

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00124/2015

Reserved on :22.07.2016

Jodhpur, this the 04th day of August, 2016

CORAM

Hon'ble Dr. Murtaza Ali, Judicial Member
Hon'ble Ms Praveen Mahajan, Admn. Member

Nathu Singh son of Shri Hanuman Singh, aged about 29 years, resident of Village and Post Kharesh Via Khun-Khuna, District Nagaur 341318, at present employed on the post of Gramin Dak Sewak at Post Kharesh via Khun-khuna, District Nagaur 341318.

.....Applicant

By Advocate: Mr J.K Mishra/Mr. A.K. Kaushik

Versus

1. Union of India through Secretary to the Govt. Of India, Deptt. Of Posts, Ministry of Communications & IT Dak Bhawan, Sasad Marg, New Delhi 110001.
2. Superintendent of Post Offices, Nagaur Division, Nagaur 341001.
3. Post Master General, Rajasthan Western Region, Jodhpur.

.....Respondents

By Advocate : Mr K.S. Yadav

ORDER

Per Dr Murtaza Ali

The present O.A. has been filed for quashing the impugned orders dated 27.2.2015and 24.3.2015 by which the services of applicant has been terminated by the respondents.

2. The brief facts as stated in the O.A. are that in pursuance of notification published in the last week of June 2013, the applicant applied for the post of Gramin Dak Sevak Branch Post Master at Kharesh BO. He was selected vide order dated 25.7.2013 (Annexure No.4) and an appointment letter was issued vide letter dated 7.8.2013 (Annexure A-5). After under going training from 14.8.2013 to 19.8.2013, he was given the charge of the post of GDS BPM vide charge report dated 20.8.2013. All of a sudden he was served a notice of termination dated 27.2.2015 (Annexure A-1) on 2.3.2015 and another letter dated 24.3.2015 (Annexure A-2) was also issued in respect of cancellation of selection of applicant. It has been alleged that no reason has been given by the respondents while the applicant has worked for about one and half years. It has also been alleged that the termination notice dated 27.2.2015 was said to be given under Rule 6 (a) (b) of P&T Extra Departmental (Conduct and Service) Rules 1964, while the said Rules have already been superseded by the Gramin Dak Sewak (Conduct and Engagement) Rules 2011 which regulate the services of applicant.

3. In the reply filed on behalf of respondents, it has been stated that the applicant was provisionally selected as GDS BPM on the basis of highest marks obtained by him in class 10. It is stated that

Madhyamik Shiksha Parishad, Uttar Pradesh for verification. It was intimated by the Parishad that the enrolment No. 2401525 was not issued to Meerut Janpad hence it is incorrect and the mark sheet submitted by the applicant was found to be fake. The Appointing Authority issued termination notice vide memo dated 27.2.2015 and also cancelled the provisional order dated 25.7.2013 by memo dated 24.3.2015. It has further been clarified that the services of applicant has not been terminated on the ground of unsatisfactory record and, therefore, there was no necessity of conducting detailed enquiry in this regard.

4. In the additional reply, it has been submitted that the respondents have lodged an FIR on 1.4.2015 under section 420/467/468 and 471 of IPC at Police Station Kotwali Nagaur and the investigating officer has also received information from Secondary Education Council Meerut (UP) to the effect that the marksheets submitted by the applicant is not genuine.

5. In the rejoinder, the applicant submitted that the matter is subjudice and his services cannot be terminated on account of mere pendency of criminal case against him. It has further been submitted that his services are governed by the Gramin Dak Sevak (Conduct and Engagement) Rules 2011 and he could not be terminated under

the provisions of P&T Extra Departmental (Conduct and Service) Rules 1964 which are not in existence.

6. We have heard Shri Parvej Moyal, learned counsel for the applicant and Shri Kamal Dave, learned counsel for the respondents and perused the entire record.

7. Learned counsel for the applicant argued that no notice was given to the applicant before passing termination order and the provisions under which the termination order has been issued are not in existence as the said Rules, have been superseded by the Gramin Dak Sevak (Conduct and Engagement) Rules 2011.

8. Learned counsel for the respondents contended that the applicant secured the post of GDS BPM on furnishing a fake mark sheet of class 10 and on receipt of report from Madhyamik Siksha Parishad, Allahabad in this regard, the services of applicant has rightly been terminated. It has also been contended that the termination order was actually issued under Rule 8 of GDS (Conduct and Engagement) Rules 2011 and mere mentioning of wrong Rules does not vitiate the termination order. The termination order is simpliciter and it does not attach any stigma and there was no need

- (i) *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others reported in 1999 Supreme Court Cases (L&S) 596.*
- (ii) *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. And another reported in 1999 Supreme Court Cases (L&S) 439.*
- (iii) *Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another reported in (2002) 1 Supreme Court Cases 520.*
- (iv) *Union of India and others Vs. A.P. Bajpai and others reported in (2003) 2 Supreme Court Cases 433.*

9. The short controversy involved in this OA is whether the impugned termination order shall be treated as termination simpliciter as provided under Rule 8 of GDS (Conduct and Engagement) Rules 2011 while the termination order is actually based upon furnishing of fake mark sheet of class 10 by the applicant.

10. In the case of Dipti Prakash Banerjee (supra), the appellant's services were terminated during probation period as there were serious deficiencies in his work and conduct. It has been clarified

temporary employee are terminated and where a probationer is discharged. While holding the order of termination simpliciter, it has been held that "if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad".

11. In the case of Radhey Shyam Gupta (supra), while distinguishing the order of termination as simpliciter or punitive, Hon'ble Apex Court has held as under:-

*"It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the Officer, as stated by Shah, J. (as he then was) in Ram Narayan Das's case. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary inquiry is held because the purpose of a preliminary inquiry is to find out if there is *prima facie* evidence or material to initiate a regular departmental inquiry. It has*

preliminary inquiry is not to find out misconduct on the part of the Officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental inquiry is started, a charge memo issued, reply obtained, and an enquiry Officer is appointed - if at that point of time, the inquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry Officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur's case and in Benjamin's case. In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujrat Steel Tubes case, the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer, by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive".

12. In the case of Pavanendra Narayan Verma (supra), the

period as his work and conduct was not found to be satisfactory after a summary enquiry. The appellant alleged that the said order was stigmatic and punitive and in support of his allegation, he referred to certain statements made in the respondents' counter affidavit. He also alleged that such an order could not be passed without a full fledged departmental enquiry. While dismissing the appeal, Hon'ble Supreme Court has enunciated three factors theory for determining whether the order of termination is punitive or not. Hon'ble Apex Court has held as under:



“One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld”.

13. In the case of A.P. Bajpai (supra) , the applicant A.P Bajpai was temporary employee in the Intelligence Bureau, Ministry of Home Affairs. His performance was found to be unsatisfactory on account of his negligence and dereliction of duty as he was found sleeping during duty hours, he remained on earned leave for about six months during his tenure of one and half years. He left the station

and absented himself from duty in anticipation of sanction of leave. Under these circumstances, the Competent Authority passed the order of termination simpliciter under Sub Rule (1) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965. The applicant filed O.A No 281 of 1993 before the Central Administrative Tribunal Lucknow Bench which allowed the O.A. and set aside the order of termination of his services with all consequential benefits. Aggrieved by this order of Tribunal, the department filed appeal before Hon'ble Supreme Court. It was contended on behalf of department that the said order of termination was a termination simpliciter and it was not stigmatic while it was contended on behalf of employee that certain adverse comments were made against the applicant in regard to his dereliction of duty and negligence and the order of Tribunal is valid. Hon'ble Apex Court while holding the order of termination was simpliciter without attaching any stigma, set aside the order of Tribunal and also held that "the bases stated in the Department's counter affidavit to assess the unsuitability of employee, could not be relied on to infer that the termination order was stigmatic".

14. In view of above judgments, we are of the considered opinion that the impugned termination notice cannot be termed as punitive, as neither any departmental enquiry was conducted nor it is

furnishing fake marksheet of class X by the applicant could not relied on to infer that the termination order was stigmatic.

15. In the case in hand, the impugned termination order is said to have been issued under Rule 6 (a) and (b) of P&T Extra Departmental Agents (Conduct and Service) Rules, 1964 which reads as under:-

“6. Termination of Services.

- (a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;***
- (b) the period of such notice shall be one month;***

Provided that the service of any such employee may be termination forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his Basic Allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before

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 Basic Allowance plus Dearness Allowance is being remitted to the ED Agent in lieu of notice of one month through money order".

It is not in dispute that the above Rules have been superseded by Gramin Dak Sevak (Conduct and Engagement) Rules 2011 and corresponding Rule 8 of Gramin Dak Sevak (Conduct and Engagement) Rules 2011 is applicable to the case of the applicant which are as follows –

“8. Termination of Engagement

(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;

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

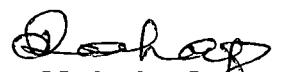
Provided that the service of any such Sevak may be

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".

16. From the perusal of Rule 6 of Old Rules of 1964 and Rule 8 of New Rules of 2011, it is clear that the language and contents of both the Rules are identical which deal with the "Termination of Services." We also notice that same Form – I given below Rule 6 of Old Rules of 1964 has been printed below Rule 8 of New Rules of 2011 and inadvertently the reference of Rule 6 of Old Rules of 1964 has not been substituted in Form-1 printed under Rule 8 of new Rules of 2011. We are of the view that mentioning of wrong Rule does not make the notice of termination invalid.

17. In view of above, OA lacks any merit and accordingly dismissed. Interim order is vacated. There is no order as to costs.



[Praveen Mahajan]
Administrative Member



[Dr Murtaza Ali]
Judicial Member

Manish/-