



CENTRAL ADMINISTRATIVE TRIBUNAL,

CALCUTTA BENCH, KOLKATA

O.A. 347 of 2012.

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member

Hon'ble Ms Jaya Das Gupta, Administrative Member

Sri Nitish Das Son of Sanjit Das,
Aged about 20 years, Ex GDSBPM
Of Naragoria Branch Post Office
Under Purulia Head Post Office,
Residing at Village & P.O. Naragoria,
P.S. Raghunathpur, District Purulia,
Pin – 723133.

..... Applicant.

Versus

1. Union of India
Service through the Secretary,
Department of Post,
Government of India,
Ministry of Communication and
I.T. Dak Bhawan,
New Delhi – 110 001.
2. The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan, 5th Floor,
Kolkata – 700 012.
3. The Superintendent of Post Offices,
Purulia Division, P.O. Purulia,
PIN – 723101.
4. Inspector of Post Offices, Adra
Adra Sub-Division, P.O. Adra,
District Purulia, Pin 723101.

..... Respondents.

For the Applicants : Mr A.B.Ghosh & Mr G. Guria, Counsel

For the Respondents :Mr U.P.Bhattacharyya, Ms R. Basu, Counsel &
Mr T.K. Biswas (Counsel for Pvt. Res. No.5)

Date of Hearing : 27.09.2016

Date of order: 04.10.2016

ORDER

JUSTICE V.C. GUPTA, JM

By means of this application the applicant sought for the following reliefs:

- "a) To set aside the illegal order dated 14.2.2012 of the respondent No.3 for termination of service of the applicant from the post of Gramin Dak Sevak Branch Post Master of Naragoria B.O in account with Raghunathpur Sub-Post Office under Purulia Head Post Office with immediate effect.
- b) To direct the respondents to reinstate the applicant in the post of Gramin Dak Sevak Branch Post Master in account with Raghunathpur S.O under Purulia Head Post office with effect from 22.2.2012 with immediate effect.
- c) To direct the respondents to give salary to the applicant from the period of 22.2.2012 to the period when he reinstate in the said post with immediate effect;
- d) To direct the respondents particularly respondent No.3 to produce the entire service records of the applicant before this Hon'ble Tribunal for proper adjudication of this case.
- e) To pass such order or further orders or orders and/or direction or directions as this Hon'ble Tribunal may deem fit and proper.



2.. The brief facts for deciding this O.A are that the applicant in pursuance of an open advertisement applied for the post of Gramin Das Sevak Branch Post Master (GDS BPM for short) of Naragoria Branch post Office in account with Raghunath Sub Post office under Purulia Head Post Office. The Superintendent of Post Offices, Purulia Division vide its order dated 31.03.2011 communicated the selection for engagement of the applicant for the post of GDS BPM. A letter of engagement was issued to the applicant on 25.04.2011. The applicant in pursuance thereof joined the post on 26.4.2011. The applicant worked as GDSBPM up to 21.02.2012. All of a sudden without assigning any reason the engagement of the applicant was terminated by an order dated 14.02.2012, which is extracted herein below:

"Department of Posts, India

O/O the Supdt. of Post Offices, Purulia Division

Purulia-723101

Memo No.A/Naragoria B.O/part - Dated Purulia the 14.02.12.

In pursuance of the Postmaster General, South Bengal Region, Kolkata-12 memo No. PMG(SB)/SB(Vig)/Z-40/08/2011/Naragoria B.O dated 08.02.2012, the engagement of Sri Nitish Das to the post of GDSBPM, Naragoria BO in account with Raghunathpur S.O under Purulia H.O who was working with effect from 26.04.2011 vide this office memo of even number dated 25.04.2011 is hereby terminated under Rule 8 of Gramin Das Sevaks (Conduct & Engagement) Rules 2011 previously known as Gramin Das Sevaks (Conduct & Employment) Rules, 2001 with immediate effect.

(Signature)

Shri Nitish Das will get one month's Time Related Continuity Allowance plus Dearness Allowance as admissible from the date of issue of this memo,

To
Sri Nitish Das
GDSBPM, Naragoria B.O.
Via Raghunathpur
Dt. Purulia

*Superintendent of Post Offices
Purulia Division, Purulia-723101."*

On perusal of which it reveals that the same was issued in pursuance of Memo No.PMG(SB)/SB(Vig)/Z-40/08/2011/Naragoria B.O dated 08.02.2012 issued by Postmaster General, South Bengal Region, Kolkata-12. The perusal of letter of termination of engagement reveals that It was not the mental act of the appointing authority. He persuaded to issue letter of disengagement in the above mentioned circumstances under the orders of Post Master General. It is further reveals that no reason has been assigned therein. The order was not merely challenged on that grounds of non observance of legal mandatory provisions but also challenged on the ground of violation of principles of natural justice as no opportunity of being heard has been given to the applicant before termination of his engagement as GDSBPM.

3. The application has been contested by the respondents by filing reply alleging therein that the termination of engagement of the applicant was due to receipt of several serious complaints regarding irregularities in selection and on the basis result of enquiry conducted at regional level.



The serious irregularities were noticed and found. The applicant who alleged to have been selected on the basis of merit has wrongly been appointed ignoring two other better candidates and in pursuance thereof his services were terminated, which clearly speaks the reason and mentioned in reply submitted before this Tribunal. Sub-rule 3 of Rule 4 was invoked by Superior officer than recruiting authority after exercising the power of review and in pursuance thereof the order of termination of the applicant was passed under rule 8(2) which does not require to serving any show cause notice before termination.

4. Admittedly no show cause notice has been issued before termination of the engagement. This controversy is fully covered by a judgment of this Tribunal delivered in bunch of cases with O.A. No. 769/2016 (by both of us as a member of the Division Bench) on 02.09.2016. Hence, we are of the view that this O.A may be decided in terms of conclusions arrived at and the decision rendered in the aforesaid O.As. The relevant findings and conclusions arrived at in paragraphs no. 16, 17, 18, 19, 24 and 25 are extracted herein below:

"16. Rule 3(a) speaks that the engagement of GDS is purely on contractual basis and shall not be required to perform duty beyond the maximum period of 5 hours in a day. Moreover, GDS has to give an undertaking that he has adequate means of livelihood for himself and his family by other source of income besides the allowances paid to him. He shall not be treated as civil servant and cannot equate himself with Central Government employee. It shall be incumbent upon the GDS to reside within the jurisdiction of delivery post office and the post office may be located in the accommodation provided by the GDS BPO. This makes abundantly clear that it is not a service

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rendered by a Government servant as a civil servant but it is a part time engagement of a person to perform the job of the postal services in such area where post offices are not located for providing postal services. Rule 4 gives power to the superior authority to the recruiting authority, to call for record and examine the same with regard to the recruitment of the GDS by the recruiting authority and if he found something wrong he may pass any suitable order. It is not necessary for exercising the powers under rule 4 that any complaint or any application should have been made; he may take suo moto action or otherwise call for the record. The power under Rule 4 of the superior authority to invoke the jurisdiction of examining the record is very wide. The only rider for exercising such power before reaching to the conclusion and before passing any order, is that he shall give opportunity of being heard to the affected person or who may be aggrieved by the outcome of the examination of record. Therefore, this rule prescribes that even without resorting to the procedure of Rule 10 the superior authority may examine the case of recruitment and in case he found some illegality or irregularity may set aside the appointment or direct the recruiting authority to terminate the engagement. But that cannot be done without giving an opportunity of being heard.

17. Admittedly, in these cases the procedure prescribed under Rule 10 has not been adopted. No enquiry was conducted by issuing any notice to the applicant. Rule 9 (v) prescribes the power of removal from engagement which shall not be a disqualification for future employment. The present order of termination of engagement of the applicant may fall within that parameter of Rule 9(v) if the procedure prescribed under Rule 10 has not been adopted. The order of termination of engagement cannot be passed by the authority as a punishment.

18. The respondent's case is that the applicants had not been punished as no punishment has been awarded in terms of Rule 9 by Recruiting Authority. In pursuance of the power conferred upon the superior authority and under his direction the Recruiting Authority acted and proceeded to disengage the applicant. The case of the respondents is also that as the applicants have not completed 3 years continuous service, therefore her engagement can be terminated in view of Rule 8 without assigning any reason. Therefore, there is no illegality in passing the order of disengagement.

19. The scope of Rule 4, 8 and 10 is necessary to be looked into. Rule 8 no doubt gives power to recruiting authority to disengage the GDS in case he has not completed 3 years continuous service from

(Signature)

the date of his engagement and in that case he has to give a notice in writing of a stipulated period or in lieu thereof allowances payable to him or for any short fall in the stipulated period under the rule. Power under Rule 8 could be exercised only by recruiting authority by applying his mind to the matter and this disengagement would be simplicitor without imputing any misconduct against the GDS. For example if the recruiting authority finds that there is no need to continue to render services in the area where improvised facility of postal departmental started then on cessation of postal services, the engagement of GDS may be terminated or where the GDS himself volunteers to disengage himself, the recruiting authority after stipulated period permit the GDS to disengage himself. While exercising the power under Rule 8 the recruiting authority is not governed by the dictates of the superior authority like in the present case. In this case the superior authority on the basis of vigilance report found that the appointment of the applicant was illegal and directed the recruiting authority to terminate the engagement of the applicant, as is evident from the order dated 09.05.2016 which is passed on the vigilance report by the superior authority. In such a situation Rule 8 cannot be invoked and the case shall certainly fall within the ambit of Rule 4 which prohibits taking any final decision by the superior authority without giving any opportunity of being heard to the aggrieved person including the GDS against whom the order is proposed to have been passed. Admittedly, in this case no such notice or opportunity has been afforded to the applicant. Admittedly, the case does not fall within the ambit of Rule 10 and no enquiry has been conducted. Therefore, the termination of engagement by letter dated 14.02.2012 would not be sustainable and is liable to be set aside.

Conclusion

24. In view of the above mentioned facts and circumstances we left with no option to set-a-side the order of termination of engagement dated 14.02.2012. However it will be open to the respondents that if they want to proceed to disengage the applicants they could do so by adopting the procedure prescribed under the aforesaid Rules of 2011.

25. We also make it clear while delivering the judgment we simply discussed the legal aspect of the matter and have not make any comment on the merit of the case. The Respondent Authorities would be free to take any decision without being influenced by this order so far as the merit of this case is concerned."



The present O.A No.347 of 2012 is accordingly allowed in terms of the aforesaid judgment and impugned order dated 14.02.2012 is set aside but with no costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member

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