



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(Orders reserved on 25.9.2020).

O.A.No.060-00403 of 2017.

Chandigarh, this the **15.10.2020.**

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J)**

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Preeti w/o Sh. Deepak Kumar, H.No.1540/12, Gawal Mandi,
Ram Tirath Road, Amritsar, Punjab-143 001.

Applicant

(BY ADVOCATE: Mr. Gaurav Sethi)

Versus

1. Union of India through its Secretary, Ministry of Communication and IT, Department of Posts, Government of India, New Delhi.
2. The Assistant Superintendent of Post Office, Rohini, Sector 7, PO Delhi-110085.
3. The Senior Superintendent of Post Offices, Delhi North Division, Delhi-110054.
4. The Senior Superintendent of Post Offices, Amritsar Division, Amritsar.

BY ADVOCATE: Mr. Sanjay Goyal

.. Respondents

ORDER

HON'BLE MRS. AJANTA DAYALAN, MEMBER(A).

1. The present OA has been filed by the applicant Preeti seeking quashing of order dated 20.9.2016 (Annexure A-21) whereby her services have been terminated. She has



also sought direction for her reinstatement along with back wages, arrears and interest.

2. The applicant was employed as Gramin Dak Sewak Stamp Vendor vide order dated 4.4.2013 on contract basis. The applicant was later on declared successful in an examination for the post of MTS (Multi Task Staff) and was posted as such vide order dated 15.11.2014 (Annexure A-2). Her marriage was solemnized on 15.7.2015 with Deepak Kumar at Panchkula. Applicant has stated that as her father and brother were against this marriage, she along with her husband filed a petition bearing No.CRM-M No.23204 of 2015 before the Hon'ble Punjab & Haryana High Court for seeking protection of life and liberty. The said petition was disposed of on 17.7.2015 by directing respondent no.2 therein to issue necessary orders to ensure that no harm is caused to the lives and liberty of the petitioners at the hand of two private respondents named therein. After her marriage, the applicant vide letter dated 23.7.2015 applied for her transfer from New Delhi to Amritsar in view of threats given by her family.
3. According to the applicant, after making further representations, her transfer from New Delhi to Amritsar was approved. However, no transfer order was given to her. She could not continue in Delhi office due to threat from her father as he was posted at Delhi. She became pregnant in September 2015. Thereafter, as she was



unable to carry heavy work, she applied for maternity leave in May 2016 (Annexure A-11). She gave birth to a female child on 12.5.2016 and immediately thereafter she applied for six months maternity leave. Again, a request through the hospital was made on 11.7.2016. The applicant has stated that no rejection was conveyed to her and she was assured of grant of leave.

4. Learned counsel for the applicant argued that the applicant was informed that her transfer from Delhi to Amritsar was approved and she applied for maternity leave twice. Despite that, she was issued order dated 16.6.2016 (Annexure A-15) informing that her services shall stand terminated with effect from the date of expiry of period of one month from the date notice is served. The counsel has also stated that notice is totally non-speaking and does not mention any reasons and is thus violative of natural justice. The applicant has stated that she replied vide letter dated 29.6.2016 (Annexure A-18). On 14.7.2016 (Annexure A-19), the applicant was finally transferred from Delhi to Amritsar.
5. The applicant has alleged that she has been harassed at the hands of her father and brother, particularly father who is working in the same postal department Delhi. The applicant has stated that she sent a letter dated 23.7.2016 (Annexure A-20) requesting therein to transfer her to Amritsar and for cancellation of termination notice.



However, order of termination order dated 20.9.2016 (Annexure A-21) was served upon the applicant by Delhi office. She has stated that this was despite the fact that she was no longer working under Delhi office and any order, if required, was to be issued by Amritsar office.

6. The counsel for the applicant has further argued that the applicant has been terminated under the provisions of Central Civil Services (Temporary Services) Rules, 1965 which is illegal as she was a probationer for two years as per appointment letter dated 15.11.2014 and hence these rules do not apply in her case.
7. She has further alleged that the impugned order is against the provisions of Maternity Benefit Act which clearly provides that no female can be terminated/dismissed during the period of maternity leave. The applicant has relied upon section 12(1) of the Maternity Benefit Act, 1961, which is reproduced below :-

" 12. Dismissal during absence or pregnancy-(1) When a women absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service".

8. The applicant has also stated that as per order dated 26.8.1967, CCS (Temporary Service) Rules, 1965 are not



to be applied on a probationer. Relevant Rule 5 (1) of the Rules reads as under :-

" Rule 5(1) not to be applied to probationers - A question has arisen whether this rule should invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) has been provided. The position is that the C.C.S.(T.S.) Rules do not exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) it has been decided in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5(1) of the C.C.S.(T.S.) Rules, 1965 (G.I. M.H.A., O.M. no. 410/66-Ests.(c)dated 26th August,1967".

9. She has also alleged that no notice was given to her prior to her termination. She has also stated that no reasons have been mentioned in the termination order. Thus, the applicant has been denied her right of defence which is totally violative of principles of natural justice.
10. In view of above, she has prayed for quashing of termination order dated 20.9.2016 and direction to the respondents to reinstate her in service.
- 11.** The respondents in their reply have stated that the applicant was initially engaged as Gramin Dak Sewak Stamp Vendor on 4.4.2013 on purely contract basis and her contract was liable to be terminated by notifying the order in writing. Later, the applicant cleared the limited



departmental competitive examination restricted to GDS held on 27.7.2014 and she was appointed as MTS on 15.11.2014. However, para 3 of the appointment letter clearly stipulates that her services are liable to be terminated at any time without giving any notice and without assigning any reason. In the meantime, a review of engagement of the GDS vacancies filled during the period from 2013 to 2015 was carried out by the competent authority i.e. SSPOs, Delhi North Division, Delhi. In the review, certain irregularities were found in the engagement of post of GDS Stamp vendor, wherein eligible candidate was ignored and the present applicant was engaged. They have also annexed the original application and mark sheet of one Narender Kumar who had obtained 70% marks, but was ignored on the ground of incomplete application form. However, this ground for rejection of his application was found to be inappropriate as the declaration in respect of shifting of residence was filled correctly in his original application form. Moreover, the declaration in respect of income and shifting of residence can be obtained before appointment. Accordingly, the engagement process was found improper and ordered to be cancelled vide letter dated 3.6.2016 (Annexure R-3). Thereafter, the appointing authority i.e. ASPOs, Delhi North Sub Division-III, Rohini, Sector 7 Post Office, Delhi, in exercise of power under Rule 5(1) of CCS(TS) Rules, 1965 issued one month's notice of



termination to the applicant vide letter dated 16.6.2016 (Annexure A-15) and she was finally terminated from service on 20.9.2016 (Annexure A-21). The order was not punitive or stigmatic in nature, it was due to administrative reasons and administrative expediency.

12. The respondents have further stated that the applicant was sanctioned maternity leave from 12.5.2016 to 7.11.2016 and her transfer was approved vide order dated 14.7.2016, but the applicant was not relieved from Delhi Postal office and the applicant continued to work in North division of Delhi Postal circle till the date of her termination. Hence, the action of the respondents in issue of order by Delhi office is correct, lawful and as per rules.

13. The respondents have also stated that the provisions of the Maternity Benefit Act do not restrict an employer from exercising his powers under the CCS (Temporary Service) Rules, 1965. The action of the respondents in terminating the services of the applicant is in consonance with the Central Civil Services (Temporary Service) Rules, 1965, as under these Rules, there is no requirement to issue show cause notice or hold enquiry. The applicant was subject to the terms and conditions laid down in the appointment letter which provide for termination by giving one month's notice in writing. These terms further stipulate that the appointing authority reserves its right to terminate the services of the applicant at any time without



giving any notice and without assigning any reason. Accordingly, they have concluded that the present petition has no merit and deserves to be dismissed.

14. We have heard the learned counsel for the parties and have gone through the pleadings available on record. We have given thoughtful consideration to the matter.

15. We find that the applicant was appointed as MTS on 15.11.2014. The order of her appointment is at Annexure A-2. A reading of the appointment letter shows that the applicant was appointed on temporary basis and was to be on probation for two years subject to her confirmation. Her appointment was subject to the terms and conditions laid down in her appointment letter, one of which is as follows : -

" 3. The services of newly appointees shall be liable to be terminated at any time by giving one month's notice in writing either by appointee or by appointing authority. The appointing authority, however, reserves the right of terminating his services at any time without giving any notice and without assigning any reason thereof."

16. This appointment order also clearly states that the CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965 as amended from time to time will be applicable to her. However, the appointment order does not anywhere state that CCS (Temporary Services) Rules, 1965 apply to her. The termination order has been issued under Rule 5(1) of



the CCS (Temporary Service) Rules. This Rule reads as under:-

“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 service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim 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”.

17. The counsel for the applicant has challenged the applicability of these Rules to the applicant. We have gone through the Temporary Service Rules. We find that Rule 1(3) deals with the applicability of these Rules. As per this, besides the exceptions given in Rule 1(4), these Rules apply to all persons who hold a civil post but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government. We do not find the applicant to be covered under the exceptions given in Rule 1(4). The only exception in Rule 1(4) relating to P & T Department is for “(f) non-departmental telegraphists and telegraph-men employed in the Posts and Telegraph Department;”. Applicant is obviously not covered under this sub-section. There are also no exceptions relating



to probationers anywhere in the Temporary Service Rules. The order of 26.8.1967 of Government of India quoted in para 8 above and relied upon by the applicant does not fully support the applicant's case. This order itself states that CCS (TS) Rules, 1965 do not exclude probationers or persons on probation. Finally, it only concludes that it would be 'desirable' to terminate the services of the probationer/ person on probation in terms of letter of appointment and not under Rule 5(1) of the CCS (TS) Rules. This could be because the Department may have found the terms regarding termination in the offer of appointment stronger and hence advisable to be followed, as compared to Rule 5(1). This does not mean that Rule 5(1) is not applicable or that termination notice cannot be issued under this Rule. Hence, this plea of the applicant is not acceptable.

18. We also notice that the applicant was never relieved from Delhi office. We, in fact, find that she herself on 23.7.2016 (i.e. during her maternity leave) is seeking her transfer. In the pleadings, the applicant has stated that she has been relieved from Delhi office. But during arguments, learned counsel for the applicant alleged that she was not relieved from Delhi office. The applicant has also not produced any supporting evidence to show that she was in fact relieved from Delhi office. We, therefore, do not find that the impugned order which was issued by Delhi office to be outside the jurisdiction.



19. We further observe that the applicant was sanctioned maternity leave from 12.5.2016 to 7.11.2016. The respondents themselves have admitted this fact. As such, her termination order dated 20.9.2016 was issued while she was on sanctioned maternity leave. However, the protection of Maternity Act, as quoted by the applicant, is also not relevant here as provisions of maternity leave are applicable to establishments like factories, mines, plantations etc. and do not apply to government servants who are governed by their own service rules.
20. However, we observe that the applicant has been appointed as MTS after successfully clearing a departmental examination held for the purpose. She was on probation for two years and her period of probation has still not been completed.
21. We further observe that the termination order does not give any reasons for termination. In their reply, the respondents have themselves not alleged that the termination was due to any mis-behaviour or laxity in work on part of the applicant. They have also not stated that termination was due to her absence due to maternity leave. On the other hand, the respondents have stated that the termination is due to administrative reasons/administrative expediency. More specifically, they have stated that it was because of irregularities noticed in her original appointment when eligible candidate was not



appointed and she got the appointment. They have further stated that the irregularities were noticed during review of engagement of GDS vacancies filled during 2013, 2015 when it was noticed that in the instant case, one Narender Kumar who got 70% was ignored on the ground of incomplete application form which was later found to be an inappropriate ground. The respondents have attached certain documents to prove this point. From these documents, we notice that Narender Kumar got 70% in matriculation examination of Board of School Education, Haryana (Annexure R-1 colly). We, however, find that the applicant also obtained 70% marks in CBSE. This fact is not contested by the respondents nor have they specifically mentioned the marks secured by the applicant. There is no allegation by the respondents that there was any mis-representation by the applicant while applying for the departmental examination. No mal-practice by the applicant during the examination is alleged by the respondents. No general allegation of copying or mal-practice in the concerned departmental examination is alleged and there is no cancellation of the whole examination.

22. In view of all the above, we are of the view that natural justice demanded that reasons for her termination be at least given to the applicant prior to her termination and she should have been given an opportunity to present her defence.



23. In view of all the above facts and observations, we partly allow the OA. The impugned order dated 20.9.2016 (Annexure A-21) is quashed. The respondents are directed to reinstate the applicant within a period of three months from the date of receipt of certified copy of this order. The period of absence be regularized as leave of kind due or leave without pay. The respondents are further directed to ensure that principles of natural justice are complied with if they wish to proceed with termination of her services. No costs.

(Ajanta Dayalan)
Member (A)

(Sanjeev Kaushik)
Member(J).

Place: Chandigarh
 Dated: 15.10.2020.

KKS