-4-2005 and thereafter it was extended upto 18-4-2005, 18-4-2006 and 17-10-2006 and later on he was discharged from service on 15-3-2007. Even if the second proviso is taken into consideration namely twice the period of probation is not yet completed i.e., four years period had not lapsed as on date of discharge when reckoned from the date of initial appointment. Hence, the contention of petitioner Counsel that petitioner is to be deemed to have been permanently appointed cannot be accepted, since four years period had not been completed as on date of discharge. For this reason also, contention of learned Counsel appearing for petitioner cannot be accepted.

28. Now turning my attention to the second contention of Sri M.R. Rajagopal,

that order of discharge or termination is to be construed as one attached with a "stigma" requires to be examined with utmost circumspection. In the earlier paragraphs of this judgment I have already discussed as to what is a "discharge simpliciter" or a "discharge with stigma". Learned Counsel appearing for the petitioner has relied upon the judgment of Hon'ble Apex Court in the case of Palak Modi by extensively referring to various paragraphs to contend that motive for discharging petitioner was his unsatisfactory performance and absenteeism and as such an enquiry ought to have been held and only thereafter further action could have been taken by the respondents. The relevant paragraphs of above said judgment which has been pressed into service and they are as under:

29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

(emphasis supplied)

30. Applying these principles to the facts of the present case, it will be noticed that the appellant, who was recruited as a Constable in the 34th Battalion, Pradeshik Armed Constabulary, Uttar Pradesh had successfully completed his training and had also completed two years of probationary period without any blemish. Even after the completion of the period of probation under para 541 of the Uttar Pradesh Police Regulations, he continued in service in that capacity. The incident in question, namely, the quarrel was between two other Constables in which the appellant, to begin with, was not involved. When the quarrel was joined by few more Constables on either side, then an inquiry was held to find out the involvement of the Constables in that quarrel in which filthy language was also used. It was through this inquiry that the appellant's involvement was found established. The termination was founded on the report of the preliminary inquiry as the employer had not held the preliminary inquiry to find out whether the appellant was suitable for further retention in service or for confirmation as he had already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it is admitted by the respondent that the performance of the appellant throughout was unblemished, the order was definitely punitive in character as it was founded on the allegations of misconduct.

32. A combined reading of Rules 15(1) and 16 of the State Bank of India (Officer's Service) Rules, 1992 and paragraph 5 of the conditions of appointment

makes it clear that a person appointed as a Probationary Officer remains on probation for a minimum period of two years at the end of which he is entitled to be confirmed if the Competent Authority is of the opinion that he has satisfactorily completed the training in any institution to which he may have been deputed and the in-service training in the Bank. The Probationary Officer can also be subjected to screening for judging his merit and suitability. If the Probationary Officer fails to satisfactorily complete the training(s) or fails to pass the screening test or his service is not satisfactory, then the Bank can extend the period of probation by a further period of which the outer limit is one year. In a given case, the Competent Authority can, if it is of the opinion that the Probationary Officer is not fit for confirmation, terminate his service by one month's notice or payment of one month's emoluments.

33. It is thus evident that satisfactory performance during the period of probation, successful completion of training(s) and passing of the test conducted by the Bank for judging his suitability for the post constitute the touchstone for his confirmation.

34. The policy of confirmation, which was circulated vide letter dated 20-9-2010 envisaged placement of the Probationary Officers scoring 75% or more marks in the written test, group discussion and interview in MMGS-II. Those scoring less than 75% but minimum 50% (general category) and 45% (SC/ST/PWD) could be confirmed in JMGS-I. Those scoring less than 50% or 45%, as the case may be, are eligible to again appear in the confirmation test and qualify the same before completion of two years' probation. If he fails to qualify the test second time, his service is liable to be terminated in terms of Rule 16(3) of the Rules. An alternative available to the Bank is to extend the period of probation of the candidate for maximum one year with two opportunities to appear in the confirmation tests at six-monthly interval.

35. The primary object of the confirmation test held on 27-2-2011, which could also be termed as evaluation test within the meaning of paragraph 5(c) of the appointment letter was to decide whether the Officer has made use of the opportunities made available to him by the Bank to prove his worth for the job for which he was recruited and whether he has acquired sufficient knowledge about the functional requirements of the Bank. The test also gave an opportunity to the Probationary Officer to demonstrate that he was meritorious enough to be placed in the higher grade.

36. There is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanor. In a given case, the Competent Authority may, while deciding the issue of suitability of probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects

but, if the misconduct/misdemeanor constitutes that basis of the final decision taken by the Competent Authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.

38. Before concluding, we may notice the judgments relied upon by the learned Senior Counsel for the appellants. In *Ajit Singh and Others Vs. State of Punjab and Another*, this Court considered the question whether the decision of the State Government to terminate the services of the appellants, who were appointed as Executive Officers on probation of one year, could be nullified on the ground of violation of Articles 14 and 16 of the Constitution. The facts of the case show that the Punjab Town Improvement Act, 1922 was enacted to make provision for the improvement and expansion of towns in Punjab. The Act envisages the creation and constitution of Trusts and the Trust so created will have a corporate personality with perpetual succession and a common seal. The duties and functions of the Trust inter alia include preparing of schemes under the Act for various purposes. Section 17 conferred power on the State Government to constitute certain services in the manner therein prescribed. One such service contemplated by the section was Punjab Service of Trust Executive Officers. Sub-section (2) of Section 17 conferred power on the State Government to make rules for regulating the recruitment and the conditions of service of members of the Trust services constituted by the State Government. Armed with this power, the State Government constituted Punjab Service of Trust Executive Officers. In exercise of the power conferred by Section 73 read with Section 17(2) of the Act, the State Government framed Rules styled as Punjab Trust Services (Recruitment and Conditions of Service) Rules, 1978 ("1978 Rules" for short). Rule 5(2)(i) inter alia provided that 50 per cent of the vacancies in the cadre of Executive Officers shall be filled by direct recruitment and for this purpose Rule 5(4) envisaged the setting up of a Selection Committee called Punjab Trust Services Selection Committee. In 1978, Directorate of Local Government, Punjab issued Advertisement No. 1078 inviting applications for the posts in Classes I, II and III of Trust Executive Officers. Pursuant to this advertisement, large number of persons applied for various posts. The Punjab Trust Services Selection Committee interviewed various candidates and ultimately recommended 11 persons for the post of Trust Executive Officers. Ajit Singh and Rajinder Singh were recommended for Class I post; S. Sarup Singh and R.L. Bhagat were recommended for Class II post of Trust Executive Officers and the remaining seven petitioners in this group of petitions were recommended for Class III post of Trust Executive Officers. These recommendations were accepted and appointment orders were issued by Punjab Government on May 28, 1979. After each appointee completed one year of service, an increment was released in his favour. After one year, the State Government terminated their services vide order dated 25-9-1980.

39. One of the several grounds on which the appellants challenged the

termination of their services was that the action of the employer was wholly arbitrary, discriminatory and violative of equality clause contained in the Constitution. While quashing order dated 25-9-1980, this Court observed: (Ajit Singh's case, SCC pp. 225-26, para 7)

7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations is any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus potentate to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved 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. Viewed from this aspect, the Courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to (See Parshotam Lal Dhingra Vs. Union of India (UOI),). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer.

40. The Court then took cognizance of the fact that on completion of one year's probation an increment was released in favour of the appellants and proceeded to observe: (Ajit Singh's case, SCC p. 229, paras 10 and 11)

10.....It is implicit in release of increment that the petitioners had satisfactorily discharged their duty during the probation period, and at any rate the work and conduct was not shown to be unsatisfactory, which permitted an increment to be

earned. Assuming, as contended for on behalf of the respondents that period of probation was two years, the fact that on the expiry of one year of service an increment was released, would imply that during the period of one year the work and conduct has not been unsatisfactory. If it was otherwise the release of increment could have been interdicted on the ground that neither the work nor the conduct was satisfactory. The fact that the increment was released would at least permit an inference that there was satisfactory completion of the probation period and that during the probationary period, the work and conduct of each of the petitioners was satisfactory.

11. If upto the end of June 1980, the work and conduct of each of the petitioners was satisfactory and if the service of each of them was, simultaneously on the same day September 25, 1980 dispensed with on the ground mentioned in Rule 9(2)(a) in that in the opinion of the Appointing Authority, the work and conduct of each of the petitioners was not satisfactory, then between June 1980 and September 1980 something was simultaneously done by each of the petitioners to permit the Appointing Authority -- the State -- to reach an affirmative conclusion that the work and conduct, became wholly unsatisfactory and the degree of dissatisfaction with the service was so high that the service of all the 11 petitioners recruited on the same day was required to be dispensed with on identical ground. This is too fortuitous to carry conviction.

29. Let me now examine as to whether principles laid down in the said judgment is applicable to facts on hand. In the said judgment their Lordships have held that when Competent Authority holds a test or other evaluation method for judging suitability of a probationer for confirmation and for such test or evaluation, certain method evolved by employer formed basis for termination order, even then action of the Competent Authority cannot be castigated as punitive. On the other hand where allegations of misconduct construes foundation for such action taken then order of discharge passed by a Competent Authority can be nullified on the ground of violation of natural justice since order of termination was not preceded by an enquiry. It is in this background their Lordships have held in Palak Modi's case referred to supra that termination prima facie is not stigmatic. The Apex Court has lifted the corporate veil and examined whether in the garb of termination simpliciter the employer had in fact punished the employee for misconduct. In the said case the foundation laid for discharging the employee therein was on the ground that employee had resorted to copying when he had appeared for the objective test which was conducted prior to joining service. This was the foundation laid in the said case by the employer to formally discharge the employee and as such the Apex Court after examining the facts by lifting the corporate veil found that though the order of discharge indicates it to be an order discharge simpliciter on facts it was an order of discharge with stigma.

30. It is the contention of Sri M.R. Rajagopal, that the order of discharge has to be looked into the background or the circumstances which has led to issuance of

such order and in support of the proposition that order of discharge in the instant case it is tainted with imputation against the petitioner and as such it is to be construed as a discharge with stigma he requests the Court to look into the communication dated 3-1-2007 and 6-3-2007 issued by the Assistant Deputy Commandant of the Unit in which the petitioner was working. These two communications produced along with writ petition at Annexures-B and C would indicate that petitioner was permitted to avail medical leave and home rest for two months with effect from 3-1-2007 to 2-3-2007 and the communication dated 6-3-2007 Annexure-C would indicate that on completion of period of leave petitioner had not reported to duty and as such he was called upon to join duty. It would also indicate that subsequently telegram is said to have been sent by the petitioner seeking leave for one month on the ground of sickness which was considered and rejected. It is no doubt true that on 15-3-2007 when notice was issued calling upon petitioner to report to duty, order of discharge came to be passed on the same day. Said order of termination reads as under.--

2. Since No. 034400658 Constable Sidagoud Patil of CISF Unit, Nalco, Angul has not been found fit for further retention in service, his service is terminated with immediate effect under Rule 25(2) of CISF Rules, 2001 and one month's salary in lieu of the notice period is paid to the concerned Constable.

Sd/-15-3-2007 Senior Commandant, CISF Unit, Nalco, Angul.

31. As to whether the reasons assigned in the discharge or termination order would amount to casting a stigma or attributing imputation against the petitioner is to be examined. Contention of Sri M.R. Rajagopal, is that on account of petitioner not reporting to duty he has been terminated and said reason is the foundation for terminating the petitioner's service. The foundation and motive are to be construed as independent and if the motive is attributable on the basis of the foundation laid then the argument of Sri M.R. Rajagopal deserves to be accepted as otherwise not.

32. As to what constitutes foundation and motive came to be considered by the Hon'ble Apex Court in the case of Dipti Prakash Banerjee. As what would be the criteria for differentiating between "foundation" and "motive" also came to be examined by their Lordships in the said judgment and three points came to be formulated for answering the same. They read as under:

1. In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?

2. When can an order of termination of a probationer be said to contain an express stigma?

3. Can the stigma be gathered by referring back to proceedings referred to in the order of termination?

33. In the said case the employee was appointed as Office Superintendent in

Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others and he was on probation for a period of one year. During this period, employee was informed that his work was not satisfactory on account of certain instances which were also pointed out to him. In fact a letter had been written to the employee by the Director of Centre pointing some deficiencies in his work as well as in his conduct. In fact the Administrative Officer had appreciated appellant's work. During the extended period of probation the employee was informed of serious deficiencies in his work and conduct. On the other hand Administrative Officer has given a favourable report in favour of the said employee. Yet again probation was extended and thereafter the employee's service was terminated and in the termination order the earlier communication that had emanated from the Director was referred to as the cause or reason for termination. In the letter of Director the employee's alleged acts of omission and commission had been pointed out to him. It is in this background the Hon'ble Apex Court held though order of discharge does not cast any stigma against the employee but on account of certain communications said to have been issued to the employee which finds there are certain imputations made against the employee about his conduct and said communication having been referred to in the order of termination, it was held that it amounts to a discharge with stigma. It is in this background the three points formulated was examined amongst others and answered as under:

21. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid.

26. There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a "stigma". The other issue in the case before us is whether -- even if the words used in the order of termination are innocuous, -- the Court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination?

35. The above decision is, in our view, clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its Annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such a

case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.

34. In the background of the judgment referred to hereinabove when the facts on hand are examined it would indicate that there are no such communication issued to the petitioner for his habitual absenteeism finding a place in the order of discharge. It only states that petitioner has not been found fit for further retention in service. Hence, it cannot be construed that the order of termination is with a stigma.

35. Even otherwise if the claim of the petitioner is considered in the background of the earlier notice issued to him as being habitual absentee or Appraisal Officer recording in appraisal forms that services of petitioner are not satisfactory and not upto the mark it cannot be held or construed that recording of such remarks would amount to stigma. The Hon'ble Apex Court in the case of *State of Punjab v. Bhagwan Singh*, (2002) 9 SCC 636 has held that a discharge order stating that the performance of the Officer on the whole being not satisfactory cannot be said to be stigmatic and if employer refers to the reports of seniors of a discharged employee while passing the discharge order and it forms an opinion to issue such discharge order it would not amount to stigmatic. It has been held in the said judgment as follows:

4. This aforesaid order to the extent it stated that the Officer was unlikely to prove a good Police Officer, was in terms of the relevant Rule 12.21 of the Punjab Police Rules, 1934 applicable to the respondent. In our view, when a probationer is discharged during the period of probation and if for the purpose of discharge, a particular assessment of his work is to be made, and the authorities referred to such an assessment of his work, while passing the order of discharge, that cannot be held to amount to stigma.

5. The other sentence in the impugned order is, that the performance of the Officer on the whole was "not satisfactory". Even that does not amount to any stigma.

6. Learned Counsel for the respondent, however, contended that the reference in the impugned order to the reports of the Inspectors on the basis of which the above assessment was made, would itself amount to stigma. This again cannot be accepted. The said reference has also become necessary because the respondent was working under the said officers and it was their assessment that was referred to and that was the source for the opinion expressed by the Competent Authority to discharge the respondent. The learned District Judge and the High Court were, therefore in error in treating that the removal order caused stigma.

36. In fact Apex Court was examining as to whether recording of remarks "unfit to be appointed" amounts to stigma or not and held it does not, in the case of

Hari Singh Mann Vs. State of Punjab and Others, . It has been held as under:

12. Termination on account of unsatisfactory record will attract Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. It is obvious that at the time of confirmation fitness is a matter to be considered. The order terminating the services is unfitness for appointment at the time of confirmation, it is not passed on the ground of any turpitude like misconduct or inefficiency. To hold that the words "unfit to be appointed" are a stigma would rob the authorities of the power to Judge fitness for work or suitability to the post at the time of confirmation. Termination of services on account of inadequacy for the job or for any temperamental or other defect not involving moral turpitude is not a stigma which can be called discharge by punishment. Fitness for the job is one of the most important reasons for confirmation. The facts and circumstances do not show that there is any stigma attached to the order of termination.

37. One another contention raised by Sri MR. Rajagopal is that in the statement of objections respondents have made imputations, allegations and have passed remarks against the conduct of petitioner and as such discharge order or termination is not discharge simpliciter but a discharge with stigma. Though said argument looks attractive in the first blush, it does not detain this Court for long to negative said contention for the simple reason that records produced by learned Central Government Standing Counsel for respondents having been perused it would indicate that in the course of appraisal of petitioner's performance respondent-Authorities have recorded to the following effect:

He is not able to correct himself if his faults are pointed out to him. He should be watched for retention.

In the appraisal report dated 10-6-2006 while extending the probationary period it has been recorded as under:

The Constable has bad quality because he cannot correct himself when his pointed out to him. His probation period already extended with effect from 8-12-2005. Further the Constable is on SL with effect from 28-5-2006 to till date. His probation period unsatisfactory so recommended to extend his probation period for next 6 months.

Again after period of five months petitioner's performance came to be evaluated by unit head namely Assistant Commandant of CISF Unit, Nalco who is the Reviewing Officer and he has noted as under:

His probation period is found unsatisfactory. As such it is recommended that his period of probation may be extend for another 6 months or action as per rule.

38. Above remarks recorded in the appraisal reports of the petitioner, when examined by lifting the corporate veil, would not indicate that order of discharge issued to the petitioner is to be construed as stigmatic.

39. In the present case we are not faced with the factual matrix as found in

Palak Modi's case referred to supra. At the cost of repetition when the facts leading to discharge or termination of petitioner is examined by looking into the records made available by the learned Central Government Standing Counsel it would clearly indicate that petitioner herein was found to be a habitual absentee and his performance was not satisfactory. His performance was not upto mark. Probationary period was extended from time to time. Despite advise to correct himself petitioner had failed to do so. All these facts cumulatively constituted the basis for discharge of petitioner from service as not fit for retention in the service. Thus, even by lifting corporate veil when the order of termination is examined then the one and only conclusion that can be drawn by this Court is that order of discharge is not stigmatic and as such decision in Palak Modi's case would not come to the rescue of petitioner.

40. As noticed herein above learned Counsel for petitioner made a feeble attempt to rely upon the counter-affidavit filed by respondent to be used as his crutches and to assail the impugned order by contending that respondent-Authorities have cast aspersions or allegations on the petitioner and contends that it is because of these allegations petitioner has been removed from service. Apex Court has time and again held that grounds stated in the counter-affidavit would not be relevant factor while examining as to whether the termination order is simpliciter or stigmatic. Hon'ble Apex Court in the case of Union of India (UOI) and Others Vs. A.P. Bajpai and Others, on this proposition has held as under:

7. The grounds stated in the counter-affidavit filed by the appellants in answer to the challenge made by the respondent 1 in the O.A. No. 281 of 1993 before the Central Administrative Tribunal, Lucknow Bench were only the basis to assess the unsuitability of the respondent 1 to continue in the sensitive post for which he was appointed. It may be added that Annexure-C3 on which the Tribunal heavily relied to say that the impugned order was stigmatic was an Annexure to the counter filed by the appellants. It was a confidential letter written by the Assistant Director of the Department. In our view, the Tribunal committed a serious error in law and on facts of the present case in concluding that the order of termination of services of the respondent 1 involved stigma attached to respondent 1. The grounds stated in the counter-affidavit in answer to the challenge made by the respondent 1 were the factors to assess the suitability or otherwise of respondent 1 to continue in service. Having regard to all relevant aspects, the authorities reached a conclusion that respondent 1 was not suitable to continue in service. The order of termination of his services was simpliciter without attaching any stigma to the conduct of respondent 1. In this view, the impugned order cannot be sustained. Accordingly, it is set aside and the appeal is allowed. No costs.

41. Whether an order of discharge or termination is stigmatic or simpliciter will have to be gathered from the very order itself and reasons which flow for such an order being passed and also by adopting the test as to how a reasonable man of ordinary prudence would look at it as held by Hon'ble Apex Court in the case

of Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, as under:

17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the Government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the Court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the Court would infer therefrom that the real intention of the Government was to punish the Government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So, also if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the Government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it.

42. Thus, from the analysis of facts and the case-laws referred to herein above, it would emerge that petitioner was appointed as a Constable and was placed on probationary period and on account of authorities recording in the appraisal reports that petitioner service was not satisfactory his probationary period was extended from time to time and his services was terminated by impugned order. Said order of termination is a discharge simpliciter and not a discharge with stigma and hence points 1 and 2 formulated hereinabove is answered by holding that order of termination dated 15-3-2007 Annexure-F confirmed by Reviewing Authority by order dated 18-6-2008 Annexure-L1 is in consonance with the CISF Rules, 2001 and the dicta laid down by the Apex Court. In view of the fact that petitioner was a probationer and his probationary period was being extended from time to time question of holding any inquiry did not arise at all and as such question of holding any domestic inquiry against the petitioner before discharging him from services did not arise. Hence, issuance of termination order dated 15-3-2007 is to be upheld and contention raised in this regard by petitioner deserves to be rejected and it is accordingly rejected.

For reasons aforestated, following order is passed:

ORDER

1. Writ petition is hereby dismissed.

2. Order of discharge dated 15-3-2007 Annexure-F as affirmed by Reviewing Authority by order dated 18-6-2008 Annexure-L1 is hereby affirmed.

3. Parties to bear their respective costs.