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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 01<sup>st</sup> September, 2026**

# **CNR No. DLHC010887612024**

+ **W.P.(C) 16765/2024 & CM APPLs. 70946/2024, 27707/2025**

**ANIL MAAN**

.....Petitioner

Through: Dr. Amit George, Mr. Ankit Sinsinwar, Mr. Ravi Kumar, Ms. Muskan Shalya, Ms. Rupam Jha, Mr. Amal A.R., Ms. Tanushree, Mr. Zubin M. John and Ms. Medhavi Bhatia, Advocates.

versus

**DELHI POLLUTION CONTROL COMMITTEE & ANR.**

.....Respondents

Through: Mr. Biraja Mahapatra and Mr. Abhay Singh, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

### **JUDGMENT**

#### **SANJEEV NARULA, J. (Oral):**

1. The Petitioner joined the Delhi Pollution Control Committee<sup>1</sup> as a Junior Environmental Engineer on 6<sup>th</sup> December, 2021. His appointment was on probation for two years. Before that period expired, his services were terminated by order dated 10<sup>th</sup> March, 2023. The order is brief. It refers to his temporary appointment and period of probation and, invoking Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, terminates his services forthwith with one month's pay and allowances in lieu of notice.

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<sup>1</sup> "DPCC"



It makes no reference to his conduct or any allegation against him.

2. The Petitioner's appeal dated 9<sup>th</sup> May, 2023, was rejected on 13<sup>th</sup> September, 2024. He has challenged both orders and seeks reinstatement with consequential benefits and a declaration that he be treated as a confirmed employee.

3. The objection of delay raised by DPCC need not detain the Court. The Petitioner had challenged the termination departmentally in May 2023. His appeal remained pending until September 2024, and the present petition was instituted shortly thereafter. The intervening period cannot, in these circumstances, be treated as abandonment of the challenge. DPCC itself acknowledges the appeal and its rejection on 13<sup>th</sup> September, 2024.

4. Nor is the status of the Petitioner in dispute. He was a probationer. Clause 1 of his appointment memorandum expressly permitted the appointment to be terminated by one month's notice from either side, without assigning any reason. A probationer has no indefeasible right to continue merely because the period of probation has not expired.

5. But that proposition does not conclude the case. The power to discontinue a probationer because he is found unsuitable and the power to punish him for misconduct is distinct. A clause permitting termination simpliciter can be used for the former. It cannot be used to give an innocuous form to the latter.

6. The issue arises because the order dated 10<sup>th</sup> March, 2023 does not disclose any reason for the termination, whereas the record preceding it contains several complaints concerning the Petitioner's conduct, show-cause notices describing some of that conduct as misconduct and insubordination, and replies furnished by the Petitioner. DPCC maintains that this material



was considered only while assessing whether he was suitable to be continued on probation. The Petitioner contends that DPCC had, in fact, accepted the allegations of misconduct and terminated him on that basis, without holding the disciplinary inquiry which such an action required. It is in this context that the distinction between *motive* and *foundation* assumes significance.

*What separates motive from foundation*

7. Much of the argument has turned on the familiar expressions “motive” and “foundation”. They can sometimes obscure a fairly simple proposition.

8. Complaints against a probationer may legitimately affect the employer’s assessment of whether he should be retained. The employer is not required, every time something adverse comes to its notice, to embark upon disciplinary proceedings. It may decide that it does not wish to adjudicate or decide the complaint at all and that, taking the employee’s work and conduct as a whole, it would rather not continue him during probation. In such a case the complaint becomes the basis for the employer’s dissatisfaction, but the employee is not being punished upon a ‘determination’ that the complaint is true. The complaint is then just the motive for the action.

9. The position changes where the employer crosses that line. If it examines the accusation, rejects the employee’s defence, accepts that the alleged act was committed and then terminates his services on that basis, the misconduct has ceased to be merely the occasion for considering suitability. It has become the factual basis of the action. That is what the law describes as the foundation.



10. A simple example illustrates the distinction. Assume that a probationer is accused of threatening a superior. The employer may say: there are serious complaints concerning this officer; I do not propose to decide whether the threat was in fact made, but I am not satisfied that he should continue on probation. That is ordinarily a case of motive.

11. If, however, the employer considers the allegation and the employee's explanation, concludes that he did threaten the superior, characterises that act as misconduct or insubordination, and terminates him because of that conclusion, the result is different. The employer has punished him for an act which it has treated as established. Calling the eventual order a termination simpliciter does not alter what has in substance occurred.

12. The difference, therefore, does not lie in the existence of a complaint. Nor does it lie merely in the fact that the complaint prompted the termination. The question is whether the employer left the allegation unresolved and assessed suitability, or accepted the misconduct as an established fact and acted upon it.

13. This also explains why the Court is permitted, in an appropriate case, to look beyond the language of an innocuous termination order. If the Court's examination ended with the words of the formal order, an employer which had in fact found a probationer guilty of misconduct could avoid the safeguards attending punitive action simply by omitting that finding from the final communication. The law does not make the character of the action depend upon drafting.

14. *Anoop Jaiswal v. Government of India*,<sup>2</sup> therefore holds that where an apparently simple discharge is in reality a cloak for punishment, the court



may ascertain its true character from the circumstances and the material which formed the basis of the action. The Supreme Court ultimately found in that case that the alleged misconduct was the real foundation of the discharge.

15. The same principle appears in *A.P. State Federation of Cooperative Spinning Mills Ltd. v. P.V. Swaminathan*.<sup>3</sup> The order there was innocuous on its face. The Supreme Court nevertheless examined what had actually prompted the employer and held, on the attendant material and the assertions made in the counter affidavit, that the termination was founded upon misconduct. In *State Bank of India v. Palak Modi*,<sup>4</sup> also, the Supreme Court held that if misconduct forms the basis of the final decision to dispense with the probationer's services, the Court can look through the form of a non-stigmatic order and identify the action as punitive.

16. There is one further point which is important in applying this doctrine. A formal departmental inquiry culminating in a finding of guilt is the clearest case in which misconduct becomes the foundation. It is not, however, an indispensable condition.

17. At the same time, the mere issuance of a show-cause notice does not make every subsequent termination punitive. A preliminary examination of a complaint does not preclude the employer from thereafter deciding not to continue a probationer.

18. This is where the decisions relied upon by DPCC assume significance. In *Governing Council of Kidwai Memorial Institute of*

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<sup>2</sup> (1984) 2 SCC 369

<sup>3</sup> (2001) 10 SCC 83

<sup>4</sup> (2013) 3 SCC 607



***Oncology v. Dr. Pandurang Godwalkar***,<sup>5</sup> the Governing Council considered different reports concerning the probationer's overall performance and decided that he should not be continued. The Supreme Court held that the employer is entitled, during probation, to take complaints and conduct into account while assessing the employee as a whole; the action does not become punishment merely because some inquiry had been made against him.

19. The decision of the Supreme Court in ***State of Punjab v. Sukhwinder Singh***<sup>6</sup> is to similar effect. It was emphasised that mere holding of an inquiry during probation does not by itself make the resultant discharge punitive. What matters is whether the exercise was really intended to impose punishment for misconduct or to determine whether the probationer should continue in service.

20. A Division Bench of this Court applied the same principle in ***Government of NCT of Delhi v. Dalbir Singh***.<sup>7</sup> The probationary Warder had been found carrying a narcotic substance and an FIR had been registered. Yet, no inquiry was undertaken by the employer to determine his guilt. The incident and the criminal case caused the employer to conclude that he should not be retained. The allegation thus served as motive for the termination and was not treated as established misconduct forming its foundation.

21. These authorities are not in conflict. They draw the same line on different facts. An employer may be influenced by adverse conduct without adjudicating guilt. However, it cannot find the employee guilty of the

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<sup>5</sup> (1992) 4 SCC 719

<sup>6</sup> (2005) 5 SCC 569

misconduct and then avoid the procedure which that conclusion attracts, and remove him by issuing an order which says nothing about it.

*The present record*

22. With that distinction in view, the present case may now be examined. The termination order itself passes the first test. It contains no stigma. If its language alone were decisive, the petition would fail. But the inquiry cannot stop there because the Petitioner has specifically pleaded that the termination was the culmination of proceedings in which DPCC had treated particular acts as misconduct.

23. During the Petitioner's short tenure, DPCC issued a series of show-cause notices. The number of notices, by itself, is not material. What matters is the character of those notices and, more importantly, the manner in which DPCC states that it dealt with them. The question is therefore not merely whether notices were issued, but whether they remained allegations considered as part of an overall assessment of the Petitioner's suitability for continued probation, or whether they were treated as establishing misconduct and insubordination.

24. The notice dated 14<sup>th</sup> July, 2022, for instance, did not merely record that complaints had been received. After referring to allegations of threats, physical intimidation and altercations, DPCC stated "you have failed to maintain discipline / office decorum..." and described the conduct as "gross misconduct and wilful insubordination or disobedience...". The Petitioner was required to explain why action under the disciplinary rules should not be initiated for the "above misconduct and insubordination".

25. The memorandum dated 19<sup>th</sup> December, 2022 concerned an

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<sup>7</sup> W.P.(C) 6596/2023, decided on 6<sup>th</sup> September, 2023.



inspection during the winter enforcement drive. It recorded that the Petitioner's failure to serve a show-cause notice at the site "reflects doubt about your integrity toward office works" and warned that disciplinary action, including dismissal, could follow.

26. These notices, standing alone, would still not be enough. An allegation remains an allegation, even when strongly worded. DPCC could legitimately have considered the Petitioner's responses and yet decided, without determining guilt, that his overall conduct did not inspire confidence for continued probation. That would bring the case within *Kidwai, Sukhwinder Singh* and *Dalbir Singh*.

27. The difficulty arises from what DPCC itself says happened thereafter. In its counter affidavit, DPCC states that one of the complaints was "verifiable", another was "supported by evidence", and another was based on "factual incidents". It further states that the Petitioner's reply dated 25<sup>th</sup> August, 2022 was considered and "found lacking merit", while his explanation dated 21<sup>st</sup> December, 2022 to the subsequent memorandum was "found unsatisfactory".

28. More importantly, while explaining why the Petitioner was terminated, DPCC does not confine itself to saying that there was a cloud over his conduct. It asserts that he "failed to maintain discipline / office decorum", that he was constantly picking fights, using foul language and issuing threats, and that this constituted "gross misconduct and wilful insubordination or disobedience under CCS (Conduct) Rule, 1964." The very next paragraph states "In view of above facts, the service of Petitioner was terminated on 10.03.2023...".

29. There is, of course, another part of the counter in which DPCC



describes these very complaints as the “background” for assessing suitability, and later says that the decision was based upon an “objective assessment” of the Petitioner’s performance and overall unsuitability. But describing an action as an assessment of suitability does not answer the anterior question: what was the assessment actually founded upon?

30. On the record placed before the Court, DPCC has not produced any probation report or other contemporaneous performance assessment independent of these incidents. It refers in its counter to “performance reports” and “contemporaneous performance assessments”, but none has been placed on record. The RTI response, on the other hand, records that no Annual Performance Report relating to the Petitioner had been received in the Administration Branch. The absence of an APAR is not by itself fatal; a probationer may be assessed through other material. What is significant is that the independent assessment now asserted by DPCC has not been produced.

31. This is not a case in which an otherwise valid order is sought to be invalidated merely because the Respondent used a particular expression in a subsequent affidavit. The Court would not assume that the pleading has created, after the event, a punitive foundation that did not exist when the action was taken. The legal character of the decision must therefore be examined by reference to the basis on which the action was actually taken, and not by treating an isolated expression in the counter affidavit as sufficient, by itself, to alter that basis.

32. In this regard, the counter affidavit is relevant because DPCC itself has identified the material that it says was considered; and that account is consistent with the contemporaneous notices. The Court is therefore not



merely relying upon the terminology used in the pleading, but upon the material identified by DPCC as having informed its decision.

33. Read as a whole, the sequence of events cannot be reduced to a case in which complaints were merely received, doubts were raised, and DPCC decided not to take the risk of continuing the Petitioner's service. DPCC's own case goes further. It asserts that the complaints were supported or verifiable, that the Petitioner's explanations were considered and rejected, and that the conduct disclosed gross misconduct and wilful insubordination. The reference to those matters was not incidental. DPCC expressly relied upon the alleged facts and the character it attributed to the Petitioner's conduct when stating that, "in view of" those facts, his services were terminated. The alleged misconduct therefore did not merely provide the occasion for an assessment of suitability; it formed the substantive basis for the decision.

34. That takes the case across the line from motive to foundation.

#### *Case Law*

35. *Dalbir Singh* is distinguishable. There the employer did not undertake to determine whether the probationer had committed the alleged offence; his involvement in the FIR was the motive for the employer not to retain him. Here, on DPCC's own showing, it went further and gave a verdict upon the substance of the accusations and the Petitioner's response to them.

36. Nor does *Kidwai Memorial Institute* assist DPCC on facts. There the decision proceeded upon an overall appraisal of reports concerning the probationer's performance. In the present case, the supposed independent performance assessment has not been produced, while the material which DPCC itself identifies and defends consists predominantly of the specific



acts which it describes as misconduct.

37. The decision of the Division Bench in *New Delhi Municipal Council v. Rahul Kumar*<sup>8</sup> applies the same approach. The Court held that the allegations constituted the foundation of the termination, notwithstanding their absence from the subsequent termination order, since the employer's own case showed that the order was based on those allegations.

38. The Petitioner has also relied upon *Prasant Kumar Sahoo v. Indian Railway Stations Development Corporation Ltd.*<sup>9</sup> and *Nina Lath Gupta v. Union of India*.<sup>10</sup> Those cases concerned, respectively, a regular employee and a tenure appointment and are therefore not exact parallels. They nevertheless reiterate the general proposition that the legal character of termination depends upon its substance and that an otherwise available contractual power of separation cannot be used to circumvent the procedure governing punitive action.

#### *Rule 5*

39. The Petitioner's separate argument concerning invocation of Rule 5 may be dealt with briefly. He relies upon the Government instruction which provides that where the appointment letter itself contains a specific provision for termination during probation, it would be "desirable" to terminate in terms of that provision rather than under Rule 5(1).

40. That instruction does not say that probationers stand excluded from Rule 5 or that invocation of Rule 5 in such a case is without jurisdiction. Indeed, DPCC's own counter takes inconsistent positions: the termination order expressly invokes Rule 5, whereas the counter subsequently describes

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<sup>8</sup> 2026:DHC:6505-DB

<sup>9</sup> 2026:DHC:6792



that reference as a clerical error and says that the action was really under the appointment condition. Nothing turns on that controversy. Whether DPCC acted under Rule 5 or Clause 1 of the appointment memorandum, neither provision authorised it to impose, in substance, a punishment for misconduct without the procedure which punitive action required.

### *Mala fides*

41. The Petitioner has also alleged that the action was retaliatory because he had complained of corruption against certain officers. Some complaints were undoubtedly made while he was in service. He has also relied upon criminal and vigilance proceedings which arose subsequently.

42. It is neither necessary nor appropriate to determine those allegations in this petition. The subsequent registration of criminal proceedings against some officers cannot retrospectively establish that the Petitioner's complaints were true or that the termination in March 2023 was actuated by mala fides. Conversely, nothing said in this judgment amounts to a rejection of any matter which may independently be under investigation. The termination fails for the narrower reason already recorded.

### *Relief*

43. The termination order dated 10<sup>th</sup> March, 2023 and the order dated 13<sup>th</sup> September, 2024 rejecting the Petitioner's appeal are accordingly set aside.

44. The Petitioner shall be reinstated in service within four weeks. Reinstatement shall not amount to a declaration that the Petitioner stood confirmed merely by expiry of the original period of probation. His status, confirmation and further continuation shall be governed by the applicable rules and lawful orders passed thereunder.

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<sup>10</sup> 2023:DHC:2944



45. The conclusion reached by the Court does not exonerate the Petitioner from the allegations made against him. Their truth has not been adjudicated here.

46. DPCC shall also remain at liberty, if so advised, to proceed in respect of the allegations already made against the Petitioner in accordance with the disciplinary procedure applicable to him. Nothing in this judgment shall prejudice either side in such proceedings.

47. The Petitioner has sought arrears of salary for the entire intervening period. There is, however, no pleading or material before the Court that he remained without gainful employment after termination. Back wages do not follow automatically from the setting aside of an order of termination. Having regard also to his status as a probationer and to the fact that the allegations themselves have not been adjudicated, the prayer for back wages is declined. He shall, however, have continuity of service for other service purposes, subject to the clarification regarding confirmation in paragraph 44 above.

48. The writ petition is allowed in the above terms. Pending applications, if any, stand disposed of.

**SANJEEV NARULA, J**

**SEPTEMBER 1, 2026/as**