IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.612 of 2023

Director, CSIR-CIMFR [Central Institute of Mining and Fuel Research], a unit of Council of Scientific Industrial Research (C.S.I.R.), having its Registered Office at-Barwa Road, Dhanbad, P.O. & P.S. Dhanbad, District Dhanbad, Jharkhand represented through its Controller of Administration (COA) namely Alok Sharma, Age about 48 years, S/o. Late Pooran Chand Sharma R/o. CSIR-CIMFR Colony, Dhanbad, P.O. & P.S. Dhanbad District Dhanbad, Jharkhand .... **Petitioner**

Versus

1. Mayuresh Dash, S/o. Sri Rabindra Kumar Dash

2. Union of India through Secretary, Science & Technology, Technoloy Bhawan, New Mehrauli Road, New Delhi-110016, P.O. & P.S-Mehrauli, Dist.-New Delhi.

3. The Administrative Officer, CSIR-Central Institute of Mining & Fuel Research having its office at Barwa Road, P.O. & P.S. Dhanbad District Dhanbad, Jharkhand.

4. The Head of Research Group, Combustion, Carbonisation and Non Conventional Gas Research Group at CSIR-Central Institute of Mining & Fuel Research having its office at Barwa Road, P.O. & P.S. Dhanbad District Dhanbad, Jharkhand.

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Abhay Prakash, Advocate
For the Resp. No.1 : Mr. Mayuresh Dash, In Person

12/Dated: 18.01.2024

Per Sujit Narayan Prasad, J.

1. This writ petition is under Article 226 of the Constitution of India, whereby and whereunder, the order dated 15.12.2022 passed by the Circuit Bench of Central Administrative Tribunal, Patna Bench at Ranchi

(hereinafter referred to as CAT, Ranchi) in Original Application being O.A. No.051/00269/2021, whereby, the order dated 26.02.2021 as contained in letter no.8/3489/19-Estt-I/987, by which, the service of the petitioner, respondent no.1 herein, has been terminated as also the direction sought for confirmation of the applicant, who is the respondent no.1 in the list. The Tribunal has quashed the aforesaid impugned order and the service of the applicant, respondent no.1 herein was restored to the status as existing on 25.03.2021 prior to termination.

2. The brief facts as per the pleading made in the original application, as has been interpreted in the instant petition, read as under:-

3. It is the case of the applicant/respondent no.1 that the applicant was appointed to the post of Technical Assistant/GR III in CSIR-Central Institute of Mining and Fuel Research (CIMFR) vide order dated 25.07.2019. The appointment offer stipulated that applicant will be on probation for one year from the date of his joining which may be extended or curtailed at the discretion of the competent authority.

4. The appointment offer also mentioned that applicant's services may be terminated during the period of probation on one month notice in accordance with the provisions of the Central Civil Services (Temporary Service) Rules, 1965 without assigning any reason.

5. The applicant had joined the post on 09.08.2019. On completion of one year, applicant's services was not confirmed and his probation was extended till 07.11.2020 vide OM dated 28.08.2020. The OM extending the probation mentioned lack of sense of responsibility, unsatisfactory disposal of allotted work, inability to perform jobs in given

time and lack of patience as the grounds for extension of probation. Applicant's probation was further extended by 3 months till 07.02.2021 vide OM dated 02.12.2020 on the grounds of deficiencies noted in timely completion of allotted work, inability to perform the job in satisfactory manner and lack of inquisitiveness.

6. It is the further case that after expiry of the second extension of probation, applicant was served a show cause notice vide OM dated 08.02.2021 as to why his services should not be terminated in terms the appointment offer and DOPT OM dated 11.03.2019. Applicant submitted his representation but the respondents after considering the representation decided to terminate his services w.e.f. 25th March, 2021. Respondent, the petitioner herein, vide OM dated 26.02.2021, gave one month notice to applicant terminating his services from 25th March 2021 (AN).

7. It is evident from the pleading of the respondent no.1, who was applicant before the learned Tribunal was appointed Technical Assistant/GR III in CSIR-Central Institute of Mining and Fuel Research (CIMFR) vide order dated 25.07.2019. The aforesaid offer of appointment contains a condition that the period of probation for a period of one year from the date of his joining which may be extended or curtailed at the discretion of the competent authority.

8. The further condition contained in the said offer of appointment that the applicant’s services may be terminated during the period of probation on one month notice in accordance with the provisions of the Central Civil Services (Temporary Service) Rules, 1965 without assigning any reason. Accordingly, the applicant has joined the post on

09.08.2019. On completion of one year, his service was not confirmed, rather, his probation was extended till 07.11.2020 vide OM dated 28.08.2020.

9. The applicant's probation was further extended by three months till 07.02.2021 vide OM dated 02.12.2020 on the ground of deficiencies noted in timely completion of allotted work, inability to perform the job in satisfactory manner and lack of inquisitiveness.

10. The respondents before the Tribunal and the petitioner herein, thereafter, had issued show cause notice vide OM dated 08.02.2021 as to why his services should not be terminated in terms of the appointment offer and DoPT OM dated 11.03.2019.

11. The applicant replied by putting his defence but according to the applicant, without taking into consideration the aforesaid fact and the defence put-forth for its consideration, the order of termination has been passed.

12. The applicant, being aggrieved with the said decision of the authority of termination, has challenged the same before the learned Tribunal by filing original application.

13. The ground has been taken that the order of termination from service being stigmatic since the very allegation leveled against him that the applicant is not found to be on probation and in course of discharge of his duty, he is having lack of responsibility and sensitivity.

14. The applicant, respondent herein has taken the ground of termination that the aforesaid ground is nothing but the order is said to be passed on stigma and as such, the recourse as has been taken by taking aid of the provision of the Central Civil Services (Temporary

Service) Rules, 1965 (hereinafter referred to as the Act 1965), cannot be said to be permissible since the said Rule, 1965 is to be resorted in a case where the termination is simplicitor in nature.

15. While on the other hand, the respondent, the writ petitioner herein on being called upon by the learned Tribunal has taken the ground by filing the written statement that there is no infirmity in the order of termination since the Temporary Service Rule, 1965, is said to be applicable.

16. The respondent by taking aid of the provision of Rule, 1965 and taking into consideration the condition stipulated in the offer of appointment has given due notice and thereafter, on consideration of the objection so made by the applicant, the decision has been taken for his termination.

17. The learned Tribunal after appreciating the argument advanced on behalf of the parties and taking into consideration the fact that the allegation of lack of responsibility and sensitivity are the reasons for termination. Hence, the same has been considered to be stigmatic in nature and as such, came to the conclusion that the order of termination cannot be said to be simplicitor, rather, it becomes stigmatic, hence, the provision of Rule, 1965 will not be applicable.

18. The learned Tribunal, based upon the aforesaid reason, has quashed and set aside the order of termination restoring the status of the applicant, as existing on 25.03.2021 prior to the issuance of order of termination by allowing the original application.

19. The respondent, petitioner, being aggrieved with the said order is before this Court by filing writ petition under Article 226 of the

Constitution of India by raising the following grounds:-

(i) The first ground has been taken that even accepting what has been considered by the learned Tribunal to be correct, the reason for interfering with the order of termination is that the plea of the petitioner of having lack of sensitivity and responsibility has been considered to be stigmatic even accepting the aforesaid fact that the right recourse available to the Tribunal was to remit the matter before the authority for conducting regular departmental proceeding.

The aforesaid requirement is based upon the order that if the public servant is allowed to discharge his duty if there is lack of responsibility and sensitivity then such public servant cannot be considered to be retained in service, instead of doing so, the learned Tribunal has quashed the impugned order on the ground of technicality and restored the status of the applicant, as such, the order of tribunal based upon the aforesaid reason, is not sustainable in the eye of law.

(ii) The ground has been taken that the Conduct Rule, 1965 in the facts and circumstances of the case is not applicable, as per the conclusion arrived at by the learned Tribunal but even the master rule which is meant for regular employee, who is under the regular establishment, was allowed to be dealt with but the same has not been done, rather, without giving opportunity to the employer, the petitioner, the order of reinstatement has been passed restoring the status of the applicant/respondent.

Hence, the said order passed by the learned Tribunal is not sustainable and as such, the same is fit to be quashed and set aside.

20. *Per contra*, Mr. Mayuresh Dash, respondent, in-person, has

appeared and seriously contested the case by refuting the following argument/ground, as has been agitated on behalf of the petitioner.

(i) It has been submitted that there is no such allegation as available on record that he is having lack of sensitivity and the responsibility.

If such allegation was there, then, cogent document ought to have been provided at the time, when the show cause notice was issued but the same is lacking.

(ii) The learned Tribunal has not committed any error in quashing the order of termination by taking into consideration the very object and spirit of the Rule, 1965 which provides for terminating the service of the probationers.

(iii) The respondent, petitioner herein, in the written statement has come out with the specific pleading of casting allegation of not rendering the service properly due to lack of sensitivity and responsibility as also the extension of the period of probation which itself suggests and clarifies that the same is by way of imputation and once the imputation has been casted upon the public servant, the requirement under the service jurisprudence is that thorough inquiry is to be conducted for the aforesaid purpose and taking the aforesaid ground, an application has been filed before the learned Tribunal.

The learned Tribunal has appreciated the aforesaid fact and come to the conclusion based upon the plea taken by the respondent, the petitioner herein, in the written statement that the order of termination is punitive and as such, is correct in coming to the conclusion that the Rule, 1965 is not applicable in the facts and

circumstances of the case.

21. To buttress his argument, the party-in-person has relied upon the judgment laid down by the Hon'ble Apex Court in the case of ***Pradeep S/o Rajkumar Jain Vrs. Manganese Ore (India) Limited & Ors., passed in Civil Appeal No.7607 of 2021 [arising out of S.L.P.(C) No.21346 of 2017].***

22. The party-in-person, in view of the aforesaid ground has submitted that the learned Tribunal while interfering with the order of termination, therefore, cannot be said to have committed an error, hence, the instant writ petition is fit to be dismissed.

23. We have heard the learned counsel for the parties and perused the finding recorded by the learned Tribunal in the impugned order as also the pleading made by them in the affidavit including the pleading/written statement as available on record.

24. This Court, on the basis of the material available on record and after hearing the learned counsel for the parties, is of the view that three issues are required to be considered, i.e.,

(i) Whether in the case of the respondent no.1, the provision of the Conduct Rule, 1965 will be applicable taking into consideration the nature of appointment of the concerned respondent.

(ii) Whether the order passed by the learned Tribunal is based upon the cogent/justifiable reason by applying the provision of Temporary Service Rules, 1965.

(iii) Whether the service of the respondent no.1 is to be protected in view of the fact that the service of the respondent has been terminated by relying upon the incorrect rule, i.e., CCS (Temporary Service) Rules,

1965 instead of CCS (CCA) Rules, 1965.

25. All the issues are interlinked and as such, the same are being decided together.

26. This Court, before delving upon the issue based upon the rival submissions advanced on behalf of the parties, deems it fit and proper to refer the provision of Central Civil Services (Temporary Services) Rules, 1965, which reads as under:-

> ***"1. Short title, commencement and application**.-(1) These rules may be called The Central Civil Services (Temporary) Services) Rules, 1965.*
>
> *(2) They shall come into force at once.*
>
> *[(3) Subject to the provisions of sub-rule (4), these rules shall apply to all person,-*
>
> *(i) who hold a civil post including all the civilians paid from the Defence Services Estimates under the Government of India and who are under the rule-making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government;*
>
> *(ii) who are employed temporarily in work-charge establishments and who have opted for pensionery benefits.*
>
> *(4) Nothing in these rules shall apply to,-*
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> *(a) Railway servants;*
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> *(b) Government Servants not in wholetime employment;*

(c) Government Servant engaged on contract;

(d) Government Servants paid out of contingencies;

(e) Persons employed in extra-temporary establishments or in work-charged establishments (other than the persons employed temporarily and who have opted for pensionary benefits);

(f) non-departmental telegraphists and telegraphmen employed in the Posts and Telegraphs Department;

(g) such other categories of employees as may be specified by the Central Government by notification published in the Official Gazette.

2. Definitions.-*In these rules, unless the context otherwise requires,-*

(a) "appointing authority" means, in relation to a specified post, the authority declared as such under the Central Civil Services (C.C.&A.) Rules, 1965;

(b) Omitted.

(c) by Noti. No.GSR.145, dated 22nd February, 1989, G.I. Min. of per P.G. & Pen. (Dept. of Per. & Teg.).

(d) "temporary service" means the service of a temporary Government Servant in a temporary post of officiating service in a permanent post, under the Government of India.

(e) "defence service" means service under the Government of India in the Ministry of Defence and in the Defence Accounts Departments under the control of the

Ministry of Finance (Department of Expenditure) (Defence Division) paid out of the Defence Services Estimates and not permanently subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (45 of 1950) or the Navy Act, 1957 (62 of 1957)."

3. *[* * *]*

4. *[* * *]*

***5. Termination of temporary service**.-(1)(a) The Services of a temporary Government Servant shall be liable to termination at any time by a notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government Servant;*

(b) the period of such notice shall be one month:

Provided that the services of any such Government Servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

27. It is evident from the aforesaid Rule that the same has been carved out to deal with the services of the temporary employee. It is evident that the reference made in the Rule, 1965 is not for the probationers, rather, for the temporary employee since the said rule contains the word 'temporary'.

28. The law is well settled and clarified by the Hon'ble Apex Court

that there is difference in between temporary and probationer employee.

29. The temporary employee is to be defined as an employee who is not in the regular establishment, while, the employee who has been asked to join with a period of probation will be said to be in the regular establishment but their services will be continued followed by confirmation depending upon his performance during the period of probation.

30. The writ petitioner, therefore, while accepting the candidature of the respondent while issuing offer of appointment under the regular establishment, has kept his service for probation of one year, subject to the extension depending upon the performance of the respondent concerned with a condition of its extension.

31. The Hon'ble Apex Court has clarified while dealing with the provision of Rule, 1965 that even in the case of temporary employee or probationers, the same will not be applicable of terminating such employee, if the order of termination is punitive in nature, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***V.P. Ahuja Vs. State of Punjab,*** reported in ***AIR 2000(3) SCC 239,*** wherein, it has been held that if the order is stigmatic or punitive the rules of principles of natural justice ought to have been followed by the respondents authority as because in paragraph 7 of the said judgment it has been held that "a probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice"

32. The word 'punitive' has been defined by the Hon'ble Apex, whereby and whereunder, it has been interpreted that the order of termination will be said to be punitive if is based upon the allegation or any type of stigma so that it be carried against the applicant for all time to come.

33. The said punitive order if allowed to be operated without providing an opportunity of hearing to the party concerned, then such party will be condemned without providing any opportunity of hearing which will be nothing but in violation of cardinal principle of natural justice.

34. The law in this regard has been settled by the Hon'ble Apex Court in the case of ***Msr. Maneka Gandhi Vrs. Union of India and Anr.,*** reported in ***(1978) 1 SCC 248,*** wherein, the issue involved was impounding of the passport as required to be impounded under the provision of Section 10(3) of the Indian Passport Act. The validity of the aforesaid provision was assailed on the ground that impounding of passport being major in nature and if taken that will be an adverse decision against the party concerned in whose favour the passport has been issued.

35. The ground has been taken that the aforesaid provision does not contain a condition that before doing so, the party concerned is to be provided an opportunity of hearing.

36. The Hon'ble Apex Court while, considering the issue, although, has refused to interfere with the validity of the aforesaid provision by holding it to be valid but come out with the proposition that even if, there is no reference of opportunity of hearing to the concerned then

also as per the cardinal principle to provide an opportunity before taking an adverse decision having civil consequence, the opportunity of hearing by way of issuance of notice, is to be provided so that the principle of passing an adverse decision or condemning a person may not be passed without providing an opportunity of hearing, the relevant paragraph of the said judgment is required to be referred herein which reads as under:-

> ***"9.*** *We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club:*
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> *"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet re-remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fair-play in action — who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled; it lacks more exalted inspiration.*[13]
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> *And then again, in his speech in the House of Lords in Wiseman v. Borneman*[14]*, the learned Law Lord said in words of inspired felicity:*
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> *"... that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules*

of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only 'fair play in action'. Nor do we wait for directions from Parliament. The common law has abundant riches : there may we find what Byles, J., called 'the justice of the common law' ".

Thus, the soul of natural justice is "fair-play in action" and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that "fair-play in action" demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, MR in these terms in Schmidt v. Secretary of State or Home Affairs[15] — "where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained [286] access to the United Nations (vide American Journal of International Law, Vol. 67, p. 479). Magarry, J., describes natural justice "as a distillate of due process of law" (vide Fontaine v. Chastarton[16]). It is the quintessence of the process of justice inspired and guided by "fair-play in action". If we look at the speeches of the various Law Lords in Wiseman case[14] it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", or, was the procedure adopted by the Tribunal "in all the circumstances unfair?" The test adopted by every Law Lord was whether the procedure followed was fair in all the circumstances and "fair-play in action" required that an opportunity should be given to the taxpayer "to

> *see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him". The inquiry must, therefore, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?"*

37. This Court is now proceeding to examine the issue in the light of the aforesaid fact.

38. The admitted position herein is that the respondent no.1 having been appointed in service on the post of Technical Assistant/GR III under the regular establishment of the respondent, petitioner herein, which carries two conditions:-

(i) The appointment will be for a period of one year by way of probation, subject to its extension depending upon the performance of work which is to be discharged by the probationer.

(ii) The employer has the prerogative/privilege that in case, the services have not found to be satisfactory during the probation period, by giving three months' notice, the services can be terminated.

39. Admittedly herein, the condition is there that in case the concerned public servant is failed in discharging his duty to the utmost satisfaction of the employer, then after issuance of three months' notice, the services can be dispensed with.

40. The writ petitioner by taking aid of the aforesaid condition and also considering the fact that the applicant, the respondent was on probation, has taken recourse of Central Civil Service (Classification, Control and Appeal) Rules, 1965 which contains a Rule 14 of the Rules, 1965.

41. It requires to refer herein that the Central Government has come

out with two rules, i.e., (i) Central Civil Service (Classification, Control and Appeal) Rules, 1965 and (ii) Central Civil Services (Temporary Service) Rules, 1965.

42. So far as the Central Civil Service (Classification, Control and Appeal) Rules, 1965 is concerned, the same is to be applied for the employees who are under the regular establishment. However, so far as the Central Civil Services (Temporary Service) Rules, 1965 is concerned, the same has been enacted in exercise of power conferred as a proviso to Article 309 and Clause-5 of the Article 148 of the Constitution of India for the very purpose to deal with the services of the temporary government servant.

43. Admittedly, the 'temporary service' has been defined under Rule, 1965 as under Rule 2(d) which means the service of temporary government servant in a temporary post or officiating service in a permanent post under the Government of India.

44. It is, thus, evident from the meaning of temporary service as defined under the Central Civil Services (Temporary Service) Rules, 1965 that such rule is to be exercised before taking any action against the person concerned who is holding the temporary post, meaning thereby, such appointment of the person concerned in a service in temporary post or officiating service in a permanent post.

45. Coming back to the facts of the case particularly the offer of appointment, whereby and whereunder, it is evident that the applicant, respondent no.1, herein has not been appointed in a temporary post or even he has not been asked to officiate his duty in a permanent post, rather, as per the offer of appointment, which will be said to be admitted

case of the writ petitioner that the respondent no.1 has been appointed against the permanent post as a probationer on probation.

46. This Court, after making reference of the meaning of temporary service, is now proceeding to answer the question:

(i) As to whether, the decision to terminate the service of the respondent by taking the aid of the master rule construing the service of the respondent to be temporary in nature since the respondent was under probation as per the terms and conditions of the appointment, can it be said that the said office memorandum is to be applied in the case of the respondent no.1.

(ii) The second question which requires consideration by taking note of the argument advanced on behalf of the petitioner that no such Rule said to be Central Civil Services (Temporary Service) Rules, 1965, has been followed by the writ petitioner but can it be said to be acceptable in view of the fact that the master rule also provides to deal with the probationery public servant by way of considering him in the temporary service, meaning thereby, the aforesaid master rule can be said to be based upon the principle of Temporary Service Rule, 1965 even if the respondent has not adopted the same.

47. This Court, in order to answer both the issue which is crux of the issues to be answered to assess the act of the petitioner in terminating by taking aid of the master rule which is in principle based upon the Temporary Services Rules, 1965.

48. There will be no dispute if the service of the respondent concerned will be on temporary service or he was asked to officiate against the permanent post under the Govt. of India, then the provision

as contained under the Central Civil Services (Temporary Service) Rules, 1965, can well be taken recourse.

49. But when the admitted case of the writ petitioner is that the respondent has been appointed against the permanent post by keeping him on probation for one year subject to its extension, then applying the master rule which is based upon the Central Civil Services (Temporary Service) Rules, 1965, according to our considered view, cannot be said to be proper and justified.

50. Further, when the respondent no.1 having been inducted in the service against the permanent post, how his service can be treated to be temporary in nature as per the meaning of 'Temporary Service' as contained under Rule 2(d) of the Central Civil Services (Temporary Service) Rules, 1965.

51. As such, according to our considered view, the master rule so far as it relates to dealing with the probationery service of a public servant by taking strength of the Central Civil Services (Temporary Service) Rules, 1965, cannot be said to be justified and proper.

52. The aforesaid ground was taken by the respondent before the learned Tribunal, but the Tribunal has not accepted the said version and misconstrued itself in making difference in between the service of the public servant which is on probation and temporary service.

53. The learned Tribunal ought to have carved out the distinction before accepting the plea of the petitioner of applying the master rule which is the principle based upon the Central Civil Services (Temporary Service) Rules, 1965 by carving out the distinction in between the probationery service of public servant against the permanent post and

the temporary service by taking note of the definition of 'temporary service' as per the provision of Rule 2(d) of the Rules, 1965.

54. Further, the specific rule is also made to deal with the permanent employees who have been appointed on permanent basis, i.e., Central Civil Service (Classification, Control and Appeal) Rules, 1965. The said rule was also enacted under the power conferred by proviso to Article 309 and Article 148 of the Constitution of India.

55. The 'Government Servant' has been defined therein as under Rule 2(h) which means a person who-

(i) is a member of a service or hold as civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;

(ii) is a member of a service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

(iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government.

56. Thus, it is evident that the 'government servant' means as per the definition contained therein as referred hereinabove that a member who holds a civil post under the Union or the other eventuality as referred under Rule 2(h)(ii)(iii).

57. The word 'holds' denotes that the moment the person concerned has been appointed entitling him to hold the post, he will carry lien over the said post. The 'lien' has been defined by the Hon'ble Apex Court, as has been held in the judgment rendered in the case of ***State of***

Rajasthan & Anr. vs. S.N. Tiwari & Ors, (2009) 4 SCC 700, has been pleased to hold by taking into consideration the applicable rule under Rajasthan Service Rules as would appear from paragraph nos. 14, 15, 17, 18, 21 and 21. For ready reference, the said paragraphs are being referred as under:

> *"**14.** It is not the case of the State that any competent authority terminated the lien of the respondent in the parent department. There is no material made available by the State to show that the respondent had been confirmed in any permanent post and that he was holding that appointment in a substantive capacity on permanent basis. On the other hand, even while working as homoeopathic doctor in ESI Corporation, the respondent employee obtained directions as against the State and the Directorate of Economics and Statistics Department to determine the yearwise vacancies and to make promotions from the post of Statistical Inspector to Statistical Assistant in accordance with the Rules. That order attained its finality. The same would demonstrate that the respondent employee always had a lien in the Department of Economics and Statistics.*
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> ***15.** It may be necessary to notice Rule 18 of the Rajasthan Service Rules which is reproduced in its entirety hereunder:*
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> > *"18. Termination of lien. -- (a)A government servant's 'lien' on a post may in no circumstances be terminated, even with his consent if the result will be to leave him without a 'lien' or a suspended 'lien' upon a permanent post.*
> >
> > *(b) A government servant's lien on a post stands terminated on his acquiring a lien on a permanent post (whether under the Government or Central/other State Governments) outside the cadre on which he is borne."*
> >
> > *A bare reading of the Rule makes it clear that a government servant's lien on a post cannot be terminated in any circumstances even with his consent if it results in leaving the government servant without a lien or a suspended lien upon a permanent post. A government servant's lien on a post stands terminated only on his acquiring a lien on a permanent post outside the cadre on which he is borne.*
>
> ***17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the 'lien' of the employee shifts to the new permanent post. It may not require a formal termination of 'lien' over the previous permanent post.***
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> ***18.** This Court in Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99 : 1989 SCC (L&S) 644 : (1984) 11 ATC 841] observed that: (SCC p. 102, para 8)*
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> > *"8. … lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which*

> *he is appointed."*
>
> ***19.** The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of 'lien' in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.*
> ***21.** Be it noted that no objections were raised when the respondent employee gave his option on 8-4-1991 duly informing all the concerned that his lien in the Subordinate Statistical Service had to be maintained for the purposes of promotions to higher posts/protection of financial interests, etc. In such view of the matter the respondent employee always had his 'lien' in his parent department. The State at this stage cannot be allowed to turn round and say that the respondent employee did not retain lien against his post in the parent department."*

58. It is evident from the said judgment that lien is entitling a person to hold the post unless if such person has been appointed in another service on substantive basis.

59. It has also been interpreted by the Hon'ble Apex Court merely by appointment of a person who holds a lien in another establishment, the lien will remain in another establishment if such appointment in different establishment is on temporary or ad-hoc or on deputation. But the moment such public servant will be absorbed in the different departments, a lien which was being carried in the parent department will extinguish the day, when it will be taken into different establishment.

60. Herein also, as would appear from the offer of appointment that the respondent was appointed against the permanent post and as such, it will be said that he was holding the civil post but with the rider that such period of service will be for probation for one year subject to extension merely because the service of the respondent has been kept on probation, his status to hold the civil post on permanent basis cannot extinguish by its deemed conversion to treat him as a temporary service by taking into consideration the meaning of temporary service

as defined under Rule 2(d) of the Temporary Service Rules, 1965.

61. The confirmation of service on closure of the probation period, although, depends upon the performance of the work of the concerned probationer and the same is with the satisfaction of the employer but in no case, his status will be changed from the holder of the permanent civil post to that of the holder of the temporary service, due to absence of the condition as stipulated under Rule 2(d) of the Temporary Service Rules, 1965.

62. Proceeding further, based upon the aforesaid reasoning and taking into consideration the fact that the service of the respondent no.1 was under the permanent establishment but was on probation and as such, whether such service can be dispensed with by the employer, writ petitioner herein merely on issuance of show cause.

63. The moment the status of the public servant becomes the holder of the civil post then he becomes entitled irrespective of the fact that he was on probation to have the adequate and sufficient opportunity to defend his case before dispensing with his services.

64. The C.C.S. (Classification, Control & Appeal) Rules, 1965 has also been formulated for the aforesaid purpose so as to provide adequate and sufficient opportunity to the concerned public servant before taking any adverse decision.

65. The Rule 11 of C.C.S. (Classification, Control & Appeal) Rules, 1965 under part-V speaks about the penalties and disciplinary authorities.

66. The 'disciplinary authority' has been defined under Rule 12**.** The authority to institute proceedings has been dealt with under Rule 13

and the most important part, the Rule 14 as under part-VI which laid down procedure for imposing major penalties and as per which, the procedure is to be followed for imposing punishment as enshrined under Rule 11, for ready reference, Rule 11, 12, 13 & 14 reads as under:-

*"**11. Penalties**. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :- Minor Penalties –*

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iii-a) reduction to lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay;

Major Penalties –

(v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay , grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that, in every case in which the charge of possession of assets disproportionate to known-sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

Explanation.—The following shall not amounted to a penalty within the meaning of this rule, namely:—

(i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the Service to which he belongs or post which he holds or the terms of his appointment;

(ii) stoppage of a Government servant at the efficiency bar in the timescale of pay on the ground of his unfitness to cross the bar;

(iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(iv) reversion of a Government servant officiating in a higher Service, grade, or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;

(v) reversion of a Government servant, appointed on probation to any other Service, grade or post, to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;

(vi) replacement of the services of a Government servant whose services had been borrowed from a State Government or an authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed;

(vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(viii) termination of the services—

(a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or

(b) of a temporary Government servant in accordance with the provisions of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965; or

(c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

(ix) Any compensation awarded on the recommendation of the Complaints Committee referred to in the proviso to sub-rule (2) of rule 14 and established in the Department of the Government of India for inquiring into any complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964.

12. Disciplinary Authorities

(1) The President may impose any of the penalties specified in Rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on –

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

(3) Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in Rule 11 may also be exercised, in the case of a member of a Central Civil Services, Group 'C'

(other than the Central Secretariat Clerical Service), or a Central Civil Service, Group 'D' ,-

(a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India in that Ministry or Department, or

(b) if he is serving in any office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

(4) Notwithstanding anything contained in this rule –

(a) except where the penalty specified in clause (v) or clause (vi) of Rule 11 is imposed by the Comptroller and Auditor-General on a member of the Indian Audit and Accounts Service, no penalty specified in clause (v) to (ix) of that rule shall be imposed by any authority subordinate to the appointing authority;

(b) where a Government servant who is a member of a Service other than then General Central Service or who has been substantively appointed to any civil post in the General Central Service, is temporarily appointed to any other Service or post, the authority competent to impose on such Government servant any of the penalties specified in clauses (v) to (ix) of Rule 11 shall not impose any such penalties unless it has consulted such authority, not being an authority subordinate to it, as would have been competent under sub-rule (2) to impose on the Government servant any of the said penalties had he not been appointed to such other Service or post;

(c) in respect of a probationer undergoing training at the Lal Bahadur Shastri National Academy of Administration, the Director of the said Academy shall be the authority competent to impose on such probationer any of the penalties specified in clauses (i) and (iii) of rule 11 after observing the procedure laid down in rule 16.

EXPLANATION I. For the purposes of clause (c), 'probationer' means a person appointed to a Central Civil Service on probation. EXPLANATION II. Where a Government servant belonging to a Service or holding a Central Civil post of any Group, is promoted, whether on probation or temporarily to the Service or Central Civil post of the next higher Group, he shall be deemed for the purposes of this rule to belong to the Service of, or hold the Central Civil post of, such higher Group.

__13. Authority to institute proceedings__ (1) The President or any other authority empowered by him by general or special order may -

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

__14. Procedure for imposing major penalties__ (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act. (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof. Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules... ... ..."

67. This Court since has come to the conclusion while answering the issue of applicability of Temporary Service Rules, 1965 holding it not to be applicable in the facts and circumstance of the case based upon the reason referred hereinabove, is of the view that the provision of conduct Rule, 1965 ought to have been applied before terminating the services of the respondent but instead of doing so, the Temporary Service Rule, 1965 has been taken recourse of.

68. The learned Tribunal, although, has quashed the order of termination but according to our considered view since we are exercising the power of judicial review, the reasoning based upon which, the order of termination has been quashed is unjustified, for the following reasons:-

(i) The learned Tribunal has committed an error in applying the provision of Temporary Service Rules, 1965 as per the reference of the reasoning made hereinabove.

(ii) The learned Tribunal has gone into the fact that the order of termination being stigmatic in nature and as such, as per the master rule based upon the principle of Temporary Service Rules, 1965, the learned Tribunal has considered the nature of imputation of allegation, to be stigmatic and hence, quashed and set aside the order of termination.

(iii) The learned Tribunal has not carved out the distinction in between the temporary service and the service of the permanent employees who are on probation as per the detailed discussion made hereinabove and as such, for the risk of repetition, the same is not being repeated herein.

69. This Court, therefore, is of the view that the part of the finding of the impugned order as per the detailed discussion made hereinabove is not sustainable in the eye of law.

70. But the fact herein is:

"as to whether the final decision of restoration of service of the respondent can be said to be unjustified."

71. Herein, since this Court has come with the conclusive finding for non-applicability of the Temporary Service Rules, 1965/Master Rule, basis upon which, the services of the respondent no.1 has been dispensed with, which has been considered to be improper finding due to the reason that the conduct rules will be applicable.

72. As such, the moment, we have come to the conclusion that the proceeding ought to have been initiated under the conduct rules, based upon reason, as referred hereinabove then the question will be that "why the respondent no.1 be kept out of service."

73. "Whether keeping the respondent no.1 out of service will not amount to punishment passed under the wrong provision".

74. This Court, is of the view that if the writ petitioner is required to be provided liberty to initiate regular proceeding under the conduct rules, then the propriety demands that the services of the respondent no.1 is to be protected, due to the following reasons:-

(i) Such decision according to our considered view, is proper in view of the fact that if the protection to that effect will not be granted to the respondent then he, at this stage will be made to suffer due to illegal action of the writ petitioner who had terminated him from service by taking aid of the rule which is not applicable in the facts and

circumstances, as per the discussion made hereinabove.

(ii) Further, for the reason that if the respondent will be restricted to remain out of service then he will highly be prejudiced mentally as also monetarily due to want of finance which he is used to get while he was in service.

(iii) The instance can be taken in this regard that if an employee is proceeded departmentally and if the nature of allegation is serious or the inquiry is to be influenced by the concerned employee, the recourse available to the employer concerned is to put such employee under suspension so that there may not be any interference in the departmental proceeding.

(iv) In the case of putting an employee under suspension, the provision is there in the service code applicable to one or the other employee to make payment of subsistence allowance.

The purpose of making subsistence allowance is to provide money for sustenance of the employee and its family member so as not to cause any prejudice to the concerned employee in contesting the case.

(v) Further, for the reason that if the respondent will be asked to remain out of service then the question will be "why due to the fact of wrong order passed by the authority, the respondent no.1 will remain to be kept out of service".

75. This Court, in view of the aforesaid discussion, is of the view that the decision so far as restoring the services of the respondent no.1 is not being interfered with.

76. However, the said decision will finally depend upon the final

outcome of the decision which is to be taken by the authority if the departmental proceeding is being initiated in pursuance to the order passed hereinabove.

77. As such, all the issues are being answered accordingly.

78. This Court, therefore, is of the view that the order impugned needs to be interfered with.

79. Accordingly, the order dated 15.12.2022 passed by the Circuit Bench of Central Administrative Tribunal, Patna Bench at Ranchi (hereinafter referred to as CAT, Ranchi) in Original Application being O.A. No.051/00269/2021 is hereby quashed and set aside.

80. In the result, the instant writ petition is allowed.

81. Accordingly, the writ petitioner is at liberty to initiate departmental proceeding in accordance with law.

82. Before parting with the judgment, the party-in-person has relied upon the judgment laid down by the Hon'ble Apex Court in the case of ***Pradeep S/o Rajkumar Jain Vrs. Manganese Ore (India) Limited & Ors., passed in Civil Appeal No.7607 of 2021 [arising out of S.L.P.(C) No.21346 of 2017].***

83. In the case of ***Pradeep S/o Rajkumar Jain Vrs. Manganese Ore (India) Limited & Ors. (supra),*** the appellant was a qualified Chartered Accountant and was appointed as Manager (Finance). Thereafter, he was posted in 2005 at the Balaghat Mines as the Deputy Chief (Finance) and due to the death of his father, he had reported late for work i.e., after three days. He was served with a show cause and it was replied by him, but he was suspended on 05.10.2007 and was served with a charge memo on 27.10.2007. Thereafter, he was dismissed from

service on 12.08.2008.

84. Thereafter, the matter was travelled to the High Court, wherein, the Division Bench while ordering his reinstatement of the petitioner, has denied him the benefit of back wages.

85. Being aggrieved with the aforesaid order, the petitioner moved to the Hon'ble Apex Court, wherein, it is called upon to decide whether there is justification to deny back wages to the petitioner.

86. The Hon'ble Apex Court has held that the High Court was in error in not making appropriate order relating to back wages.

87. As such, since, the fact of the aforesaid case, i.e., ***Pradeep S/o Rajkumar Jain (Supra)*** is different to that of the facts of the present case, hence, it is not applicable herein.

88. In consequence thereof, I.A. No.6571 of 2023 stands disposed of.

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)

Rohit/-**A.F.R.**