

(1978) 12 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 7171 of 1978

T.S. Chandrasekariah

APPELLANT

Vs

Karnataka Road Transport Corporation

RESPONDENT

Date of Decision : 04-12-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311 (2)
Karnataka State Road Transport Corporation Cadre and Recruitment Regulations, 1968
— Regulation 7

Citation : (1979) 2 LLJ 108

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. Whether the principle of natural justice ingrained in the audi alteram partem rule should be complied with, before discharging a probationer on grounds unsuitability, is the main question of law arising for consideration in this case in which the petitioner, who was a conductor, who was on probation in the service of the Karnataka State Road Transport Corporation has prayed for quashing the order by which he was discharged from service which was not preceded by a show cause notice.

2. Facts. - The petitioner was working as "badli" conductor on the establishment of the Corporation since 1971. On 6th December, 1976, he was appointed as a conductor on the regular establishment of the Corporation on probation. While he was on probation, by order dated 22/23rd June, 1976, he was discharged from service. Aggrieved by the said order, the petitioner has presented this writ petition.

3. Sri G. B. Raikar, learned counsel for the petitioner, urged the following contentions :

(1) That though the impugned order on the face of it appears to be an order of discharge simpliciter, it is in truth and substance an order imposing penalty of removal and as the passing of the said order is not preceded by any

departmental enquiry in accordance with the Regulations of the Corporation, the impugned order is liable to be quashed.

(2) That even assuming that the impugned order is an order of discharge simpliciter, principles of natural justice required that before passing such an order, an opportunity to show cause against such discharge should have been given to the petitioner and as no such opportunity was given, the order is liable to be quashed on the ground of violation of principles of natural justice.

In support of the first contention that the order in question is really in the nature of an order imposing penalty, the learned counsel for the petitioner referred to a charge memo served on the petitioner on 1st June, 1978, (Ext. A). In the said charge memo, certain irregularities relating to non-issue of tickets by the petitioner were pointed out and he was called upon to submit his explanation. Thereafter, without holding any enquiry into the said charges and without finding the petitioner guilty of the charges, the impugned order has been issued. Therefore, in the circumstances, the only inference, according to him, which is possible, is that the order is disguised as an order of discharge, but in truth and substance it is an order imposing the penalty of removal for the aforesaid misconduct.

4. In order to appreciate the above contention, I shall first set out the impugned order in full, which reads as follows.

"Karnataka State Road Transport Corporation, B.T.S. Division, Bangalore-27;

(1) No. KST : BTS : EST : E7 : DT; 2398/78-79 dated 22/23-6-1978. D.E.O. No. 683 of 78.

Read : DEO No. 699/76 dated 6-12-1976 appointing Sri R. S. Chandrasekharaiah, Conductor, T. No. 3531 on probation.

(2) Letter No. KST; BTS; TRF; DEL; D.V. 10381 dated 20-6-78.

ORDER

Sri Chandrasekharaiah, Conductor, T.S. No. 3531 attached to BTS, Depot No. V, was appointed on probation vide reference read at (1) above, under clear terms and conditions that the Appointing Authority is competent to discharge his services if and when found unsuitable for the job during the period of probation.

As he is found unsuitable, I hereby order that the services of Sri T. S. Chandrasekharaiah, Conductor, T. No. 3531 (on probation), be "Discharged" in B.T.S. Division with immediate effect in terms of his appointment cited at (1) above.

Sd./- Dy. General Manager

By R.P.A.D.

Sri T. S. Chandrasekharaiah, Conductor, T. No. 3531 s/o. T. N. Srikanta Shastry,

No. 2673, II Stage, Rajajinagar, Bangalore-10.

Copy fwd to : The Dy. G.M. (A) KSRTC. C.O. Bangalore, for information.

* * * *

The order in express terms states that the petitioner who was on probation is discharged as he is found unsuitable. In the preamble to the order, the first reference is to the order dated 6th December, 1976, under which the petitioner was appointed on probation. The probationary period is regulated by Rule 7 of the Karnataka State Road Transport Corporation Cadre and Recruitment Rules, which reads as follows :

"7. Probation. - (1) Every candidate appointed shall be on probation for a period of two (2) years. This terms may be extended at the discretion of the Competent Authority by a further period not exceeding one (1) year. The period of probation may not be further extended without the approval of the Corporation.

(2) On satisfactory completion of the period of probation and his passing the prescribed tests, if any, within the period of probation the candidate shall become eligible for confirmation when substantive vacancies arise.

(3) If the candidate appointed on probation is not found suitable for the post, his services may at the discretion of the Appointing Authority, be terminated within the period of probation."

From the above rule, it may be seen that the period of probation is two years and it is also condition of probation that he is liable to be discharged before the end of the period of probation on the ground of unsuitability. The second reference is to a letter dated 20th June, 1978. The said letter has been produced as Annexure I to the statement of objections. The said letter reads as follows;

"Mysore State Road Transport Corporation Report Book KST/BTS/DSL/OV 10381 dated 20-6-1978.

To

The Labour Welfare & Personnel Officer, B.T.S.

The competent authority while disposing off the default case booked against Sri T. S. Chandrasekharaiah, Conductor, T. No. 3731 (Probationer) had passed orders to terminate his services as unsuitable for the post of Conductor.

You are, therefore, requested to issue a D.E.O. accordingly in terms of his appointment as probationer, under intimation to this office immediately.

Sd./- Divisional Traffic Officer."

The aforesaid letter shows that while disposing of a default case booked against the petitioner, a decision had been taken that the petitioner was unsuitable for the post of conductor. In order to find out as to how that decision was taken, I

called upon the respondent-Corporation to produce the original records. Accordingly the records were produced. The records disclosed that on 16th April, 1977, on the allegation that the petitioner had temporarily misappropriated a sum of Rs. 39.25 orders of the competent authority were sought for, as to whether a departmental enquiry should be instituted against the petitioner or his services may be dispensed with as unsuitable in terms of his appointment. It further shows that though the opinion was to discharge him on the ground of unsuitability, it was not implemented, but a departmental enquiry was instituted against him on the aforesaid charge. The enquiry officer, who conducted the enquiry, held the petitioner guilty of the charge. The disciplinary authority agreeing with the findings recorded by the enquiry officer passed an order dated 5/6th November, 1977, imposing penalty of suspension for a period of 10 days against the petitioner. The said order was not challenged by the petitioner and he has suffered the said penalty. Even thereafter there were several complaints against the petitioner on various dates during April, 1978. After referring to all those complaints a note was put up for the orders of the competent authority on 8th June, which reads as follows :

"This is a serious case of defalcation of ticket revenue by alteration of the W. Bill entry and consequential re-issue of tickets. 42 tickets of the aggregate value of Rs. 36.10 ps. are involved in this case. Such frauds have become possible obviously because of lack of surveillance by the Controllers at either terminal.

As the conductor is only a probationer, the case is put up for kind orders."

After considering the aforesaid note, the deputy general manager, who is the competent authority, passed the order on 20th June, 1978, which reads as follows :

"He has been given number of chances to improve his career. He has been indulging in proved pilferage activities. The case on hands is of a serious nature. I feel no useful purpose will be served by providing him any opportunity. I, therefore, order that his services be terminated as unsuitable."

It is in pursuance of the aforesaid decision that the letter dated 20th June, 1978, was addressed to the Labour Welfare & Personnel Officer, B.T.S. and the impugned order of discharge has been issued.

5. The impugned order specifically states that the petitioner is being discharged as probationer, it does not, on the face of it, cast any stigma on the conduct of the petitioner. It shows that it has been made in exercise of the right of the management to discharge a probationer. Nevertheless it is contended for the petitioner that the impugned order is in the nature of penalty imposed for misconduct.

6. I shall now consider as to whether the discharge order is in substance an order imposing penalty for misconduct. Under the regulations, the competent authority of the Corporation had the powers to discharge the petitioner on the

ground of unsuitability, as he was only a probationer. As stated earlier, even during the period of probation, a charge of temporary misappropriation of Rs. 39.25 was levelled against the petitioner in April, 1977, itself and a departmental enquiry was held against the petitioner. In that enquiry he was found guilty of the charge levelled against him and a penalty of 10 days suspension was also imposed against him. Thereafter once again there were several complaints against the petitioner including the one which is set out in Ext. A produced by the petitioner. All these instances were set out and orders of the competent authority were sought for. In the note put up, it was also pointed out that the petitioner is only a probationer. When the matter was put up for orders before the competent authority, two courses were open to the competent authority, namely, if it came to the conclusion having regard to the previous service record of the petitioner that he was not suitable for being confirmed in the appointment, it could order his discharge without holding any enquiry as he was still a probationer, or to institute disciplinary proceedings under the regulations if it thought that any penalty should be imposed. In the present case, the competent authority, after referring to the earlier proved charge of pilferage against the petitioner, expressed that it was unnecessary to enquire into the truthfulness of the subsequent allegations made against him and he may be discharged from service on the ground of unsuitability. It is pursuant to this decision the impugned order was issued. Can it be said that just because certain charges were levelled against the petitioner, the discharge order is in the nature of penalty ? The learned counsel for the petitioner strenuously contended that the very fact that certain serious charges were levelled against the petitioner and the discharge order followed it, shows that in truth and substance, the order of discharge is in the nature of imposition of penalty on the ground that the charges levelled against the petitioner have been proved.

7. On the facts and circumstances of this case, I find difficult to hold that because the order of discharge has been made by the competent authority after certain allegations against the petitioner were brought to his notice, it amounts to imposition of penalty. If the disciplinary authority had found the petitioner guilty of the charges, without holding enquiry and had passed the order of discharge, then, notwithstanding the form of the order, it could be held that the order was in the nature of penalty. But as can be seen from the original records, the competent authority, after referring to the charges proved against the petitioner, which is obviously a reference to the charges proved against him earlier for which punitive suspension for 10 days was imposed against him, decided to discharge the petitioner on the ground that he is unsuitable without going into the truth or otherwise of the latest charges levelled against him. Therefore, I hold that the authority has exercised its power to discharge the petitioner and the impugned order is not in the nature of penalty. If I were to hold that because the discharge order followed certain allegations made against the petitioner it amounts to removal for misconduct it would lead to astounding results. It would mean that, the moment certain charges are levelled against a

person, who is a probationer, the power of the competent authority to discharge a probationer on the ground of unsuitability would be lost and the authority would be compelled to the necessity of holding a departmental enquiry in respect of such charges. It is well-settled that in respect of a probationer it is left to the option of the competent authority either to exercise the power of imposition of penalty of dismissal after complying with the rules of the principles of natural justice, as the case may be, or to pass an order of discharge simpliciter without resorting to the holding of an enquiry into the charges. In the present case, the competent authority has chosen to pass an innocuous order of discharge simpliciter, without casting any stigma on the petitioner, as can be seen from the impugned order. If the previous misconduct for which the petitioner was punished, during the period of probation, constituted the background for the order of discharge the petitioner has to blame himself for the position in which he placed himself even during the period of probation. The penalty of suspension was, as pointed out earlier, imposed against him only after due enquiry, which was remained unchallenged by the petitioner and, therefore, the petitioner cannot complain that the principles of natural justice were violated in relying upon the proved misconduct for adjudging him unsuitable.

8. The learned counsel for the petitioner relied on the two decisions of the Supreme Court in *The State of Bihar Vs. Gopi Kishore Prasad*, and *Bishan Lal Gupta Vs. The State of Haryana and Others*, . Though the relevant portion of the judgment in *The State of Bihar Vs. Gopi Kishore Prasad*, on which he relied, is contained in paras 5 and 6, which read as follows :

"5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause.

6. It would thus appear that in the instant case, though the respondent was only a probationer, he was discharged from service really because the Government had, on enquiry, come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of Art. 311(2) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true that, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in the direct way, without casting any aspersions on his honesty or competence, his

discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any Court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist upon the protection of Art. 311(2) of the Constitution. That protection not having been given to him, he had the right to seek his redress in court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by Art. 311(2) of the Constitution. His removal from the service, therefore, was not in accordance with the requirements of the Constitution".

The above case arose in respect of a civil servant governed by Art. 311(2) of the Constitution. Nevertheless, there can be no doubt that the principles laid down in the said case equally apply to the case of discharge of a probationer under a statutory authority, governed by statutory tenure of service. But the decisions far from supporting the contention urged for the petitioner, support contention urged for respondents. As can be seen from the above judgment, it is specifically laid down that if the authority comes to the conclusion that the concerned employee is not a fit and proper person to hold the post to which he was appointed on probation, it could discharge him without holding any enquiry into the alleged misconduct. That is what has been done in this case by the competent authority. The learned counsel for the petitioner pointed out that in Gopi Kishore Prasad's case, (supra) itself the Supreme Court held that the discharge order amounted to removal for misconduct and, therefore, confirmed the judgment of the High Court holding that the discharge order in that case being in the nature of penalty or removal was made in violation of Art. 311(2) of the Constitution. As can be seen from para 2 of the judgment of the Supreme Court, the relevant portion of the proceedings of the Government by which Gopi Kishore Prasad was discharged is fully set out. The order, on the face of it, showed that he was being punished for misconduct. Therefore, the Supreme Court held that as the Government instead of resorting to the easy method of discharge took upon itself to hold him guilty of charges and then discharged him, the order cast a stigma on his conduct and consequently it amounts to removal within the meaning of Art. 311(2) of the Constitution and, therefore, the passing of such an order should have been preceded by a proper enquiry. As already pointed out, in the present case, the competent authority has resorted to the easy course available to it and simply discharged him only on the ground of unsuitability. Hence, it is difficult to hold that it amounts to a penalty imposed against the petitioner.

9. The learned counsel for the petitioner, however, submitted that he receives support for the above contention from paragraphs 14 and 17 of the judgment of the Supreme Court in Bishan Lal Gupta Vs. The State of Haryana and Others, The said paragraphs read thus :

"14. These observations must, we think, be meant to cover those cases where, even though the probationer may have no right to continue in service, yet, the

order terminating his services casts a stigma on his name. This means that the individual concerned must suffer a substantial loss of reputation which may affect his future prospects. In that case justice requires a fuller hearing. If, however, after going into the particular facts and circumstances of a case, the Court finds, as seems to be the position in the case before us, that the enquiry conducted and notices given were intended only to arrive at a finding on the desirability of continuing a person in service, and more serious action was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere form does not indicate the exact nature and result of the proceeding judged by its nature and its effects upon a probationer. To some extent the Courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that, even if the reputation of a probationer was to some degree affected by what took place yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for terminating his services. There is, in such cases, no injustice.

17. There is, however, another point of view also, already indicated above, from which the case could be considered. It is that the High Court held that this was not really a case of punishment. On this aspect of the case, the High Court rightly seems to us proceeded on the view that there should be at least some difference, as to the nature of or the depth of the inquiry to be held, as between a probationer whose services can be terminated by a notice and confirmed Government servant who has a right to continue in service until he reaches a certain age. It is true that neither can be "punished" without a formal charge and enquiry. But, a less formal inquiry may be sufficient as it was here, to determine whether a probationer, who has no fixed or fully formed right to continue in service (treated in the eye of law as a case of "no right" to continue in service), should be continued. A confirmed Government servant's dismissal or removal is a more serious matter. This difference must necessarily be reflected in the nature of the inquiries for the two different purposes. We are satisfied that, on facts found, the findings on petitioner's suitability to continue in service were rightly not interfered with. It was, in the eye of law, not a case of punishment but of termination of service simpliciter. The petitioner should be thankful that a more serious view was not taken of this shortcomings."

As can be seen from the aforesaid portions of the judgment, the Supreme Court has only held that if an enquiry is conducted for finding out the desirability of continuing a probationer in service and no more serious action was contemplated, such an inquiry need not be of the same nature or depth as an inquiry for imposing a penalty and that there is bound to be some difference between the two and that on account of any finding recorded against a probationer in such a less formal inquiry, if even some stigma is attached; it does not amount to imposition of any penalty. On this basis discharge of the probationer concerned in that case was upheld notwithstanding the inquiry held against him before ordering discharge. The ratio of the said decision is, that if an inquiry is held against a probationer in order to find out the desirability of

continuing him in service, such an inquiry need not be a full-fledged departmental inquiry necessary for imposing penalty, but could be of a less formal character and not that such an inquiry is necessary in all cases of discharge of a probationer. The learned counsel for the petitioner next relied on the decision of the Patna High Court in Awadhesh Kumar Vs. The State of Bihar, The said decision turned on the Explanation 2 to rule 55 of C.C.S. (C.C.A.) Rules which specifically provided that discharge of probationer for a specific fault or on account of unsuitability amounted to dismissal within the meaning of that rule. No such provision is contained in the regulations. The Explanation 1 to Rule 18B of the regulations provides to the contrary. It reads as follows :

"18. Nature of penalties. -

* * * *

B. Major Penalties -

(ix) Removal from service which would not be a disqualification for future employment;

(x) Dismissal from service which would ordinarily be a disqualification for future employment.

Explanation 1. - The following shall not amount to penalties within the meaning of this regulation, namely :

* * * *

(vii) Termination of the services -

(a) of a Corporation servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the regulations or orders governing such probation; or

* * * * In view of the above rule, discharge of the petitioner does not amount to penalty. Hence, the aforesaid decision is clearly distinguishable and has no application to the case of the petitioner.

10. The learned counsel for the petitioner also relied on the decision of the Nagpur High Court in Tribhuwannah v. Govt. of Union of India AIR 1953 Nag 138 , to show that discharge order also amounts to penalty. In the said decision, it was held that an order of discharge of a probationer also attracts provisions of Art. 311 of the Constitution and, therefore, it should be preceded by a departmental inquiry. The decision in the said case is no good law after the series of the decisions of the Supreme Court commencing from Parshotam Lal Dhingra Vs. Union of India (UOI), , including the decision referred to above.

11. The second contention urged for the petitioner is that, even if the discharge order is not a penalty, it could be made only after complying with the rule of natural justice, viz., audi alteram partem. It support of this submission, the learned counsel for the petitioner next relied on the decision of the Jammu &

Kashmir High Court in *Gulam Rasul v. State of Jammu and Kashmir* AIR 1956 J&K 17. In the said decision, it was held that the principle of natural justice is part of the guarantee under Art. 14 of the Constitution and, therefore, natural justice requires that an opportunity should be given before the services of a person are terminated on the recommendations of the commission of inquiry. The said decision is not in any way helpful to the case of the petitioner. In the said case, the Court came to the conclusion that the petitioner therein was punished by way of demotion on the basis of the report of the commission of inquiry, without giving any opportunity and, therefore, there was violation of the principle of natural justice. In view of my conclusion that this is not a case of imposition of penalty, the ratio of the decision has no application to the case of the petitioner.

12. The learned counsel for the petitioner next relied on the decision of the Delhi High Court in *Hira Singh v. Union of India* (1970) S.L.R. 223 (Delhi), in support of his contention that probationer is entitled to an opportunity before the order of discharge is made. The said decision is also clearly distinguishable. On the facts of the said case, the Court came to the conclusion that the order impugned in the said case by which the petitioner therein was reverted to a lower post from the officiating higher post held that it cast a stigma on him. The relevant portion is contained in paragraph 15 of the judgment, which reads as follows :

"15. I find that the impugned order reverting the petitioner to his original post, which admittedly carried lesser emoluments and a lesser rank, coupled with a stigma on his work during the period of probation is one which deserves to be quashed".

Here the above decision, therefore, has no application as the impugned order does not cast any stigma on the conduct of the petitioner. On the other hand, the judgment of the Supreme Court in *Bishan Lal Gupta Vs. The State of Haryana and Others*, , on which reliance was placed for the petitioner provides an effective answer to the contention urged for the petitioner. In para 9 of the said judgment, the Supreme Court referred to an earlier judgment in *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, , which related to the termination of services of a temporary Government servant were in which the Court held though the services of a temporary Government servant were terminated after the charges were levelled against him, as his services were terminated in accordance with the rules without holding departmental inquiry, the termination cannot be questioned on the ground that it was a penalty. There after, referring to the type of the order issued in the case of *Bishan Lal Gupta Vs. The State of Haryana and Others*, the Supreme Court stated as follows in para 10 :

"10. We think that the position before us also is very similar. No fullfledged departmental inquiry followed any show cause notice. Proceedings for punishment could be deemed to have been "dropped". The only result of what happened was an innocuous order of termination of service without stating any ground for the termination. If this, in itself, involved some reflection upon the petitioner's capabilities it cannot be helped. It was not undeserved. Therefore,

there could be no question of injustice".

The present case clearly falls within the scope of what is laid down by the Supreme Court in the aforesaid paragraph. In the present case, the order of discharge, as in the case of Bishanlal Gupta, (supra), is in innocuous order of discharge without stating any ground for discharge. In the present case also as in Champaklal's case (supra), after charge memo was served, no inquiry was held and the petitioner was discharged exercising the power under the relevant regulation. Therefore, I am unable to accept the contention urged for the petitioner that the impugned order should have been preceded by any inquiry in conformity with the principles of natural justice.

13. The next two decisions on which reliance was placed for the petitioner are Ahmedabad Cotton Manufacturing Co. Ltd. v. Union of India AIR 1977 Guj. 113 and Balwant Singh and Others Vs. Deputy Chief Settlement Commissioner and Others, respectively. Both these decisions have no relevance. The principle laid down in those cases is that before any right of a person is adversely affected, principle of natural justice demands that an opportunity should be given before passing such an order.

13A. It is well-settled that a probationer has no right to the post until he is confirmed. See Purshotam Lal Dhingra v. Union of India, (supra). In Bishanlal Gupta's case, (supra) also the Supreme Court has stated that a probationer has no fully formed right. Therefore, the decision on the question of suitability of a probationer for confirmation is similar to a decision to be taken by an authority on the question of suitability of a civil servant for promotion or if any civil servant has already been promoted and officiating in a higher post, whether he should be confirmed in the higher post or reverted to his substantive post on grounds of unsuitability. The Supreme Court has ruled in the case of Union of India (UOI) Vs. Mohan Lal Capoor and Others, , that the compliance with audi alteram partem Rule is not necessary before deciding that a civil servant, is not fit for promotion. The same principle equally applies to the discharge of a probationer as his right for confirmation is also inchoate, as is the case or the right of a person for promotion.

14. In the light of the discussion made above, my conclusion on the question as to whether the discharge of a probationer should be preceded by the giving of an opportunity, may be summarised as follows :

(i) The consideration of the question as to whether a probationer is suitable for confirmation is akin to adjudging the suitability for promotion. The decision has to be taken on the basis of his performance and service record during the period of probation. If a decision is taken on these grounds that a probationer is not suitable for confirmation and should be discharged and he is accordingly discharge, the principle of natural justice contained in the rule of eddy alteram partem has no application. In this behalf, the law laid down by the Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, , to the effect

that no opportunity is required to be given to a civil servant before holding that he is not fit for promotion, equally applies to the adjudging of suitability of a probationer for confirmation.

(ii) (a) If in the case of a probationer, against whom charges of misconduct are levelled during the probationary period, if the discharge is made, not on the ground that he is unsuitable, judged on the basis of his performance and service record during the period of probation, but on a finding that he is guilty of any misconduct, it should be held that such an order could not have been made without holding any enquiry by giving opportunity to him to meet the charge.

(b) Similarly, in the case of a probationer if the discharge order is based on a finding of fact about any alleged specific instances of inefficiency or of any alleged lapses in the performance of his duties, on the part of probationer truth of which could have been found only after giving an opportunity to the probationer, in such a case also, it should be held that such an order could not have been made without giving an opportunity to the probationer to have his say in the matter.

In cases of the aforesaid types, whether such a finding is referred to in the discharge order or not, notwithstanding the form of the order whenever it is alleged that the discharge is based on any such finding without giving any opportunity, the Court can find out as to whether the order was based on any such finding and, therefore, compliance with principle of natural justice was necessary. The Court can also find out as to whether the discharge order was based only on service record without going into the truth of the charges or complaints, if any, made against him, or it was based on a finding of fact in respect of any such matter recorded after giving opportunity, or which he is not in a position to controvert and, therefore, enquiry or opportunity was not necessary before passing the discharge order.

From the above conclusion, it follows that the question as to whether the giving of opportunity was necessary before the passing of an order discharging a probationer must be decided applying the above principle to the facts and circumstances of a given case. If on such consideration the Court comes to the conclusion that opportunity was necessary and was not given, such an order is liable to be quashed.

15. In the present case, in my opinion, it was not necessary to give any opportunity to the petitioner before passing the impugned order for the reason that only the service record of the petitioner, namely, the proved misconduct during the period of probation, which was after due enquiry, was taken as the basis to discharge him without going into the truth or otherwise of the subsequent allegations. If reliance placed on the misconduct proved against the petitioner during the probationary period itself amounted to casting stigma on the conduct of the petitioner, it cannot be helped and cannot be held as undeserving, as observed by the Supreme Court in Bishanlal Gupta's case, (*supra*). Therefore, I

am unable to accept the contention urged for the petitioner that principles of natural justice required that an opportunity should have been given to the petitioner before discharging him.

16. For the reasons stated above, I make the following order :

(i) Rule discharged. (ii) Writ petition dismissed. (iii) Not costs.