A UNION OF INDIA AND OTHERS

v.

MAHAVEER C. SINGHVI

(SLP (C) No. 27702 of 2008)

B JULY 29, 2010

[ALTAMAS KABIR, J.M. PANCHAL AND CYRIAC JOSEPH, JJ.]

Service Law:

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Discharge of an IFS probationer during the period of probation – Challenged – HELD: The order had been issued on account of the alleged misconduct of the probationer which was the very basis of the order, although nothing was found D *against him on the basis of the inquiries conducted – The order was passed as a punitive measure without giving the probationer any opportunity of defending himself and, as such, was rightly set aside by the High Court – Natural justice.*

The respondent, who was appointed to the Indian E **Foreign Service on 21.9.1999, was, by order dated 13.6.2002, discharged from the service as IFS Probationer during the period of probation. He challenged the order before the Central Administrative Tribunal. It was submitted that the order was passed because the** F **respondent protested against the manner in which he had been deprived of his choice of German as his language allotment by deliberately altering the rules of allotment of languages for the year 1999 to benefit a certain candidate. The Tribunal dismissed the application.** G **The respondent filed a writ petition before the High Court emphasizing that his discharge from service was not a discharge simpliciter, but was the result of an inquiry conducted behind his back on a complaint of one 'NC' regarding threat and abusive and sexually explicit**

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remarks alleged to have been made by him to her daughter, though nothing adverse could be found against him. The High Court quashed the order of discharge and directed reinstatement of the respondent with all consequential benefits. Aggrieved, the Union of India and others filed the petition for special leave to appeal.

Dismissing the petition, the Court

HELD: 1.1. It has been repeatedly expressed by this Court from *Purshotam Lal Dhingra** onwards that if the inquiries on the allegations made against an employee formed the foundation of the order of discharge, without giving the employee concerned an opportunity to defend himself, such an order of discharge would be bad and liable to be quashed. [para 29] [264-A-B]

**Purshotam Lal Dhingra vs. Union of India* 1958 SCR 828; and *Radhey Shyam Gupta vs. U.P. State Agro Industries* Corporation Ltd. and Anr. 1998 (3) Suppl. SCR 558 = (1999) 2 SCC 21, relied on.

Shamsher Singh vs. State of Punjab and Another ***1975*** (1) SCR 814=AIR 1974 SC 2192 = 1974 (2) SCC 831, referred to.

1.2. In the instant case, although, nothing was found against the respondent on the basis of the inquiries conducted on the complaint made by 'NC', the same was taken into consideration which is reflected from the observation made by the Joint Secretary (CNV) that he had no doubt that the respondent would blacken the country's name. There is absolutely no material on record to support such an observation made by a responsible official in the Ministry, which clearly discloses the prejudice of the authorities concerned against the respondent. What is, however, most damning is that a

A decision was ultimately taken by the Director, Vigilance Division to terminate the services of the respondent, stating that the proposal had the approval of the Minister of External Affairs. [Para 31] [264-E-H; 265-A-E]

B *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors.* 1999 (1) SCR 532= (1999) 3 SCC 60, held inapplicable.

1.3. The petitioners have not been able to satisfactorily explain why the rules/norms for allotment of C languages were departed from only for the year 1999, so that the respondent was denied his right of option for German. The mode of allotment was amended for the 1999 Batch in such a calculated fashion that the officer, who was at Serial No.7, was given the choice of German D over and above the respondent who was graded at two stages above her. [Para 29] [263-F-H]

1.4. 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, E 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 F 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. The order dated 13th June, 2002, by which the respondent was discharged from service, was G punitive in character and had been motivated by considerations which are not reflected in the said order. [Para 28 and 31] [264-F-G; 263-E]

1.5. Since the High Court has gone into the matter in H depth after perusing the relevant records and nothing has

been pointed out to persuade this Court to take a different view, there is no reason to interfere with the judgment and order of the High Court. [Para 31] [264-E-H]

Shamsher Singh vs. State of Punjab and Another **1975 (1) SCR 814=AIR 1974 SC 2192 = 1974 (2) SCC 831;** *Benjamin (A.G.) vs. Union of India* **1967 (1) LLJ 718 (SC);** *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences* **2001 (5) Supl. SCR 41= (2002) 1 SCC 520;** *State of Haryana vs. Satyender Singh Rathore* **2005 (3) Suppl. SCR 126= (2005) 7 SCC 518;** *Jai Singh vs. Union of India* **(2006) 9 SCC 717;** *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* **AIR 1980 SC 1896;** *Life Insurance Corp. of India vs. Shri Raghvendra Seshagiri Rao Kulkarni* **JT 1997 (8) SC 373;** *State of Punjab vs. Shri Sukh Raj Bahadur* **1968 (3) SCR 234;** *Chaitanya Prakash and Anr. vs. H. Omkarappa* **(2010) 2 SCC 623;** *State of Bihar vs. Shiva Bhikshuk Mishra* **1971 (2) SCR 191= (1970) 2 SCC 871;** *Anoop Jaiswal vs. Government of India and Anr.* **1984 (2) SCR 453=(1984) 2 SCC 369;** *Nehru Yuva Kendra Sangathan vs. Mehbub Alam Laskar* **2008 (1) SCR 1069 = (2008) 2 SCC 479, cited.**

Case Law Reference:

1999 (1) SCR 532	**held inapplicable**	**para 5**
1958 SCR 828	**relied on**	**para 13**
1998 (3) Suppl. SCR 558	**cited**	**para 14**
1975 (1) SCR 814	**referred to**	**para 15**
1958 SCR 828	**cited**	**para 20**
1967 (1) LLJ 718 (SC)	**cited**	**para 21**
2001 (5) Supl. SCR 41	**cited**	**para 22**

A	2005 (3) Suppl. SCR 126	cited	para 22
	(2006) 9 SCC 717	cited	para 22
	AIR 1980 SC 1896	cited	para 22
B	JT 1997 (8) SC 373	cited	para 22
	1968 (3) SCR 234	cited	para 22
	(2010) 2 SCC 623	cited	para 23
	1971 (2) SCR 191	cited	para 27
C	1984 (2) SCR 453	cited	para 27
	2008 (1) SCR 1069	cited	para 27

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. D 27702 of 2008.

From the Judgment & Order dated 29.08.2008 of the High Court of Delhi at New Delhi in W.P. (C) No. 8091/2003.

P.P. Malhotra, ASG, Rekha Pandey, Rohitash S. Nagar, E Madhurima, Chetan Chawla, Anil Katiyar, B. Krishna Prasad for the Petitioners.

Jayant Bhushan, Pallav Shisodia, Manish K. Bishnoi, Samir Ali Khan, Gautam Talukdar for the Respondent.

F The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. After an outstanding academic career under the Rajasthan Secondary Board and the University of Jodhpur, the Respondent appeared for the Civil G Services Examination, 1998, conducted by the Union Public Service Commission and on account of his brilliant performance, he was appointed to the Indian Foreign Service on 21st September, 1999. But on 13th June, 2002, he was discharged from service by the following order :-

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"The President hereby discharges forthwith from service Shri Mahaveer C. Singhvi, IFS Probationer (1999 Batch), in accordance with the terms of employment issued vide order No.Q/PA.II/578/32/99 dated 21st September, 1999.

By order and in the name of the President.

Sd/-
(P.L. Goyal)
Addl. Secretary (AD)"

2. Although, the aforesaid order appears to be an innocuous order of discharge simpliciter of a probationer, the same has given rise to a question of law relating to service jurisprudence which has been considered over and over again for the last five decades. However, even though the principles laid down by this Court in the various cases have been uniformly followed, there have been individual cases which have thrown up new but related issues which have been considered on their own merits. As will be apparent from the aforesaid order dated 13th June, 2002, the question with which we are concerned in this Special Leave Petition (S.L.P.) relates to the discharge from service of a probationer during his period of probation. In order to be able to appreciate the said question in the facts of this case, it is necessary to set out the background in which the order of 13th June, 2002, came to be passed and the manner in which the same was dealt with by the Central Administrative Tribunal and the Delhi High Court.

3. The case made out by the Respondent before the Central Administrative Tribunal, is that he was deployed to the East Asia Division of the Ministry of External Affairs. He was, thereafter, asked to give his preference for allotment of the study of a compulsory foreign language. The Respondent opted for French, German, Arabic and Spanish in the said order of preference. In view of his position in the merit list, the Respondent should have been allotted German. However, in deviation from the prevalent procedure whereby the allotments

A relating to study of a compulsory foreign language were made on the basis of gradation in the merit list, the Respondent was informed by a letter dated 11th January, 2001, that he had been allotted Spanish which was his last choice. The Respondent thereafter made a representation against such allotment, but B he was directed by the Petitioner No.2 Mr. P.L. Goyal, who was the then Additional Secretary (Admn.), to remain silent over the issue. The Respondent was, thereafter, posted in Madrid, Spain, in confirmation of the allocation of Spanish to him, but for his language training he was directed to proceed to C Valladolid, which was at a great distance from Madrid. The Respondent thereupon made a further request for arranging his language training at Madrid, where he had been posted since he wanted to take his dependent and ailing parents with him to Madrid. On account of the sudden deterioration of the health D condition of his parents, the Respondent sought permission to join the language course at a later date and such permission was apparently granted by the Mission at Madrid by a communication dated 10th September, 2001. As the date for the new course was not intimated to the Respondent and there was no improvement in his father's condition, the Respondent E sought further extension to join the Mission and the same was also granted on 18th February, 2002. Accordingly, the Respondent planned to join the Mission in July/August, 2002, but in the note of 18th February, 2002, the request for providing medical facilities and diplomatic passports to the Respondent's F dependent parents was not granted. According to the Respondent, he was thereafter served with the order of discharge from service dated 13th June, 2002, set out hereinabove.

G 4. The Respondent challenged the said order dated 13th June, 2002, before the Central Administrative Tribunal in O.A.No.2038 of 2002, contending that after the expiry of his period of probation, he stood confirmed and his services could not have been terminated without an enquiry in view of the H provisions of Article 311(2) of the Constitution. It was also

contended that the order of 13th June, 2002, had been passed in complete violation of the principles of natural justice as the Respondent was not given a hearing or an opportunity to defend himself against the allegations which formed the foundation of the said order. It was also submitted that since the Respondent had protested against the dubious manner in which he had been illegally deprived of his choice of German as his language allotment, the authorities who had deliberately altered the rules of allotment of language for the year 1999 to benefit a certain candidate, were determined to see that the Respondent was discharged from service. It was submitted that the method adopted for the year 1999 for allotment of languages was discontinued thereafter and the authorities thereafter reverted to the old method which was continuously followed till it was altered only for the year 1999. It was submitted that by adopting the method in question, the candidates who figured in the select list of ten, but were graded below the Respondent, were given an opportunity to exercise their option, while denying such opportunity to the Respondent who was left with no option of preference as per his choice at the end of the exercise.

5. Negating the submissions made on behalf of the Respondent herein, the Tribunal by its judgment and order dated 4th September, 2003, dismissed the Respondent's O.A.No.2038 of 2002, upon holding that the Petitioners had no intention of conducting an inquiry against the Respondent, but they did not also want him to continue in service, which could only be a motive and not the foundation for discharging the Respondent from service. In order to buttress its finding, the Tribunal relied upon the decision of this Court in *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.* [(1999) 3 SCC 60], wherein the question as to in what circumstances an order of termination of a probationer can be said to be punitive fell for consideration. It was held by this Court that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the cause of the termination

A are the motive or foundation. It was observed that if findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, a simple order of termination is to be treated as founded on the allegations and would be bad, but if the enquiry was not held, B and no findings were arrived at and the employer was not inclined to conduct an enquiry, but, at the same time, he did not want to continue the employee's services, it would only be a case of motive and the order of termination of the employee would not be bad.

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6. One other aspect which was subsequently agitated before the High Court but does not find place in the decision rendered by the Central Administrative Tribunal in its judgment and order dated 4th November, 2003, relates to a complaint alleged to have been made against the Respondent by one D Mrs. Narinder Kaur Chadha, the mother of one Ms. Arleen Chadha, to the Minister of External Affairs on 7th February, 2002, alleging that the Respondent had been threatening her daughter and the entire family. In the said complaint, it was indicated that the Respondent had met her daughter in 1997 E and had been harassing her since then. It was also indicated that her daughter had been thoroughly demoralized and disturbed by the Respondent's behaviour and that she had suffered both mentally and physically, as a result of which her marriage could not be finalized. The complainant sought F suitable action against the Respondent for allegedly misusing his official position.

7. It also appears that the Minister concerned had met Mrs. Narinder Kaur Chadha and Ms. Arleen Chadha on the same G day and the matter had been referred to the Joint Secretary and the Director (Vigilance) and a copy of the complaint was sent by the Minister to the Vigilance Division on 8th February, 2002, with a direction that the matter be looked into at the earliest. Some enquiries appear to have been conducted about the Respondent's conduct and character by the Joint Secretary, H

Foreign Service Institute (FSI) but nothing adverse could be found against him. Despite the above, on 19th February, 2002, the Joint Secretary (Vigilance) held further discussions with the Joint Secretary (Admn.) and, thereafter, a Memorandum was issued to the Respondent on the very same day alleging his unauthorized absence.

8. Although, the said allegations were duly denied by the Respondent, on 8th March, 2002, the Director, Vigilance Division, prepared a formal inquiry report stating that there were some complaints of misconduct against the Respondent and that the Minister desired action to be taken against him. Accordingly, on 5th April, 2002, Shri P.L. Goyal, Additional Secretary (Admn.) noted that as desired by the Minister, the Respondent had been called for a hearing in the presence of the Joint Secretary (CNV) and Under Secretary (FSP) and a decision was ultimately taken by the Director on 23rd April, 2002, to terminate the services of the Respondent and stated that the proposal had the approval of the Minister of External Affairs. Certain new materials were introduced against the Respondent relating to a written complaint which had been received from a Desk Officer in the Department of Personnel & Training (DoPT) alleging that the Respondent had threatened him and tried to bribe him to effect a change in allotment of his service from the I.F.S. The proposal to terminate the services of the Respondent was said to have been ultimately approved by all the superior authorities and in their reply filed before the Tribunal, the Petitioners had stated that the Respondent herein had been discharged from service, primarily for his misconduct in office. This led the Tribunal to conclude that the record was so clear that the only conclusion that could have been arrived at is that the findings of misconduct arrived at by the Petitioners were only the motive for the orders discharging the Respondent from service.

9. The Respondent challenged the judgment and order of the Tribunal dated 4th September, 2003, dismissing his

A O.A.No.2038 of 2002, before the Delhi High Court in W.P.(C)No.8091 of 2003. It was emphasized on his behalf that his discharge from service was not a discharge simpliciter, but the decision taken in that behalf was the result of an enquiry conducted behind his back in relation to a complaint alleged B to have been made by Mrs. Narinder Kaur Chadha regarding threatening, abusive and sexually explicit remarks allegedly made by the Respondent to her daughter. It was submitted that the same would be evident from the pleadings made on behalf of the Petitioners which would unequivocally constitute an C admission on the part of the Petitioners that the order of discharge dated 13.6.2002 discharging the Respondent from his duties was passed because of the Respondent's alleged misconduct which was the very foundation of the said order.

10. It was also contended that the Additional Secretary, Mr. D P.L. Goyal and some others were nursing a grudge against him on account of his protest against the dubious alteration of the allotment of language rules for the year 1999, in order to give a choice of language allotment to five candidates who were below the Respondent in the Select List of ten chosen for the E Foreign Service, while denying the same to the Respondent. Once the complaint was received from Mrs. Narinder Kaur Chadha, the Petitioners stepped into over drive to remove the Respondent from the Foreign Service Cadre by any means at their disposal, but without giving the Respondent an opportunity F of hearing to defend himself.

11. On behalf of the Petitioners herein, the submissions made before the Tribunal were reiterated by the learned Additional Solicitor General. It was admitted that the Petitioners had discharged the Respondent from service for misconduct G during his period of probation, which the Petitioners were entitled to do not only under the terms and conditions of the Respondent's appointment, but also under Rule 16(2) of the Indian Foreign Service (Recruitment, Cadre, Promotion, Seniority) Rules, 1961, which empowers the Central H

Government to discharge any probationer from service, who may be found unsatisfactory during the period of probation.

12. It was also contended that since no enquiry was contemplated against the Respondent, the order of discharge simpliciter during the Respondent's period of probationary service, without attaching any stigma, was valid and no interference was called for therewith in the Writ Petition. Reliance was placed on several decisions, but, in particular, on the decision in *Dipti Prakash Banerjee's* case (supra) which has been discussed hereinbefore in paragraph 5.

13. After considering the various decisions cited by the learned Additional Solicitor General, beginning with the decision of this Court in *Purshotam Lal Dhingra vs. Union of India* [1958 SCR 828], the High Court accepted the case of the Respondent and observed that it was left with no doubt that the entire object of the exercise was to camouflage the real intention of the Petitioners, which was to remove the Respondent for something about which they had convinced themselves, but did not think it necessary to give the Respondent an opportunity to clear his name. The High Court by the impugned judgment dated 29.9.2008, accordingly quashed the order of discharge of the Respondent from the Indian Foreign Service dated 13.6.2002, along with the orders passed by the Tribunal on 4.9.2003 dismissing the Respondent's O.A.No.2038 of 2002 and on 14.11.2003 rejecting the Respondent's Review Application No.323 of 2003, with a direction to reinstate the Respondent in the Indian Foreign Service Cadre of the 1999 Batch, along with all consequential benefits, including consequential seniority, within a month from the date of the order.

14. In allowing the Writ Petition filed by the Respondent, the High Court referred to and relied on the decision of this Court in the case of *Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. & Anr.* [(1999) 2 SCC 21], wherein this Court had held that in cases where termination is preceded

A by an enquiry, evidence is received and findings as to misconduct of a definite nature are arrived at behind the back of the officer and where on the basis of such a report the termination order is issued, such an order would be violative of the principles of natural justice.

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15. The High Court also referred to the Special Bench decision of this Court in Shamsher Singh vs. State of Punjab and another [AIR 1974 SC 2192 = 1974 (2)SCC 831] which was a decision rendered by a Bench of seven Judges, holding that the decisive factor in the context of the discharge of a C probationer from service is the substance of the order and not the form in determining whether the order of discharge is stigmatic or not or whether the same formed the motive for or foundation of the order.

D 16. In the facts of the case the High Court came to the conclusion that a one-sided inquiry had been conducted at different levels. Opinions were expressed and definite conclusions relating to the Respondent's culpability were reached by key officials who had convinced themselves in that E regard. The impugned decision to discharge the Respondent from service was not based on mere suspicion alone. However, it was all done behind the back of the Respondent and accordingly the alleged misconduct for which the services of the respondent were brought to an end was not merely the F motive for the said decision but was clearly the foundation of the same.

17. The High Court was convinced that although the order of discharge dated 13.6.2002 by which the Respondent was discharged from service was not without substance, the same G was bad and liable to be quashed since the respondent's services had been terminated without a formal inquiry and without giving him any reasonable opportunity to defend himself.

18. Appearing for the Petitioners, Mr. P.P. Malhotra, H learned Additional Solicitor General of India, reiterated the

arguments which had been advanced before the learned Tribunal and also before the High Court emphasizing that since the Respondent had been discharged from service by a simple order of discharge without any stigma attached thereto, the Respondent was not entitled to the protection of Article 311(2) of the Constitution. It was urged that since the Respondent had not completed the probationary period, and was a probationer when the order of discharge was made, it was within the competence of the Petitioners to pass such an order if they were dissatisfied with the performance of the Respondent during the probation period. It was sought to be urged that an assessment of a candidate appointed on probation has to be made before his services may be confirmed. The process to make an assessment of the performance of the probationer often requires the confirming authorities to look into and consider his complete performance, which could include lapses on his part which could have adverse consequences for the employer.

19. Mr. Malhotra submitted that in the instant case the indisciplined acts and behaviour of the Respondent during his period of probation were noticed and it was found that instead of being an asset to the Indian Foreign Service, the Respondent would ultimately become an embarrassment and thus were of the view that he should be discharged from the service. Mr. Malhotra repeated the stand taken by him before the High Court that it was not the intention of the Petitioners to conduct an inquiry into the various materials received relating to the services of the Respondent, and, accordingly, a decision was taken to discharge him from service on the ground of his unsatisfactory performance during his period of probation, although, the same does not find any place in the order of discharge which was an order of discharge simpliciter. Mr. Malhotra urged that in a series of judgments passed by this Court it had repeatedly been held that if no stigma was attached to the separation of ways between the authorities and the probationer, the same would not amount to being the

A foundation of a discharge simpliciter. Mr. Malhotra urged that the High Court had erred in taking a contrary stand and had travelled beyond its jurisdiction in going beyond the satisfaction of the authorities in reaching the conclusion that the inquiry conducted against the Respondent formed the foundation and B not the motive for the impugned order of discharge.

20. In the aforesaid regard, Mr. Malhotra firstly referred to the decision of this Court in *Purshotam Lal Dhingra vs. Union of India* [1958 SCR 828] as to the scope of Article 311 of the Constitution in relation to the appointment of a Government C servant to a permanent post either in a substantive capacity or on probation or even on an officiating basis. Dealing with appointments on probation, this Court observed that an appointment to a permanent post in Government service on probation means, as in the case of a person appointed by a D private employer, that the person so appointed is taken on trial. Such an employment on probation would generally be for fixed periods, but could also remain unspecified and under the ordinary law of master and servant would come to an end during or at the end of the probation period, if the servant so appointed E on trial was found unsuitable and his service was terminated by a notice. It was accordingly held that appointment to a permanent post in Government service on probation is of a transitory character and the person so appointed does not acquire any substantive right to the post and his service can F be terminated at any time during the period of probation.

21. Reference was also made to the decision rendered by this Court in *Benjamin (A.G.) vs. Union of India* [1967 (1) LLJ 718 (SC)], where the principles enunciated in *Purshotam Lal Dhingra* (supra) were followed in regard to the termination G of service of a temporary Government servant. What was sought to be highlighted was the right of the authorities to stop a departmental proceeding and to pass an order of discharge simpliciter to avoid attaching a stigma to the order of dismissal.

H 22. Several other decisions on the same question, namely,

(1) *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences* [(2002) 1 SCC 520]; (2) *State of Haryana vs. Satyender Singh Rathore* [(2005) 7 SCC 518]; (3) *Dipti Prakash Banerjee* (supra); (4) *Jai Singh vs. Union of India* [(2006) 9 SCC 717]; (5) *Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha* [AIR 1980 SC 1896]; (6) *Life Insurance Corp. of India vs. Shri Raghvendra Seshagiri Rao Kulkarni* [JT 1997 (8) SC 373]; and (7) *State of Punjab vs. Shri Sukh Raj Bahadur* [1968 (3) SCR 234] were also referred to by Mr. Malhotra. In the two latter cases, this Court relying on the principles laid down in *Purshotam Lal Dhingra's* case (supra), reiterated the law that the requirement to hold a regular departmental enquiry before dispensing with the services of a probationer cannot be invoked in the case of a probationer, especially when his services are terminated by an innocuous order which does not cast any stigma on him. However, it was also observed that it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination was punitive and was brought about on the ground of misconduct, Article 311(2) would be attracted and in such a case a departmental enquiry would have to be conducted.

23. Mr. Malhotra lastly referred to one of the latest decisions of this Court in this field in *Chaitanya Prakash & Anr. vs. H. Omkarappa* [(2010) 2 SCC 623], wherein it was observed that even if an order of termination refers to unsatisfactory service of the concerned employee, the same could not be termed as stigmatic.

24. Mr. Malhotra submitted that having regard to the consistent view of this Court that the services of a probationer can be discharged during the probationary period on account of unsatisfactory service by way of termination simpliciter, without holding a departmental enquiry, the order of the High Court was contrary to the settled legal position and was, therefore, liable to be set aside.

25. Appearing for the respondent, Mr. Jayant Bhushan,

A learned Senior Advocate, submitted that the contentions urged on behalf of the Petitioners herein had been fully considered by the High Court which had, after considering the various decisions of this Court, rightly come to the conclusion that the Respondent's discharge from service was not a discharge
B simpliciter, but was on account of several findings arrived at behind his back on the basis of complaints made relating to the Respondent's moral integrity. He also submitted that apart from the above, the protest raised by the Respondent with regard to the unlawful manner in which the allotment of foreign
C languages to the 1999 Batch of I.F.S. officers had been made by the authorities, was also a major factor in the decision-making process for removing the Respondent from the service. It was contended that the authorities were desperate to cover up the highly dubious and motivated manner in which the rules
D of allotment were altered only in respect of the 1999 Batch of I.F.S. appointees in order to favour a particular candidate who was graded lower than the Respondent. Mr. Bhushan highlighted the fact that despite being graded higher than five other candidates in the select list of ten, the Respondent was
E denied his right of preference relating to allotment of a foreign language of his choice in order to accommodate one Ms. Devyani Khobragade, who was graded at two places below the Respondent and wanted German as her first preference. Mr. Bhushan submitted that a great amount of political pressure was brought to bear upon the concerned authorities to ensure
F that Ms. Khobragade was allotted German as her language preference, as she happened to be daughter of a powerful I.A.S. officer in Maharashtra.

26. Mr. Bhushan submitted that the High Court had
G correctly held that the order of discharge was only a camouflage, and in substance, it was a punitive order based on malafide considerations relating to findings of misconduct recorded against the Respondent behind his back.

27. Mr. Bhushan submitted that, as has been rightly held
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by the High Court, the case of the Respondent was fully covered by the series of decisions of this Court which have also been referred to on behalf of the petitioners. Mr. Bhushan, however, laid special emphasis on the following decisions of this Court, some of which have also been cited on behalf of the petitioners, namely, (1) *State of Bihar vs. Shiva Bhikshuk Mishra* [(1970) 2 SCC 871]; (2) *Shamsher Singh* (supra); (3) *Gujarat Steel Tubes Ltd.* (supra); (4) *Anoop Jaiswal vs. Government of India & Anr.* [1984) 2 SCC 369]; (5) *Nehru Yuva Kendra Sangathan vs. Mehbub Alam Laskar* [(2008) 2 SCC 479], wherein it has been repeatedly observed that if a discharge is based upon misconduct or if there is a live connection between the allegations of misconduct and discharge, then the same, even if couched in language which is not stigmatic, would amount to a punishment for which a departmental enquiry was imperative. Various other decisions were also cited by Mr. Bhushan, which reflect the same views as expressed by this Court in the above-mentioned decisions.

28. From the facts as disclosed and the submissions made on behalf of the respective parties, there is little doubt in our minds that the order dated 13th June, 2002, by which the Respondent was discharged from service, was punitive in character and had been motivated by considerations which are not reflected in the said order.

29. The Petitioners have not been able to satisfactorily explain why the rules/norms for allotment of languages were departed from only for the year 1999 so that the Respondent was denied his right of option for German and such choice was given to Ms. Khobragade who was at two stages below the Respondent in the gradation list. The mode of allotment was amended for the 1999 Batch in such a calculated fashion that Ms. Khobragade, who was at Serial No.7, was given her choice of German over and above the Respondent who was graded at two stages above her. The reason for us to deal with this aspect of the matter is to see whether the case of the

A Respondent is covered by the views repeatedly expressed by this Court from *Purshotam Lal Dhingra* (supra) onwards to the effect that if the inquiries on the allegations made against an employee formed the foundation of the order of discharge, without giving the employee concerned an opportunity to B defend himself, such an order of discharge would be bad and liable to be quashed.

30. In addition to the above, the then Minister of External Affairs, Government of India, appears to have taken an active interest on the complaint made by Mrs. Narinder Kaur Chadha C and, although, nothing was found against the Respondent on the basis of the inquiries conducted, the same was taken into consideration which is reflected from the observation made by Mr. Jayant Prasad, Joint Secretary (CNV) that he had no doubt that the respondent would blacken the country's name. There D is absolutely no material on record to support such an observation made by a responsible official in the Ministry, which clearly discloses the prejudice of the authorities concerned against the Respondent.

E 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 F 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 G 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 H

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).

32. The Special Leave Petition is, accordingly dismissed, with cost to the Respondent, assessed at Rs.25,000/- to be paid to the Respondent by the Petitioners. All interim orders are vacated and the Petitioners are given a month's time from today to comply with the directions given by the High Court in its order dated 29th August, 2008, while allowing the writ application filed by the Respondent.

R.P. Special Leave Petition dismissed.