

Central Administrative Tribunal
Patna Bench, Patna.
O.A./050/00640/2016

Date of CAV : 08.01.2020

Date of Order :- 10 .01. 2020

C O R A M

Hon'ble Mr. J. V. Bhairavia, Member [J]
Hon'ble Mr. Dinesh Sharma, Member [A]



Soni Raj, wife of Chandra Shekhar Singh, resident of Village – Damvak, Post – Baburi, District – Mirjapur [Uttar Pradesh], PIN – 232102.

....Applicant

By Advocate : Shri Om Prakash Singh

Vs.

1. Union of India, through the Secretary-cum-Director General, Department of Posts, Government of India, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services, Central Region, Bihar Circle, Patna – 800001.
4. The Superintendent of Post Offices, Rahtas Division, Sasaram – 821115.
5. The Inspector of Posts, Bhabhua Sub. Dn. Bhabhua – 821101.

..... Respondents.

By Advocate : Mr. T.N.Thakur

O R D E R

Per J.V. Bhairavia, M [J] :-

In the instant OA, the applicant

has prayed for the following reliefs :

"8[i] Your Lordships may graciously be pleased to quash and set aside the order of Inspector of Posts, Bhabhua Sub Division, Bhabhua, Respondent No.5 issued on 29.07.2016 under his office Memo No.-A-GDS MDMC Apptt/Kurasan BO dated 29.07.2016.

8[2] Your Lordships may graciously be pleased to direct the respondents to allow the applicant to resume duty as GDS MDMC Kurasan BO in account with Bhabhua MDG at once.

- 8[3] Your Lordships may graciously be pleased to direct the respondents to pay the TRCA to the applicant from the date of termination to the date of resume of duty.
- 8[4] Your Lordships may graciously be pleased to direct the respondents to pay interest against the amount of TRCA to be paid during the period of termination to the applicant.
- 8[5] Your Lordships may graciously be pleased to direct the respondents to keep the service of applicant continued as she was never terminated.
- 8[6] Any other relief/reliefs as your Lordships may please deem fit and proper in the interest of justice.
- 8[7] Cost of the case may please be awarded to the applicant for unnecessary expenditure incurred in litigation, mental agony financial harassment, sorrow, suffering and pain."



2. The applicant's case in short, runs as under : -

- [i] The Inspector of Posts, Bhabhua Sub. Dn., Bhabhua [in short IPO, Bhabhua] advertised for recruitment to the post of GDS MDMC Kurasan BO in account with Bhabhua MDG, against which the applicant applied in time. The IPO, Bhabhua sent a letter dated 21.05.2014 [Annexure-A/1] to the applicant to appear before him on 04.06.2014 along with original certificates of educational qualification, caste and residential certificates etc. for verification. The applicant appeared before the IPO, Bhabhua on 04.06.2014 and her certificates were verified. Being satisfied and found fit for appointment to the aforesaid post, the appointment letter dated 11.02.2015 [Annexure-A/2] was issued to the applicant.
- [ii] The applicant assumed the charge of MDMC Kurasan BO in account with Bhabhua MDG in the forenoon of 14th Feb., 2015 and was discharging duty with full devotion and without any

complaint, but the IPO, Bhabhua terminated her service on 29.07.2016 [Annexure-A/10] without any show cause notice. The applicant submitted that the order of termination of service was delivered on 01.08.2016 and the IPO, Bhabhua was relieved for new posting on 01.08.2016, which smells malafide and wrong attitude/intention of the respondent for the wrongful gain.



- [iii] The applicant draws our attention to Sl. No.4, DG's instruction below Rule 8 of GDS [Conduct & Employment] Rules, 2011, which stipulates that "Initiation of regular disciplinary proceeding is necessary, if specific irregularity comes to surface in view of the safeguard afforded to ED Agents under Article 311 of the Constitution. [DGP&T letter No.151/2/78-Disc.11 dated 19th April, 1979]." The applicant also draws our attention towards Sl. No.12 of DG's instruction below Rule 10 of GDS [Conduct & Employment] Rules, 2011, which stipulates that "it is enjoined upon all concerned to offer reasonable opportunity to the accused ED Agents at all stages with a view to ensuring that there is no infraction of the principle of natural justice under GI Department of Posts Letter No.19-24/96-ED & Trg. Dated 29th Nov., 1996." [Annexure-A/11]
- [iv] The applicant represented to the Senior Superintendent of Post Offices, Rohtas Division, Sasaram on 05.08.2016 [Annexure-A/12] against her termination order but nothing has been done by them. The applicant submitted that the action of IPO, Bhabhua terminating the services of the applicant is punitive in nature since the respondents have

snatched the livelihood of the applicant, which is violative of Article 311 of the Constitution of India, as also arbitrary, illegal, unconstitutional, irrational and colourable exercise of power.

[v] The Id. Counsel for the applicant relied upon the decision reported in 2008 [3] PLJR page 344, The Chief Postmaster General vs. Nirbhay Kumar & Ors. [CWJC No.1175/2007 decided on 21.01.2008] wherein the Hon'ble High Court of Patna held that-



- "7. *It is also well settled that where order of termination is punitive, it has to be brought about by a fair procedure, namely, holding a proper enquiry into alleged misconduct in accordance with procedure laid disciplinary rules, if any, and in accordance with requirement of Article 311 of the Constitution. Even if there are no rules laying down procedure for holding such enquiry, it must accord to norms of a fair and just procedure in which the civil servant has been provided with adequate opportunity to defend himself. Undisputedly the impugned order has been made without holding a departmental enquiry, the termination of respondent's services cannot be said to be in accordance with law.*
8. *Therefore, we are in agreement with the order of the Tribunal that the respondent-applicant has been dismissed from service without holding a full departmental enquiry and thus the order of termination cannot be sustained. "*

The Id. Counsel for the applicant relied upon another decision reported in 2018 [2] PLJR page 265 [Ajit Kumar vs. The State of Bihar through the Principal Secretary, Panchayati Raj & Ors. [LPA No.501 of 2007 arising out of CWJC No. 277/2017 decided on 14.11.2017], wherein the Hon'ble Patna High Court held that – Termination – on account of producing

forged certificate – impugned order passed without issuing notice, without granting him any opportunity of defence or without following the principles of natural justice – when penal action is taken and services of an employee is terminated, which has an adverse consequence on the delinquent employee, at least an opportunity of hearing should be granted to him.



The applicant relied upon another decision rendered by CAT, Principal Bench in the case of Praveen Kumar and Ors. vs. UOI & Ors. [OA No. 2280/2016 decided on 09.10.2017] wherein it is held that – termination without assigning any reason but through their counter stated that in view of the irregularities occurred in the process of selection of applicants, they are right in invoking the power under Rule 8 of the 2011 Rules. Hence, as held in Jayakumar Parida [supra] since the report of irregularities forms foundation for termination of the applicants, impugned orders issued without adhering to the principles of natural justice deserves to be interfered with. The contention of the respondents' counsel that Jayakumar Parida [supra] has no application to the applicants cannot be accepted in view of the similarity in facts and law. The Tribunal further held that since it is found that the applicants are entitled for an opportunity before terminating their services, the other issues are kept open. Accordingly the OA was allowed.

3. The respondents have filed their written statement and contended that the applicant, Soni Raj applied for the post of GDS

MD/MC Kurasan BO and submitted the required documents in which the date of birth was mentioned as 01.07.1994 and same date of birth was mentioned in the column of the application, vide Annexure-R/2, R/3 and R/4. The IPO, Bhabhua after verification of documents, issued the letter of engagement dated 11.02.2015 but before assumption of charge, the applicant filled the attestation form in which she wrote the date of birth 01.07.1995 and the same copy of mark-sheet of Matriculation in which her date of birth was clearly mentioned as 01.07.1995. The respondents submitted that since the Roll Code and All other particulars were same, the only difference was 1994 and 1995, and since this was overlooked by the IPO Bhabhua, the applicant assumed the charge of GDS MD/MC of Kursan BO. However, when it is detected, the IPO, Bhabhua has no other option but to terminate the services of the applicant, since she has submitted two sets of documents of different date of birth. The respondents submitted that the applicant has cheated the department by way of submitting one set of bogus certificate.



4. The applicant filed a rejoinder and reiterated the submissions which she has already narrated in her application. However, he contended that initiation of regular disciplinary proceeding is necessary, if specific irregularity comes to surface in view of the safeguard offered to ED Agent under Article 311 of the Constitution of India.

5. The respondents filed their supplementary written statement and contended that as the applicant was below 18 years of age at the last date of filing application, i.e. 25.05.2013, she submitted bogus certificate to cover up the fact and getting appointment for

the post in question. As such the applicant has made a fraudulent practice by way of cheating the Department of Post, and the appointing authority, therefore the claim of the applicant has no merit to sustain in the eye of law, and the OA deserves to be dismissed.

6. Heard the learned counsel for the parties and gone through the materials on record.



7. The Tribunal noticed that the applicant, Soni Raj applied for the post of GDS MD/MC Kurasan BO and submitted her application dated 21.05.2013 [Annexure-R/4], wherein she has declared her date of birth as 01.07.1994 and enclosed the certificate-cum-Mark-sheet of matriculation pass (Madhyamik Shiksha Parishad, Uttar Pradesh, High School Examination-2012, bearing Roll No. 3703609 and Distt/Centre/School Code 86/25263/1003) [Annexure-R/3] as also photo stat copy of admit card of the said examination [Annexure-R/2] in which the date of birth of the applicant was mentioned as "**01.07.1994**". It is further noticed that the IPO, Bhabhua after verification of documents, issued the letter of engagement dated 11.02.2015 but before assumption of charge, the applicant filled the attestation form in which she wrote the date of birth 01.07.1995 and also submitted another the certificate-cum-Mark-sheet of matriculation pass (Madhyamik Shiksha Parishad, Uttar Pradesh, High School Examination-2012, bearing Roll No. 3703609 and Distt/Centre/School Code 86/25263/1003) [Annexure-R/5]. The Tribunal noticed that though the Roll Number and other particulars of these two matriculation certificates, i.e. Annexure-R/3 and Annexure-R/5 are same except the date of birth. Needless to

say that in one mark-sheet, the applicant's date birth has been mentioned as 01.07.1994 [Annexure-R/3] and in another mark-sheet, her date of birth has been mentioned as 01.07.1995 [Annexure-R/5], which she has submitted at the time of joining. The applicant assumed the charge of GDS MC/MD of Kursan BO on 04.06.2014. The applicant at the time of joining has submitted a declaration/undertaking dated 04.06.2014 [Annexure-R/6], wherein she has undertaken that the certificates submitted by me are correct and in future, if it is found that the information/certificates furnished by her are not correct, necessary legal action can be taken against her.



However, when it was detected that the applicant herein has submitted two sets of documents on which different date of births has been mentioned, by this conduct, the applicant has cheated the Department by submitting one set of bogus certificate. Therefore, the respondent authorities have decided to terminate the services of the applicant since the engagement of the applicant as GDS MC/MD of Kursan BO governed under the provision of GDS [Conduct and Engagement] Rules, 2011 and as per the provision of Rule 8, the respondents have terminated the services of the applicant, vide impugned order dated 29.07.2016 [Annexure-A/10]. Rule 8 of the aforesaid Rules is reproduced as under : -

"8[1] The engagement of a Sevak who has not already rendered more than three years' continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak;

[2] The period of such notice shall be one month :

Provide that the service of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of one month."



8. In the present case, it is noticed that the applicant was engaged as Sevak, vide order dated 11.02.2015. In the said appointment letter it was made clear that as GDSMC, Kurasan BO in a/c with Bhabhua MDG under Rohtas Division shall be in the nature of contract and liable to be terminated by the undersigned by notifying the order in writing and the applicant's conduct and service shall be governed by the Department of Posts of Gramin Dak Sewak [Conduct & Engagement] Rules, 2011. That apart, Rule 8[1] stipulates that the engagement of a Sevak who has not already rendered more than three years' continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing. Rule 8[2] further stipulates that the service of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance etc.

9. We have perused the termination order dated 29.07.2016 [Annexure-A/10] and found that the same has been issued in terms of Rule 8 of Gramin Dak Sevaks [Conduct & Engagement] Rules, 2011. We do not find any indefeasible right of the applicant to continue as GDSMC in the light of terms and conditions as mentioned in the appointment letter. The respondents have exercised their power as stipulated under Rule 8 of the Gramin Dak

Sevak [Conduct & Engagement] Rules, 2011. The Tribunal further noticed that the applicant not even completed 18 years on the last date of submission of the application for the post in question. The submission of the applicant that she deserves to be given an opportunity or show cause to defend her case before issuance of termination order in the light of DG's instructions as contained in below Rule 8 and also the judgement relied upon by her [supra] is not acceptable since the facts and circumstances of the present case is quite different. As such, there is no justifiable explanation by the applicant as to why she has furnished two mark-sheets mentioning two date of birth. Accordingly, we do not find any infirmity in the impugned order since it is issued in terms of the statutory rules of Gramin Dak Sevak [Conduct & Engagement] Rules, 2011.



10. In view of the aforesaid discussions, we are of the considered opinion that this OA has no merit. Accordingly, the same is dismissed with no order as to costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]

mps