

(2022) 04 RAJ CK 0002

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 2897 Of 2010

Yogesh Kumar Gupta

APPELLANT

Vs

Chief Managing Director And Others

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Central Secretariat Service Rules, 1962 — Rule 7(1)

Citation : (2022) 04 RAJ CK 0002

Hon'ble Judges : Sameer Jain, J

Bench : Single Bench

Advocate : Ajay Choudhary, Abhishek Sharma

Final Decision : Dismissed

Judgement

Sameer Jain, J

1. Instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner assailing the termination order dated 08/06/2009 issued by the Secretary, Ajmer Vidhyut Vitran Nigam Ltd. as well as the show cause notice dated 20/10/2008.

2. The facts of the case as per the petitioner are that he was appointed on the post of Junior Engineer-I (Electrical) as a Probationer Trainee vide order dated 02/08/2007 on the terms and conditions as enumerated in the order itself. Vide clause 1, 2 and 3 of the terms and conditions of the appointment, it was specified that the initial appointment was as a probationer trainee for a period of two years on a fixed remuneration and the service of the probationer trainee can be terminated at any time by giving one month's notice in writing or by giving one month's remuneration in lieu thereof except in case of misconduct where the provisions of the AVVNL Employees (CC&A) Regulations, 1962 (hereinafter called as 'CCA Regulations 1962') will be applicable and in that case, the candidate would not be entitled for any compensation. In clause 20 of the terms &

conditions of the appointment order, it was specified that the other terms and conditions of service will be the same as are applicable to the employees of AVVNL of similar category.

2.1 On 24/09/2008, the petitioner was placed under APO at Headquarters of Superintending Engineer (O&M), Jhunjhunu. On 17/10/2008, he was to work in the office of Assistant Engineer (O&M), Jhunjhunu and thereafter on 06/10/2008 he was transferred from Jhunjhunu to Assistant Engineer (O&M), Raipur.

2.2 On 20/10/2008, a show cause notice was issued to the petitioner the reply of which was submitted by the petitioner on 06/01/2009 claiming that he received the show cause notice on 01/01/2009. In the reply, the petitioner primarily submitted that his case may be considered sympathetically and that in future he will carry out his duties with full devotion and that in fact, the show cause notice is not correct. On 08/06/2009, termination order was passed after hearing the petitioner on 29/05/2009 and it was categorically pointed out that defence reply, preliminary enquiry report and the comments submitted by the Chief Engineer, AVVNL, Jhunjhunu have all been considered and it was held that during the probation period, the work performed by the petitioner was not found satisfactory, therefore, in terms of clause 3 of the terms & conditions of the appointment order dt.07/05/2007, his services can be terminated.

2.3 It is important to note that a letter dated 07/08/2009 was submitted by the petitioner as a representation for review of the case in the light of CCA Regulations 1962. The said letter dated 07/08/2009 has not been placed on record by the petitioner but is reflected from the review order dated 12/01/2010. In the said order of review, it was categorically held in Para 3 to 5 as under:-

"3. In this case you were personally heard by the Managing Director, Ajmer Discom, on Dt. 29.05.2009 and after considering all the facts, your reply and other documents available in the case file, it is concluded that your work was not found satisfactory and thus, as per the terms & conditions No. 03 of your appointment order, the MD, Ajmer has ordered to terminate your services from the Nigam, accordingly your services was terminated vide this office order No. 191/D. 1820 Dt. 08.01.09 and not due to any disciplinary action.

4. Refer CC & AR-1962 Para -5, Sub Para-3, Clause-V, wherein it is mentioned that "The termination of service of a probationer, temporary employee or an employee appointed on Contract during or at the end of the period of Probation, on the Expiry of the period of temporary appointment or in accordance with the Terms of Contract respectively is not a Penalty" read with Rule No. 6 sub, para iii &iv of ESR-1977.

5. Since you were appointed as JEN (PT) vide above referred letter and governed with Terms & Conditions of Your appointment order, but not governed by CC&A Rules, a show cause notice was given to you by this office mentioning that if the reply not been submitted by you within seven days Ex-parte decision will be taken and your service can be terminated, but you have taken 80 days for the

submission of reply, as such one month salary in lieu of, is not allowed in this case, as you have exceeded the notice period i.e. beyond 30 days."

2.4 The crux of the review order was that services of the petitioner were terminated on account of his unsatisfactory performance and not due to any disciplinary action as per clause 3 of the terms & conditions of the appointment order. It was further stated in the review order that CCA Regulations, 1962 are not applicable as the termination of service of a probationer on account of unsatisfactory service is not a penalty and therefore, a show cause notice was given which was not replied within specified time and the review was rejected.

3. On the above facts, learned counsel for the petitioner contended that the show cause notice has reflected allegations of misconduct and the disciplinary proceedings were initiated as per RSEB Employees Conduct Regulations, 1976 and therefore, charge-sheet was must alongwith enquiry report in terms of CCA Regulations, 1962. The further contention of learned counsel for the petitioner was that there was violation of principles of natural justice as the conditions of Rule 7(1) of the CCA Regulations, 1962 were not followed. He further contended that the impugned termination order is stigmatic in nature which has been passed without giving any opportunity of hearing and if the stigmatic order is passed without conducting regular enquiry, the same is illegal as per settled position of law held in *State Bank of India Vs. Palak Modi*:2013(3) SCC 607; *Union of India Vs. Mahaveer C. Singhvi*: 2010(8) SCC 220; *Tarun Kumar Khatri Vs. AVVNL*: 2014(4) WLC 288; *Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala*: 2020(2) SCALE 661.

4. Per-contra, learned counsel for the respondents submitted that the petitioner was admittedly a probationer trainee and not a regular employe. He further submitted that in terms of Annexure R/1 dt.05/02/2008, Annexure-R/2 dt. 12/02/2008, Annexure-R/3 dated 31/03/2008 and Annexure-R/4 dated 02/04/2008, the petitioner has not performed satisfactorily and has not taken keen interest in the work of respondent-AVVNL and was issued letters in this regard. Because of his unsatisfactory services, even complaints were received from the office of District Collector on 17/06/2008 (Annexure-R/5) as well as from the consumers on 21/07/2008 (Annexure-R/6). In order to enquire the matter, following the principles of natural justice, the Executive Engineer, AVVNL, Khetri Nagar was appointed to hold preliminary inquiry and the report of the same was submitted by him on 24/09/2008 (Annexure -R/7) whereby it was submitted that despite of repeated warnings, the petitioner was not taking interest in his duties and his work was not satisfactory. In this background, a show cause notice dated 20/10/2008 (Annexure-7) was issued to him to submit his reply within a period of seven days of issuance of the same. The petitioner submitted his reply on 06/01/2009 for rendering satisfactory service in future. The Executive Engineer, AVVNL, Khetrinagar, after considering the entire matter, was of the opinion that the reply of the petitioner is not satisfactory and accordingly submitted his comments vide letter dated 18/03/2009 (Annexure-

R/9). The petitioner was given opportunity of personal hearing on 29/05/2009 and as his work was not found satisfactory, he was terminated vide order dated 08/06/2009. As per the respondents, the review order dated 12/01/2010 was also passed on application for review dated 07/08/2009 which is on record, whereby, it was categorically made clear that the petitioner was removed on account of his unsatisfactory services during the course of probation period and not on account of misconduct and therefore, the provisions of CCA Regulations, 1962 would not be applicable. Learned counsel for respondents further contended that the order dated 12/01/2010 passed on review application is not under challenge.

5. This Court has gone through the contentions of the respective counsels, scanned record of the writ petition as well as considered the judgments cited at bar.

6. On consideration of above, following points are to be noted:-

(a) The petitioner was not an employee but was a probationer trainee for a period of two years;

(b) During the course of his probation vide repeated reminders dated 05/02/2008, 12/02/2008, 31/03/2008 and 02/04/2008, the petitioner was informed that he was not rendering services satisfactorily. As per the complaint dated 17/06/2008 (Annexure-R/5) sent by the District Collector and the illustrative complaint sent by the consumers dated 21/07/2008 (Annexure-R/6), the act of not providing satisfactory service by the petitioner was strengthened.

(c) In this regard, as per the principles of natural justice, a show cause notice was served to the petitioner, a preliminary enquiry was also conducted but no convincing and satisfactory reply to the same was submitted by the petitioner. No objection pertaining to applicability of CCA Regulations, 1962 and allegation of misconduct was raised by the petitioner at that stage.

(d) The petitioner has not approached the court with clean hands as the letter dated 07/08/2009, whereby, he has represented for review of the order of termination dated 08/06/2009 has not been brought on record.

(e) The order dated 12/01/2010 passed in review categorically reflects that the termination was not on account of disciplinary action and was not passed qua any misconduct but was passed with reference to non-performance of satisfactory service during the course of probation and therefore, as per clause 3 of the terms and conditions of the order of his appointment, the CCA Regulations, 1962 were not applicable in the case of the petitioner. The reasons for rejection of review/representation are also reiterated above which are self explanatory.

(f) The order of termination was passed on assessment that work of the petitioner was not satisfactory but was not with the motive to cause stigma upon him and therefore, the order cannot be said to be punitive which is reflected from

the review order dated 12/01/2010 which is not under challenge in the writ petition.

(g) The judgments cited by the petitioner as referred above, are distinguishable on account of the fact that the order impugned was not issued on account of misconduct and was not at all stigmatic or punitive. As per the review order dated 12/01/2010, it is absolutely clear that the termination was on account of unsatisfactory work during the probation period which is not assailed but accepted by the petitioner and the order dated 08/06/2009 has merged with the same. All the judgments cited and relied upon by the petitioner are distinguishable on account of the fact that the same were passed as punitive measure and not on account of unsatisfactory work.

(h) In this regard, reliance is placed upon judgment of the Apex Court in *Mahaveer C. Singhvi* (supra) wherein it has been held in Para 31 as under:-

"31. Since the High Court has gone into the matter in depth after perusing the relevant records and the learned Additional Solicitor General has not been able to persuade us to take a different view, we see no reason to interfere with the judgment and order of the High Court impugned in the Special Leave Petition. Not only is it clear from the materials on record, but even in their pleadings the Petitioners have themselves admitted that the order of 13th June, 2002, had been issued on account of the Respondent's misconduct and that misconduct was the very basis of the said order. That being so, having regard to the consistent view taken by this Court that if an order of discharge of a probationer is passed as a punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed, and the same finding would also apply to the Respondent's case. As has also been held in some of the cases cited before us, if a finding against a probationer is arrived at behind his back on the basis of the enquiry conducted into the allegations made against him/her and if the same formed the foundation of the order of discharge, the same would be bad and liable to be set aside. On the other hand, if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving him a hearing, the same would be valid. However, the latter view is not attracted/ to the facts of this case. The materials on record reveal that the complaint made by Mrs. Narinder Kaur Chadha to the Minister of External Affairs had been referred to the Joint Secretary and the Director (Vigilance) on 8th February, 2002, with a direction that the matter be looked into at the earliest. Although, nothing adverse was found against the Respondent, on 19th February, 2002, the Joint Secretary (Vigilance) held further discussions with the Joint Secretary (Admn.) in this regard. What is, however, most damning is that a decision was ultimately taken by the Director, Vigilance Division, on 23rd April, 2002, to terminate the services of the Respondent, stating that the proposal had the approval of the Minister of External Affairs. This case, in our view, is not covered by the decision of this Court in *Dipti Prakash Banerjee's* case (supra)"

(i) On perusal of dictum of the Apex Court, referred above, it is clear that if the allegations were merely with a motive for passing of an order of discharge of a probationer, the same can be done without giving him any opportunity of hearing and the same would be valid.

(j) As per the review order dated 12/01/2010, it is absolutely clear that the termination of the petitioner as a probationer was neither on account of disciplinary reason, nor the same was punitive, nor was it conducted at the back of the petitioner.

(k) The judgments cited and relied upon by learned counsel for the respondents in State of Orissa & Anr. Vs. Ram Narayan Das: AIR 1961 (SC) 177; The Oil and Natural Gas Commission Vs. Dr. Mohd. S. Iskender Ali: AIR 1980 (SC) 1242; State of Punjab & Ors. Vs. Sukhvinder Singh (Civil Appeal No.4441/2021) decided on 14/07/2005; Raj. High Court Vs. Ved Priya & Anr. (Civil Appeal No. 8933/8934 of 2017), decided on 18/03/2020 are applicable in the present case wherein it has been held that the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is not found suitable can be discharged from service and it was further held that mere holding of preliminary enquiry where explanation is called for from an employee would not make the order of discharge or termination of service punitive in nature.

7. In view of the discussion made above, this court does not find any merit in the present case and the writ petition filed by the petitioner is accordingly dismissed. All pending applications stand disposed of.