Radhey Shyam Gupta vs U.P. State Agro Industries Corporation ... on 15 December, 1998

Author: M. Jagannadha Rao

Bench: K.Venkataswami, M. Jagannadha Rao

PETITIONER:
RADHEY SHYAM GUPTA

Vs.

RESPONDENT:
U.P. STATE AGRO INDUSTRIES CORPORATION LTD. & ANR.

DATE OF JUDGMENT: 15/12/1998

BENCH:
K.VENKATASWAMI, & M. JAGANNADHA RAO.

JUDGMENT:

M. JAGANNADHA RAO. J.

Leave granted.

This appeal is preferred by the appellant questioning the judgment of the High Court of Allahabad dated 10.12.97 (Lucknow Bench) which reversed the Judgment of the Administrative Tribunal III, Lucknow in claim No. 686 of TIII of 1977 dated 3.12.80.

The appellant was working in the respondent Corporation as Senior Accountant from 27.7.1970. On 17.7.1973, he was appointed as Branch Manager and posted at the Meerut Division of the respondent Corporation and transferred to various places. He was posted at Faizabad as Branch Manager on 3.10.1975 and while he was working there, he received a letter dated 12.1.1976 from the Managing Director on 15.1.1976 alleging that one person by name Jai Chandra Lal complained that the appellant had fraudulently taken Rs. 2000/- from him and that the appellant should therefore offer his explanation. The appellant denied the allegation and submitted his explanation on 22.1.1976 was submitted by one Sri Ram Pal Singh, General Manager (Fertiliser) without issuing any Charge Memo or giving hearing. Copy of the report was also not given to the appellant. Thereafter, on

23.1.1976, a simple order of termination was passed stating that the appellant had been appointed as Branch Manager by order dated 17.7.1973, and Condition No.3 of the appointment order provided that the services of the appellant could be terminated at any time after giving one month's notice or one month's day in lieu thereof and that his services were being terminated with immediate effect in terms of the aforementioned Condition No. 3 of the appointment order. It was stated that the appellant could obtain one month's day from the General Manager (Fertiliser), Lucknow.

It was the appellant's case before the Administrative Tribunal, Lucknow, that though the termination order appeared to be innocuous, it was still punitive in nature inasmuch as it was based on an experts report of inquiry by the said Ram Pal Singh and that the allegation of accepting a bribe in a sum of Rs. 2000/- was not merely the motive but the very foundation of the order of termination. The appellant also raised a plea of malafides against the said Shri Ram Pal Singh who allegedly bore a grudge against the appellant as the appellant while working at Meerut in 1973-74 had made certain serious complaints against one Balbir Singh Chauhan, Assistant Sales Officer-I - who was a close friend of the said Shri Ram Pal Singh. In fact, soon after the appellant complained against Balbir Singh, a letter of transfer is said to have been engineered and the appellant was transferred to Varanasi on 9.5.74. Various details have been given to prove malafides.

The Administrative Tribunal, Lucknow in its order dated 31.12.80 accepted the appellant's contention and allowed the appellant's application and quashed the termination order declaring it to be violative of principles of natural Justice and hence viod. It also held that the inquiry report of Shri Ram Pal Singh was a malafide one. It was however stated that the respondents would be at liberty to initiate regular inquiry if they so desired and deal with the appellant's case in accordance with law.

Aggrieved by the said judgment, the respondent Corporation filed Writ Petition No. 1591 of 1981 and the same was allowed by the High Court on 10.12.97 holding that though an inquiry was conducted by Shri Ram Pal Singh and a report was given against the appellant, the same was conducted "to assess the work" of the appellant as it was decided to dispense with his temporary service in terms of Condition No.3 of the order of appointment, which permitted such termination on payment of one month's salary or after giving one month's notice. That was why a simple order of termination was passed and it did not cause any stigma inasmuch as it did not refer to any disciplinary inquiry. There was "sufficient material" to indicate the unsatisfactory work and conduct of the appellant. The High Court referred to various decisions relied upon by the appellant and said that they did not apply. It however held that the ruling of this Court in State of U.P. vs. Kaushal Kishore Shukla (1991(1) SCC 691) was in point, that whenever, the competent authority was satisfied that the work and conduct of a temporary employee was not satisfactory, it could pass a simple order of termination and such an order could not be treated as one of punishment. The High Court also referred to Triveni Shanker Saxena vs. State of U.P. [1992 Suppl.(1) SCC 524] and State of U.P. vs. Km. Premlata Misra [1994 (4) SCC 189]. The High Court held as follows:

> "In view of the law laid down by the Hon'ble Supreme Court, we are of the opinion that the temporary services of the respondent No.1 have not been terminated by way of punishment founded on any misconduct but on the other hand, the competent authority has found that the respondent No.1 was not fit to be continued in services

> on account of unsatisfactory work and conduct. There is no material to establish that the respondent No.1 had outstanding or meritorious service record."

It further observed:

> "Further in view of the law laid down by Hon'ble Supreme Court, even if some parte preliminary inquiry has been conducted or disciplinary inquiry was initiated to inquire into some misconduct, it is the potion of the competent authority to withdraw the disciplinary proceedings and take the action of termination of service under the terms of appointment and the same would not be by way of punishment."

One this reasoning, the Writ Petition of the Corporation was allowed, the order of the Tribunal was set aside and the termination order was upheld.

Aggrieved by the Judgment of the High Court, the appellant has preferred this appeal. It is contended by the learned senior counsel for the appellant Sri M.L. Verma that the High Court had assumed that the inquiry was a preliminary inquiry report but it was in fact a final one which gave findings as to the quilt of the appellant in regard to the allegation of receiving a bribed of Rs. 2000/- and the said finding was arrived at by examining witnesses behind the back of the appellant and therefore there was a clear violation of principles of natural justice. In other words, the findings in the inquiry report were the 'foundation' for the termination. This was not a case where some allegations against the appellant were the 'motive'. It was permissible for the Court to go behind the order and find out if it was punitive in nature. It was also argued that the High Court was in error in not going into the question of malafides even though the Tribunal had held that the inquiry report was vitiated by malafides.

On the other hand, learned counsel for the respondent, Sri J.M. Khanna made a vehement submission that the termination was the result of a preliminary inquiry and it was always permissible to rely on such an inquiry and pass a simple order termination by giving a one month's notice or giving one month's pay in lieu thereof. He contended that it was not permissible for the Court to look into the report given by Sri Ram Pal Singh to the General Manager as the same was confidential in nature. The Court could not go behind the order.

On the basis of the above contention, the following point arises for consideration:

> Whether the report of Sri Ram Pal Singh was a preliminary report and whether it was the motive or the foundation for the termination order and whether it was permissible to go behind the order?
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> On this point, the question is whether the contents of the report dated 22.1.76 of Sri Ram Pal Singh against the appellant were the motive or foundation for the termination order dated 23.1.76 issued by the General Manager?

> Now, there are two lines of cases decided by this Court which deal with the question in issue. In certain cases of temporary servants and probationers, this Court has taken the view that if the experts inquiry or report are the motive for the termination order, then the termination is not to be called punitive merely because principles of natural justice have not been followed. On the other hand. there is another line of cases where this Court has held that the facts revealed in the inquiry are not the motive but the foundation for the termination of the services of the temporary servant of natural justice have not been followed, and such orders are to be declared void. This Court has held that for finding out whether a given case falls within either of these two categories, it is permissible for the High Court or Administrative Tribunal to go behind the order and look into the record of the proceedings, the antecedent and attendant circumstances culminating in the order of termination.
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> In what situations the allrgations of misconduct will be the motive and in what cases they will be the foundation, it is argued, is not clear enough.
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> In fact, Krishna Iyer, J. his characteristic style described the words 'form' substance, motive and foundation as the face of an inscrutable sohink, baffling lawyers and judges alike. [See Samsher Singh vs. State of Punjab 1974 (2) SCC 831 (at 889)]. According to him, the need in this branch of law is to lay down a simple test which can be grasped by the administrator or Civil servant without much subtlety.

De Smith says, as to procedural fairness where preliminary inquiries are conducted (See 5th Ed., 1995 (page 491, para 10.027) that the question of "proximity between investigation and act or decision" depends on the degree of proximity so far as the person affected claiming a right of hearing is concerned. He says:

> "Thus, a person empowered or required to conduct a preliminary investigation with a view to recommending or deciding whether a formal inquiry or hearing (which may lead to a binding and adverse decision) should take place, is not normally under any obligation to comply with rules of fairness (Beetham vs. Trinided Cement Co. 1960 A.C.. 132; Medical Board of Queens Land vs Byme College of Physicians, ex P Samuels (1996) 58 D.L.R.(2ND) 622; Re; Drummoyne M.C. (1962). S.R. (N.S.W.) 193. But he may be placed under such an obligation if his investigation is an integral part of a process which may terminate in action adverse to the interest of a person claiming to be heard before him. (Wiseman vs. Borneman 1971 AC 297). Re:All General Canada and Canadian Tabacoo Manufacturers' Council (1986)
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> 26.D.L.R (4th) 677."

The above principles stated in De Smith are, as we shall presently see, very close to what is laid down in Samsher Singh's case and other cases decided by this Court.

It is, therefore, necessary to refer to the development of the law in this branch between 1958 to 1974 in the first phase - a development which was noticed by Krishna Iyer, J. in the above case and also by E.S. Venkataramiah,J. (as the then was) in Anoop Jaiswal vs. Government of India (1984 (2) SCC 369).

There are atleast seven Constitution Bench Judgments and & Judgment of seven Judges of this Court on this issue. It will be seen that form stage to stage the law has been developed.

The first decision of the Constitution Bench was in Parshottam Lal Dhingra vs. Union of India [AIR 1958 SC 826]. There a twin test was laid down - whether the order in terms of the appointment gave a right to terminate and whether the order was punitive in nature. If misconduct was motive, the order was not punitive but if it was the foundation it was punitive. In that case, the employee was working in a higher post in an officiating capacity and that appointment was terminated and he was reduced in rank. S.R. Das, C.J. stated (para 28) (p49) that misconduct, negligence, inefficiency or other disqualification might be the motive or the inducing factor which influenced the Government to take action under the terms of the contract of employment or the specific service rule, and the motive was irrelevant. But if the termination was 'founded' on misconduct, negligence, inefficiency or other disqualification, it would have to be treated as a punishment. It was also held that the use of the word 'termination' or 'discharge' was not conclusive. In spite of the use of such innocuous expressions, the Court could still hold it be punitive. On the facts of the case the termination of the officiating appointment was based upon certain adverse remarks and it was held that it was not by way of punishment.

Next came the decision of the Constitution Bench in State of Bihar vs. Gopi Kishore Prasad [AIR 1960 SC 689]. Here a test of 'inquiry' was laid down. That was a case probationer. The Government had come to the conclusion, on inquiry, that the respondent was unsuitable for the post held on probation. Because of the inquiry, Sinha, C.J. held this to be "clearly by way of punishment." Termination (without notice) but after holding an inquiry into the alleged misconduct or inefficiency or some similar reason would be punitive. Government could not, "brand him dishonest and incompetent without inquiry." If it did so, it would be by way of punishment, but not if the position "was that he was found unsuitable', without holding an inquiry. Both Dhingra and Gopi Kishore Prasad were decided when the law in this branch was just developing.

However Shah,J. (as he then was) in State of Orissa vs. Ram Narayan Das [1961 (1) SCR 606] gave a new dimension to the legal principles. That case also related to a probationer but was governed by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which was a special provision and which stated that "where it is proposed to terminate the employment of a probationer, whether during or at the and of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity for show cause against it, before orders are passed by the authority competent to terminate the employment." if the test of 'industry' laid down by Sinha, CJ was to be applied, every termination of a probationer made by following the rule and conducting an inquiry would become punitive. The 'industry test' (as pointed out by Krishna Iyer, J. in Samsher Singh's case broken down. A new test had to invented. Therefore Shah, J. (as he then was) laid down a new test

which required that one should look into "object or purpose or the inquiry" and not merely hold the termination to be punitive merely because of an antecedent industry. J.C. Shah, J (as he then was) said:

> "Whether it amounts for an order of dismissal depends upon the nature of the inquiry, if any, the proceedings taken therein and the substance of the final orders passed on such inquiry."

The learned Judge pointed out that the employed being a probationer, "the inquiry against the respondent was for ascertaining whether he was fit to be confirmed." His Lordship pointed out that this inquiry was not of the same nature as an inquiry into charges of misconduct, negligence, inefficiency or other disqualification. On the facts of thee case, the termination of a probationer was upheld inasmuch as the purpose of the inquiry was to find out if the employee could be confirmed. The purpose of the inquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.

We then come to the third case decided by the Constitution Bench in Madan Gopal vs State of Punjab (AIR 1963 SC 5312. Here Shah, J. (as he then was), applied the same principle laid down earlier by him out in this case he held the order was punitive. That was a case of a temporary employee. There was a report of the Settlement Officer about the 'misconduct' of the employee and the termination was based on the said report. It was, therefore, held that though the order of termination was an order simpliciter still the Court could go behind the same and further if thee foundation was the finding as to misconduct, then the order was punitive. The termination order was quashed, even though the employee participated therein because the statutory procedure for a regular departmental inquiry was not followed. Emphasis was again made on the "purpose of the inquiry". The distinction between the earlier case and this case was that while in Ram Narayan Das' Case, the inquiry was made to find out if the probationer could be continued and confirmed and was, therefore, not punitive, the position in the Madan Gopal's case was that the inquiry by the Settlement Officer was to find out if the employee was guilty of misconduct. In fact the termination order was based on the inquiry held behind his back and was held to be punitive. In Ravindra Chandra vs. Union of India (AIR 1963 SC 1552), being a case of a probationer to whom Rule 55-B of the Central Rules applied, Wanchoo J. (as he then was) upheld the order on the ground that the limited purpose of the inquiry was to find out whether he could be 'retained or not' in the service. In other words, the inquiry was not with a view to see if the employee had misconducted in his duties. This case was similar to Ram Narayan Das case.

The theory of 'object of the inquiry' was further emphasised by the Constitution Bench in Jagdish Mitter vs. Union of India. [AIR 1964 SC 449]. That was a case of a temporary employee. The discharge from service was by way of an order 'simpliciter'. But there, an inquiry was held and the termination order was based on it as it stated on its face that it was 'found undesirable' to retain the employee and hence his services were being terminated. The order was held to be punitive on its face and was quashed. Gajendragadkar, J. (as he then was) discussed the earlier cases and held that in every case the purpose of the inquiry was crucial. If the inquiry was held 'only for the purpose of deciding whether the temporary servant should be continued or not, it could not be treated as

punitive and that the motive operating in the mind of the authority was not relevant. But "the from in which the order terminating the service is expressed will not be decisive." It was held that "what the Court will have to examine in each case would be, having regard to the material facts existing upto the time of discharge, is the order of discharge in substance one of dismissal". Therefore, the 'form' was not of importance but the 'substance' was.

Finally, we come to the seventh case, Champaklal Chimanlal Shah vs. Union of India [AIR 1964 SC 1854], a case strongly relied upon by the learned counsel for the respondent, Shri J.M. Khanna. Here, it was the case of a preliminary inquiry which was intended to find out if a prima facia case was made cut to start a regular departmental inquiry. The question was whether a termination order passed soon after the completion of the preliminary inquiry could be treated as punitive. Wanchoo, J. (as he then was) held that it could not be as held. Once the preliminary inquiry was over, it was open to the employer not to make a regular inquiry for proving the quilt of the employee. The employer could stop at that stage and pass a simple order of termination. The facts as gathered or revealed in the preliminary inquiry would be the motive and not the 'foundation' since there was no inquiry as to their correctness made. The order could not be quashed as being punitive.

We finally come to the seven Judge Judgment rendered in Samsher Singh vs. State of Punjab [1974 (2) SCC 831] to which we made a brief reference at the beginning of this Judgment. The case concerned two Judicial Officers. So far as the termination order passed against Sri Ishwar Chand Aggarwal was concerned, it was quashed holding it to be punitive as it was based on the report of an Inquiry Officer appointed by the Director of Vigilance. The Inquiry Officer recorded statements of witnesses behind the back of the officer and definitive findings therein were the basis for the termination. It was not a preliminary inquiry. A.N.Ray, C.J. held that the object of the said inquiry was (see p

055) (para 79 and 80) "to ascertain the truth of the allegation of misconduct. Neither the report nor the statements recorded by the Enquiry Officer reached the appellant. The Inquiry Officer gave his findings of misconduct. ... The order of termination was because of the recommendation in the report.

The order of termination of the services of Ishwar Chand Aggarwal is clearly by way of punishment in the facts and circumstances of the case.... The form of the order is not decisive as to whether the order is by way of punishment. Even an innocupusly worded order terminating the service may, in the facts and circumstances of the case establish that an inquiry into allegation of serious and grave character of misconduct involving stigma has been made in infraction of Article 311. In such a case, the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Aggarwal. The order of termination is illegal and must be set aside."

A.N.Ray, C.J.. wrote the opinion for himself and five other learned Judges, Krishna Iyer, J. wrote a separate but concurring Judgment where he referred to the new dimension to the law given by Shah, J. (as he than was) in the sixties. The learned Judge said that the words 'form', 'substance', 'motive' and 'foundation' were baffling and the need of the hour was a simple test.

If there was any difficulty as to what was 'motive' or 'foundation' even after Shamsher Singh's case, the said doubts, is our opinion, where removed in Gujarat Steel Tubes vs. Gujarat Steel Tubes Mazdoor Sangh (1980 (2) SCC 593) again by Krishna Iyer, J. No doubt. it is a Labour matter but the distinction so far as what is 'motive' or 'foundation' is common to Labour cases and cases of employees in government or public sector. The learned Judge again referred to the criticism by Shri Tripathi in this branch of law as to what was 'motive' or what was 'foundation', a criticism to which reference was made in Samsher Singh's case. The clarification given by the learned Judge is, in our opinion, very instructive, It reads as follows (at page 616-617):

> "Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psygnic by terminological cover-ups or by appeal to psycnic reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put if slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent 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 a different proceedings from the formal order does not detract from is nature. Nor the fact that, after being satisfied of the quilt, the master abandons the enquiry 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-inqurious terminology is used.
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> 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 quilt 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 punitive peculary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.
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> In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wise to go into their truth out besides merely not to continue a dubious employee. The master does not want to decide or to direct a decision about the truth of the allegations, but if he conducts an inquiry only for purpose proving the misconduct and the employee is not heard, it is a case where the inquiry is the foundation and the termination will be bad.
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> Subsequent to the above cases, there have been a number of other cases where the above principles have been applied. We shall refer to a few of them where some more

principles have been discussed. In State of U.P. vs. Ram Chandra Trivedi {1997 (1) SCR 462] the employee's service were terminated as he allowed some other employee to impersonate him in an examination. The order was innocuous put the case was preceded by an inquiry and it was held that the petitioner in his pleadings had not made out a case for calling for departmental records to examine if it was a case of punishment. That was how this case was explained by Pathak, J. (as he then was) in State of Maharashtra vs. S.R. Saboji [1971 (4) SCC 466]. In Anoop Jaiswal vs. Government of India [1984 (2) SCC 369] it was held while quashing the order of termination, that it was open to the Court to go behind the order and find out if the report/recommendation of the superior authority was a camouflage and if that was the basis or foundation for the order the report/recommendation, then it should be read along with the order for the purpose of determining the true character of termination. If on a reading of the two together, the Court reached the conclusion that the alleged finding of misconduct was the cause or basis of the order, and that but for the report containing such a finding, the order would not and could not have been passed, the termination order would have to fall to the ground as having been passed without the officer being afforded a reasonable opportunity. It was also held that it was wrong to presume that an order would be punitive only if a regular inquiry was conducted exparte or behind the back of the officer. Even if it was not a regular inquiry, any other inquiry where evidence was taken and findings were arrived behind the back of the officer, would make the subsequent termination bad. Vankataramiah, J. (as he then was) pointed out in the above case the shift in the law as brought about by Samsher Singh's case.

So far as Triveni Shankar Saxena vs. State of U.P. [1992 Suppl. (1) SCC 524] and State of U.P. vs. Prem Lata Motors, [1994 (4) SCC 189], relied upon by the High Court are concerned, in the former case, the termination order was a simple order which did not cast any stigma and there were several adverse entries in his confidential reports. The termination was as per rules. In the latter case the employee's superiors complained that the employee was not regular in her work, and was in the habit of leaving office during office hours. A simple order of termination appointment. There was no prior inquiry. In both these cases, the termination orders were upheld.

We shall now refer to a different type of cases where a departmental inquiry was started, then dropped and a simple order of termination was passed. In State of Punjab vs. Sukh Raj Bahadur [1968 (3) SCR 234], the charge memo was served, reply given and at that stage itself, the proceedings were dropped and a termination order was passed. The High Court felt that the 'object of departmental inquiry, being to punish the employee, the order of termination must be treated as punitive. This was not accepted by a three Judge Bench consisting of Justice Shah (as he then was) who had laid down in Madan Gopal's case (AIR 1963 SC 531) the principle of 'object of the inquiry'. This court reversed the High Court Judgment and held that neither Madan Gopal's case nor Jagdish Mitter's case (AIR 1964 SC 449) applied. This was because in the case before them the inquiry did not go beyond the stage of the explanation. No

> findings were given and no inquiry report was submitted as in the above two cases. In that case (i.e. Sukh Raj Bahadur) this Court felt that the decision in A.G. Benjamin vs. Union of India (Civil Appeal No. (341 of 1966 dated 13.12.1966) (SC) was more direct. In Benjamin's case, a charge memo was issued, explanation was received and an Enquiry Officer was also appointed but before the inquiry could be completed, the proceedings were dropped stating that: 'departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities, we will be able to deal with the accused in the way he deserves." There also, the order was held not to be punitive. Following the above case, this court in Sukh Raj Bahadur's case stated that the position before them was similar to what happened in Benjamin's case and concluded as follows:
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> "the departmental inquiry did not proceed beyond the stage of submission of a chargesheet followed by the respondent's explanation thereto. The inquiry was not preceded with, there were no sittings of any inquiry officer, no evidence recorded and no conclusion arrived at in the inquiry."

The underlined words are very important and demarcate the line of distinction. If the inquiry officer held no sittings, did not take evidence nor record any conclusions and if at that stage the inquiry was dropped and a simple order of termination was, passed, the same would not be punitive.

In Nepali Singh vs. State of U.P. (1988 (3) SCC 370) a three Judge Bench held the order to be punitive as it was passed after issuing a charge memo, a reply received, even though no evidence was adduced and no findings were given. But in a latter three Judge Bench case in State of U.P. vs. Kaushal Kishore Shukla, [1991 (1) SCC 691], Nepali Singh's case was not followed as being a judgment rendered per incuriam as it did not consider Champak Lal's case (AIR 1964 SC 1854). Of course, the above case, i.e. Kaushal Kishore Shukla's case was one where there was an adverse entry and only a preliminary report and then a simple order of termination was issued. That order was upheld. Similarly, in Commission of Food & Civil Supply vs. P.C. Saxena [1994 (5) SCC 177]. the facts were that the departmental inquiry was started and dropped and this Court held the order not to be punitive.

It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the Officer, as stated by Shah, J. (as he then was) in Ram Narayan Das's case. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary inquiry is held because the purpose of a preliminary inquiry is to find out if there is prima facie evidence or material to initiate a regular departmental inquiry. It has been so decided in Champaklal's case. The purpose of the preliminary inquiry is not to find out misconduct on the part of the Officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental inquiry is started, a charge memo issued, reply obtained, and an enquiry Officer is

appointed - if at that point of time, the inquiry is dropped and a simple notice of termination is passed, thee same will not be punitive because the enquiry Officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur's case and in Benjamin's case. In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the quilt of the employee. In all these cases the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujrat Steel Tubes case, the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer, by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

But in cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definitive 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 will be violative of principles of natural justice inasmuch as the purpose of the inquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employees conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee - even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

Coming now to the facts of the case before us, the inquiry officer, Sri R.P. Singh examined witnesses and in his report dated 22.1.76 has said: "I conclude that Sri R.P. Gupta took a sum of Rs.2000/- from Sri Jai Chandra Lal, thereafter referring to certain facts said they 'go to prove the correctness of the complaint". Not only that, he concluded "I therefore suggest that service of Shri R.S. Gupta may be terminated and one month salary may be given to him in lied of the notice". The very next day, the impugned simple order of termination followed.

In our view, it is an absolutely clear case where the inquiry officer examined witnesses, recorded their statements and gave a clear finding of the appellant accepting a bribe and even recommended his termination. All these were done behind the back of the appellant. The Managing Director passed the termination order the very next day. It cannot in the above circumstances be stated, by any stretch of inspection that the report is a preliminary inquiry report. It's findings are definitive. It is not a preliminary report where some facts are gathered and a recommendation is made for a regular departmental inquiry. In view of the principles laid down in the cases referred to above, this case is an obvious case where the report and its findings are the foundation of the termination order and not merely the motive. The Tribunal was right in its conclusion. The High Court was in grave error in treating such a report as a preliminary report.

For all the above reasons, we set aside the High Court's Judgment and restore the Tribunal's order. There will be no order as to costs.