
(2011) 11 DEL CK 0381

In the Delhi High Court

Case No : Writ Petition (C) 8120 of 2011

Union of India and Another

APPELLANT

Vs

Pravesh Malik

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)

Citation : (2012) 3 AD 255 : (2012) 186 DLT 174

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajinder Nischal, for the Appellant; M.K. Bhardwaj with Ms. Priyanka, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petitioners impugn the common order dated 11th August, 2011 of the Central Administrative Tribunal allowing OAs 749/2011, 779/2011, 781/2011 and 782/2011 preferred u/s 19 of the Administrative Tribunals Act by each of the respondents respectively in these petitions. Each of the said OAs challenged identical orders all dated 22nd November, 2010 of termination of services of each of the respondents under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965.

2. The respondents were appointed as Field Assistant in the Cabinet Secretariat. It was a term of their appointment memos dated 3rd May, 2010 that their appointments could be terminated at any time by a month's notice given by either side and the notice period could be dispensed with by making payment of a sum equivalent to the pay and allowance for the period of notice or for the unexpired period of notice. It was yet further provided in the said appointment memos that the respondents were to be on probation for a period of two years from the date of appointment.

3. The order dated 22nd November, 2010 in the case of respondent Pravesh

Malik was as under:

ORDER OF TERMINATION OF SERVICE ISSUED UNDER PROVISIO TO SUB-RULE (1) OF RULE 5 OF THE CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) RULES, 1965

In pursuance of Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Arvind Saxena, Joint Secretary (Pers.) hereby terminate forthwith the services of Shri Parvesh Malik, FA(GD), Id No.07162C and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowance for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

The orders in the cases of the other respondents were identical.

4. It was the case of the respondents in the OAs that, they had on 9th June, 2010 been deputed for training; that the Training Instructor was very abusive and used filthy language and misbehaved with them and they brought the matter to the notice of the higher authorities; that the higher authorities ordered an enquiry into the matter and even recorded the statements of some of the other trainees and of the Instructor; however no explanation was sought from the respondents and thereafter the services of the respondents were terminated as aforesaid. The respondents thus contended that the termination of their services was punitive and they had not been given any opportunity to defend themselves. Reliance was placed on Union of India (UOI) and Others Vs. Mahaveer C. Singhvi, .

5. The petitioners in their reply before the Tribunal denied that the termination was punitive and contended that the termination was strictly in terms of the memos of appointment.

6. The Tribunal in the common order in four OAs held the termination to be punitive. It was found that an enquiry had indeed been conducted on the basis of complaint made by 33 trainees including the respondents against the Instructor; that the statement of the Instructor as well as of other trainees was recorded by the Inquiry Officer; that the report of the said enquiry formed the foundation for termination of the services/probation of the respondents. Accordingly, it was held that the order of termination could not be termed as termination simplicitor. It was further held that the enquiry preceding the termination being behind the back of the respondents was violative of the principles of natural justice. The Tribunal thus directed the petitioners to reinstate the respondents with all consequential benefits.

7. A perusal of the reply filed by the petitioners before the Tribunal shows that the petitioners therein had inter alia pleaded that on receipt of complaint from some of the trainees including the respondents, a two member team headed by the Deputy Secretary was sent to the Training Camp to sort out the genuine

grievance if any; the said team monitored the training apart from interacting with each of the trainees individually and the DIG/Commandant of the Training Centre and his Second-in-Command as well; that the respondents were found to be argumentative and abrasive with the trainers and found to be not taking the training in the right spirit and spoiling training of others as well.

8. We are of the opinion that the Tribunal has failed to appreciate the distinction between a probationer and a permanent employee. We are also of the opinion that the Tribunal has misconstrued the scope of termination during the probation period. A three Judges Bench of the Supreme Court in *State of Punjab and Others Vs. Sukhwinder Singh*, held that a probationer does not have any right to the post and an enquiry conducted to obtain primary facts cannot qualify as termination punishment. It was held that where a superior officer in order to satisfy himself whether the employee concerned should be continued or not in service makes enquiry for the purpose, it would be wrong to hold that the enquiry which was held was really intended for the purpose of imposing punishment. Yet further it was held that if in every case where some kind of fact finding inquiry is made, whether the employee is either given an opportunity to explain or the enquiry is held behind his back, it is held that the order of discharge or termination from service, is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in services or not would run the risk of being dubbed as an order of punishment. A probationer is on test and a temporary employee has no right to the post. If merely holding of an enquiry to ascertain the relevant facts for arriving at a decision on an objective considerations whether to continue the employee in service or to make him permanent is treated as an enquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated and which would be wholly wrong. The same view was reiterated in *State of Punjab and Others Vs. Constable Avtar Singh (dead) through LRs.*, . Reference may also be made to *Municipal Committee, Sirsa Vs. Munshi Ram*, , *Chaitanya Prakash and Another Vs. H. Omkarappa*, and *Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd.*, all to the effect that during the probation period the services of an employee can be terminated and merely because the employer on appraisal of the performance of the employee finds the employee not upto the mark, the order of termination of probation or cessation of probation does not become stigmatic. Mention may also be made of *Rajesh Kohli Vs. High Court of J. and K. and Another*, also laying down that consideration of the service record to determine whether a probationer should be continued on probation or be discharged or confirmed and/or reaching a conclusion that he is not to be continued would not amount to casting any aspersion nor his discharge be construed as stigmatic. Opinion expressed in the termination order that the probationer's work and conduct has not been found satisfactory was held to be not stigmatic requiring compliance of the principles of natural justice. It was further

held that in order to amount to a stigma the order must be in a language which imputes something over and above mere unsuitability for the job.

9. Another Division Bench of this Court (speaking through one of us i.e. Hon''ble the Acting Chief Justice) in *Gautam Kant Nimaan Vs. GNCT of Delhi and Others*, has also exhaustively dealt with the said aspect.

10. It may also be noticed that the enquiry, which appears to have influenced the Tribunal, was not an enquiry against the respondents but an enquiry into the complaint of the respondents and others. The Tribunal failed to appreciate that the inquiry was into the complaint against the Instructor and not into the complaint against the respondents. In fact there was no complaint against the respondents. There was thus no question of any inquiry behind the back of the respondents.

11. In so far as the Tribunal has relied on *Mahavir C Singhvi (supra)*, in that case it was established that the real intention was to remove from service for misconduct and the termination was punitive; though camouflage of termination of probation was used.

12. However there is no such finding in the present case. Neither was any inquiry conducted into any complaint against the respondents nor were any findings returned. However the team sent to investigate the complaint made by the respondents having had occasion to appraise the conduct of the respondents did not find the same to be befitting as required from an employee. The same is nothing but an appraisal by the employing authority of a probationer and which the employer is entitled to do.

13. The petition thus succeeds. The Rule is made absolute. The common order dated 11th August, 2011 of the Tribunal is quashed/set aside and the orders, all dated 22nd November, 2010 of termination of probation/services of the respondents are upheld.

No order as to costs.