

2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOs. 562 OF 2006

Cuttack, this the ~~06th~~ day of ~~July~~, 2008
August,

Jasowant Bhanj Deo Applicants

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
MEMBER (A)

(JUSTICE K. THANKAPPAN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 562 OF 2006
Cuttack, this the 06th day of ~~July~~, 2008

August,

CORAM:

Hon'ble Shri Justice K. Thankappan, Member (J)

Hon'ble Shri C.R. Mohapatra, Member (A)

.....

Jasowant Bhanj Deo, aged about 35 years, S/o. Late Kali Prasanna Bhanj Deo, At/Po-Kothabilla, P.S-Chandua, Dist-Mayurbhanj..... Applicant

By the Advocate(s)

M/s D.P. Dhal,
K. Dash,
S.K. Dash,
S. Mishra

Vs.

1. Union of India represented thorough the Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Orissa Circle, Orissa, BBSR.
3. Superintendent of Post Office, Mayurbhanj Division, Baripada.
4. Inspector of Post Office, Baripada Sub-Division, Baripada.

..... Respondents

By the Advocate(s)..... Mr. P.R.J. Dash

8

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

The question raised in this Original Application is whether once a person appointed in a regular service could be removed from service if on verification of the documents submitted by him regarding the antecedents and character, are found faulty?

2. The short facts which has led to filing of this application are as follows:-

The applicant was appointed as Extra Departmental Branch Post Master (EDBPM) at Kumbhar Mundakata, S.D.N., Mayurbhanj Division on compassionate or rehabilitation ground. While he was working so, after a lapse of about 10 months i.e. on 24.03.03, the services of the applicant has been terminated by the Inspector of Post Office, the 4th Respondent in the Original Application, on the ground that on verification of character and antecedent of the applicant, it was found that the applicant was involved in some criminal cases registered against him by the police under the Indian Penal Code and this involvement in the criminal case had not been revealed by the applicant while he had submitted application or attestation or declaration form at the time of joining service. Aggrieved by the above action of the Respondents, the applicant has approached this Tribunal with the following prayers:-

"1. The order of termination of service passed by the Inspector of Post Office vide his order dt.24.03.2003 may be set-aside/quashed.



2. The applicant may be re-instated in his office with consequential service benefits."

3. We heard Mr. D.P. Dhal, Ld. Counsel appearing for the applicant and Mr. P.R.J. Dash, Ld. Counsel for the Respondents and perused the records produced along with the Original Application and the relevant service rules. The Counsel for the applicant had urged mainly on 03 contentions as under:-

(i) The impugned order has been passed by the authorities, the Respondent without giving any opportunity to the applicant to have his say in the matter and thereby principles of natural justice has been violated.

ii) The order impugned has been passed without following the relevant rules regarding EDA (Conduct and Service) Rules.

iii) Once a person has been employed/entered into service, his service shall be terminated only in accordance with the service Rules and not based on any extraneous considerations.

4. To substantiate the above contentions, the Ld. Counsel for the applicant relied on the judgement of the Hon'ble Apex Court reported in (1) 2005 (1) OLR (SC)- 548 in the case of Secy., Deptt. of Home Secy., A.P. and Others Versus B. Chinnam Naidu, (2) Jdgement of 2003 (1) OLR(SC) - 459 in the case of P.G. Patra Versus Purna Foods and another and also relied on (3) the judgement of the Hon'ble High Court of Orissa reported in 2003 (1)




10

OLR - 457 in the case of Santosh Kumar Mishra Versus Union of India and others.

5. The Ld. Counsel appearing for the Respondents relying on the counter affidavit filed for and on behalf of the Respondents had urged two contentions to support the impugned order. Firstly the Ld. Counsel submitted that as per the provisions of Rule 8(2) of GDS (Conduct and Employment) Rules, 2001 the 4th Respondent is justified in terminating the services of the applicant. Secondly, it is contended that as per clauses 12(a) and (b) of Attestation Form or the declaration which the applicant had filed, would show that he had actually made a false declaration and thereby committed fraud on the authorities by indicating that he had not been involved, arrested, prosecuted, kept under detention, or bound down, fined, convicted by a court of law for any offence, or any case pending against him.

6. Considering the rival contentions raised and the materials placed and also relying on the provisions of law which govern the subject in question, we are to find whether the impugned order passed by the Respondents is justifiable in law or not. Admittedly, the applicant has been appointed on compassionate ground as his father died in harness. For the purpose of appointment on the above ground, the department had supplied certain documents to be filled up by the applicant. Annexure-R/1 is one among such documents, which has the heading "Attestation Form" and this further follows the column "Warning". In the above document,



there are 13 columns to be filled in by the applicant, among which column 12 reads as follows:-

"12. a) Have you ever been arrested, prosecuted, kept under detention, or bound down and convicted by a court of law for any offence, or debarred/disqualified by any Public Service Commission from appearing at Examination Selection or debarred from any resignation/rusticated by any University or any other educational authority/Institution ?

b) is any case pending against you in any court of law, University or any other educational authority, institution at the time of filling up this attestation form."

7. Further as per Annexure-R/6 the applicant had signed a declaration and oath in which it is recorded as follows:-

"I Sri Jasowant Bhanj Deo swear/solemnly affirm that the above declarations is true to the best of my knowledge belief and I understand that in the event of the declarations be in found to be incorrect after my appointment I shall be liable for dismissal from service."

8. In column 12. a) & b) the applicant had mentioned in the negative, by writing the word "No". On the basis of the above filled in Attestation Form and the declaration or oath, the Counsel for the Respondents submitted that the applicant had actually committed fraud on the authorities which was subsequently verified from the report of the Additional District Magistrate, Mayurbhanj as per Annexure-R/2 that he was involved in P.S Case No.47 dt.02.12.2000 of the Chandua Police Station and the said case was, after



12

investigation was chargesheeted in C.S. No.65 dt. 26.12.2000 U/S 341/323/294/506 (ii) I.P.C. (GR No.1139/2000). The further contention of the Counsel for the Respondents is that as the applicant was aware that a case was registered against him and the same was under investigation, the statements contained in Annexure-R/1 dt.22.05.02 are not correct and hence the action taken against the applicant under Rule 8 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 is justifiable and the order of termination should not be interfered with. Hence, the Ld. Counsel for the Respondents had not placed any material to show that the applicant was fully aware of the registration of the criminal case, as alleged in Annexure-R/2 dated 06.01.03. It is also pertinent to note that there is no evidence before the authorities while issuing the impugned termination order or that the applicant was arrested or prosecuted or rather convicted in any case against him. In this context it has to be noted that column 12. a) & b) in Annexure-R/1 only requires to state whether the applicant has been arrested, prosecuted, kept under detection, or bound down fined convicted by a court of law for any offence, or debarred, disqualified by any Public Service Commission from appearing at Examination Selection or debarred from any resignation/rusticated by any University or any other educational authority/Institution. The second column i.e. column 12. b) is any case pending against you in any court of law, University or any other educational authority, institution at the time of filling up this attestation form. As this Tribunal had already found that Annexure-R/1 has been signed and submitted by the applicant on 22.05.02 whereas as per report of the Additional District Magistrate,



13

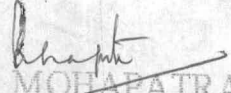
Mayurbhanj, dt. 06.01.03, it is only stated that the applicant was involved in Chandua Police Station Case No.47 dt.02.12.2000. It is not clear from the above certificate or on any other material which would show that the applicant was arrested, prosecuted, detained or even convicted. Even if any case has been registered by the Police against the applicant, that by itself shall not be taken as a ground to conclude that the applicant had been arrested, detained or prosecuted. In this context the Counsel for the applicant, relied on the judgement of the Apex Court reported in (1) 2005 (1) OLR (SC)- 548 (cited supra); but the facts of the case dealt by the Hon'ble Supreme Court, are different from the facts of the case in hand, inasmuch as the false statement made by the applicant in the Attestation Form while joining service. It has to be noted that as per column 12. a) & b) of Annexure-R/1, Attestation form it is imperative on the part of the applicant to furnish the correct information regarding his arrest/prosecution or pendency of any case in court of law or University. As postulated, the facts of the present case tally by the Apex Court are to the effect of conviction & retention for certain offence. The question of pendency of any case or registration of any crime against the applicant therein has not been contemplated in the above case, whereas in the case in hand, it is mandated as per Annexure-R/1 that the applicant has to furnish the correct information regarding his arrest prosecution or pendency of any case in any court of law. As per Annexure-R/2 dt. 06.01.03 it reveals that on 26.12.2000, a case was registered against the applicant and a chargesheet pending before the Court for offences punishable under Section 341/323/294/506 (ii) I.P.C. Fully knowing the facts the applicant suppressed the truth

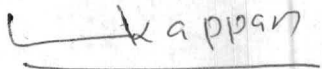


14

while submitting Annexure-A/1 on 22.05.2002. Hence, we are not inclined go by the analogy of ^{reasoning} ~~reasoning~~ adopted by the Apex Court to the case in hand though the Counsel for the applicant also relies on the judgement reported in 2003 (1) OLR - 457 (cited supra) for justifying the stand of the applicant. But in that case, the Hon'ble High Court had considered the facts and circumstances which are different from the case in hand. In the above case, the appointment was on the basis of the sponsorship made by the Sub-Employment Officer to the post of EDBPM. The assessment of character and antecedent of the applicant had to be done which were the conditions of appointment. In the instant case it has to be noted that Annexure-R/1 Attestation Form and Declaration Form Annexure-R/6 have to be filled in by the applicant with due care and caution. If so, we are not in a position to hold that while submitting Annexure-R/1 attestation form the applicant was not aware of the cases pending against him before the court of law. Even if the subsequent acquittal of the applicant in the criminal case is not a good reason to accept that the applicant had not committed any fraud on the authorities, and if so, as per Rule 8 of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 the Respondents are justified in issuing the impugned order by which the services of the applicant has been terminated.

9. In the light of the above order and reasons stated herein, we are of the view that this O.A is devoid of any merit and is liable to be dismissed. Accordingly this O.A stands Dismissed. No order as to costs.


(C. R. MOHAPATRA)
MEMBER (A)


(JUSTICE K. THANKAPPAN)
MEMBER(J)