

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 373 of 2006

Date of order : 18. 7. 2008.

C O R A M

Hon'ble Mr. Shankar Prasad, Member(A)
Hon'ble Ms. Sadhna Srivastava, Member(J)

Radhey Shyam Singh, S/o Late Ram Baran Singh, resident of Village – Bariarpur,
P.O. -Gauspur Bariarpur, P.S. Raja Pakar, Distt.- Vaishali.

...Applicant.

By Advocate : Shri J.K. Karn.

Vs.

1. The Union of India, through the Secretary cum D.G. Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director Postal Services, O/o the Chief Postmaster General, Bihar Circle, Patna.
4. The Superintendent of Post Offices, Vaishali Division, Hajipur.
5. The Asstt. Superintendent of Post Offices, East Sub Division, Hajipur.
6. Shri Chandra Shekhar Paswam, S/o Jageshi Paswan, Vill- Basanti, P.S.- Raja Pakar, Distt. Vaishali.

..... Respondents.

By Advocate : Shri B.K. Prasad.

O R D E R

Shankar Prasad, M[A] :- Aggrieved by the notice dated 3.6.2006 issued by the respondents asking the applicant to show cause as to why his illegal appointment should not be terminated, the applicant has preferred the present OA. He seeks

quashing of this order.

2. (a) The facts lie in a narrow compass. The applicant was appointed as EDMC Bakhari Supain B.O. w.e.f. 14.10.2000 vide order dated 10.01.2001. It appears that ^{As} DPS(Hq) had issued a Show Cause notice dated 27.06.2003 (Annexure A/2) asking the applicant to show cause as to why his appointment, which has been found to be irregular, should not be terminated. The applicant submitted his reply on 12.07.2003 (Annexure A/3)

(b) It appears that the private respondent preferred an OA 124/05 against this appointment. The applicant had not been impleaded. The relevant part of the order reads as under:

“ 3. So far as the prayer for issuing direction to the respondents for appointment of the applicant on the aforesaid post is concerned, we are not inclined to give such direction to the respondents when a vigilance enquiry is pending in connection with this appointment. However, learned counsel for the respondents assured the Court that the vigilance enquiry would be completed expeditiously and the representations of the applicant at Annexure 4 and 5 would also be considered as early as possible.

4. Accordingly, we dispose of this OA in view of such submissions made on behalf of the respondents.

5. A copy of the OA, with annexures, has already been supplied to the learned counsel for the respondents.”

(c) The relevant part of CPMG's order in terms of which the impugned notice has been issued reads as under:-


“ Now the whole case was discussed under the above noted paras and the undersigned came to conclusion that the applicant of the OA was actually the fittest candidate for the ^{As}

post of GDSMC B. Supain among the S.C. Candidates but it was due to non-delivery of the R.L. No. 3107 ibid, he could not have the opportunity to show his candidature. The said R.L. No. should have been sent on his permanent address noted on the application but it was not so done. The post was also de-reserved by the appointing authority at his own motion and he appointed an O.C. candidate irregularly without confirming whether the R.L. No. addressed to Shri Paswan was actually delivered or not. That is why, Shri Shyam Pandey, the then ASP Sub-Division, Hazipur was proceeded under Rule 14 of CCS(CC&A) Rules, 1965. Therefore, the applicant deserves to be appointed to the said post of EDSMC B. Supain though late.

Therefore, I pass an order to the appointing authority terminating the appointment of Shri Radheshyam Singh after observing due formalities under the extant rules/instructions and appointing Shri Chandra Sekhar Paswan in the place. However, keeping in view the services of the appointed candidate namely Shri Radheshyam Singh it is ordered to offer him alternative appointment to any suitable vacant post preferably near the place of his present appointment."

(d) It is thereafter that this impugned notice is issued. It is stated in para 13 of the reply of official respondents that services of the applicant have been terminated after observing due formalities and the applicant has accepted alternative appointment. The private respondents has also stated that pursuant to the letter appointing him he has taken over on 13.07.2006.

(e) No rejoinder is filed. It is, however, accepted by the applicant that he has been offered alternative appointment

The OA is also not amended. Neither the order terminating the appointment nor the one offering alternate appointment is brought on record. 

3. We have heard the learned counsel for the parties and gone through the records.

4. We have noted in para 2(b) above that the applicant has not been impleaded in the earlier round of litigation. We also find that a statement had been made by the official respondents that the vigilance enquiry will be expeditiously concluded and the case of private respondent was considered. It is thereafter that the CPMG has passed the impugned order. A significant feature is that the post was de-reserved and appointment of applicant was made.

5. The question of consideration is as to whether the appointment of the applicant could have been terminated by order simpliciter

6. Rule 4(3) and Rule 8 of the GDS (Conduct & Employment) Rules, 2007 reads as under:-

“ Rule 4(3) - Notwithstanding anything contained in these rules, any authority superior to the Appointing authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears-

(a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or

(b) to have failed to exercise a jurisdiction so vested; or

(C) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may- after giving an opportunity of being heard, make such orders as it thinks fit.”

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 mere perusal would show that an order simpliciter can be passed only within three years and not after that period. Swamy's Compilation of CCS (CCA) Rules (28th Edition, 2003) quotes at noted below Rule 11 DOPT OM 11012/78/91 -Estt(A) dated 19.5.93. This circular amongst other provides,

" A question has now arisen as to whether a Government servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. The Supreme Court in its judgment in the District Collector, Vizianagaram Vs. M. Tripura Sundari Devi [1990(4) SLR 237] went into this issue and observed as under-

" It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the Appointing Authority and the appointee concerned. The aggrieved are all those who had similar or better qualification than the appointee or appointees but who had not applied for the post because they did not

possess the qualification mentioned in the advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications, are relaxable. No Court should be a party to the perpetuation of fraudulent practice."

The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government servant, who was not qualified or eligible in terms of the Recruitment Rules, etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. If he has become permanent Government servant, an enquiry as prescribed in Rule of CCS(CCA) Rules, 1965, may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed."

8. This Tribunal in OA 239/05 [Md. Aslam Ansari Vs. UOI] had held ,

" Private respondent No. 7 also appeared and filed his written statement in which he supported the case of the answering official respondents. It has also been mentioned that when his candidature was found to be most suitable, the Superintendent of Post Offices, Motihari was directed to appoint him, bu the Superintendent of Post Offices, Motihari vide his letter dated 23.05.2003 suggested to the higher authority that private respondent may be appointed to the post of EDBPM at Rupani/Mankarwa. Respondent No. 7 stated in the written statement that he was willing to be so appointed to the post of EDBPM, Mankara. Thereafter, he came to know that the official respondents had terminated the services of the applicant which however was stayed by this Tribunal (by order dated 22.03.2005). The case of this respondent is that while terminating the services of the applicant the respondents had issued a wrong order of termination and they, as well the applicant, had suppressed the aforesaid facts as mentioned herein. This answering respondent also has filed

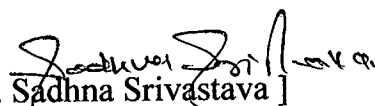
OA No. 264/2005 which is still pending, in which the instant applicant is in the category of respondent. It has been claimed in this WS that a review could be done under Section 4(3) of Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 (to be referred to as 'GDS Rules') which was done in this case, hence the order of termination was not wrong."

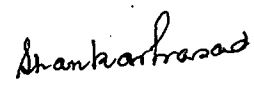
9. We are, accordingly, of the view that a full fledged departmental proceeding is ordinarily required. We, however, note that the post to which the applicant was initially appointed was reserved for a member of SC. The case of private respondent had been overlooked as the R/L asking him to appear for verification had not been received by him. Even a full fledged enquiry would not have altered this factual position which is not contested.

10. We also note that order of CPMG envisages simultaneous appointment to another post. It is true that the services of GDS are non pensionable. They are, however, eligible for exgratia gratuity depending upon the length of service. The length of service has an important role for seniority, which is a crucial factor in appointment to Postman/Gr. 'D' posts.

11. The general effect of termination is that previous service is forfeited. The CPMG should clarify on the points raised in para 10 of the note.

12. The OA is disposed of accordingly. No costs.


[Ms. Sadhna Srivastava]
Member[J]


[Shankar Prasad]
Member[A]

srk.