
(2003) 11 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 10642 of 1992

Sudhakar Rai

APPELLANT

Vs

Superintending Engineer, 34th Finance, P.W.D. and Others

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 3, 3(2)

Citation : (2004) 1 AWC 595 : (2004) 1 UPLBEC 404

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : I.R. Singh, for the Appellant; Ajai Bhanot, S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri I. R. Singh, learned counsel for the petitioner and Sri Ajai Bhanot, learned standing counsel appearing for the respondents.

2. This writ petition has been filed by the petitioner praying for issue of a writ of certiorari quashing the order dated 8.1.1975 and 21.1.1992 passed by the Superintending Engineer, 34th Finance, Public Works Department, Varanasi. A writ of mandamus has also been sought directing the respondents to count the earlier services of the petitioner with effect from 7.11.1974 till 28.4.1991 and fix his salary in accordance with law and then pay arrears of salary and also his salary month by month in accordance with law.

3. Facts giving rise to the writ petition briefly stated are :

By an order dated 9.10.1973 issued by the Superintending Engineer petitioner was given temporary appointment as Store Keeper on the terms and conditions as mentioned in the order. The terms and conditions of the appointment as mentioned in the appointment order provided that the services of the petitioner

can be terminated by the appointing authority by giving notice. The period of such notice shall be one month. Appointing authority was also empowered to give shorter notice for termination. The condition further stipulated that it is for the appointing authority to terminate without giving any notice.

4. Against the petitioner a Criminal Case No. 491 of 1974 u/s 409, I.P.C. was registered. Another case u/s 380, I.P.C. was also registered regarding theft of records. The Work Superintendent in letter dated 26.9.1974 recommended suspension of the petitioner making allegations against the petitioner including the allegations of theft of records. The suspension order was issued on 28th September, 1974. Petitioner did not attend his duties with effect from 7.11.1974. The petitioner was arrested in criminal case but later on released. By an order dated 8.1.1975, the services of the petitioner were terminated with effect from 7.11.1974 by the Superintending Engineer. After termination of his services, in a criminal case u/s 409, I.P.C. final report was submitted on 14.8.1980 which fact was communicated by the Senior Superintendent of Police vide letter dated 1.9.1980 to the Superintending Engineer. In other criminal case which was going on against the petitioner, the petitioner was acquitted by the Chief Judicial Magistrate vide judgment dated 25.11.1980. Petitioner vide his letter dated 28.11.1980 wrote to the Superintending Engineer to reinstate the petitioner on account of his acquittal in criminal case. The Superintending Engineer vide letter dated 19.3.1981 wrote to the Chief Engineer informing the fact of acquittal of the petitioner in criminal cases and stated that no further proceeding is required regarding the case decided by the Chief Judicial Magistrate. It was stated in the letter that the petitioner be reinstated so that case of contempt of court may not arise. Petitioner submitted a representation on 13.2.1991 addressed to the Minister, Public Works Department praying that his Joining report be accepted and he may be reinstated. It was also stated in the letter that the department be directed for finding out liability of the Government loss amounting to Rs. 1,20,000. It was also stated in the letter that from 1986 to 1990 the petitioner due to his illness and family circumstances could not place his case before any higher authority. On the representation dated 13.2.1991 the Superintending Engineer sent his comments to the Chief Engineer, a copy of the said report has been filed as Annexure-9 to the writ petition. The aforesaid report contains detailed facts with regard to petitioner. The fact that the petitioner has been acquitted in both the criminal cases lodged under Sections 380 and 409, I.P.C. was also noted. It was also noted In the letter that the petitioner has submitted a written application on 12.4.1991 in paragraph 2 of which letter consent was given by the petitioner that his appointment be accepted from present date with the condition that the same will be acceptable to the petitioner subject to approval of the higher authorities. It was also stated with regard to earlier services of the petitioner that the petitioner will accept the decision of the Chief Engineer/Engineer-in-Chief and the Government. The Engineer-in-Chief vide letter dated 25.4.1991 wrote to the Superintending Engineer to reappoint the petitioner on the post of Store Keeper. The Chief Engineer has noted in the order

that the petitioner has been acquitted in the case pertaining to theft of records and with regard to shortage of materials in store final report has been submitted by the police. Taking the above facts into consideration the petitioner was given appointment in the pay scale of Rs. 950-1,500 as temporary Store Keeper vide order dated 26th April, 1991. The petitioner in pursuance of the appointment order dated 26.4.1991 Joined on 29th April, 1991. Petitioner wrote a letter dated 2.7.1991 to the Superintending Engineer in which he stated that there is no mention in the order dated 26.4.1991 regarding previous services of the petitioner. The petitioner prayed that the earlier services of the petitioner be added in the present service. Vide letter dated 21.1.1992 Superintending Engineer wrote to the Work Superintendent that the petitioner be informed that in the letter of the Engineer-in-Chief there is mention of reappointment and no mention has been made for giving benefit of earlier services of the petitioner. At this stage petitioner filed the present writ petition praying for quashing the earlier termination order dated 8.1.1975 and letter dated 21.1.1992 rejecting his representation to add his earlier services. Counsel for the petitioner challenging the termination order dated 8.1.1975 has made following submissions :

(1) That the termination order dated 8.1.1975 was punitive in nature. Services of the petitioner were terminated without holding any regular enquiry hence the termination is vitiated.

(2) Termination of petitioner's services vide letter dated 8.1.1975 was also not in accordance with the terms of appointment letter as well as in accordance with the U.P. Temporary Government Servants (Termination of Services) Rules, 1975.

(3) Petitioner was entitled to be reinstated after cancelling the illegal termination order and respondents committed error in reappointing the petitioner on the same post on temporary basis. Petitioner is entitled to add his earlier services from 7.11.1974 to 28.4.1991.

5. Sri Ajai Bhanot, learned standing counsel replying the submissions of the learned counsel for the petitioner at the very outset submitted that the petitioner's writ petition is barred by laches since the services were terminated on 8.1.1975 which is being challenged by means of this writ petition filed in the year 1992, i.e., after 27 years. Learned counsel further stated that the petitioner having accepted the fresh appointment it is not open to him to challenge the fresh appointment. Submission is that the fresh appointment has been made on consideration of all relevant facts and by sympathetically considering the request of the petitioner, Government acted on the representation of the petitioner that he will accept the decision of the Government regarding past services as well as regarding Joining with current date. Replying on merits, the learned standing counsel submitted that the termination of petitioner's services were not punitive but were made in accordance with the terms and conditions of the contract. He further contended that at best the petitioner was entitled for one month salary in accordance with the U.P. Temporary Government Servants (Termination of Services) Rules, 1975. Learned standing counsel further submitted that the

petitioner is not entitled for any relief since Government did not choose for holding any enquiry for punishing the petitioner and by taking lenient view of the matter, made fresh appointment of the petitioner which has been accepted by the petitioner, and it is now not open to the petitioner to challenge the same.

6. Counsel for both the parties have placed reliance on various judgments of the Apex Court in support of their respective submissions which shall be considered while considering the said submissions in detail.

7. Before considering the submissions of counsel for the petitioner, it is necessary to consider the preliminary objection of the respondents regarding laches in filing the writ petition. The learned standing counsel has placed reliance on the Judgment of the Apex Court in S.S. Rathore Vs. State of Madhya Pradesh, The said judgment of the Apex Court was considering the question as to when cause of action will be said to arise regarding the service dispute of a Government servant. The Apex Court held that where there is statutory remedy of appeal or revision, the cause of action shall be from the date the statutory appeal or revision is decided and if higher authority has entertained the statutory remedy and where no order is made by the higher authorities within six months from the date the remedy is availed. From the facts which have been brought on the record it is clear that after termination of petitioner's services on 8.1.1975 detailed correspondence took place between the Superintending Engineer and the higher authority with regard to petitioner after acquittal of the petitioner in criminal cases in the year 1980 when the petitioner submitted joining report the same was recommended by the Superintending Engineer to the Engineer-in-Chief. The respondents themselves were considering the request of the petitioner for reinstating in service, detailed facts regarding entire correspondence have been clearly mentioned in the report of the Superintending Engineer dated 18.4.1991 Annexure-9 to the writ petition and after the report the Chief Engineer passed an order on 25.4.1991 giving fresh appointment to the petitioner. After the fresh appointment petitioner joined and thereafter represented for adding his earlier services. A letter was issued to the petitioner on 21.1.1992 that no benefit can be given to the petitioner of his earlier services. In view of peculiar facts of the case and specially when the authorities were themselves considering the representation of the petitioner and have positively acted on the representation, the petitioner cannot be held to be precluded from filing this writ petition after the letter dated 21.1.1992. The question whether the petitioner can successfully challenge the termination order dated 8.1.1975 is a different question, but in view of the facts of the present case I am not inclined to throw the petitioner on the ground of laches. The judgment in S.S. Rathore Vs. State of Madhya Pradesh, relied by the counsel for the petitioner was on the question as to when cause of action will arise for a Government servant to file writ petition under Article 226 of Constitution of India. In the aforesaid case the services of the employee were dismissed on 13.1.1966 and he filed a suit for declaring the dismissal order as invalid. Subsequently he preferred an appeal which was dismissed on 31.8.1966 which was communicated on 19.9.1966. The question

was as to whether the dismissal order will merge in the appellate order. In that backdrop the Apex Court laid down in paragraph 20 :

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months" period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

8. Before the Apex Court the question for consideration was not question of laches for dismissing the writ petition. In view of this the said case does not help the respondents. In view of what has been said above, I am not inclined to accept the preliminary question raised by the learned standing counsel.

9. The first submission of the counsel for the petitioner is that the order of termination dated 8.1.1975 is punitive, since the respondents have punished the petitioner by terminating his services due to fact that the prosecution was launched against the petitioner regarding theft of record in the store and shortage of material in the store. Learned counsel submitted that the petitioner was suspended and the suspension order provided that the petitioner will not be paid any subsistence allowance. The contention of the counsel is that misconduct of the petitioner was foundation for termination and the innocuous order of termination was in fact order of punishment. Reliance has been placed by the counsel for the petitioner on Jagdamba Prasad Shukla Vs. State of U.P. and Others, ; Nar Singh Pal Vs. Union of India and Others, and Chandra Prakash Shahi u. State of U.P. and Ors. 2000 (3) AWC 1848 : 2000 (3) ESC 1625 . Elaborating his submission learned standing counsel contended that the respondents have never decided to punish the petitioner nor the order of termination dated 8.1.1975 can be said to be founded on any misconduct. Learned standing counsel submitted that the employer have only invoked the terms of appointment which was a contract for dispensing with the services of the petitioner. It was submitted that the launching of criminal prosecution against the petitioner at best could be a motive for employer to invoke the terms of appointment in terminating the petitioner's services and the action cannot be held to be punitive. Learned standing counsel submitted that no enquiry was launched against the petitioner before passing the order dated 8.1.1975 nor there was any finding of guilt against the petitioner. Learned standing counsel placed reliance on Roshan Lal Tandon Vs. Union of India (UOI), and Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others,

10. The question as to whether the termination order dated 8.1.1975 is by way

of punishment or was termination simpliciter has to be examined from the facts of case. The termination order is simpliciter termination only mentioning that the petitioner's services are terminated with effect from 7.11.1974. There is no stigma in the termination order nor it refers any other fact. The counsel for the petitioner, however, has submitted that the Court has to go behind the termination order and find substance of the termination and the real reason behind it.

11. From the facts brought on the record it is clear that neither any preliminary nor any regular enquiry was held by the respondents before passing the order of termination dated 8.1.1975. Thus, the finding of any guilt of misconduct which can be said to be foundation of termination is absent. In the report of the Superintending Engineer Annexure-9 to the writ petition reference has been made to a letter of the Work Superintendent dated 26.9.1974 recommending suspension of the petitioner. The said letter made allegations against the petitioner and the suspension order was issued on 28.9.1974.

12. The Apex Court in *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, after considering large number of judgments of the Apex Court right from *Parshotam Lal Dhingra Vs. Union of India (UOI)*, has laid down facts for determining the motive and foundation of an order. Relying on the judgment of Krishna Iyer, J., in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, following was held in paragraphs 26 and 27 :

"26. If there was any difficulty as to what was "motive" or "foundation" even after *Shamsher Singh* case the said doubts, in our opinion, were removed in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* again by Krishna Iyer, J. No doubt, it is a labour matter but the distinction so far as what is "motive" or "foundation" is common to labour cases and cases of employees in the Government or the public sector. The learned Judge again referred to the criticism by Shri Tripathi is this branch of law as to what was "motive" or what was "foundation", a criticism to which reference was made in *Shamsher Singh* case. The clarification given by the learned Judge is, in our opinion, very instructive. It reads as follows : (Supreme Court Cases pension papers 617-18, paras 53-54).

"53. Master and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic process but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of misconduct and of the consequent desirability of terminating the service of the

delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if there is suspicion or misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cutback on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.

27. In other words, it will be a case of motive if the master, after gathering some prima facie facts does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad."

13. Dipti Prakash Banerjee's case (supra) do support the contention raised by the learned counsel for the respondents that if no enquiry was held, no finding was arrived and the employer was not inclined to conduct an enquiry, it can only be a case of motive. Paragraph 21 of the judgment is extracted below :

"21. If findings were arrived at in an enquiry 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 findings were arrived at and the employer was not inclined to conduct an enquiry 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 enquire 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 allegations would be a motive and not the foundation and the simple order of termination would be valid."

14. The Apex Court in Union of India and others Vs. Shri Bihari Lal Sidhana, has considered almost a similar case where a cash clerk was terminated after prosecution in a case for misappropriation was launched against him while exercising power under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 the said employee was also subsequently acquitted. The

Apex Court upheld the action of the employer exercising its jurisdiction under Rule 5 to terminate the services. Paragraphs 3, 4 and 5 of the judgment which are relevant for this case are quoted below :

"3. The respondent was acquitted of the charge in the criminal case and therefore, he filed a writ petition. In his order, the learned single Judge held thus :

"The position of a Cash Clerk is one of confidence and responsibility. Even if the incidents averred against the petitioner were not proved, they were such, as to lead a prudent employer to terminate the services of the employee on the ground of his, not being desirable. The order of termination was passed, as noticed above, one year after the criminal case had started and two years after the enquiry. The enquiry appears not to have been completed, so, no definite opinion had been arrived at with regard to the guilt of the petitioner. No evil consequences were visited on the petitioner as a result of the order of termination. Nor has any stigma been attached. No penalties were inflicted on the petitioner despite the enquiries, and the start of the criminal case. In the circumstances the order of termination simpliciter is valid. Since the order is Innocuous, there is no need to peer behind it, unless mala fides had been established."

4. On appeal, the Division Bench reserved it, holding that the order of removal does indicate that it was termination of the services of the respondent with stigma attached by mentioning "under suspension". Rule 5 (1) of Central Civil Services (Temporary Service) Rules, 1965 was exercised with stigma attached in the order. The order does indicate that he was under suspension. It postulates that it was by way of a misconduct and thereby without conducting the enquiry, the termination of the service of the respondent was illegal. Consequently, instead of reinstating him into service the Court directed the appellant employer to pay him compensation in a sum of Rs. 2.50 lakhs. Aggrieved by that order, this appeal has been filed.

5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent Government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary Government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of Government employee does not automatically entitle the Government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should

be taken as per law, if otherwise, available. Since the respondent is only a temporary Government servant, the power being available under Rule 5 (1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a Government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

15. The above case fully supports the contention of the counsel for the respondents. In the present case also, the prosecution was launched against the petitioner but instead of proceeding to hold an enquiry, his services were terminated invoking the terms of appointment.

16. Coming to the judgments cited by the learned counsel for the petitioner. The first case of Jagdamba Prasad Shukla (supra) is not applicable to the present case. The said case was a case where subsistence allowance was not paid in the departmental enquiry on the basis of which it was held that there was a breach of principles of natural justice. This question is not attracted in the present case since there was no departmental enquiry held against the petitioner. The judgment of the Apex Court in Narsingh Pal's case was a case where an enquiry was held and the termination itself recorded a charge against the petitioner that he had beaten with iron article and had bitten with teeth Sri Mahender Singh. The Apex Court held the order was punitive in nature. Further, it was held that the preliminary enquiry was held against the petitioner in which the statements of certain persons were recorded. Due to the reason that services were terminated on account of allegation of assault made against the petitioner of that case as well as the fact that in the preliminary enquiry statements of persons were recorded who had seen the incident it was held that the termination order was founded on misconduct. The said case was on the facts of that case and does not help the petitioner.

17. The case of Chandra Prakash Shahi v. State of Uttar Pradesh and Ors. (supra) was a case of termination of service of probationer. In the aforesaid case the Apex Court found that the termination of appellant was founded on the report of the preliminary enquiry in which the appellant's involvement was found established. The enquiry was held for finding the guilt of the appellant of that case which too was found. The said case is thus distinguishable.

18. Applying the principles as laid down in the above noted case of the Apex Court into the facts of the present case, it is clear that the criminal prosecution launched against the petitioner and allegations against the petitioner regarding theft of record and shortage of material in the store was at best motive for passing the order of termination. The employer never chose to hold any enquiry to find out the guilt of the petitioner before passing the termination order, hence the submission of the counsel for the petitioner that the order is punitive cannot be accepted. The employer Invoked the terms and conditions of appointment while terminating the services of the petitioner.

19. The second submission of the counsel for the petitioner is that since one month's notice or pay in lieu thereof has not been given to the petitioner before effecting the termination, the order is vitiated. The petitioner has placed reliance on the Judgment of the Apex Court in *Prabhudayal Birari v. M.P. Rajya Nagrik Aapurti Nigam Ltd.* 2000 (4) AWC 2951 (SC) : 2000 SCC 958 . Learned standing counsel elaborating his reply contended that the termination of the petitioner was in terms of the appointment letter which is a matter of contract hence cannot be challenged. Learned standing counsel further contended that according to Rule 3 of the U.P. Temporary Government Servants (Termination of Services) Rules, 1975, the petitioner at best was only entitled for one month salary and the termination will not be vitiated due to that reason. Learned standing counsel has placed reliance on the judgment of the Apex Court in *Brij Mohan Singh v/s. Union of India and others*, (2002) 9 SCC 453

20. Before considering the submission it is necessary to look into the terms of appointment of the petitioner. Appointment letter dated 9.10.1973 has been filed as Annexure-1 to the writ petition. Condition No. (1) of the appointment letter mentions that the service can be terminated by giving notice by employer at any time. Condition No. (2) which is relevant is quoted below :

^^2- bl izdkj dh uksfVI dh vof/k ,d ekg dh gksxh] pkgs ;g fu;qfDr vf/kdkjh }kjk mudks ;k muds }kjk fu;qfDr vf/kdkjh dks nh x;h gks A izfrcU/k ;g gS fd fu;qfDRk vf/kdkjh dks ;g vf/kdkj gksxk fd mUgsa bl de le; dh uksfVI ij mrus gh le; dk osru nsdj lsok eqDr dj nsa A blds vfrfjDr ;g Hkh fu;qfDr vf/kdkjh ij fuHkZj gS fd og mUgsa fcuk fdlh iwoZ lwpuk ds lsok eqDr dj nsa A mUgsa dksbZ le; esa fcuk fdlh izdkj nf.Mr fd, uksfVI fn, tkus ij mudh uksfVI Lohdkj dj ysaa A**

21. The Condition No. (2) provides that it is open to the appointing authority to terminate the service without any notice. The services of temporary Government servant are governed by statutory rules the U.P. Temporary Government Servants (Termination of Services) Rules. 1975. The petitioner being appointed on temporary basis, which is apparent from the appointment letter, he is temporary Government servant, governed by the said 1975 Rules. Rule 3 of the said Rules which is relevant for the purposes is being quoted below :

"3. Termination of services.--(1) Notwithstanding anything to the contrary in any existing rules or orders on the subject, the services of a Government servant in temporary service shall be liable to terminate at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

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

Provided that the service of any such Government servant may be terminated forthwith, and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be, period for which such notice falls short of one month at the same rate at which he was drawing them immediately

before the termination of his services :

Provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice :

Provided also that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated shall be effective only if it is accepted by the appointing authority, provided in the case of a contemplated disciplinary proceeding, the Government servant is informed of the non-acceptance of his notice before the expiry of that notice."

22. The first proviso to Rule 3 provides that the service of any Government servant may be terminated forthwith, and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice. The words "shall be entitled to claim" makes it clear that the non-giving of one month notice shall follow the consequence as mentioned in the proviso which entitle a Government servant to claim one month's salary but by non-giving of notice the order itself will not be void. The judgment of the Apex Court in *Brij Mohan Singh v. Union of India and Ors.* case (supra) do support the contention of the petitioner. The Apex Court in the case of *Brij Mohan Singh v. Union of India and Ors.* (supra) was considering the proviso to Rule 6 of Extra Department Agent Conduct and Service Rules, 1964. From reading of paragraph 4 of the judgment it appears that the proviso of Rule 6 provided that the employee is entitled to claim a sum equivalent to the amount of his basic pay plus D.A. The Court interpreted the said proviso and held that the proviso entitles the delinquent a month's basic allowance plus dearness allowance for the period of notice and termination was held not to get vitiated on that score. Following was laid down by the Apex Court in paragraph 4 :

"So far as the contention in relation to non-compliance of the provision of Rule 5 is concerned, firstly the same does not appear to have been taken before the Tribunal. Secondly, on a plain reading of the provision of Rule 6 and the proviso thereto, it is clear that it would not vitiate the order of termination ipso facto and the employee will be entitled to claim a sum equivalent to the amount of basic pay plus dearness allowance for the period of notice at the same rate which he was drawing monthly before the termination or, as the case may be, for the period by which such notice falls short of one month. Mr. Mohanty urged before us that the note to the aforesaid rule, as well as the form indicated therein support the proposition that the payment of compensation in lieu of one month's notice must be simultaneous with the order of termination or else the order of termination would be vitiated. We are unable to accept this submission. The provision contained in proviso to Rule 6 from the very language of the proviso entitles the delinquent a month's basic allowance plus dearness allowance for the period of notice. In this view of the matter, even assuming that the said payment has not been made along with the order of termination, the order of termination will not get vitiated on that score."

23. Now coming to Prabhudayal Birari v. M.P. Rajya Nagrik Aapurti Nigam Ltd. "s case (supra) as relied by the counsel for the petitioner it is clear that the Apex Court held the termination was made in contravention of specific condition mentioned in the appointment order. The Condition No. 5 was that the appellant was to be given one month's notice or one month salary. The Apex Court held that when admittedly the order of termination of services of the petitioner was made in contravention of the specific condition mentioned in the appointment order, the trial court was right and Justified in decreeing the suit of the appellant. In the case before the Apex Court the condition No. 5 provided for giving one month's notice or one month salary. In the U.P. Temporary Government Servants (Termination of Services) Rules, 1975 there is proviso to Rule 3 Sub-rule (2) which provides for consequence of not giving the notice. In condition No. 5 which was considered by the Apex Court there was no such proviso as is contained in 1975 Rules. Thus, the Judgment of the Apex Court was based on condition No. 5 of the appointment order in that case and is not applicable on the facts of the present case and is clearly distinguishable.

24. There is one more aspect on account of which the petitioner is not entitled for any relief in this writ petition. Petitioner's services were terminated on 8.1.1975. He did not challenge the said termination immediately on the ground, which is being sought to be urged in this writ petition. Petitioner represented to the department after he was acquitted in the criminal case praying for his reinstatement. Petitioner also gave a written application on 12.4.1991 giving his consent to the authority concerned to accept his Joining from that date with the condition that it will be acceptable to the petitioner subject to approval by the authorities and he will accept the decision of the Chief Engineer/Engineer-in-Chief/ Government regarding his earlier services. Petitioner approached the Government to accept his joining with effect from 12.4.1991 and offered that he will accept the decision of the Government regarding accepting the joining on the said representation and considering all other facts the respondents took sympathetic view of the matter and decided to give fresh appointment to the petitioner by giving fresh opportunity of service by the appointment order dated 26.4.1991 which was immediately accepted by the petitioner on 29.4.1991. Now it is not open to him to challenge. He cannot at this stage be permitted to challenge the termination order dated 8.1.1975. Petitioner has unconditionally accepted the fresh appointment and is serving in the department. No error has been committed by the respondents in refusing to give any benefit to the petitioner of his earlier service.

25. In view of what has been said above, none of the submissions of the petitioner has any merit. The writ petition lacks merit and is dismissed without any order as to cost.