

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No.154/2020

Dated this the 24th day of September 2020

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Sh. Dr.A.K. Dubey, Member (A)

Patel Jaydipkumar Pravinbhai,
Son of Patel Pravinbhai,
Aged 24 years,
Working as GDS,
Residing at Village Ramgadh,
Ta.Dhrangadhra,
Dt.Surendranagar – 363 310.

Applicant

(By Advocate Mr.Joy Mathew)

Vs.

1. Union of India,
Notice to be served through
The Secretary,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi 110 001.
2. The Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad – 380 001.
3. Superintendent of Post Offices,
Surendranagar Division,
Surendranagar 363 310.
4. The Postmaster,
Surendranagar Head Office,
Surendranagar 363 001.
5. Sub Divisional Inspector (Post),
Dhrangaddhra Sub Division,
Dhrangadhra 363 310. Respondents

(By Advocate Ms.R.R.Patel)

O R D E R (Oral)
PER JAYESH V. BHAIRAVIA : Member (J)

1. Aggrieved by notice for termination of applicant's engagement as ABPM dated 19.6.2020, whereby with effect from the date of expiry of period of one month from the date on which the notice was served upon him, the applicant has filed the present O.A. seeking relief by way of quashing and setting aside the said order dated 19.6.2020 (Annexure A/1) issued by respondent No.5 herein and has further prayed for issuance of direction to the respondents to allow the applicant to work as Gramin Dak Sevak Employee.
2. In brief, it is the case of applicant that the applicant was appointed vide order dated 2.6.2019 (Annexure A/2) as GDS MC, Dhrumath B.O., in account with Dhragandhra SO, with effect from 1.2.2018. The appointment of the applicant is governed by the service rules for GDS (Conduct & Engagement) Rules, 2011 (as amended from time to time). After his appointment as GDS MC, he was also rendering service as Branch Post Master as there was no regular appointment on the post of Branch Post Master. He had submitted representation to pay him the salary of Branch Post Master as well. However, the department had not paid any salary for the said extra work nor they have filled up the vacant post of Branch Post Master at Dhrumath B.O.
 - 2.1 It is further submitted that after the applicant was appointed as GDS MC, the Audit Department had raised certain objections to the appointment made in Dhrumath Branch as there were certain

mistakes in advertisement. However, the applicant is not served with the copy of Audit Report. He is not aware about the exact objections raised by the Audit section, but at the same time, just with a view save the face of the respondent department, applicant has been made a escape goat and his service has been sought to be terminated under the provisions of Rule 8(1) and (2) of GDS (Conduct & Engagement) Rule, 2020 vide impugned order dated 19.6.2020.

2.2 It is contended by the applicant that as on today, he has completed two years and five months of service and there is no complaint or charge-sheet issued against the applicant. Not even a notice or memo with respect to his conduct has been issued against him. Therefore, applicant's services should not have been terminated under the guise that he had not completed three years of service. It is submitted that impugned notice of termination of service is a non-speaking and unreasoned one. Though the impugned order is titled as notice, in fact the same is an order of terminating the services of the applicant. After the notice period of one month, applicant has never been served with any show cause in this regard. The respondent Postal Department selected more than 1900 persons for various posts along with the applicant in Gujarat state that too under the same advertisement. Had there been any mistake in the advertisement, all the 1900 candidates should have been terminated from service. However, the respondent adopted pick and choose policy and only for the reason known to them, wanted to terminate the services of the applicant. Therefore, the action of the respondent is utter violation of Articles 14 and 16 of the Constitution of India.

2.3 By relying upon the order dated 9.10.2017 passed by the Principle Bench, CAT, New Delhi, in the case of Praveen Kumar & Ors. vs. UOI & Ors. OA No. 2280 of 2016 (Annexure A/3), it is contended that prior notice ought to have been issued to the applicant before exercising powers under Rule 8 of the Rules and without affording any opportunity of hearing before terminating the services of the applicant the impugned order is in violation of principle of natural justice.

2.4 It is further submitted that to cover up mistake committed by the respondent while publishing the advertisement, the respondents want to terminate the service of the applicant. In a series of judgment it has been held that the temporary government servants or probationers are as much entitled to the protection under Article 311(2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post. It is submitted that as such there is no foundation for the termination of the service of applicant and in absence of it, the impugned order is required to be quashed and set aside. In support of his contention, the counsel for the applicant placed reliance of the judgment passed by Hon'ble Apex Court in the case of **Chandraprakash Sahay vs. State of UP decided on 25th April, 2000 reported in [(2000) 5 SCC 152]**.

2.5 It is further submitted that the audit team raised objection that in the advertisement made by the department, instead mentioning the post of BPM (Branch Post Master), same was mentioned as ABPM (Assistant Branch Post Master). Since, applicant being a graduate,

he can be appointed even as BPM and even otherwise, there are vacant posts of ABPM in and around the post offices where the applicant worked. The applicant can be accommodated in any of the post offices. The impugned termination order is punitive in nature and also amount to take away the only source of applicant's livelihood for no fault of him. Hence, this OA.

3. Per contra, respondents have filed their reply and denied the contentions of the applicant. The contention raised by the respondents in the reply as well as during the course of argument are briefly as under.
 - 3.1 The applicant was recruited through GDS on-line recruitment cycle-I from 1.2.2018 on the post of GDS MC, Dhrumath BO/Dhrangadhra SO under Surenderanagar Division.
 - 3.2 It is contended that the competent authority had asked SDI(P), Dhrangadhra Sub Division to submit the latest vacancy position of his sub-division vide letter dated 15.2.2017 (Annexure R/1). In response to it, the SDI(P), had submitted the list of vacant post of his sub-division vide letter dated 23rd February, 2017 (Ann. R/2) in which the post of GDS MC Dhrumath BO was shown as vacant post at sl. No. 14. Thereafter, the Supdt. of Post, Surendranagar has confirmed the justification for the post of GDS MC Dhrumath BO (Ann. R/3). Subsequently, the list of vacant posts was submitted to the Regional Office Rajkot for the purpose of updating it on GDS online recruitment software. In consequence thereof, the notification for filling up the post of GDS was issued (Ann. R/4) and after following the procedure laid down under the notification, the result

thereon was published in which applicant was selected as GDS MC, Dhrumath BO with effect from 1.2.2018 (Ann. R/6).

3.3 It is contended that meanwhile, during the vigilance of O/o Supdt. Of Post Office, Surendranagar Division, on 27.9.2019 it came into notice that there was only one post of GDS BPM in the establishment of Dhrumath BO and no post of GDS other than BPM existed at Dhrumath BO, i.e. as per establishment register (Ann. R/8). There is no post of GDS MC at Dhrumath BO. Thus, as per the report of the vigilance, the post of GDS MC was erroneously notified in GDS online recruitment cycle-I, pursuance of which the applicant was selected on the said post as GDS MC. Therefore, Vigilance Team instructed to review the situation and report to RO.

3.4 In response to the vigilance report, the office of Superintendent had taken up the case with RO, Rajkot vide letter dated 15.10.2019 (Ann. R/9) with further reminders dated 11.12.2019 and 27.1.2020 (Ann. R/10) for re-designing the post of ABPM (GDS MC) Dhrumath BO to ABPM Bharada BO as work performed by the applicant on the post of Dhrumath BO was borne on the establishment of Bharada BO. In reply, RO Rajkot instructed vide its letter dated 7.4.2020 (Ann. R/11) that as per Establishment Register there was no post of ABPM (GDS MC) at Dhrumath BO, and as such, there was no question of redesignating it to ABPM Bharada BO arises. Hence, SPO Surendranagar, ordered SDM (P) Dhrangadhra to issue one month's pay notice to the applicant for his removal from service vide office letter dated 1.6.2020 and further reminder dated 18.6.2020 (Ann. R/12). Consequently, SDI (P) Dhrangadhra, issued one

month notice to the applicant vide impugned memo dated 19.6.2020 (Ann. A/1).

- 3.5 It is submitted that without preferring any representation to the competent authority, i.e. DPC, Rajkot region, or preferring an appeal/petition to higher authority, the applicant has preferred the present OA before this Tribunal, and as such he has not exhausted alternative remedy available to him. Therefore, OA may be disposed of on the ground of alternative remedy not exhausted.
- 3.6 The respondents have filed their further reply dated 21.7.2020, and contended that as per the amended Rules, i.e. GDS (Conduct & Engagement) Rules, 2020, the Gramin Dak Sevak other than Branch Postmasters (BPMs) and working in Branch Post Offices are designated and called as "Assistant Branch Post Masters (ABPMs)" (Ann. S/1). Therefore, the applicant who was engaged as GDS MC, the said post has been designated as ABPM under the 2020 Rules and accordingly, pursuant of Rule 8 (1) and (2) of the Gramin Dak Sevaks (Conduct & Engagement) Rules 2020, termination notice dated 19.6.2020 which is impugned herein was issued to the applicant. The said notice/order is in consonance with provisions of rules 2020 and applicant has unnecessarily raised the issue that he was appointed as GDS. however he has been served with the notice as ABPM.
- 3.7 It is further contended that the engagement of the applicant was in nature of a contract liable to be terminated by either party and his engagement/service governed by the service rules called Gramin Dak Sevaks (Conduct & Engagement) Rules 2011, as amended

from time to time. Therefore, the discontinuance of the engagement of the applicant as GDS MC (ABPM) is just and proper and not in violation of any terms of engagement/contract and is under the provision of Rule 8(1) & (2). Hence, it is prayed that OA be dismissed.

4. The applicant has filed rejoinder and reiterated his contentions. Additionally, it is submitted that there is no dispute to the fact that applicant's service was sought to be terminated from the post of GDS ABPM under the rules, 2020. He is working as GDS ABPM with additional charge of GDS BPM at Dhrumath BO. This contention has not been controverted by the department. The qualification fixed by the department for the post of GDS is matriculation, i.e. SSC. Since, the applicant succeeded in the selection process, the department can easily change his designation as per requirement. Moreover, the department has not properly verified the vigilance report. In fact, the respondent No.3 had issued letter dated 15.10.2019 to the Post Master General, Rajkot Region, stating therein that there are two sanctioned posts of ABPM Bharada BO from which one post of ABPM was Dhrumadh HO and at present the post of ABPM Bharada has been vacant since 7.2.2012 and it has not been notified in cycle-I and cycle-II of the GDS recruitment. Therefore, it was requested for approval for redesignate of ABPM Dhrumadh BO to ABPM Bharada BO. In the said letter it was admitted that there are two sanctioned posts of ABPM Bharada BO from which one post of ABPM was for Dhrumadh BO. Therefore, it is clear that the post of ABPM at Dhrumadh is vacant. It is further submitted that under the GDS

Rules, there is no provision of appeal, but only review lies on the order of termination. Review is to be made to the same authority who issues the order. The scope of review is limited to the correction of clerical mistake. Therefore, the applicant has no other alternative remedy except to file the present OA. . Further, it is stated that respondent had admitted that one post of GDS BPM at Dhrumadh BO is vacant and applicant continued to work as both GDS ABPM and in charge GDS BPM. Therefore, the department can allow him to continue to work at Dhrumadh BO.

5. Heard the learned advocates for the respective parties and perused the material available on record.
6. Undisputedly, vide order dated 24.6.2019 (Ann. A/2), the Sub-Division Inspector (Post), Dhragandhra Sub-Division, appointed the applicant as GDS MC at Dhrumath BO. In the said appointment order, in unequivocal terms, it has been stated that, "this engagement as GDS MC shall be in the nature of a contract liable to be terminated by him/her or by the undersigned by notifying the order in writing and that he shall be governed by the Service Rules for Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011 as amended from time to time". It is also not in dispute that the service rules have been amended by the respondent which are now called as Gramin Dak Sevaks (Conduct & Engagement) Rules, 2020. Under the new amended rules, as per the definition 3(d), i.e. Gramin Dak Sevak means, (i) a Branch Postmaster, (ii) an Assistant Branch Post Master, (iii) a Dak Sevak. The note No.1 below the said definition stipulates that, "Gramin Dak Sevaks other than Branch

Postmasters (BPMs) and working in Branch Post Office are designated and called as "Assistant Branch Postmasters (ABPMs)". Therefore, it is evidently clear that the appointment to the post of GDS has been re-designated as per the definition stipulated in Rule 3(d) as noted hereinabove and accordingly the applicant has been considered as ABPM. The respondent by exercising power under Rule 8 (1) & (2) terminated the services of the applicant. The said rule stipulates that the engagement of the Sevak who has not already rendered more than three years continuous engagement from the date of his/her engagement, shall be liable to be terminated at any time by notice in writing given either by the Sevak to the Engaging Authority or any authority to which the engaging authority is sub-ordinate or any other authority empowered in that behalf by the government, by general or special order, to the Sevak. As per rule 8(2), the period of such notice shall be one month.

7. In the present case, undisputedly the applicant was appointed/engaged vide order dated 24.6.2019 as GDS MC with effect from 1.2.2018 and before he could complete continuous service of three years, the respondent no.3, i.e. engaging authority, by exercising powers under rule 8 (1) & 2 of the Rules, decided to terminate the services/engagement of the applicant from the post of ABPM vide impugned order dated 19.6.2020. Since, the engaging authority is empowered under the provision of Rule 8 to terminate the engagement of Sevak who has not completed continuous service of three years from the date of his engagement, we do not find any infirmities in passing the impugned order. The judgment relied upon by the applicant are not applicable in the facts and

circumstances of the present case. Further, the contention of the applicant that the foundation for his termination is based on the report of vigilance, which indicates that the post of GDS MC was wrongly advertised as only the post of GDS BPM exist at Dhrumath BO, for which he cannot be faulted with, is not based on extant rules. It is also claimed by the applicant that the respondent can accommodate him to the sanctioned post of ABPM at Bharada BO and he may be allowed to work both GDS ABPM and in charge GDS BPM at Dhrumath BO. This Tribunal cannot issue any direction in that regard. It is left open for the respondent to consider the said claim to meet with exigency if any vacancy exists at the post office for which, it is also open for the applicant to submit his representation within 30 days from the date of receipt of this order before the competent authority to be considered in accordance with the rules, which shall be decided within a period of two months from the date of filling of such representation.

The OA stands disposed of as above. No costs.

(A.K.Dubey)
Administrative Member

(Jayesh V.Bhairavia)
Judicial Member

SKV