

(2010) 07 DEL CK 0376

In the Delhi High Court

Case No : W.P (C) No. 7214 of 2009

Union of India (UOI) and Others

APPELLANT

Vs

Santosh Kumar Verma

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

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

Citation : (2010) 07 DEL CK 0376

Hon'ble Judges : Pradeep Nandrajog, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Vide office order dated 29.04.2005, services of the respondent, who was on probation, were terminated. The order reads as under:

F. No. 1/32004/DRT-III/743

DEBTS RECOVERY TRIBUNAL-III, DELHI

2nd Floor, Sanskriti Bhawan

Desh bandhu Gupta Road, Jhandewalan

New Delhi-110055.

Dated April 29, 2005

OFFICE ORDER

In pursuance of Proviso of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service), Rules, 1965 the services of Sh. Santhosh Kumar Verma, Staff Car Driver, (who was offered Temporary Appointment on the said post and is on probation w.e.f. 17/11/2004) are forthwith terminated by the Appointing Authority. He shall be entitled to claim a sum equivalent to the amount of his pay

plus allowances for the notice period of one month at the same rates at which he was drawing them immediately before the termination of his services.

By order of the Honourable Presiding Officer

(Appointing Authority)

(J.S. KOCHAR)

Secretary/Registrar,

DRT-III, New Delhi

2. It is not in dispute that the order was preceded by various memos calling upon the respondent to give justification, if he had any, for the misdemeanor alleged against him.

3. The respondent was appointed as a Staff Car Driver vide order dated 21.12.2004 in which it was clearly indicated to him that he would be on probation and his service would be regulated by the Central Civil Services (Temporary Services) Rules, 1965.

4. The aforementioned order terminating his services as also the order rejecting his representation against the order dated 29.04.2005 was challenged before the Central Administrative Tribunal alleging the same to be penal.

5. The Tribunal has found favour with the contentions urged by the respondent.

6. The Tribunal has been influenced by the fact that the order in question was preceded by various memos which were issued to the respondent requiring him to show cause whether he had any justification for the misdemeanor alleged against him.

7. As regards the appellate order, the Tribunal has been influenced by the fact that there is a reference to the misconduct of the respondent in the appellate order.

8. Ex-facie, the order dated 29.04.2005, casts no stigma inasmuch as it does not refer to any misconduct or misdemeanor.

9. It is not in dispute that under Rule 5 of CCS (Temporary Services) Rules 1965 the Appointing Authority is vested with the power to dispense with the services of a temporarily appointed Government servant or one on probation.

10. We need not pen a lengthy decision, for the reason, a co-ordinate Division Bench of this Court, of which one of us; namely, Pradeep Nandrajog, J was a member of, visited the law on the subject in the decision dated 22.12.2009 deciding W.P. (C) No. 2128/1996 Ex.CT/Painter, CRPF Suresh Kumar v. UOI and Ors.

11. Dealing with the issue as to what was a stigma and when can it be said that a previous misconduct is a motive or a foundation for an order of discharge, it

was held as under:

11. What is a stigma?

12. In the decision reported as Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, it was observed: According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person.... The Legal Thesuras by Burton gives the meaning of the word "to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame".

13. In the decision reported as The State of Orissa and Another Vs. Ram Narayan Das, it was held that the words "unsatisfactory work and conduct" in the termination order will not amount to a stigma.

14. The reason is obvious. Notwithstanding subjecting a new recruit to the rigors of a selection process, the employer has a right to see whether the recruit is able to perform the duties assigned to him. Being on probation, the recruit is kept under a watch to ascertain his performance. Not only is the recruit under the scrutiny but even the initial judgment of the employer is under a scrutiny for the reason even the employer has to consider and decide whether his initial judgment was correct. Logic demands that where the new recruit is able to discharge the duties assigned to him he should be permanently absorbed. It would be most illogical to say to the recruit that I find nothing wrong with your work but still I do not permanently absorb you. That is why some decisions have taken the view that it would be unfair not to point out the shortcomings in the work of a probationer thereby depriving him an opportunity to improve himself and all of a sudden discharge him from service stating that his work is not up to the mark.

15. Thus, we do not find the order of discharge as casting a stigma merely because in the past, communications were sent to the petitioner requiring him to improve his working. Even if we read in the order of discharge that it is premised on the inefficiency of the petitioner, as noted above, law does not treat the same to be as stigmatic.

16. Thus, it cannot be said that the order of discharge is punitive.

17. With respect to the plea whether the notice dated 6.4.1995 was the foundation or the motive for the action, we note that the said controversy is unnecessary for the reason in the said notice no misdemeanour or misconduct was alleged. It was simply pointed out to the petitioner that he was not working efficiently. That apart, we have enough case law where pertaining to a misconduct detected during the probation of an employee a show cause notice was issued to respond as to why on account of the stated misconduct the services be not terminated, but ignoring the show cause notice, a simple order of discharge from service was issued. When questioned in a Court on the plea that the veil be lifted to see as to what was the foundation of the order, it was held

that motive and foundation are two different concepts. We may quote only from one decision reported as Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, As to foundation, it was observed:

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

18. As to motive, it was observed:

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

19. Suffice would it be to state that if an inquiry is conducted into an alleged misconduct behind the back of the officer and a simple order of termination is passed, "founded" on the report of the inquiry indicting the employee, the action would be tainted but where no findings are arrived at any inquiry or no inquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received it would be a case of the complaints motivating the action and hence order would not be bad as observed in the decision reported as Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others,

20. To conclude on the issue, we note the decision of the Supreme Court reported as Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, where in para 28 thereof, how the issue has to be dealt with by Courts was stated. It was held: Therefore, whenever a probationer challenges his termination the Courts' first task will be to apply the test of stigma or the form test. If the order survives this examination the substance of the termination will have to be found out.

21. Since we have held that the termination of the probationer is not casting any stigma and on the substance test we have held the same not to be punitive, there is no merit in the writ petition which is dismissed.

12. Under the circumstances, on the facts of the instant case, it is apparent that

the Tribunal has completely over looked the law on the subject. Merely because the impugned order was preceded by certain memorandums would not mean that the impugned order is penal.

13. As regards the appellate order, since the respondent has raised the issue pertaining to his good working under the employer, the appellate authority was per force obliged to refer to the past incidents.

14. The writ petition is allowed. Impugned order dated 22.10.2008 is set aside. As a result OA No. 2262/2007 filed by the respondent is dismissed.