

(1983) 09 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Appeal No. 1922 of 1983

Sunder Grover

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-09-1983

Acts Referred:

Citation : (2009) 244 ELT 173 : (1984) ILR Delhi 406

Hon'ble Judges : Rajinder Sachar, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, A.B. Saharia, P.H. Parekh, Arun K. Sinha, Ashok Gupta, S.M. Babu, Indu Malhotra, K. Prasaran and D.K. Kapur, for the Appellant;

Judgement

Sachar, J.

(1) This petition challenges the impugned order passed by the President of India on July 16, 1983 by which he gave one months" notice to the petitioner and further ordered that on the expiry of the period of one month from the date on which this notice is served on him he shall stand reverted to the post of Judicial Member, Income Tax Appellate Tribunal. As reference to this order has to find place a number of time in the judgment it will be apt to reproduce the impugned order which is as follows : "In accordance with the provisions .of paragraph 1(6) of this Ministry"s memorandum F. No.A-1202619j 82-Ad.IKTrib) dated the 14th September, 1982, concerning the terms and conditions of appointment of Sbri S. Grover as Vice-President in the Customs Excise and Gold (Control) Appellate Tribunal the President is pleased hereby to give one month"s notice to Shri Grover and to order that on the expiry of the period of one month from the date on which this notice is served oil him, he shall stand reverted io the post of Judicial Member, Income Tax Appellate Tribunal."

(2) The petitioner is a B.A.,LL.B. and was practicing Advocate. The petitioner joined as a Judicial Member of the Income Tax Appellate Tribunal on 3fd August, 1973. By Section 50 of the Finance Act 2 of 1980 read with fifth Schedule, an

Appellate Tribunal was constituted called the Customs, Excise and Gold"(Control) Appellate Tribunal to be called the Customs Tribun"al consisting of as many Judicial and technical members as the Central Government may think fit to appoint. Section 129(4) of the Finance Act further empowered the Central Government to appoint one or more members of the Customs Tribunal to be Vice President or as the case may be Vice Presidents thereof.

(3) In order to make selection of the personnel of the Customs Tribunal, the Government of India on 21st November, 1981 constituted a Selection Committee which was chaired by one of the sitting judges of the Supreme Court. In due course the petitioner was called for interview and on 14th September, 1982 the President offered to the petitioner an. appointment as a Member and Vice President of the Customs Tribunal on the terms and conditions mentioned in the said order. Clause 3 and clause 6 of the said order read as under :

"3.The said post is permanent but the appointment will initially be temporary. 6. Unless Sh. S. Grover is confirmed as Vice-President, the Central Government may at any time revert him to his previous post by giving him one month's notice in this behalf. He will also have the option to revert tn his ordinal post by giving one month's notice. In the event of such reversion, his age of superannuation will be regulated by the general rules in force in this behalf."

(4) The petitioner challenges the order of 16th July, 1983, on various grounds. It is maintained that the Government had already decided to confirm the petitioner and Therefore the Government was estopped from purporting to Act in terms to the appointment letter.

(5) The impugned order is stated to be arbitrary and capricious. It is said to be penal in nature and also to have cast a stigma on the petitioner. The order is also said to have been passed for collateral and ulterior purposes and is also stated to have prejudiced the petitioner and also claimed to be bad as violating natural justice inasmuch as it was passed without giving any opportunity of hearing to the petitioner. Re: Was the petitioner confirmed as Vice President :

(6) Though in the petition averment was made that on 6th April, 1982 the petitioner was called by the President of the Customs Tribunal who informed him that the Government of India had decided to confirm him and that he had also given his option for confirmation on that very day, impliedly suggesting that henbit be deemed to have been confirmed the learned COUHSC-I for the petitioner. Mr. Sorabji did not press the plea that the petitioner should be treated to have been confirmed. He argued the matter on the acceptance of the petitioner still holding temporary appointment, a position also proved on record.

(7) The fact that the petitioner did give his option turn being confirmed in the Customs Tribunal is not in dispute. However the petitioner"s contention that the same was done at the instance of Mr. F. S. Gill, the President of the Customs Tribunal who had informed him that the Government had decided to confirm him does not receive support, from the counter" affidavit filed by the President of the

Tribunal. Mr. Gill has stated in his affidavit that he had not called the petitioner and informed him of any decision of the Government of India to confirm him and the other Vice Presidents. He has stated that he on his own accord initiated the proposal for the confirmation of all the members including the Vice Presidents in the Custom Tribunal. He was keen that this should be done early so that the spirit of belonging is infused in the mind of the officers working in the Customs Tribunal. Mr. Gill's other purpose was that if such a request was made the Government would expedite the framing of the Recruitment Rules under which confirmation were to be made. It is specifically stated that there was absolutely no decision of the Government or even direction from the Government to obtain option from the Vice Presidents or the members and that option was obtained entirely on his own.

(8) The petitioner has also alleged that some time after 6th April, 1983, he had been informed by Mr. Gill that a letter accepting the confirmation had been sent to the Government and Mr. Justice Murtaza Fazal Ali, Judge, Supreme Court who was the Chairman of the Selection Committee was pleased to endorse the decision to confirm the petitioner. This averment is denied by Mr. Gill who has stated that it is incorrect that he had informed the petitioner that Hon^{ble} Mr. Justice Murtaza Fazal Ali had been pleased to endorse the decision to confirm the petitioner as Vice President. Mr. Gill further states that the question of endorsing the decision to confirm the petitioner did not arise as no decision of this kind had been taken. The alleged endorsement and confirmation is thus strongly denied by Mr. Gill. In the counter affidavit filed on behalf of the Union of India by the Deputy Secretary, Ministry of Finance, it is also stated that Mr. Justice Murtaza Fazal Ali was the Chairman of the Selection Committee which was constituted to recommend suitable persons for appointment as Judicial and Technical Members and the role of the Selection Committee was confined only to recommend suitable persons for appointment. No function of confirmations or further advancement in the careers of the Members, Vice Presidents etc. had been assigned to the Selection Committee. It is denied that the Government had taken any decision to confirm the petitioner and therefore the question of endorsing any such decision by Mr. Justice Murtaza Fazal Ali does not arise. In view of these pleadings we cannot hold that any decision had been taken by the Government of India to confirm the petitioner and that the impugned order was a sudden volte face. Mr. Sorabjee therefore rightly argued the matter by accepting that the petitioner was holding a temporary appointment. If so, the petitioner was governed by the terms and conditions of his appointment letter dated 14th September, 1982 by which he could be reverted to his previous post by giving him one month's notice in this behalf. Indeed this finding of temporary appointment is the sheet anchor of stand of the Union of India because it was not disputed by the learned Attorney General appearing for the Union of India that had the petitioner been confirmed as Vice President in the Custom Tribunal then the order reverting the petitioner without first holding an inquiry and giving him opportunity of hearing would have been per se bad. But, argued Mr. Attorney

General, as the petitioner was still a temporary incumbent he was validly reverted in terms of clause 6 of his terms and condition of appointment. The suggestion of the order being punitive arbitrary or for collateral purpose or having cast a stigma are all repudiated. -. Has the imputed order visited the petitioner with civil consequence^ and is he entitled to an opportunity of hearing :

(9) But the finding above that the petitioner was a temporary employee is not the end of line for the petitioner's grievance His next grievance is that the mere order of reversion entails civil consequences and it was incumbent to hold an enquiry and an opportunity of hearing being given to him before passing the impugned order and says that the principle of hearing is nothing but fair play in action and that to revert even a temporary employee causes civil consequences entailing a hearing to be given. In support of that he refers to Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, to urge that "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. The interest of a candidate at an election to Parliament regulated by the Constitution and the laws comes within this gravitational orbit. In that authority it was held that a candidate at a poll when counting of vote is taking place had a right to be heard before Election Commission makes an order cancelling the poll and directs the holding of a fresh poll for the whole of the constituency. But this very authority itself negates the contention that hearing is required to be given in the case of termination of the service of a temporary employee because the court made this distinction when it said Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, for the same reason, is inapplicable. A temporary servant has only a temporary tenure terminable legally without injury. Even he, if punished, has procedural rights in the zone of natural justice, but not when the contract of employment is legally extinguished." (para 67)

(10) Mr. Sorabjee then referred us to Swadeshi Cotton Mills Vs. Union of India (UOI), . That was a- case in which the question arose whether when an order is passed u/s 18AA of the Industries Development Regulations Act to take over the management of the undertaking and even though immediate action is the condition precedent in the statute natural justice in the sense of giving a hearing can be excluded. The majority held that the circumstances were not such that a hearing could be dispensed with before passing the impugned order. The Bench pointed out that from the analysis of Section 18AA(I)(a) it was clear that as a necessary preliminary to the exercise of power the Central Government is to be satisfied With regard to the existence of circumstances which would include that the person in charge has by committing any of the ads namely reckless investments or creation of encumbrances has brought about a situation which is likely to cause fall in production, and this satisfaction could not be arrived at without living a hearing to the undertaking there some stigma was to be attached before taking over and hence hearing was implied.

(11) Similarly in *S.L. Kapoor Vs. Jagmohan and Others*, where the case was of supersession of N.D.M.C. and it was held that as the status and office and rights of the Committee to serve its full terms are affected which if superseded would entail civil consequences which would justify the insistence upon the observance of principles of natural justice before an order of supersession is passed. The committee could Only be superseded u/s 238, should a connote be incompetent to perform or is persistently incompetent to perform its duties imposed on it under this Act. Thus a certain preliminary situation about the incompetence and abuse of power had to be established before the order could be passed and evidently there could be no question of the State Government assuming such abuse without at least first giving an opportunity of hearing to the committee concerned. It will be seen that in all these cases there is a specific right which is vested in the party concerned and the same Was to be taken away. But it is wrong to extend the analogy of these cases to the case of a temporary employee who under the terms of his employment is liable to have his services terminated by giving a month's notice as in the present case. A temporary employee has no right to the post and thus no vested right is taken away when his services are terminated *Parshotam Lal Dhingra Vs. Union of India (UOI)*, .We must.emphasise again that we are not thinking of a case where even though in case of a temporary employee action is taken against him on the ground of misconduct or as a measure of punishment or the order casts a stigma on him because in such a case even Mr. Attorney General concedes that an opportunity of hearing has to be given. We shall of course deal a little later with the aspect whether in fact the present case is a simple order of reversion or does it cast any stigma. But we are not aware of a case which has held that before passing a simple .order of reversion of a temporary employee in accordance with the terms of service contract or-the service rules an opportunity of .hearing has still to be given to the government servant even, when an action was not as a measure of punishment.; rather to the contrary.

(12) Now Fundamental Rule 56(j) provides that if the appropriate authority is of the opinion that it is in public interest so to do, have absolute right to retire any Government Servant by giving him notice of not less than three months in writing or three months pay and allowance in lieu of that notice. This power thus permits the government to compulsorily retire an employee at the age of 50 years before reaching the normal age of superannuation at 58" years. One .would, at, first blush think that this action of compulsory retirement which will affect an employee so seriously by throwing him out of employment so. many years in advance with obvious loss in earning, status, material as well as .financial should at least attract natural justice and require a-hearing to be given to him before taking any action. And this is what a Division Bench of this court so held in 1970 SLR 213. But this view was not approved by the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, . The Supreme Court though it recognised the essential sweep of the natural justice and also recognising that the compulsory retirement of an officer is bound to have some

adverse effect on the employee compulsorily retired yet held that it involved no civil consequence nor is such a rule intended to take any penal action against the government servant. Reversing the reasoning for the applicability of principles of natural justice it said that In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences. Such a retirement does not take away any of the rights that have accrued to the Government servant because of his past service." Thus the broad argument put forth by Mr. Sorabjee that in every case even in the case of temporary employee and in case of reversion without any stigma demand of principles of natural justice requires hearing to be given must be rejected. If the case of compulsory retirement of government servant who has the normal expectation of remaining in service up to 58 years principles of natural justice and hearing are not attracted, it is impossible to accept the argument that opportunity of being heard was necessary to be given to the petitioner, when he was only being reverted to his old post, "and apparently in accordance with the conditions and terms of his appointment. No invalidity can Therefore attach to the impugned order merely on the ground that no opportunity of being heard was given to the petitioner before making the order of reversion.

(13) Another argument advanced by the petitioner was that he had been penalised and this could not be done without giving him a hearing. The alleged penalty was stated to be that by the impugned order the petitioner's present emoluments of Rs. 50751- p.m. would stand reduce to Rs. 48251- p.m. upon his reversion. This is because the salary of Vice President of the Customs Tribunal is Rs. 3250.00 whereas as a member of Income Tax Tribunal the petitioner would be getting Rs. 30001- p.m. We do not agree. Reversion to his parent post from a post carrying higher pay which he was holding temporarily must necessarily result in reduction of pay. This situation is automatic and is inherent in a person holding a post temporarily and is not the result of any punitive action.

(14) The other instance of the loss of benefits stated to be is that in the normal course the petitioner would become President of the Custom Tribunal in December, 1985 and would have a tenure of 7 years as President while on his reversion the petitioner in the normal course would become Vice President of the Income Tax Tribunal around 1990 with a tenure of 2 years. We- feel that this assumed promotions are too speculative and conjectural to .give any right. The Finance Act, 1980 does not provide for an automatic appointment of a Vice President as a President. It has to be an independent appointment. The petitioners effort at clutching at this normally uncertain future career prospects in the years to come is too tenuous a ground to found an agreement on loss of benefits so as to base his claim that he has been penalised. This plea, Therefore, is rejected. Is The Order Arbitrary :

(15) The next contention of Mr. Sorabjee was that he impugned order was arbitrary and thus vitiated. The counsel characterizes it as arbitrary because according to him no reason is mentioned in the impugned order as to why the

petitioner is being reverted. He also makes, a grievance that in justification of the order of reversion the Union of India has also taken a stand in the return affidavit that the order of reversion was passed because the petitioner's performance was not satisfactory and says that even though it is stated by the respondents to be an order of reversion implicate and not by way of punishment yet by commenting on the petitioner's performance it casts a stigma on the petitioner. Mr. Sorabjee seeks to refer us to a number of authorities to urge that an arbitrary order cannot be allowed to stand. The proposition is unexceptionable. It may be readily conceded that if it can be shown that termination of the services of an employee has violated the constitutional mandate of Article 14 or 16 of the Constitution the said arbitrary action is liable to be struck down, See; *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, . However it is necessary to strike "a caution to urge that the principles on which the test of arbitrariness has to be judged has to be co-related with the facts of each case as arc-laid down in the authorities dealing with the matter of termination or reversion of a temporary employee. That a rule permitting the termination of a temporary government servant by giving him a notice of one month as in the present case is not per se vocative of Articles 14 and 16 of the Constitution has been settled by the decision of the Supreme Court in *Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*, which rejected an argument based on the violation of Articles 14 and 16 of the Constitution and observed that there is no merit in this contention and the argument that such a rule confers arbitrary and unguided discretion is devoid of any merit and observed that the services of a temporary Government senate may be terminated on one month's notice whenever the government thinks it necessary or expedient to do so for administrative reasons. It is impossible to define before hand all the circumstances in which the discretion can be exercised. The discretion was necessarily left to the government (see para 5 at p. 160).

(16) The next limb of "the argument is that as "an allegation has been made that the order of reversion is arbitrary it is incumbent on the respondent [Union of India to place sufficient material before the court to indicate the reason oi grounds on the basis of which order of reversion has been passed and that no material is being placed before the court by the respondent to justify its action the said order must be castigated as arbitrary and unsustainable.

(17) Sorabjee seeks support from *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and *Rohtas Industries Vs. S.D. Agarwal and Others*, . In oar opinion those cases are clearly distinguishable. In those cases the question was as to when an order is passed u/s 237(b) of Companies Act 1956 to appoint inspectors to investigate the affairs of the Company. Now Section 237(b) could only be invoked if Central Government was of the opinion that there are circumstances suggesting that the business of the Company is being conducted with intent to defraud its creditors members, etc. It was because of this condition precedent before passing the order u/s 237(b) of Companies Act that the Court laid down that "the formation of the opinion is

subjective but the existence of the circumstances relevant to the inference as the sine qua non for action must be demonstrable; if their existence is questioned, it has to be proved at least prima facie: it is not sufficient to assert that those circumstances exist and give no clue to what they are, because the circumstances must be such as to lead to conclusions of certain definiteness; the conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct." That is not the position in the case of reversion of a temporary employee, because the only condition precedent is that it should be in accordance with sender conditions, no other limitations are imposed on the government to exercise its undoubted power under the Rules.

(18) Similarly futile is the reliance on *J. N. Sinha v. Union of India* (1971) 2 S.L.R. 470 (10), where in a case of compulsory retirement, this court held that material to show that it was necessary to pass an order in public interest must be produced before the court. It will be appreciated that these principles were laid down in cases in which an employee has a vested right unlike the temporary employee and that right is being taken away from him earlier than the date of normal superannuation date. Thus in the case of permanent government official who would normally continue in service up to the age of 58 years if an order is passed compulsorily retiring him in public interest earlier say at 50 years, the court insists that the material on the basis of which it is passed should be such that a reasonable person could have formed an opinion that it was in public interest to so do, and that is why when an order is challenged as arbitrary the court insists on the material being placed, before it so as to satisfy itself on this limited jurisdictional precondition.

(19) Similar comment applies to another case cited by Mr. Sorabjee namely *Chief Security Officer v. Ajoy Chandra* (1975) 2 SLR 660 (1), which was also a case of compulsory retirement and the court struck down the order because it found that the adverse entries which were the alleged basis for the recommendation for the order of compulsory retirement of the employee were not duly communicated or made known to him.

(20) Similarly *State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others*, was a case where a Government Servant was compulsorily retired as a result of second review committee, even though the first review committee had not found anything adverse against the employee; this action was, Therefore, rightly characterised as arbitrary. It was in that context that it was held by the Supreme Court that where an order of compulsory retirement is challenged as arbitrary and mala fide it was for the government to produce the necessary materials to repudiate such pleas to satisfy the court about its bona fide action. None of these cases even remotely supports the contention of the petitioner, namely that even if the order has been passed in terms of the conditions of appointment of the petitioner who had no Vested right to the post, it is still incumbent on the Union to seek to justify its action in passing an order of reversion even though it was not punitive nor does it cast any stigma on the petitioner. Justification or

Explanation by the Union is only called f(A when some vested right of the petitioner is being taken away. A temporary government officer like the petitioner can claim no such right, for as the Supreme Court says "in short, if the termination of service is founded on the right flowing from contract or the Service Rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so Aft. 311 is not attracted"..... "(He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, Therefore, his reduction did not operate as forfeiture of any right and could not be described as reduction in rank by way of punishment." See Parshotam Lal Dhingra Vs. Union of India (UOI), .

(21) Of douse it is also equally well settled that "even if the order of termination does not contain words attaching stigma to the character or reputation of a Government Officer still the court is not debarred from looking at all circumstances to dis sever whether the order has been made by way of punishment. The form of the order is not conclusive of its nature; See S. R. Tiwari v. The District Board Agra now the Antarim Zila Parishad Agra through its Secretary and another; AIR 1964 1680 (13). Now a reference to the impugned order would show that it is ex facie innocent order reverting the petitioner to his original post of a Judicial Member of the Income Tax Tribunal., The order as such neither casts any stigma on the petitioner nor does it impose any penalty or any adverse consequences.

(22) The petitioner's complaint of a loss of about Rs. 2501- in pay, on being reverted cannot be said to be penal in nature because it is inherent in the nature of any officiating or temporary appointment to a higher post that when the employee is reverted in accordance with the terms of his service to his original post this extra amount of salary will not be any longer available to him. This consequence of less pay.is implicit in the nature of holding a temporary appointment. Of course if the order itself casts a stigma ,, different consequences would follow.

(23) Thus in Jagdish Mitter Vs. The Union of India (UOI), the services of a temporary employee were terminated and the order read. as follows s

"Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be renamed in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949".

The Supreme Court held that though the order purports to be one of discharge and can be referred to the power of the authority to terminate the temporary appointment with one months" notice, but the order stated that the employee was found undesirable to be retained in Government service, it expressly casts a stigma and must be held to be dismissal and not merely an order of discharge. It was held that the use of word "undesirable" would necessarily import an element of punishment which is the basis of order and is its integral part. In this very

case however, the Supreme Court has very clearly laid down that the tenure held by a temporary public servant is of a precarious character and that his services can be terminated by one months' notice without assigning any reason either under the terms of contract which expressly provide for such termination or under the relevant statutory rules governing temporary appointments or appointments of probationers, and in such a case it would be a straight forward and direct case of discharge and nothing more and in such a case Article 311 will not apply. Mr. Sorabjee however, seeks to distinguish it by saying that as return affidavit says the petitioner's performance was not satisfactory it must mean that reversion following such an opinion amounts to casting a stigma. Mr. Attorney General in this connection) makes a justifiable grievance that as the petitioner had made an allegation in the petition that the order was passed for ulterior and collateral purposes of inducting another person to the post of Vice President (Judicial) in the Customs Tribunal, the Union of India properly thought it right not only, to merely denying such a reckless allegation, but also considered its duty to inform the court that it had a bonafide and justifiable reason to pass an order of reversion. His contention is that in order to repudiate the allegation of having acted with ulterior purpose the Explanation is given by the respondent that not only the order of reversion has been passed in accordance with the terms and conditions of appointment, but also to show its bonafide it is explained that the performance of the petitioner was not satisfactory, but he says that this does not in any way make the order penal in nature. We feel that there is justification for such a complaint, because to accept the argument of Mr. Sorabjee would be to confront the Union with an irresolvable dilemma & an uncrossable obstacle because if it was to take the stand that it was its sweet will and whim to terminate the services then it may be accused of arbitrariness and having acted capriciously: But if it gives the motive for its action, namely that the performance of the petitioner was not satisfactory it is accused of stigmatizing the petitioner. But fortunately for the respondents Union of India the law is not that illogical or unreasonable. It is well known that government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily." "the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure". (See Champaklal Chimanlal Shah Vs. The Union of India (UOI), . As the - Supreme Court also explained in Jagdish Mitter's case (supra), "it is obvious that temporary servants or probationers are generally discharged, because they are not found to be competent or suitable for the post they hold. In other , if a temporary servant or a probationer is found to be satisfactory in his work, efficient and otherwise eligible, it is unlikely that his services would be terminated, and so, before discharging a temporary servant, the authority may have to examine the question about the suitability of the said

servant to be continued and acting bona fide in the behalf, the authority may also give a chance to the servant to explain, if any complaints are made against him, or his competence or suitability is disputed on some grounds arising from the discharge of his work; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry, the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open on to temporary servant to invoke the protection of Art. 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged". The court held that even if the authorities initiated a formal departmental enquiry against the temporary servant but it is stopped before reaching a conclusion and an order of discharge simpliciter is served it will have to be held that the termination of service of temporary servant cannot in law be regarded as his dismissal. That justification for action mentioned in the counter-affidavit cannot be seized by the employee to characterise a simple order of discharge as one of dismissal is clear from the following observations in Jagdish Mitter's case (para 13) (supra) :--

"We must bear in mind that the real character of the termination of services must be determined by reference to the material facts that existed prior to the order. Take a case where a temporary servant attacks the validity of his discharge on the ground of malafides on the part of the authority. If in resisting the plea of malafides, the authorities refer to certain facts justifying the order of discharge and the facts relate to the misconduct, negligence or inefficiency of the said servant, it cannot logically be said that in view of the plea thus made by the authority long after the order of discharge, it should be held that the order of discharge was the result of the consideration set out in the said plea. What the court will have to examine in each case would be, having regard to the material facts existing up to the time of discharge, is the order of discharge in substance one of dismissal."

That Rule 5 of C.C.S. (Temporary Service) Rules 1949, empowering the authority to terminate the services of a temporary government servant by giving one month's notice is not violative (cf Article 16 of the Constitution has been settled in Champak Lal's case (supra). Nor is such an order of termination discriminatory, for as the court observed in the above case that "the present however, is a case where the appellant's services were terminated because his work was found to be dissatisfactory". ... "it would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be

terminated Along with him, irrespective of what their conduct is". (Vide para 9).

(24) It needs to be emphasised that in Champak Lal's case finding was given that the employee was discharged under Rule 5 because his work and conduct were found unsatisfactory. But still as order of termination made no imputation whatsoever against him it was held to have not visited the employee with evil consequences and the order of termination was, Therefore, held not to be one of dismissal or removal. Exactly same is the situation in the present case.

(25) In Dalip Singh Vs. The State of Punjab, order of compulsory retirement was passed. The order only stated that the employee was being retired for administrative reasons. The employee asked for the grounds which led to the order of compulsory retirement and he was supplied the ground and certain charges were communicated to him. He sought to use these details as an argument to contend that the order of compulsory retirement was byway of punishment. This plea was negatived by the Supreme Court with the observations :

"in the case before us the order of Rajpramukh does not purport to be passed on any charge of misconduct or in efficiency. All it states is that the compulsory retirement is for "administrative reasons". It was only after the appellants' own insistence to be supplied with the grounds which led to the decision that certain charges were communicated to him. There is Therefore, no basis for saying that the order of retirement contained any imputation or charge against the officer. The fact that considerations of misconduct or inefficiency weighed with the government in coming to its conclusion whether any action should be taken under Rule 278 does not amount to any imputation or charge against the officer."

(26) In Debesh Chandra Das Vs. Union of India (UOI), , the appellant was a member of Indian Civil Service. On 20th June 1966, he received letter from the Cabinet Secretary (when he was posted as Secretary in the Government of India, Delhi), informing him that it had been decided to revert him or he may agree to proceed on leave preparatory to retirement or to agree to accept some post lower than Secretary of the Government of India. Thereafter the appellant was reverted to his parent State in Assam. The appellant challenged the reversion on the ground that this amounted to reduction in rank. The Supreme Court considered the I.A.S. Cadre Rules and Regulations and came to the conclusion that the Cadre of I.A.S. exists only in States and not in the Centre. It also found that when such officers are posted at the Centre they enjoy better emoluments and status. They rank higher than in States. In the States they cannot get the same salary in any post as Secretaries are entitled to in the Centre. The appointment to the Centre is not in any sense a deputation. It means promotion to a higher post. The post of Secretary at the Centre is a tenure post for 5 years. The tenure of Das was to expire on 29th July, 1969. The order reverting him was passed on 7th September, 1966, thus cutting short his tenure and sending him back on a smaller salary. It was on this peculiar ground that the question was posed whether the reversion to Assam State before the expiry of tenure period

and carrying a smaller salary would amount to a reduction in rank and cast stigma on him. The court accepted that reversion to a lower post per se does not amount to a stigma. But it referred to the special facts, namely three alternatives given to him; (1) to accept a lower post in Centre (2) going back to a post carrying lower salary in Assam or (3) taking leave preparatory to retirement. From these facts the court found that reversion is not due to any exigency of service, but that the Government was bent upon removing him from his present post. It was in that context that reference was also made to the affidavit filed in return wherein it was stated that the performance did not come to the standard expected of a Secretary, Government of India. It is this Explanation which is seized by Mr. Sorabjee to urge that the statement in affidavit in reply in the present case that the performance was not satisfactory should also lead to the same result namely that a stigma was being cast on the petitioner. We do not agree. The reason is. that in Das case order of reversion was held to be penal mainly because, his tenure was being cut short by 3 years by sending him to a lower salary post. The suggestion that he should seek leave preparatory to retirement. spoke volumes for the foundation of the order. In the present case the clause in the appointment letter permits the President to revert the petitioner by giving one month's notice. There is no tenure period being cut short by the impugned order. The reference to the affidavit in Das's case was mentioned so as to clear any doubt. -The court was convinced that order of reversion was penal from other facts noticed in the judgment. The present case is clearly distinguishable. Here the petitioner is holding a temporary post. His reversion is in accordance with the term of his appointment. Seeking to found a challenge on some small Explanation given in the return affidavit is to ask us to adopt a course which was deprecated in Jagdish Mitter's and O.N.G.C., case (supra.). The petitioner cannot derive any assistance from this case.

(27) In Madan Mohan Prasad Vs. State of Bihar and Others, a Munsif had been appointed in January, 1955. His services were terminated in January, 1972. Why the court held that the order "of termination violated Article 311(2) was that though the petitioner was a temporary employee he had been holding a temporary post and then- a permanent post for 17 years, and further the Chief Minister of the State had also made a statement in the Assembly stating that his services were not satisfactory and the Government) was considering serving a show cause notice. It was for this reason that the court held that all these would inevitably lead the public to believe that his services had been terminated on account of inefficiency or misconduct, and did cast a stigma on his character.

(28) Here in the present case there are no features to show that the impugned order is anything else but a simple order of reversion. But Mr. Sorabjee insisted that if we go through the files and record of the department, it will show that the impugned order is punitive. But the law appears to be well settled that in the case of a termination of the service of probationer or a temporary employee or in the case of an ordered compulsory retirement "where there are no express words in the order we cannot delve into Secretariat files to discover whether

some kind of stigma can be inferred on such research". See 1. I.N. Saksena Vs. State of Madhya Pradesh, approved in The State of U.P. Vs. Sri Shyam Lal Sharma, . In Shyam Lal's case (supra.) the compulsory retirement order of 28-3-1962 though a simple order of retirement happened to mention an order of 16-3-1962 , this separate letter of 16-3-1962 in turn made a reference to an order dated 14-2-1962. The letter of 14-2-1962 addressed to the Deputy Inspector General of Police by the Superintendent of Police mentioned that Shyam Lal was considered to be a bad lot, incorrigible and no longer useful, and his compulsory retirement was recommended. Contents of this letter were relied by Shyam Lal to urge that in view of the use of the word "incorrigible", it must be held that the order of compulsory retirement was based on stigma. Negating the resort to files, as mentioned above, the court observed that "where the authorities can make an order of compulsory retirement for any reason and no reason is" mentioned in the order .it cannot be predicated that the order of compulsory retirement has an inherent stigma in the order".

(29) Consistently it has been held that "the services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution" and "if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant." See A. Vishwanath Rao etc. Vs. The State of Mysore and Others, . In that case the probation period expired in July 1954. A chargesheet was given to the employee on January 1957. He even replied to the chargesheet in May 1957. The charges leveled against the employee were of fairly serious nature. By the order of 23/26-5-1958 the employee was reverted to his substantive post. The employee's argument was that services had been terminated without a show cause and without an enquiry into the chargesheet and there was violation of Article 311(2) of the Constitution. This plea was negated by the Supreme Court which found that the departmental enquiry did not proceed beyond the stage. of merely serving of a chargesheet followed by respondent's Explanation thereto, no evidence was taken, no conclusion reached. The court, Therefore, held that there was no stigma and the order was a valid one and no enquiry was necessary. An 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 temporary employee is unsuitable for the job and hence must be discharged, in accordance with terms of service contract. No punishment is involved in this. That is why it has been held that "an order terminating the. services of a temporary servant or probationer under the Rules of employment and without anything more will not attract article 311". Vide. Shamsher Singh's case para 67 (supra). Again it has been held that a preliminary enquiry to satisfy that there was reason to dispense with the services of a temporary employee has "been held not to attract Article 311. Vide Champak Lal's case(supra).

(30) No discrimination or arbitrariness is involved where service of a temporary government servant takes place on the ground that his conduct is not satisfactory because as observed by the Court "it would be absurd to say that if the services of one temporary government servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated Along with him, irrespective of what their conduct Is." (See Champak Lal's case (Supra).)

(31) The Manager, Government Branch Press and Another Vs. D.B. Belliappa, relied upon by Mr. Sorabjee is of no avail to him. In that case one Belliappa was appointed as temporary junior compositor. Years after he was served a show cause notice as to why disciplinary action be not taken against him. Soon thereafter however, an order was served on him terminating "his services. Beniappa filed a writ petition pleading that three other persons who were appointed as Junior Compositors subsequent to his appointment had been retained and continued in service and his termination of service was Therefore vocative of Article 16 of the Constitution. The High Court had allowed the writ petition and the same order was confirmed by the Supreme Court. It is however, relevant to note that Belliappa had in his additional affidavit specifically pleaded that he had been a victim of hostile discrimination while retaining his three juniors. The High Court had found that there was no reason for the termination of the service of the petitioner. Belliappa had also asserted in the petition that his service record was good. The Supreme Court noted that this fact had not been controverted by the State by filing any counter affidavit. . The Supreme Court thus proceeded on the-ground that Belliappa's services were in no way inferior to his three juniors who had been retained in service. Though the Supreme Court granted time to the State counsel to indicate the reason if any for the unsuitability of Belliappa, it was notable to disclose any such information. It was in that context that the Supreme Court came to the conclusion that the termination of Belliappa's services was made arbitrarily and not on the ground of unsuitability or other reason, which would warrant discriminatory treatment to him as a class apart from others in the same cadre. Though the counsel for the State had sought to plead in the Supreme Court that action had been taken against Belliappa because of his service record the same was not allowed; to be urged because of the stand adhered to throughout was that action had been taken to terminate his services without any reason in exercise of the power, vested in the competent authority under the conditions of Belliappa's employment. The Supreme Court commented adversely on the action of the State Government that while a charge of unfair discrimination had been made it made no effort to dispel that charge by disclosing to the Court the reasons for the impugned action. Thus in that case the State as a matter of fact never took the stand that it was because of any unsatisfactory service that action was taken against Beniappa. As a matter of fact from this very judgment it would appear that had the stand of the Government been that it was because of the unsatisfactory service that action has been taken against Beniappa the same

would have been upheld as valid. This is clear from the following observations of the Supreme Court made in that case that "we have a vague feeling that it was, perhaps, open to the appellant to say in view of the complaint alluded to in the show cause notice against the integrity and fidelity of the respondent that the former had lost confidence in the latter and considered him unsuitable to be continued in the post which was one of the trust and confidence". But the court found unable to give any relief to the State because it observed that "the State instead of taking any such plea has with obdurate persistency stuck to the position that the respondents' service has been terminated without any reason which comes perilously near to admitting that the power reserved to the employer under the conditions of the employment has been exercised arbitrarily.

"IN the present case however, the only basis for plea of alleged discrimination and collateral exercise of power is stated to be that action was taken against the petitioner to bring some one else in his place as Vice President. "This has been strongly and specifically repudiated. There is no other detail of discrimination or malice alleged against any one. No foundation at all whatsoever has" been laid for showing that the Central Government was hostile to the petitioner and acted with any bad motive. As a matter of fact the Supreme Court in this very case of Belliappa followed with approval the principle laid down in Champak Lal's case (supra.), about the validity of the action in terminating the services of a temporary government servant on the ground that his work was found to be unsatisfactory when it observed that "the principle that can be deduced from the above analysis is .that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which mark him. off a Class apart from other temporary servants who have been retained in service, there is no question of the applicability of- Article 16."

(32) Mr. Sorabjee contends that in a high quasi judicial post like that of the Vice President of Customs Tribunal a Statement in the counter affidavit that the performance of the petitioner was not satisfactory must be treated by itself to amount to casting a stigma on the petitioner and Therefore, per se penal. Though we have all the regard and respect for such high office it must yet be accepted that this is a post like any other Class I civil post under the Government of India. The said post is governed by the terms and conditions of appointment letter. In terms of the appointment letter unless the petitioner was confirmed as a Vice President he could at any time be reverted by giving him one month's notice. It is the exercise of this power which has been resorted to by the . respondent/Union of India. The statement in the counter affidavit that the performance; was not satisfactory was in answer to the pleading of the petitioner that the reversion was an act of victimization or for collateral purposes. As a matter .of fact Mr. Attorney General was fair enough to emphasise that notwithstanding the order of reversion the Government of India held the petitioner in high esteem and was not casting any aspersion on the conduct of

the petitioner and the exercise of the power to revert him was only related to a simple and innocent order of reversion strictly in terms and conditions of appointment letter. We may however, note that even if unfortunately the performance of the petitioner not being satisfactory may have been the motive in passing the impugned order of reversion the same may not have still caused any infirmity in the impugned order because it is now well settled that "it is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists under the contract or the rules, to terminate the service the motive operating on the mind of the government is wholly irrelevant." (Vide P. L. Dhingra's case (supra) para 28).

(33) Reference in this connection may also be made to Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, , where the services of a temporary employee were terminated. In that case the court found that though an enquiry had been started against the employee yet it was not continued and thereafter an order was passed terminating his services in accordance with the terms of his service contract. "The court held that being a temporary employee he had no right to the post and the termination of his employment does not deprive him of any right and cannot, Therefore, by itself be a punishment. The High Court, however, had gone into the departmental correspondence and come to the conclusion that the termination of the service was by way of punishment. Reversing the High Court order and disapproving of this approach Fazal Ali, J. who wrote the judgment referred with approval to the earlier case of the Supreme Court in I.N. Saksena Vs. State of Madhya Pradesh, and approved of the observation that "when there are no express words in the impugned order itself which throw a stigma on the Govt. servant, the color would not delve into Secretariat files to discover whether some kind of stigma could be inferred on such research." The court noted that the order impugned was prima facie an order of termination simpliciter without involving any stigma and held that "it is manifest that even if misconduct, negligence, inefficiency may be -the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly- By possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as" penalty or punishment." Here in this case the impugned order is an innocent order of petitioner's" reversion to his old post which is as responsible and of equal status. No infirmity can attach to the impugned order. It so happens with best of people that in a particular post somehow the work is not so fully appreciated as in some other field. That this assessment by the President is not arbitrary or just a whim, finds some support from the affidavit filed by Mr. Gill a retired Judge. The President of the Tribunal who has stated that though he had made proposals to the Government on 6th April, 1983 for confirming all the officers including the petitioner but after watching the performance of the officers he had on 8th July, 1983 recommended

to the Government that the question at confirmation of the Vice President and the Members be deferred. It is not, Therefore, as if this assessment of the work of the petitioner was something out of blue or for any extraneous reason. We are free to confess that we are unhappy that a situation should have arisen where the order of reversion had to be passed by the President even though in terms of the conditions of the service. But then in the absence of any mala fide we must presume that when an action is taken by such a high authority as the President he has acted bonafide and in) public interest and in the discharge of interest of the administrative service. We cannot hold that there was any mala fide or any extraneous reason in passing the impugned orders. The overall assessment of work of a temporary government servant has necessarily to be left to the appointing authority. As so many factors go into determining the suitability the temperamental affinity and the involvement in the job that it would be hazardous and in fact impermissible for the court to try to substitute its own opinion for that of the appointing authority. More so when all that is being done is to exercise the right to the appointing authority in terms of the appointment letter to revert the petitioner before a stage for his confirmation had reached. In such like high posts and such responsible appointments very many factors go to determine the suitability for the post like the sensitivity of the post, the temperamental and the like, the views and the assessment of the colleagues, capacity to have harmonious relationship in the work place, all these though not possible to pinpoint them concretely do determine the suitability of each individual for a particular post. These matters must necessarily be left to the assessment and determination of the appointing authority "who if he acts bonafide cannot be asked to justify his assessment to an outside agency. Though the court is very sensitive that no pressure direct or indirect be placed on such high posts-which though administrative perform quasi judicial functions and where the Government itself is one of the contending parties yet we cannot find any infirmity in the present order which is in terms of the appointment letter and is ex facie an innocent order of reversion. We also must take comfort from the fact that it is not as if the petitioner's services are being terminated. All that is happening is that the petitioner who was holding the temporary post of Vice President of the Customs Tribunal has been reverted to his original permanent post of a member of Income Tax Tribunal which by all standards is equally high powered, responsible and high status post.

(34) As a result of the above we find no merit in the petition. The same is, Therefore, dismissed. No order as to costs.

(35) Before parting with the case we would like to observe that in posts like the present or those in the Income Tax Appellate Tribunal which though act quasi judicially are in fact Central Civil Service Class I posts but perform the functions where the Government is one of the parties, it needs to be considered whether some greater protection may not be necessary to be given before terminating or reverting the officer even if temporary one, other than that which is provided under the Central Civil Services (CCA) Rules 1965. We are not suggesting that

the action taken is necessarily motivated by extraneous reasons. We are mentioning this because we feel that if some independent instrumentality other than the Central Government was involved in determining whether the services" of a temporary employee should be terminated or an order of his reversion be passed there would be a greater re-assurance of objective decision having been made which will inevitably instill greater faith in the institutions. In this connection we feel that it would be better if the central government would under the Rules which are yet to be framed make a provision that before terminating the services" or ordering the reversion of members /Vice President /President of Custom Tribunal, even when they are still holding the post in a temporary capacity it will refer the matter to one of the Judges nominated by the Chief Justice of India and take only such action, if any, as recommended by the learned Judge. This will re-assure all. the dispel even a semblance of charge that the Central Government was acting in. any manner otherwise than confide and in public interest. Of course this provision will mean a very distinct change and break with the normal set of Rules dealing with the appointment to the other Central Civil Services Class" I Posts where a mere termination of Service or reversion of a temporary employee without casting any stigma on the employee does not need to be enquired in to and a simple order of reversion passed by the appointing authority (as in the present case) would be valid. But as we have already stressed that these posts of the Customs Tribunal and of the Income Tax Appellate Tribunal need to be treated differently and not to be equated merely with other Ccs (Class 1) posts. The responsibility and the nature of the work performed by these bodies is quasi judicial. The administrative bureaucracy needs to be distanced from these quasi judicial bodies, so that the latter can really become a part of judicial stream, and help in giving even handed justice even when the government is a party to the dispute before them. In this connection we may refer to the provision which is to be found for removal of a member of the Monopolies and Restrictive Trade Practices Commission. Section 7 provides that the Central Government may remove from office any member who amongst others has so abused his position as to render .his continuance in office prejudicial to public interest. Sub-section (2) however, lays down that no member shall be removed from his office on this ground unless the Supreme Court, on a reference being made to it in this behalf by Central Government, has on enquiry held by it reported that the member ought on such grounds to be removed. It is true that the status of the member of Monopolies and Restrictive Trade Practices Commission is possibly on a little higher pedestal than that of the Customs Tribunal. It is also correct that a member of the Mrtp Commission is straightway appointed for a specified period not exceeding 5 years and cannot hold office for a total period exceeding 10 years or after he has attained the age of 65 years whichever is" earlier, while in the case of members of the Customs Tribunal or Income Tax Tribunal appointment once made on permanent basis is to go up to 60 years. Thus there is a greater period of service in these bodies. In the M.RJT.P. Commission there" is no question of any appointment being made for a period of less than 5 years. But we also have no doubt that the work performed

by the member of the Customs Tribunal as well as the Income Tax Tribunal is of very sensitive nature inasmuch as it is connected with the most important sinews of, the government i.e. collection of revenue. Earlier the quasi judicial functions were performed by the Administrative officers. This naturally led to a feeling of disquiet amongst the citizens that unless a totally impartial and objective approach was brought in the functioning of these tribunals justice may suffer. That is why this realisation of having a body outside the departmental personnel to determine these controversies was; realised as far back as 1939 by which Income Tax Act, 1922 was amended by incorporating Section 5(A) empowering the Central Government to constitute and appoint an Appellate Tribunal. This provision has been continued by Section 252 of the Income Tax Act 1961. Similarly now the Finance Act, 1980 has empowered the Central Government to constitute the Customs Tribunals. It is only, Therefore, appropriate and in accordance with this; spirit that an independent agency be constituted to look into the working and performance of the members of these two Tribunals and that is why our legation above.

(36) But as we have said before we are quite satisfied that in the present case the impugned order of reversion was passed bonafide and did not cast any stigma on the petitioner. Its validity, Therefore, is not open to challenge.

(37) The result is, as mentioned above, the writ petition fails and is dismissed but with no order as to costs.