

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00668/2014

**Reserved on- 17.11.2017.
Date of pronouncement 05.12.2017**

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri J.V. Bhairavia, Member [J]

1. Shambhu Nath Jha S/o Sri Radha Kant Jha, resident of village & P.O.- Bambaiya Harlal, P.S.- Dalsingsarai, District-Samastipur.

.....Applicant

By Advocate : Shri J.K.Karn

Versus

1. The Union of India represented through the Secretary cum D.G. Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, Samastipur Division, Samastipur.
5. The Inspector Posts, Dalsingsarai Sub Division, Dalsingsarai [Samastipur].

.....Respondents

By Advocate: Shri H.P.Singh

O R D E R

Jayesh V. Bhairavia, M [J]: The applicant in this O.A has challenged the order dated 03.09.2014 (Annexure A/2 refers) by which he has been terminated from the post of Gramin Dak Sevak, BPM by the respondent no. 5 .

2. The brief facts of the case as submitted by the applicant is as under :-

[i] The applicant was appointed as substitute on the post of GDSBPM at Bambaiya Harlal Branch Post Office in the year 1998. Since then he was continuing in the department.

[ii] In the year 2001, the applicant's service was terminated from the post of GDSBPM; the said decision was challenged by the applicant before this Tribunal by way of OA No. 366/2001. The said order of termination was kept in abeyance by way of interim relief and finally vide common order dated 8th December 2003, the O.A of applicant was allowed by this Tribunal. (Annexure A/1 refers). Thereafter, the applicant was continuing in his post as substitute.

[iii] After completion of 16 years of continuous service as substitute, the applicant came to be terminated by the Superintendent of Post Offices (respondent no.4) vide his order dated 20.08.2014 without any show cause notice and the said order has been communicated to the applicant by Inspector of Posts vide memo dated 03.09.2014. (Annexure A/2 refers). That the applicant had been served with only copy of order dated 03.09.2014 and i.e impugned herein.

[iv] It is contended by the applicant that impugned action on the part of respondents is against the principle of natural justice as he was never served with any show cause notice for purported action. It is also contended that in previous O.A, an identical action on the part of respondents was under challenge and this Tribunal deprecated the said action by quashing and setting aside the respondents decision. In the present case, the same illegality has again been committed by the respondents. The applicant has rendered service on a civil post and he has been deprived of his legitimate right to be in service.

[v] The learned counsel for the applicant has relied upon the judgement passed by the Hon'ble Apex Court which is reported in 1996 SCC (L&S) 320 in the case of Union of India Vs Vijay Kumar Parida, in the said judgement the Hon'ble Apex Court has held that "*.....it is settled law that if any material adverse to the respondents formed a foundation for termination, principle of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply order may be passed giving reasons in support thereof.*" The applicant further contends that he was never served with any notice, therefore, the action of the respondents is arbitrary and against the principle of natural justice as well as in violation of law laid down by the Hon'ble Apex Court as well as order passed by this Tribunal in various O.A in identical cases. Therefore, the reliefs sought for in this O.A.

[vi] It is further submitted by the applicant that during the pendency of the present OA the respondents have issued public notice for filling

up the post from open market. A copy of the said advertisement dated 23.01.2015 (Annexure A/3 refers) is against the provisions of rules and it amounts to snatching away the right of the applicant.

3. The respondents filed their written statement and contravened the submissions of the applicant. It is submitted by the learned counsel for respondents that the brother of the applicant namely Shri Sheelwant Kumar Jha who was working as GDSBPM, Bombaia Harlal BO in account with Dalsingsarai MDG under Samastipur HO was deputed to APS. The said Sheelwant Kumar Jha was sent to Army Postal Service on deputation and he joined Army Postal Service, and on his request, the applicant was engaged as substitute in his post with his usual risk and responsibility and thereafter applicant was working as substitute in the postal department. It is further submitted as below:-

[i] It is submitted that as per instruction issued by the department in the light of judgement passed by the various Hon'ble High Courts that in case of long term deputation of GDS to the APS, necessary action is required to be taken to fill up the post on regular basis in accordance with recruitment rules and accordingly the respondents have initiated the recruitment process. The applicant is not a regularly appointed GDS; he was working as substitute of Sheelwant Kumar Jha, who had been deputed to APS. It is also required to note that now the said Sheelwant Kumar Jha who is on deputation have also passed departmental examination to be Group D employee, and therefore the said post has become vacant. Therefore, no substitute can be allowed to continue, hence the order of termination of service of the applicant is in consonance with various orders passed by the Hon'ble High Court and instructions issued by the department.

[iii] It is further contended that on 23.01.2015 regular appointment vacancy had been sponsored (Annexure A/3 refers) and in the identical case, the Hon'ble High Court of Patna in CWJC No. 16408 of 2009 confirmed the order passed by this Tribunal and further observed "*that the post in question are public post, they must be filled up in*

regular manner. As a substitute for their brothers and relations, the petitioners can apply for the post in question, their candidature shall be considered in accordance with law" therefore, it is submitted that the applicant cannot claim any right to be continued on the post as a substitute. The respondents are under obligation to fill the post by way of regular recruitment process in accordance with the provisions of the Rules. Therefore the action taken against the applicant is just and proper.

[iv] It is further submitted that the applicant was engaged as substitute on the usual risk and responsibility of Shri Sheelwant Kumar Jha. The applicant has no legal right to claim on the basis of having worked continuously in view of the judgement passed by the Hon'ble Apex Court in the case of Devika Guha Vs Union of India as well as Hon'ble High Court of Patna (supra).

[v] It is further submitted that in the light of judgement of Hon'ble Apex Court, the applicant was not holder of civil post and he was simply engaged as a substitute. Hence; no notice needs to be served or to be issued to the applicant for terminating his service. He was never appointed as a regular employee.

[v] It is further submitted that as per the existing rules the applicant is not entitled to be continued as a substitute and the post is required to be filled up on regular basis in accordance with the rules. Therefore, the applicant has no lien or right to claim to be regularised.

[vi] The order passed by the Superintendent of Post is just and proper. On the basis of said order the Inspector, Posts Dalsingsarai Sub Division, Samastipur issued memo dated 03.09.2014 and by which it was communicated to the applicant about his termination of service. The said order is issued with the approval of competent authority. Therefore, it is not correct on the part of applicant to state that the impugned order is passed without approval of competent authority.

[vii] It is further submitted that the applicant is not entitled for any protection under Article 311 of Constitution of India and the judgement relied upon by the applicant are not applicable in view of the provisions of Rules 2011 as well as facts and circumstances of this case.

4. Heard the parties and perused the records of the present case. It emerged from the matrix of the case that applicant was continued in the post of GDS as a substitute. The applicant was never appointed on regular vacancy. The applicant was only substitute to his brother namely Sheelwant Kumar Jha, GDS who was deputed to APS. Said Sheelwant Kumar Jha passed departmental examination and the post became vacant. The said vacant post was required to be filled up through a regular appointment in accordance with provision of rules and by giving opportunity to all the eligible candidates. Therefore, in the postal department, a substitute can be permitted to be continued till the regular incumbent of the post comes back. In our view, the stand of the respondent is in consonance with the directions issued by Hon'ble High Court of Patna in CWJC 16408 of 2009 and CWJC 16416 of 2009. So, the order dated 03.09.2014 issued by respondents by which the service of the applicant has been terminated cannot be said to be in violation of Article 311 of Constitution of India as well as provisions of the Department of Post Gramin Dak Sevaks (Conduct and Engagement) Rules 2011.

"4.1 We are also of the opinion that the respondents had passed the order without recording any finding of misconduct against the applicant and the order is in the nature of termination simplicitor. The action taken against the applicant is in accordance with the existing rules and also in pursuance of the directions issued by the Hon'ble High Court Patna. Therefore, the submissions of the learned counsel with regard to applicability of Article 311 (2) of Constitution of India is irrelevant and need not be dwelt upon."

5. It is apt to note here that it is unfortunate that the respondents had utilised the services of the applicant for a period of 16 years during which no step was taken to fill up the post on regular basis and after a long association with

the department, the applicant's engagement as substitute was terminated. It is shocking the judicial conscience. Now, it is necessary for the Postal department to frame a clear-cut guidelines with regard to engagement of substitute and their tenure for such status. However, the doctrine of acquiescence cannot be equated to the doctrine of adverse possession and in the case of service under Central Government, the constitution and various judgement of Hon'ble Supreme Court do not allow any deviation. It is clear from the orders of the Hon'ble Supreme Court in the case of Uma Devi and the numerous judgment cited therein that no rights by way of doctrine of acquiescence accrue to a person whose entry is itself irregular and not with due process of law, rules and regulation.

6. In view of the above discussion, we find no merit in the O.A. The same is accordingly dismissed. There will be no order as to costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/

