

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 23rd Day of August, 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (Admin.)
Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

Original Application No.330/564/2017
(U/S 19, Administrative Tribunal Act, 1985)

Nikhil Tiwari age about 25 years S/o Prayag Narain,
R/o Village - Usar Gaon, Post - Usar Gaon, Distt-
Jalaun.

..... Applicant

By Advocate: Shri S.M.A. Naqvi

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Director Postal Services Agra, Region Agra - 284001.
3. The Sr. Superintendent of Post offices Jhansi, Dn. Jhansi 284001.

.... Respondents

By Advocate: Shri S.P. Pathak

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

"a. to issue a writ, order or direction in the nature of certiorari quashing and setting aside the impugned order dated 19.01.2017 passed by the respondent No.3

and also quash the order dated 18.01.2017 passed by the respondent No.2 (Annexure A-1).

b. to re-instate the applicant forth with in service with all consequential benefits.

c. to issue any order/direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d. award the cost of petition to the applicant."

2. The brief facts of the O.A. filed by applicant Nikhil Tiwari are that applicant was appointed as GDS BPM Damna by respondent No. 3 vide order dated 30.01.2014 and he assumed the charge of said post on 26.07.2014 and continuously performed his duties with full satisfaction of his superior authority. However respondent No. 3 terminated the services of applicant vide order dated 19.01.2017 without any reason under Rule 8 (2) of Gramin Dak Sewak (Conduct and Engagement) Rules, 2011 and without issuing any show cause notice. Hence the present O.A. for setting aside the impugned notice dated 18.01.2017 issued by respondent No. 2 terminating the service of respondent No. 2. Counter affidavit was filed by the respondents.

3. To cut the matter short, learned counsel for applicant submitted that cases involving identical facts were decided by this Tribunal in O.A. No. 742/2016 titled Birbal v/s Union of India along with connected matters vide order dated 14.07.2017

wherein the Tribunal issued the following directions:-

"It is declared that the applicants are entitled to reinstatement and further they are entitled to the consequential benefits, i.e. for full TRCA for the period they have been kept out of service. If any of their places have been filled up by someone, the applicants shall be accommodated in any other vacant post and at the earliest opportunity they shall be brought back to their original post. This order shall be complied with within a period of six weeks from today. Necessary orders for reinstatement be issued accordingly. Arrears of TRCA be disbursed within two months from the date of reinstatement".

4. However, vide above order, liberty was given to the respondents to proceed against the applicants falling in category (1) and (2) which are as below:

(1) Cases where the termination is on the ground of certain irregularities in the very selection thereby attracting Rule 493) of the Rules which warrant issue of show cause notice, which admittedly has not been issued to the applicants, consequent to which the impugned orders are to be treated as legally unsustainable.

(2) Cases where on account of misconduct termination has taken place which, in fact, are to be proceeded under Rule 9 and 10 and consequently, the order of termination under

8(2) becomes illegal and legally unsustainable.

5. Learned counsel for applicant, further, submitted this order of the tribunal has been upheld by the Hon'ble Allahabad High Court in Writ -A No. 49864 of 2017 titled Union of India v/s Archna Mishra along with connected writ petitions vide order dated 30.04.2018.

6. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record.

7. There is no dispute that the present O.A. is covered the aforementioned judgments which was upheld by the Hon'ble Allahabad High Court vide order dated 30.04.2018. Accordingly, following the order dated 14.07.2017 passed in the case of Birbal (supra) the impugned orders dated 19.01.2017 and 18.01.2017 passed by the respondent Nos.3 and 2 respectively are hereby quashed and set aside and respondents are directed to reinstate the applicant and the applicant is also entitled to the consequential benefits, i.e. for full TRCA for the period he has been kept out of service. If his place has been filled up by someone, the applicant shall be accommodated in any other vacant post and at the earliest opportunity he shall be brought back to his original post. This order shall be complied with within a period of six weeks from today. Necessary orders for reinstatement be issued accordingly. Arrears of TRCA be disbursed within two months

from the date of reinstatement. However, liberty is given to the respondents to proceed against the applicants falling in category (1) and (2) as quoted in Para-4 of this order.

8. With the aforesaid direction the **O.A. is allowed**. No costs.

[Rakesh Sagar Jain]

Member-J

[Gokul Chandra Pati]

Member-A

Manish/-