

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 350/00119/2017

Date of order: 03.09.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Pritam Biswas,
Son of Hitendra Chandra Biswas,
Residing at South Colony near
Kishalaya School,
Ward No. 9,
P.O. - Mal,
District - Jalpaiguri,
Pin - 735221.

... Applicant

VERSUS -

- (i) Union of India
Service through the Secretary,
Department of Post,
Government of India,
Ministry of Communication and IT,
Dak Bhawan,
New Delhi - 110 001.
- (ii) The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan,
New Delhi - 700 012.
- (iii) The Senior Superintendent of Post Offices,
Jalpaiguri Division,
Jalpaiguri,
Pin - 735 101.
- (iv) Sub-Divisional Inspector of Post Offices,
Sub-Division - Malbazar,
Pin - 735 221.

... Respondents

For the Applicant

Mr. K. Chakraborty, Counsel
Mr. P. Sanyal, Counsel

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For the Respondents : Mr. P.N. Sharma, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has come up in the second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief in the instant Original Application:-

"(i) An order directing the respondents to rescind, revoke or cancel the purported show cause notice dated 13.12.2016 (being made Annexure A-6) and the impugned order of termination dated 20.1.2017 (being made Annexure A-8), issued by the respondent No. 4 and further directing them to allow the applicant to continue his service and to pay all consequential benefits arising thereto.

(ii) An order directing the respondents to transmit the entire records relating to the matter before this Hon'ble Tribunal.

(iii) And to pass such other or further order or orders as Your Lordships may deem fit and proper.

(iv) Costs."

2. Heard both Ld. Counsel, examined pleadings, documents on record as well as judicial pronouncements cited by both parties in support of their respective claims. Written notes of arguments have been filed by Ld. Counsel for the applicant.

3. The submissions of the applicant, as made through his Ld. Counsel, is that, in response to a notification dated 28.6.2013, the applicant was selected as a Gramin Dak Sevak and provisionally appointed as a Gramin Dak Sevak Mail Carrier vide orders dated 14.08.2013 and, thereafter, upon acceptance of the terms and conditions therein he had joined his duties on 02.09.2013.

The applicant was continuing in the said post when he was served with a notice of termination on 17.5.2016, which he challenged in O.A. No. 772 of 2016. The Tribunal set aside the order of termination dated 17.5.2016 but left it open to the respondents to proceed to disengage the applicants by adopting the procedure prescribed under the Gramin Dak Sevak (Conduct & Engagement) Rules, 2011. While issuing its orders,

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the Tribunal made it clear that it had not entered into the merits of the case and had only discussed the legal aspects of the matter in holding that no notice or opportunity have been afforded to the applicant prior to termination of his engagement vide letter dated 17.5.2016.

That, thereafter, the respondent authorities issued a show-cause dated 13.12.2016 to the applicant in which the applicant was allowed to submit his representation to the Sr. Superintendent of Post Offices, Jalpaiguri Division, respondent No. 3, within a period of 15 days from the date of receipt of such notice. That, thereafter the applicant preferred a representation dated 3.1.2017 but the respondent authorities issued an order dated 20.1.2017, vide which an order of termination was issued under Rule 8(2) of Gramin Dak Sevak (Conduct & Engagement) Rules, 2011. Accordingly, being aggrieved, the applicant has approached the Tribunal.

The applicant has advanced, inter-alia, the following grounds in support of his claim:-

- (a) That, the applicability of Rule 8 of the Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 is not applicable to the applicant as he has already completed three years of service.
- (b) That, the show cause notice dated 13.12.2016 to the applicant reveals that there were departmental lapses for which the applicant could never have been held responsible.
- (c) That, as no departmental enquiry was initiated in the case of the applicant, the termination order suffers from patent irregularity.

In support, the Ld. Counsel for the applicant would advance the following judicial decisions, as under:-

- (i) **Lalan Kumar v. Union of India & ors. WP (S) No. 874 of 2014;**

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(ii) **Ashish M. Anjankar v. Director, Postal Services & ors.,
2010 (1)(CAT) AISLJ 196.**

4. The respondents have controverted the claim of the applicant in their written statement as well as through a memo filed on 18.2.2019 in response to the directions of the Tribunal. The principal arguments of the respondents are as follows:-

(i) That, in response to a notification dated 28.6.2013, the applicant was selected and a provisional selection/appointment letter was issued on 14.08.2013 and that the applicant joined thereafter. On verification of the recruitment process, however, certain irregularities came to light and thereafter his engagement was terminated on 17.5.2016 under Gramin Dak Sevak (Conduct & Engagement) Rules, 2011. Upon setting aside of the said termination order by the Tribunal in O.A. No. 772 of 2016, the applicant was issued a show cause notice but he failed to respond to the same within a time limit set for this purpose. That, thereafter, the competent respondent authority terminated the engagement of the applicant on 20.1.2017 and that he was accordingly relieved on 25.1.2017 (afternoon).

(ii) That, the applicant's engagement was irregular in nature and the deserving candidate, in terms of merit, was deprived of appointment.

The respondents would advance the ratio in **State of Bihar & ors. v. Chandreshwar Pathak, Civil Appeal No. 7392 of 2014** and that in **Yogesh Mahajan v. Prof. R.C. Deka, Director, All India Institute of Medical Sciences, 2018 (1) Supreme 574**, in support.

5. The primary issue to be decided herein is whether the respondents had followed the procedure as laid down in Gramin Dak Sevak (Conduct

& Engagement) Rules, 2011 in terminating the engagement of the applicant.

6.1. At the outset, we record the provisional engagement/appointment order of the applicant dated 14.8.2013 (Annexure A-3 to the O.A.) as under:

Department of Post, India
O/o the Sub-Divisional Inspector of Post Offices,
Doars Sub-Division, Mal - 735 221.

Memo No:- A1/Rectt/Lataguri SO Dated at Jalpaiguri the 14.08.2013

Pending verification of character and antecedents of the candidate for the post of Gramin Dak Sevak Mail Carrier of Lataguri S.O., Shri Pritam Biswas, S/o-Sri Hitendra Chandra Biswas, South Colony, PO-Mal, District -Jalpaiguri, is hereby provisionally appointed as Gramin Dak Sevak Mail Carrier in the scale of pay (TRCA) Rs-3635-65-5585 + admissible D.A. or as amended & circulated time to time.

2. Sri Pritam Biswas should clearly understand that his employment as Gramin Dak Sevak Mail Carrier shall be in the nature of contract liable to be terminated by him or by the undersigned by notifying the order in writing and that his/her conduct and service shall also be governed by the Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 as amended from time to time.

3. It is also mentioned that after verification of character and antecedents he subsequently found unsuitable for the appointment, then he shall be discharged forthwith.

4. If these conditions are acceptable to him/her, he/she should communicate his acceptance in the enclosed proforma (ACKNOWLEDGEMENT).

Sub Divisional Inspector of Post Offices
Doars Sub-Divn
Mal - 735/221

The relevant provision which requires to be highlighted is as follows:-

"Sri Pritam Biswas should clearly understand that his employment as Gramin Dak Sevak Mail Carrier shall be in the nature of contract liable to be terminated by him or by the undersigned by notifying the order in writing and that his/her conduct and service shall also be governed by the Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 as amended from time to time."

6.2. Upon the setting aside of the termination order in the first stage of litigation, the respondents were given liberty to disengage the applicant by adopting the procedure prescribed under Gramin Dak Sevak (Conduct & Engagement) Rules, 2011, and, accordingly, the respondents issued the applicant a show-cause notice on 13.12.2016 noting a number of irregularities which had occurred in the said engagement process.

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The particular irregularities which would relate to the applicant although admittedly not committed by him are as follows:-

- (i) That, the vacancy notifications were not dispatched through Registered post and no proof of dispatch or delivery of such notifications were kept on record, implying thereby that the transparency in inviting applications from eligible candidates other than those who responded to the process was vitiated and that the knowledge of such vacancy notification was restricted only to few candidates.
- (ii) The details of the applications received were not recorded implying that all applications received may not have been considered for selection.
- (iii) Nowhere was the selection criteria of the candidates brought on record, checked or authenticated by the recruiting authority.
- (iv) There was no evidence as to whether the applications were received through Employment Exchange or by post.
- (v) That one Tania Majumdar had scored 71.50 marks in matriculation against 39.50 marks attained by the applicant yet Smt. Majumdar was deprived of appointment.

The Counsel for the respondents would also refer to **Chandreshwar Pathak (supra)** in which the appeal of the government was allowed on the ground that the respondent's entry into service itself was illegal. The Hon'ble Court held that the petitioner/government did make out a case that there was no reason for interference with the orders of termination of an illegal appointment.

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In *Sk. Sahim v. State of WB, 2006 (6) SLR 820* it was held that where the initial appointment is illegal, the illegality continues and the mere length of such illegality cannot confer any right to appointment.

An appointment presupposes that the relationship between an employer and an employee was validly brought into existence and that the condition precedent for termination is a legal and valid appointment. When the appointment itself is illegal and void, it is non est.

6.3. Ld. Counsel for the applicant would vociferously argue that Rule 8 of said rules was not applicable to the applicant. The Rule states as follows:-

"8. Termination of Engagement"

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;

8.(2) The period of such notice shall be one month:

Provided 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.

NOTE:- Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance plus Dearness Allowance as admissible is being remitted to the Sevak in lieu of notice of one month through money order.

Admittedly, as indicated in the list of dates in the Original Application, the advertisement was issued on 28.6.2013 and the applicant having received his engagement letter on 14.8.2013 reportedly joined on 2.9.2013. Hence, he would have rendered three years' continuous service as on a date subsequent to 1.9.2016. As the applicant, however, was terminated on 17.5.2016, he had been terminated prior to completion of three years' continuous service. Even if

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the applicant who reinstated after the Tribunal issued orders on 2.9.2016 in O.A. 772/2016, he could not have rendered three years' continuous service till his final termination dated 20.01.2017. This being an undisputed factual detail, the applicant has not been able to establish that he had rendered three years' continuous service from the date of her engagement and that Rule 8(1) of 2011 Rules does not apply to him.

6.4. The Tribunal had set aside the earlier order of termination on the ground that no show cause notice was issued to the applicant enabling him to react to the proposed termination. The respondent authorities thereafter issued him a show-cause notice, waited for the response, and, not having received any reply within the specified period of 15 days from receipt of notice, terminated him once again under Rule 8(2) of the 2011 Rules.

Under D.G., P&T, Endorsement No. 10/1/82-Vig.III, dated the 19th July, 1982 it was directed that while terminating the services of an ED Agent (earlier nomenclature of GDS) under Rule 8, the reasons for termination are not to be indicated in the order.

6.5 As the GDS is not a civil servant, the Rules of 2011 have not been framed under Article 309 of the Constitution of India and the GDS (Conduct & Engagement) Rules are basically administrative instructions to regulate the functioning of Postal Service by an outsourcing method by engaging non-civil servants. It was therefore held by Hon'ble Apex Court in ***Union of India and others vs. Bikash Kuanar (2006) SCC (L&S) 1937*** that the rules for engagement of EDA (the previous nomenclature to GDS) is not governed by any statute but by departmental instructions.

It is also a fact that when the applicant had accepted her engagement order dated 14.08.2013 he was bound by paragraph 2 of the

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same, which had laid down that he was contracted into a service which was liable to be terminated under the Rules of 2011.

6.5. This Tribunal, in its earlier round of litigation had discussed the scope of applicability of Rule 4 to the applicant and had observed as follows:-

"..... The power under Rule 4 of the superior authority to invoke the jurisdiction of examining the record is very wide. The only rider for exercising such power before reaching to the conclusion and before passing any order, is that he shall give opportunity of being heard to the affected person or who may be aggrieved by the outcome of the examination of record. Therefore, this rule prescribes that even without resorting to the procedure of Rule 10 the superior authority may examine the case of recruitment and in case he found some illegality or irregularity may set aside the appointment or direct the recruiting authority to terminate the engagement. But that cannot be done without giving an opportunity of being heard."

This Tribunal while adjudicating O.A. No. 772 of 2016 filed by the applicant, had also examined the scope of the procedure prescribed under Rule 10 of the said rules and had observed as follows:-

"17. Admittedly, in these cases the procedure prescribed under Rule 10 has not been adopted. No enquiry was conducted by issuing any notice to the applicant. Rule 9 (v) prescribes the power of removal from engagement which shall not be a disqualification for future employment. The present order of termination of engagement of the applicant may fall within that parameter of Rule 9(v). If the procedure prescribed under Rule 10 has not been adopted, the order of termination of engagement cannot be passed by the authority as a punishment."

18. The respondent's case is that the applicants had not been punished as no punishment has been awarded in terms of Rule 9 by Recruiting Authority. In pursuance of the power conferred upon the superior authority and under his direction the Recruiting Authority acted and proceeded to disengage the applicant. The case of the respondents is also that as the applicants have not completed 3 years continuous service, therefore her engagement can be terminated in view of Rule 8 without assigning any reason. Therefore, there is no illegality in passing the order of disengagement.

19. The scope of Rule 4, 8 and 10 is necessary to be looked into. Rule 8 no doubt gives power to recruiting authority to disengage the GDS in case he has not completed 3 years continuous service from the date of his engagement and in that case he has to give a notice in writing of a stipulated period or in lieu thereof allowances payable to him or for any short fall in the stipulated period under the rule. Power under Rule 8 could be exercised only by recruiting authority by applying his mind to the matter and this disengagement would be simplicitor without imputing any misconduct against the GDS. For example if the recruiting authority finds that there is no need to continue to render services in the area where improvised facility of postal departmental started then on cessation of postal services, the engagement of GDS may be terminated or where the GDS himself volunteers to disengage himself, the recruiting authority after stipulated period permit the GDS to disengage himself. While exercising the power under Rule 8 the recruiting authority is not governed by the dictates of the superior authority on the basis of vigilance report found that the appointment of the applicant was illegal and directed the recruiting

authority to terminate the engagement of the applicant, as is evident from the order dated 09.05.2016 which is passed on the vigilance report by the superior authority. In such a situation Rule 8 cannot be invoked and the case shall certainly fall within the ambit of Rule 4 which prohibits taking any final decision by the superior authority without giving any opportunity of being heard to the aggrieved person including the GDS against whom the order is proposed to have been passed. Admittedly, in this case no such notice or opportunity has been afforded to the applicant. Admittedly, the case does not fall within the ambit of Rule 10 and no enquiry has been conducted."

6.6. The applicant has brought forth the decision arrived at by Bombay Bench of the Tribunal in the matter of **Ashish M. Anjankar (supra)**. The ratio highlighted therein was as follows:-

"The challenge to the wisdom of Selection Committee after a lapse of one or two years of selection, appointment or working of the applicants in the respective posts is uncalled for. It was inappropriate for the Reviewing Authority to doubt the selection process and take a unilateral view regarding the merit of selected and non-selected candidates."

In this case, the termination under Rule 8(2) issued on 20.1.2017 is not an unilateral action as because the respondents gave an opportunity to the applicant to explain his position and then decided on the termination consequent to irregularity of the recruitment process.

The applicant would also rely on the orders in **Lalan Kumar (supra)** in which the Hon'ble High Court of Jharkhand had dismissed the Writ Petition filed by an applicant, who had challenged the order of the respondent authorities in which the private respondents, with reportedly lower marks, was appointed in place of the applicant. Ld. Counsel in the instant Original Application would refer to the observations of the Hon'ble High Court that it is the marks obtained in the compulsory subjects taken in the matriculation examination and not in the additional subject which should have guided any decision on the candidature of the applicant vis-à-vis the private respondent.

In the instant matter, relative marks are not the only reason why the applicant's engagement was cancelled or terminated. Rather, the

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respondents found the entire recruitment process to be vitiated which led the respondent authorities to issue termination letters.

The respondents, on the other hand, would rely on **Yogesh Mahajan (supra)** to highlight the applicant does not have an inherent right or entitlement to have her contract renewed from time to time.

The applicant has not been able to bring before us any provisions apart from Rule 8(2) of 2011 Rules which would be applicable to the applicant. Hence, there appears to be no legal infirmity in the termination order dated 20.1.2017; accordingly, we do not find this a fit case for interference and therefore hold that the Original Application fails to succeed on merit.

7. The O.A. is, accordingly dismissed. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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