

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 330/00565 of 2017

Dated: This the 29th day of **January**, 2021

PRESENT:

HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER (A)

Asheesh Kumar age about 25 years, S/o Ram Naresh, Lamalpur
Junnerdar, Post Shekhpur heer District Jalaun.

. . . Applicant

By Adv: Shri S.M.A. Naqvi

V E R S U S

1. Union of India through Secretary, Ministry of Communication,
Department of Posts, Dak Bhawan, New Delhi.
2. The Director Postal Services, Agra Region Agra, 282001.
3. The Sr. Superintendent of Post Offices Jhansi Dn. Jhansi
284001.

. . Respondents

By Adv: Shri Rajeshwar Singh

ORDER

BY HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)

By means of present O.A., the applicant has sought the following
reliefs:-

- “(a) *To issue a writ, order or direction in the nature of certiorari
quashing and setting side the impugned order dated
19.01.2017 passed by the respondent No. 3 and also*

quash the order dated 18.01.2017 passed by the respondent No.2 (Annexure A-1).

- (b) To re-instate the applicant forthwith in service with all consequential benefits.*
- (c) To Issue any order/direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- (d) Award the cost of petition to the applicant”.*

2. The brief facts as mentioned in the O.A. are that the applicant, in pursuance of an advertisement issued in the year 2013, applied for the post of GDS BPM and he was selected and issued the appointment letter on 30.01.2014 (copy of the appointment letter has been annexed as Annexure No. A-3 to the O.A.), which is quoted below:-

“Shri Asheesh Kumar, S/o Shri Ram Naresh is hereby engaged as GDS BPM Shekhpur Bujurg in account office with Hadrukh SO/HO. He shall be paid such allowance as are admissible from time to time.

Shri Asheesh Kumar should clearly understand that this appointment as GDS BPM shall be in the nature of contract liable to be terminated by him or by the undersigned by notifying the order in writing and he shall also be governed by the GDS (Conduct and Engagement) Rules, 2011 as amended from time to time.

If these conditions are acceptable to him he should communicate his acceptance in enclosed proforma”.

The applicant assumed charge as GDS BPM at Shekhpur (Bujurg) District Jalaun on 08.02.2014 and started performing his duties to the satisfaction of his senior authority. However, all of sudden vide letter dated 19.01.2017, issued by Superintendent of Post Offices (Respondent No.3), his services were terminated. The aforesaid communication has been challenged and impugned in the instant OA. For a ready reference, it is reproduced as under;-

“In pursuance of the RO Agra letter No. Vig/1-6/2016 dated at Agra the 18.01.2017 and under provision to rule 8 of Gramin Dak Sewaks (Conduct and Engagement) Rule 2011[under proviso to Rule 6 (b) and the Note below 6 (b) of P&T EDAs (Conduct and Service) Rule, 1964] I, V.K. Singh, Sr. Supdt. Of Post Offices Jhansi here by terminate (forthwith) the service of Sri Ashish Kumar GDS BPM Shekhpur Buzurg (Hadrukh) and direct that he shall be entitled to claim a sum equivalent to the amount of his basic allowances plus dearness allowance for the period of notice at the same rates at which he was drawing them immediately before the termination of his service. The due amount of basic allowance plus dearness allowance is being remitted in lieu of the notice of one month”.

3. As by the aforesaid impugned order, the entire selection was cancelled, resulting in cancellation of services of several Gramin Dak Sevaks, several OAs were filed challenging the same.

4. The main ground to challenge the legality and correctness of the impugned order, taken by the applicant in the instant OA, is that no show cause notice was ever issued before terminating his

engagement and no reason was assigned for terminating his engagement, therefore, the impugned order is violative of principle of natural justice. It has been vehemently contended by learned counsel for the applicant that without giving any opportunity of being heard, the services of applicant have been terminated which is a gross violation of Sub Rule 4 (3) (c) of the GDS (Conduct & Engagement) Rule 2011 which mentions:-

“Notwithstanding anything contained in these Rules, any authority superior to the Recruiting Authority as shown in the schedule, may, at any time, either on its own motion or otherwise call for the records relating to the engagement of Gramin Dak Sewak made by the Recruiting Authority and if such Recruiting Authority appears:-

- (a) To have exercised a jurisdiction not vested in it by any law or rules time being in force, or*
- (b) To have failed to exercise a jurisdiction so vested or*
- (c) To have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority, may after giving an opportunity of being heard, make such order as it thing fit”.*

5. It is contended that apparently no show cause notice was issued to the applicant before the impugned order was passed, the respondents have terminated the services of the applicant without holding an enquiry and without giving him an opportunity of being heard. Therefore, the impugned order, passed in utter violation of existing Rules, being illegal is liable to be set aside.

6. The respondents have filed counter affidavit justifying the passing of impugned order dated 19.01.2017. It has been stated in the counter affidavit that the appointment of the applicant was cancelled on the ground that various irregularities were noticed by the Competent Authority in the entire recruitment process, as detailed in the counter affidavit. The matter was also referred to CBI for investigation by filing FIR. It is further stated that the decision of respondents to terminate the services of applicant under Rule 8 of GDS (Conduct and Engagement) Rules 2011 is in accordance with Rules and is justified.

7. We have heard Shri Shiv Mangal Singh holding brief of Shri SMA Naqvi, learned counsel for the applicant and Shri Rajeshwar Singh, learned counsel for the respondents and have carefully gone through the record.

8. Learned counsel for the applicant has argued that in identical factual situation where the services of some of the Gramin Dak Sewaks had been terminated and the issue was agitated before this Tribunal, this Tribunal considered the grievance of the sewaks and quashed the impugned order. In support, the copy of the judgment dated 14.07.2017 passed by this Tribunal in O.A No. 742 of 2016 – Birbal Vs. Union of India and others decided along with bunch of OAs, has been filed by the applicant, which shows that this Tribunal, while allowing the OAs, has held the applicants entitled to reinstatement and

all the consequential benefits including full TRCA for the period they have been kept out of service at the earliest opportunity. Respondents were further directed to comply with the order within a period of six weeks and to pass necessary orders for reinstatement. Accordingly, they were directed to disburse the amount of arrears of TRCA within two months from the date of reinstatement of applicants.

9. The respondents had challenged the aforesaid order dated 14.07.2017, before the Hon'ble Allahabad High Court by means of Writ A No. 49864 of 2017, clubbed with other similar writ petitions. All such writ petitions were dismissed by the Hon'ble Allahabad High Court by a common order dated 30.04.2018. Copy of orders dated 14.07.2017 passed by this Tribunal and 30.04.2018 passed by the Hon'ble Allahabad High Court, have been filed by the learned counsel for the applicant in support of his contentions.

10. Learned counsel for the respondents has opposed the O.A., however, he has not disputed the fact that in several similar cases, the OAs have been allowed in the same terms as OA No. 742 of 2016.

11. For a ready reference, operative portion of the order dated 14.07.2017 passed in OA No. 742 of 2016 clubbed with 99 other OAs, all disposed of by a common order, is reproduced below:-

"In view of the above, except the following OAs, in which pleadings are not complete, as held in para 16 above, all other

OAs are allowed and orders impugned therein are hereby quashed and set aside:-

(a) OAs 886/2016, (b) 32/2017, (c) 33/2017;

(d) 564/2017, (e) 565/2017, (f) 602/2017,

(g) 685/2017 and (h) 690/2017.

It is directed that the applicants are entitled to reinstatement and further they are entitled to the consequential benefits, i.e. for full TRCA for the period they have been kept out of service. If any of their places has been filled up by someone, the applicants shall be accommodated in any other vacant post and at the earliest opportunity they shall be brought back to their original post. This order shall be complied with within a period of six weeks from today. Necessary orders for reinstatement be issued accordingly. Arrears of TRCA be disbursed within two months from the date of reinstatement.

Liberty is given to the respondents to proceed against the applicants falling under category (1) and (2) above”.

12. Hon’ble Allahabad High Court reviewed the aforesaid order in Writ A No. 49864 of 2017 along with bunch of other writ petitions. The operative portion of the aforesaid order passed by Hon’ble Allahabad High Court is quoted below:-

“35. We find that termination orders passed by Appointing Authority are in the backdrop of directions/orders of Superior Authority, noticing some irregularities etc. In appointments of Gramin Dak Sevaks and in view of non-compliance of Rule 4 (3) i.e. opportunity of hearing to concern Gramin Dak Sevaks, the same are vitiated in law.

36. In view of above discussion, we do not find any manifest error in judgments of Tribunal warranting interference. It is always open to petitioners to pass fresh orders after complying with the requirement of Rules. Hence, we find no valid reason to interfere with judgments of Tribunal, impugned in all these writ petitions.

37. Writ petitions, for the reason discussed above, lack merit and are dismissed, accordingly. No costs”.

13 . Accordingly, the present OA is also disposed of in the aforesaid terms. The impugned order dated 19.01.2017 is quashed. The applicant's services will be deemed to be reinstated with all consequential benefits. However, it is always open for the respondents, to pass fresh orders with regard to termination of the illegal appointments if there were serious irregularities in the procedure adopted in the said appointment but after giving the opportunity of hearing to the applicant.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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