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CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 17/2005

DATE OF ORDER: 31st Aug. 05

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

Dinesh Kumar Paliwal S/o Sh. Badri Lal ji Paliwal aged 26 years by caste Paliwal (Brahmin), resident of Village Charbhuja, Tehsil Kumbalgarh, Distt. Rajsamand. At present working as GDSBPM, Post Office Ghosundi, District Rajsamand.

...Applicant.

Mr. Sandeep Shah, Counsel for the applicant.



VERSUS

1. Union of India through the Secretary to the Govt. Ministry of Communication (Deptt. of Posts) Sanchar Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer.
3. Chief Post Master General, Jaipur, Raj.
4. Senior Superintendent of Post Office, Udaipur Division, Udaipur.

...Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for the respondents.

ORDER

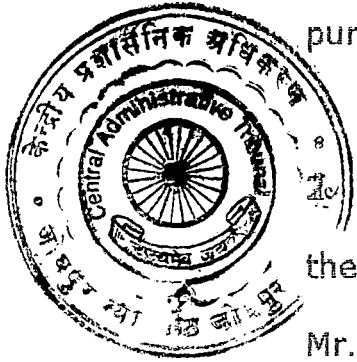
[Per Mr. G.R. Patwardhan, Adm. Member]

The old adage, "Act in haste and repent at leisure" -- comes to ones mind when one traces the history of the case in hand, where the respondent Postal authorities invested the applicant, Dinesh Kumar Paliwal with all the powers and responsibilities of a Gramin. Dak Sevak-Cum-Branch Post Master of village Ghosundi without issuing any appointment order, but after being informed

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by the police authorities that the applicant was booked under Sections 420, 409, 120 and 131 of IPC, issued a letter dated 14.12.2004 (Annexure A-1) discharging him with one months notice. And so this O.A. On 12.01.2005, a Division Bench of the Tribunal heard the learned counsel for the applicant on admission as well as interim relief, admitted the application and restrained the respondents from terminating the services of the applicant in pursuance of this notice.



The O.A. was filed on 10.01.2005 and a reply to it under the signature of Senior Superintendent of Post Office of Udaipur, Mr. P.R. Meena on 30.05.2005. Learned Counsels for both the parties have been heard on the last date. The facts of the case briefly stated, appear to be somewhat like this. The applicant got his name registered in the Employment Exchange at Udaipur who sponsored his name for the vacancy of GDS-BPM, a communication to the applicant by respondent no.4 followed on 23.09.2003 asking him to fill up the application form sent along with this communication by 23.10.2003. The applicant admits that " at present he does not have the copy of the form that accompanied this communication" but says that it only asked for details of his name, father's name, place of residence, post, additional qualifications, details of landed property and character certificate. He was asked to appear in the Udaipur office of the respondent no.4 on the basis of an order. The copy of this order dated 04.02.2004 passed by the respondent no.4 has been marked annexure A-3 and a bare perusal of this order and the details of the form as mentioned in para no.4.2 of O.A. reveals

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that there was no requirement of disclosing whether any criminal case/F.I.R. was pending against the applicant or not. The applicant further says that in pursuance of this order he joined the duties on the post of BPM on 01.03.2004 and charge report on this behalf was issued by the Sub Divisional Inspector (Annexure A-4). Subsequently during a police verification (at the request of the respondent department) they were informed that a police case no.98/03 was filed against the applicant and based on this information, respondent no.4 asked him to provide details of the case pending against him. The applicant says in paragraph 4.8 of O.A. that he submitted the details immediately vide the annexure A-7 (no date is given). However the applicant filed another application on 13.12.2004 vide annexure A-8 informing that charges are yet to be framed against him. Thereafter the impugned letter annexure A-1 has followed.

3. The grounds taken by the applicant to lay challenge to the impugned order are as follows:

- (a) His services were never found defective.
- (b) There was no necessity to terminate the services of the applicant without any enquiry.
- (c) In the application form he was not required to disclose if a criminal case or F.I.R. was pending against him.
- (d) Impugned order has been passed in total disregard of principles of natural justice.

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4. Through their detailed reply the respondents have accepted the factual part of the O.A. and have taken the following legal grounds to oppose the prayer:

- (a) The applicant was engaged purely on temporary basis as the police verification was pending .
- (b) As the police case was pending the character of the applicant was found wanting.
- (c) The services were sought to be terminated only after having given an opportunity to explain his case and when he admitted a criminal case was pending against him, the decision to terminate his service was taken.
- (d) The applicant has not availed the departmental remedy available to him and has approached the Tribunal directly and so the O.A. is premature.



5. The applicant admits that

- (a) The day he was invested with the responsibility of the Branch Post Office on 04.02.2004, he stood charge sheeted in the Court of Judicial Magistrate, Kumbhalgarh.
- (b) He is an accused in F.I.R. no.85/03 of police station, Charbhujia under Sections 406, 420 & 120B of I.P.C.
- (c) He had not informed the authorities who invested him with the charge of the Branch Postmaster that he was so accused and charge sheeted.
- (d) There is no appointment order (Annexure A-3, which

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applicant describes as an order in paragraph 4.3 of the O.A. is not an appointment order).

6. We have to consider now, in this background, the stand of the applicant that the communication as at A-1 is in total disregard of the principles of natural justice as no opportunity of hearing was given to the applicant nor an enquiry as per Rule 8 was held against the applicant.



We may therefore examine the relationship that existed between the applicant and the respondents on the fateful days i.e., the date he was invested with the responsibility of the Branch Post office and the day the alleged notice was issued. It goes without saying that this is not exactly the case of a contract in which the applicant offered his services and the respondents exercised their option to accept the same on the basis of exchange of full and factual communication. But the subsequent actions of the respondents through which they invested the applicant with the responsibilities of one of their offices and continued to utilize his services for nearly ten months does colour this relationship with some sort of a quasi-contract as both the parties have played their part of the contract till this period. The question that arises therefore is if the respondents can now say that they were not fully informed of the antecedents of the applicant so as to disentitle him from getting the job. One important piece of paper which could have helped settle this issue was the form that accompanied the letter at annexure A-3 (which the applicant calls an order but is nothing but an intimation of

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consideration for appointment). The respondents have also failed to provide a copy of the same, as also applicant who says that it is not available with him.

Coming now to the GDS Conduct and Employment Rules, Rule 8 runs as follows:

"(1) The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak;

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

Provided that the employment 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 employment, 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 months through money order."

The applicant has not explained how he is covered by the protection of this rule, especially because appointment order has not been placed on record on his behalf - Rule 8 presumes that the employment is a regular employment. Moreover, the power of termination of service does vest in the appointing authority which has been exercised in this case.



7. Another aspect that needs to be examined is, if before issuing the impugned letter, the applicant was afforded an opportunity to explain his case. We find that in November 2004, the respondents specifically asked the applicant through their letter to apprise them about the pending criminal case and to which the applicant not only replied but also admitted that he has been charge sheeted and that no charges have been framed by the Court. Therefore it cannot be said that the applicant was not given an opportunity to explain his stand. The allegation therefore that Rules of natural justice have not been followed in instant case has no basis.



8. The applicant has laid much emphasis on the communication by respondent no.4 - SSPO, Udaipur dated 04.02.2004 through which he was asked to attend office with all original documents including character certificate from two gazetted officers. The applicant maintains that this communication (he calls it the order of appointment) did not require him to disclose whether any criminal case or F.I.R. was pending against him. He therefore wants us to believe that there was no obligation to disclose the factum of F.I.R. and so the respondents cannot now take a 'U' turn and say that because of this lapse he should not continue as a GDS. This argument is fallacious to say the least. The applicant was required to submit character certificate from two gazetted officers and though he has not specifically said whether it was submitted, we presume that he did so and the respondents proceeded on that basis to put him in charge of the Branch Post Office. In any case the character

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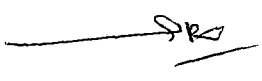
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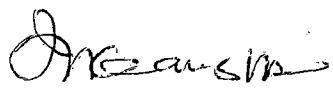
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certificate obtained from two gazetted officers (or procured) prima facie cannot be factual since the applicant was already forwarded for prosecution on 24.09.2003 itself. These two certificates if at all produced, more than establish that either the applicant did not inform the two gazetted officers about the prosecution or that they believed the bonafides of the applicant and issued the certificate. Since the applicant has not produced these two certificates we leave this issue as it is - no sane person much less a gazetted officer could have issued a character certificate to a person who was charged under Sections 406, 420 & 120B of I.P.C. and even if such a character certificate is in existence the same needs to be rejected forthwith. Looked at from this angle the conduct and character of the applicant is definitely reprehensible. In the context of contractual obligations, this behaviour can be termed as suppressio-veræ leading to inadequacies of offer.



9. No other infirmity in the impugned order has been alleged like competency of the issuing authority or violation of any rule. We are therefore of the opinion that the applicant has not been able to establish any cause of action calling for interference by the Tribunal. His conduct as disclosed by the pleadings cannot be called above board. The O.A. lacks merit and is therefore dismissed. No costs.


(G. R. Patwardhan)
Administrative Member


(J. K. Kaushik)
Judicial Member

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Rajinder
219105 From
Sandeep Singh
dtr.

Part ~~III~~ III destroyed
in my presence on 12-1-14
under the supervision of
section officer as per
order dated 18/12/13

Section officer (Record)
18/1/14