

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 330/00032/2017

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

PRESENT:

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

Vimal Kumar S/o Lala Ram Yadav aged about 26 years, R/o V & P.O Amraudha (Katra) District Kanpur (Dehat).

... 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, Kanpur Region Kanpur Distt. Kanpur Nagar, 208001.
3. The Superintendent of Post Offices Kanpur (M) Division Kanpur 208001.

.. Respondents

By Adv: Shri V.K. Pandey

O R D E R

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 aside the impugned order dated 29.06.2016 passed by the respondent No. 3 and also*

quash the order dated 27.06.2016 passed by the respondent No.2 (Annexure A-1).

- (b) to reinstate the applicant forthwith in service with all consequential benefits.*
- (c) 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 open advertisement dated 10.09.2012, applied for the post of GDS BPM and he was selected and issued the appointment letter on 24.10.2013 (copy of the appointment letter has been annexed as Annexure No. A-4 to the O.A.), which is quoted below:-

"Shri Vimal Kumar, S/o Shri Lal Ram Yadav is hereby engaged as GDS BPM Silhara Kanpur Dehat residing in Vill – Post Amraudha, Police Station Bhognipur, Kanpur Dehat 209112, with effect from the date of taking over the charge. He shall be paid such allowances are admissible from time to time.

Shri Vimal Kumar should clearly understand that this engagement as GDS BPM shall be in the nature of contract liable to terminated by him or by undersigned by notifying the order in writing and that his conduct and services shall also be governed by the Postal Gramin Dak Sewak (Conduct & Engagement) Rules, 2011 as amended from time to time.

If these conditions are acceptable to him he should communicate his acceptance in enclosed performa".

The applicant assumed charge as GDS BPM at Tehsil Silhara, District Kanpur Dehat on 02.12.2013 and started performing his duties to the satisfaction of his senior authority. However, all of sudden vide letter dated 29.06.2016, 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 ready reference, it is reproduced as under:-

"The appointment file of GDS BPM Silhara BO (Rajpur) Kanpur has been reviewed by the competent authority in the office of Post Master General Kanpur and some serious irregularities have been found in the procedure adopted in the said appointment. The competent authority has ordered for cancellation of the said appointment with immediate effect vide his letter No. ST/GDS-BPM/CPT/KP(M)/2014/3/Ch-IV dated 27.06.2016,

In pursuance of the provision under Rule 8(2) of GDS (Conduct & Engagement) rules 2011, the services of Shri Vimal Kumar GDS BPM Silhara BO (Rajpur) Kanpur is hereby terminated with immediate effect.

The due amount of basic Time related continuity allowance plus dearness allowances as admissible are being remitted to Shri Vimal Kumar 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 29.06.2016. 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 V.K. Pandey, 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 cots”.*

13. Accordingly, the present OA is also disposed of in the aforesaid terms. The impugned order dated 29.06.2016 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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