

Reserved

Central Administrative Tribunal, Allahabad Bench
Allahabad

Original Application No.330/01373/2018

Pronounced on 29.1.2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

Radha Krishan aged about 25 years son of Sri Shyam Narayan r/o
Village Raraunka Post Khanpur, District- Kanpur Dehar.

Applicant

By Advocate: Sri Avnish Tripathi

Versus

1. Union of India through Secretary, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi-110001.
3. Chief Post Master General, U.P. Circle, Hazratganj, Lucknow.
4. Post Master General, Kanpur Region, Kanpur.
5. Director Postal Services, Kanpur Region, Kanpur.
6. Superintendent of Post Offices, Kanpur Division, Kanpur

Respondents

By Advocate: Sri L.P. Tiwari

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

Applicant, Radha Krishan has filed this Original Application (O.A.) under Section 19 of the Administrative Tribunals Act, 1985 for following reliefs:-

- i) To issue an order, rule or direction for quashing and setting aside the impugned order dated 4.12.2018 by which the respondent No. 5 has proposed to terminate the services of the applicant for which the respondent No. 5 has no power (Annexure A-1 in compilation No.1).
- ii) To issue an order rule or direction directing the respondents to allow the applicant to continue to work

on the said post and pay the monthly salary as and when due and did not terminate his services against the rules.

- iii) To issue an order rule or direction, which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case to which the applicant may be found entitled under law.
- iv) To award the cost of the original application may also be awarded in favour of he applicant.

2. The applicant has further requested for stay of operation of the impugned notice dated 4.12.2018 passed by respondent No.5 and also a direction to respondent No. 4 to allow the applicant to continue to work on the post of Gramin Dak Sevak, Branch Post Master (GDS BPM), Mahua Mahoi B.O. (Manglapur) Kanpur Dehat.

3. This matter was initially placed before another bench of this Tribunal consisting of Hon'ble Ms. Ajanta Dayalan, Member (J) and Hon'ble Mr. Rakesh Sagar Jain, Member (A) on 19.12.2018. One member of that bench thought as merely a show cause notice has been given and no final order passed, therefore, applicant could submit his reply before competent authority. In the opinion of that member, the O.A. was pre-mature. However, at that stage, the bench released the matter probably on the request of counsel for applicant Sri A. Tripathi.

4. Record reveals that this order was only signed by Hon'ble Ms. Ajanta Dayalan, Member (J) and not by Hon'ble Mr. Rakesh Sagar Jain, Member (A). However, subsequently, on the same date, Judicial Member passed the following orders:-

"During the course of argument, learned counsel for the applicant submitted that the Bench may kindly release this case. Without going into the merit and demerit of the case,

the request of learned counsel for the applicant is accepted and case is released. It may be listed before any available bench."

5. Upshot of all the above discussion is that the matter was released and placed before our bench in pursuance of separate orders passed by both the members.

6. Heard Sri Avnish Tripathi, Advocate for applicant and Sri L.P. Tiwari, Advocate for respondents.

7. For disposal of controversy in question, it would be appropriate to enumerate, briefly the facts of this O.A.

8. The applicant was appointed as Gramin Dak Sewak Branch Post Master (GDS BPM) Mahua Mahoi B.O. (Manglapur) Kanpur Dehat. After completing all formalities as required under GDS (Conduct and Engagement) Rules 2011 (in short- GDS Rules), applicant was allowed to join the said post on 13.9.2013. Suddenly, respondent No. 4, Post Master General, Kanpur Region, Kanpur reviewed and cancelled the appointment of applicant without any show cause notice or opportunity of explaining the circumstances of appointment. The applicant contends that his appointment was cancelled on some fictitious complaint without making any inquiry.

9. Applicant then filed Original Application No. 735/2016 (Radha Krishan Vs. Union of India and others). Tribunal combined almost 100 OA's and heard the matter at length and vide judgment and order dated 14.7.2017 quashed and set aside the various termination orders and directed the respondents to reinstate the applicants on the post of GDS BPM, Mahua Mahoi B.O. (Manglapur) Kanpur Dehat and also directed respondents to make payment of full Time Related Continuity Allowance (T.R.C.A.).

10. Respondents filed a Writ Petition No. 9524 of 2018 before the Hon'ble High Court, Allahabad Bench against the order dated 14.7.2017 passed by this Tribunal. The Hon'ble High Court vide order dated 30.4.2018 has dismissed the writ petition filed by the respondents thereby confirming the judgment and order dated 14.7.2017 of CAT, Allahabad Bench. Respondents, thereafter, allowed the applicant to join the post on 8.10.2018.

11. Applicant claims that he was appointed on the post of GDSBPM on 13.9.2013 and thereafter, his services were terminated on 6.5.2016 and in pursuance of order of CAT, Allahabad Bench as well as order of Hon'ble High Court, Allahabad Bench, he was allowed to join on 8.10.2018 without any break in service. Therefore, applicant has completed 5 years 2 months and 26 days of service at the time of filing the present O.A.

12. Now, suddenly, respondent No. 5 has issued show cause notice dated 4.12.2018 by declaring the appointment of applicant as irregular and called for reply why his services be not terminated. The applicant was directed to submit reply to the said show cause notice within a period of one month. Learned counsel for applicant has claimed that Rule 8 of GDS Rules contemplates that ***"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."***

13. His argument is that applicant has completed more than 3 years of service pursuant to earlier orders of this Tribunal as well as Allahabad High Court reinstating applicant's engagement with full T.R.C.A. Submission is that he was in continuous service as

respondents were directed to pay him full T.R.C.A. Once he is deemed to be in continuous service for more than 3 years, then his services cannot be terminated under Rule 8 of GDS Rules.

14. Per contra, the learned counsel for respondents has claimed that the department has been authorized by the same order of CAT passed in O.A. No. 735/2016 for taking action against the applicant. He has further claimed that this part of the order was also reiterated by the Hon'ble High Court in Writ Petition No. 9524 of 2018. He has also claimed that this O.A. is pre-mature for the simple reason that merely a show cause notice has been issued. It is incumbent upon the applicant to satisfy the respondents by giving cogent answer to this show cause notice.

15. We have carefully perused all material available on record.

16. The record reveals that earlier O.A. No. 735/2016 filed by the applicant was decided by the Tribunal by a combined judgment passed in 100 Original Applications. The O.A. of applicant, Radha Krishan finds place at Sl. No. 41 of this judgment. It is true that the Tribunal had set aside the termination order in most of the cases but bare perusal of this judgment would reveal that termination order of applicant was set aside on stated violation of rules in said termination order. However, the respondents were given liberty to proceed against the applicant falling under category 1 and 2. It is pertinent to point out that Tribunal has divided all such cases in three categories. These categories are enumerated as below:-

"a) Where as a result of review conducted at the behest of the superior authority, termination took place in which even show cause notice becomes a pre-requisite.

b) Where termination is as a result of certain misconduct on the part of the individual (touching his conduct, including

production of false or forged documents etc.) procedure for imposing penalty has to be followed as it becomes a case of alleged misconduct. O.M. dated 19th April, 1979 is specific in this regard.

c) Where termination is resorted to within three years on account of unsatisfactory service or for administrative reasons, it is only in such a contingency that Rule 8(2) of the Rules is pressed into service."

17. According to respondents, the case of applicant falls within category in which permission was given by the Tribunal to proceed against the applicant in accordance with law.

18. Division Bench of Hon'ble High Court had also authorized the petitioner (respondents in this O.A.) to pass fresh orders complying with the requirement of rules. Therefore, it cannot be said that respondents are acting without authority by issuing show cause notice to the applicant.

19. It is pertinent to point out that a large scale irregularities were found in the appointment of GDS. Criminal cases were registered. Services of Central Bureau of Investigation (CBI) were taken. Some people were even arrested. In pursuance of large scale complaints and police action regarding appointment of GDS, certain actions were taken by terminating the services of tainted engagements. CAT, Allahabad Bench and Hon'ble High Court, Allahabad bench found that certain rules were not followed before terminating the service of applicant. Therefore, they set aside the termination order but simultaneously authorized the department to take appropriate action against the applicant in accordance with rules.

20. In pursuance of these orders, now the department has issued show cause notice to the applicant. The services of the

applicant has not been terminated. He has been given opportunity to explain the circumstances. Instead of explaining the circumstances to the respondents, applicant has rushed to this Tribunal again.

21. Learned counsel for applicant has relied upon on the judgment of Hon'ble Chhattisgarh High Court in **Writ Petition No. 5780 of 2016 (Smt. Shitala Diwan Vs. State of Chhattisgarh decided on 24.1.2017)**, wherein the court has held that even show cause notice can be set aside by the Courts. As far as powers of the writ court are concerned, we have no dispute with this observation but it is well settled that ordinarily the adjudicatory authorities are not required to exercise its discretionary jurisdiction in entertaining writ petitions/OAs, quashing notice to show cause unless it is issued without jurisdiction. The aforesaid judgment itself talks of this legal position. The relevant portion of this judgment is reproduced below:-

17. It is well settled law that the writ Court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless it is without jurisdiction and without authority of law but it is equally well settled when the notice is issued with pre-meditation, the writ petition would be maintainable against show cause notice.

18. In the matter of M/s. Siemens Ltd. Vs. State of Maharashtra and others⁴, Their Lordships of the Supreme Court have held that the writ petition against show cause notice would be maintainable when notice is issued with premeditation and observed as under:-

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory

authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

10. The said principle has been followed by this Court in V.C. Banaras Hindu University and Ors. v. Shrikant (2006) 6 SCALE 66, stating: (SCC p.60, paras 48-49)."

22. The aforesaid judgment indicates that this Tribunal or writ court may only step in whenever show cause notice is issued without jurisdiction and without authority of law or notice is issued with pre-meditation. In this case, it cannot be said that respondents have issued notice without jurisdiction and without authority of law as GDS Rules as well as judgment of CAT passed in O.A. no. 735/2016 (Radha Krishan Vs. Union of India and others) as well as judgment of Allahabad High Court have authorized the respondents to take action against the applicant in accordance with law. In compliance of those orders or in exercise of authority given by these adjudicatory bodies, the present notice has been issued to the applicant.

23. Learned counsel for applicant has submitted that Rule 8 of GDS Rules does not authorize termination of service if Sevak has rendered more than 3 years of continuous service.

24. This argument can be taken up by the applicant by submitting his explanation to the show cause notice. We do not want to discuss the merit of the case as the matter is still pending before the respondents for taking appropriate decision. Suffice is to say that Rule 4(3) of GDS Rules give wide powers to the respondents to take appropriate action. Merely mentioning of Rule 8 in the show cause notice does not preclude concerned authority to take appropriate action under appropriate rules.

25. We have carefully perused the notice. We are convinced that it does not reflect any pre-meditation on the part of the respondents. Therefore, the applicant cannot be given benefit of judgment of Hon'ble Chhattisgarh High Court in **Writ Petition No. 5780 of 2016 (Smt. Shitala Diwan Vs. State of Chhattisgarh)**.

26. We believe that the present O.A. at this stage is pre-mature. The applicant may explain the circumstances by submitting explanation to the show cause notice before concerned authority.

27. O.A. is accordingly dismissed as being pre-mature with liberty to file fresh O.A. in case any adverse order is passed against him in pursuance of show cause notice. No order as to costs.

(MOHD JAMSHED)
MEMBER (A)

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-