

5/1
5/2

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO. 23/2006
JODHPUR : This the 11TH day of December 2006.

CORAM :

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Dinesh Chandra Vyas S/o Shri Purshotam Ji Vyas, aged 25 years,
Gramin Dak Sevak (ED), Branch Post Master, Baman Tukda, District
Raj Samand, Resident of Village Baman Tukda, District Raj Samand.

.....Applicant.

By Mr. Vijay Mehta, Advocate, present for applicant.

VERSUS



1. Union of India through the Secretary
Ministry of Communication (Department of Posts),
Sanchar Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Udaipur.

.....Respondents.

By Mr. Mahendra Godara, Advocate and Mr. Vineet Mathur, Advocate,
for the respondents, present.

ORDER

{PER J. K. KAUSHIK, JUDICIAL MEMBER}

Shri Dinesh Chandra Vyas, has assailed the order dated 17th
January, 2006 at Annex. A/1 and has prayed for quashing the same
with a direction to the respondents to continue the applicant on the
post of Gramin Dak Sevak (ED), Baman Tukda.

D.K.

2. We have heard the learned counsel for both the parties at considerable length and have carefully perused the pleadings as well as records of this case. The brief facts of the case are that the applicant was appointed as Extra Departmental Branch Post Master (EDBPM), Baman Tukda on 28th November 2001 in place of Shri Bhanwarlal Joshi due to his retirement. The charge was handed over to him on dated 28th November 2001. He has been issued with a Notice dated 17th January 2006 at Annex. A/1, informing him that his services shall stand terminated on expiry of one-month notice from the date of receipt of the same. The applicant has been serving the Department honestly and efficiently for more than four years to the entire satisfaction of his superiors. No regular recruitment to the post of GDSBPM, Baman Tukda has been made. No reasons are disclosed as to why the services of the applicant are being abruptly terminated and applicant being replaced by some ad hoc appointment. It appears that the services have been terminated with reference to a Court case. The post in question has not been declared as surplus. Even, the persons appointed provisionally and declared surplus are also required to be kept on wait list and to be given alternate employment as per the Orders in vogue. The O.A. has been filed on various grounds mentioned in Para No. 5 and its sub paras.

3. Per contra, respondents have contested the case and have filed detailed counter reply. It has been averred that applicant was engaged purely on temporary and provisional basis as a stopgap arrangement on the post of GDSBPM Baman Tukda. The terms and conditions were very much known to the applicant and he also declared that he would handover the charge to any new comer GDSBPM whenever it is so ordered by the competent authority. The Applications were invited

from the public as well as employment exchange but selection could not be finalized since a Writ Petition was filed by the applicant, against earlier termination order before the Hon'ble Rajasthan High Court at Jodhpur. The Department has undertaken strict financial and economical measures to minimize establishment costs and all such temporary engagements are sought to be replaced by existing surplus staff already available by combining their duties. Here, it is also relevant to mention that no new person is being appointed or recruited to replace the applicant after his termination. The applicant has not disclosed anything about filing of Writ Petition before the Hon'ble High Court, which was the reason for allowing him to work for such a long period. He was never appointed on regular basis. The applicant is neither a regular appointee nor a surplus GDS. Therefore, there is no question of keeping him in wait list. The legal grounds have been generally denied. The reply is followed by a short rejoinder wherein, certain factual aspect mentioned in the reply, has been refuted. It has been denied that the post could not be filled up due to pendency of Writ Petition. It is also denied that applicant is being replaced by the existing surplus person by combining their duties and no document in support of their contention has been placed on record. It is also averred that there is no explanation forth coming as to why the impugned order was not issued immediately after the decision of the Writ Petition on 19.9.2003. No document relating to selection which was processed has been placed on record.

4. Both the learned counsel representing the contesting parties, have reiterated the facts and grounds mentioned in their respective pleadings as noticed above. The learned counsel for the applicant has submitted that the services of the applicant are sought to be

X10
P2

terminated as per Rule 8 of the Department of Posts, Gramin Dak Sevak (Conduct and Employment), Rules, 2001 (for brevity 'the Rules'). Since the applicant has rendered more than three years continuous service from the date of his appointment, therefore, the very notice issued for terminating the services of the applicant is without jurisdiction and does not have the sanction of law and, therefore, the same cannot be sustained as such. He has also submitted that the plea of adjustment of some surplus staff or combining the duties for some economic measures is an afterthought exercise. He has also submitted that there is no question of any concealment of any material fact since the case before the Hon'ble Rajasthan High Court was against another cause of action and the same has got no relevancy in the instance case. Had the respondents taken any action on the termination order that came to be issued earlier, the mentioning of details of that case would have been relevant. In this way, there is no question of concealment. Per contra, the learned counsel for the respondents has submitted that applicant is not a regularly selected candidate and has no vested right to hold the post, therefore, the notice of termination is well in order. He has further submitted that the matter relating to the filing of the case before the Hon'ble High Court is quite relevant and the applicant ought to have disclosed the same. The O.A. is, therefore, deserves to be dismissed.

5. We have considered the rival submissions put forth on behalf of both the parties. As far as factual aspect of the case is concerned, it is a fact that the applicant was initially engaged as EDBPM, Baman Tukda on 28th November, 2001 and he has been continuing since then and by the time the impugned order came to be passed on 17th January,

d

2006, he has admittedly rendered more than three years continuous service. The termination does not contain any reason whatsoever regarding the termination of the applicant. It is also a fact that the respondents have not placed on records any document relating to the selection process for filling up the said post or regarding any proposal for adjusting the surplus GDS of the neighbouring office as to economy measures. Only the bare averments have been made in the reply but without any supporting document and that too, the applicant in his rejoinder has denied the same.

6. Now, to appreciate the controversy, we find it expedient to extract the contents of Para 8 of the Rules as under: -

"8. Termination of Employment.

(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."

7. A perusal of the aforesaid provision indicates that the same applies to a Sevak who has not already rendered more than three years continuous employment from the date of his appointment. In other words, the same does not apply to a person who has been in continuous employment for more than three years. In the instance case, admittedly, the applicant has been in the continuous employment for more than three years. Therefore, by applying the aforesaid provision, services of the applicant could not have been



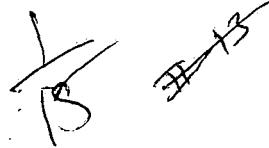
terminated. In that case, the contention of the learned counsel for the applicant is well founded and the impugned order is without jurisdiction and thus cannot be substantiated in the eye of law.

8. We are also supported by a decision of this very Bench of the Tribunal passed on 28th May, 2003 in O.A. No. 229 of 2002 – **Ogar Mal Bhil Vs. Union of India and Others**, cited on behalf of the applicant, wherein the services of the EDA was sought to be terminated under Rule 6 of the P&T EDA (Conduct & Service), Rules, 1964 which is pari materia with the aforesaid Rule 8 of the Rules. This bench of the Tribunal in Para 10.1 of aforesaid decision have held as under:-

“10.1 - It is admitted position that the applicant had rendered more than three years continuous service. Therefore, the services of the applicant could not be terminated even under the provisions of Rule 6. As a matter of fact, by rendering more than three years continuous service, the applicant had attained higher status than that of an employee whose services could be terminated under Rule 6. He could be removed from service by following the procedure under Rule 7. It is relevant to point out that it is not the case for the respondents that the posts on which the applicant was working has been abolished.”

Keeping in view the aforesaid legal position, the impugned order has to be held as without jurisdiction and an arbitrary exercise of power and, therefore, the same cannot be sustained in the eye of law and the O.A. deserves to be allowed on this count alone.

9. The point regarding abolition of post has also been dealt with in Tribunal's order but it is not a case of the respondents that the post which the applicant was holding has been abolished. We are unable to subscribe with the submission of made on behalf of the respondents that there was concealment of material fact by the applicant. Nothing prevented the respondents to give effect to termination order passed earlier and having abandoned the same as well as by passing another



order of termination; they are estopped to take such plea at this juncture. Otherwise also court order shall prejudice none is the well principle of law. We also noticed that the other version of the defence are not supported by any evidence on record, therefore, the action of the respondents cannot be justified on any count. In the result, the O.A. has ample force and the same is hereby allowed with all consequential benefits. The Rule already issued, is merged in this order. Parties shall however, are directed to bear their own costs.




[R.R.BHANDARI]
ADMV. MEMBER



[J.K.KAUSHIK]
JUDL. MEMBER

jrm

6/19/12

Part II and III destroyed
in my presence on 11/4/14
under the supervision of
Section Officer 111 as per
order dated 31/10/14

W.M.
Section Officer (Record)

Rec'd
J.W. P.
11/19/14