

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00170/15

Reserved on: 23.01.2019
Pronounced on: 29.01.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Vijay Kumar Tiwari, S/o Sri Shambhu Nath Tiwari, At & PO- Khanpur, Via- Ekma,
District- Saran.

..... Applicant.

- By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary Cum DG, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Director of Postal Services, Northern Region, Muzaffarpur.
5. The Superintendent of Post Offices, Siwan Division, Siwan.
6. The Inspector Posts, Central Sub Division, Siwan.

..... Respondents.

- By Advocate(s): - Mr. Ravindra Rai.

O R D E R

Per Dinesh Sharma, A.M.:- The case of the applicant is that he was engaged on the post of GDSMD/MC at Narhan Branch Post Office in account with Raghunathpur Sub Post Office under Siwan Head Office vide Memo no. A1-Narhan/2012 dated 11.03.2014. He joined this post and is not aware of any complaint having been made against him for his work and conduct. However, suddenly on 27.03.2015 he has been served a memo dated 25.02.2015 (Anexure A/2) by which his services have been terminated. Such termination without issuing any show cause notice applying Rule-8 of

GDS (Conduct and Engagement) Rules, 2011 which is apparently issued on account of an order passed by higher authority is violative of Rule 4(3) of GDS (Conduct and Engagement) Rules, 2011 and has been found to be so by this Tribunal in the past.

2. The respondents have denied the claim of the applicant. They have alleged that a complaint has been received regarding double date of birth of the applicant. On enquiry of this complaint it was found that in the Bihar School Examination Board, Patna, his date of birth was 03.02.1984 while on the basis of Bihar Sanskrit Shiksha Board his date of birth was 02.08.1993. Since the applicant had suppressed the fact of his actual date of birth and misled the Department his engagement was cancelled. Following this, the Inspector of Posts (IP) terminated the services of the applicant by Memo dated 25.02.2015 and the next suitable candidate Shri Binod Kumar Singh was engaged on this post. This termination order was issued as per Rule 8 of the GDS(C&E) Rules, 2011 since he had hidden the truth to the Department and got the appointment by suppressing the fact of his actual date of birth.

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

4. The case of the applicant is mainly based on the earlier decisions of this Tribunal which he has quoted extensively at Annexur A/4 series. These are copies of the interim orders granted by this Tribunal against orders of termination when the termination was prima facie seen to be pursuant to some direction from a superior authority. The applicant has alleged that in

this case also such direction can be presumed from the fact that a copy of his termination order dated 25.02.2015 (Annexure A/2) is endorsed to the Superintendent of Post Offices, Siwan Division, Siwan, w.r.t letter No. A-328/L dated 04.02.2015. The learned counsel for the applicant also cited the decisions of CAT, Ernakulam in OA 188/1996 dated 11.03.1996 and OA 274/1996 dated 01.05.1996 wherein it was held that the cancellation of the applicant's appointment by an authority higher than the empowered authority was invalid. Similar decision by Full Bench of CAT, Allahabad in OA 910/1994 decided on 09.07.1997 was brought to our notice where termination of services of EDA by an authority superior to appointing authority was found to be wrong. The learned counsel for the applicant also quoted the decision of the Hon'ble Supreme Court in Civil Appeal No. 11643/1995 (**UOI & Ors. Vs. Jayakumar Parida**) dated 27.11.1995 reported in 1996 SCC(L&S) 320 where a termination order was set aside due to it being a non-speaking one. Our attention was also drawn to the decision of the Hon'ble Supreme Court in **UOI & Ors. Vs. Kameshwar Prasad** reported in 1998 SCC(L&S) 447 where extra departmental agency were held to be persons holding a civil post entitled to protection under Article-311. Besides this, the following decisions of this Tribunal were also cited: -

- (i) OA 612/2013 decided on 10.02.2016
- (ii) OA 369/2016 decided on 04.08.2017
- (iii) OA 309/2013 decided on 08.12.2014
- (iv) OA 120/2012 decided on 30.07.2015

5. We have gone through all these citations mentioned above. The decisions of the other Benches of Ernakulam and Allahabad clearly lay down the position that an order of termination by an authority higher than the

empowered authority is invalid. The decisions of the Hon'ble Apex Court In Jayakumar Pardia (supra) is in the context of fulfilling the principles of natural justice while implementing Rule 6 of the P&T Extra Departmental Agent (Conduct & Salary) Rules. In the present case the termination has been done following the Rule 8 of GDS (C&E) Rules, 2011 which specifically provides termination simplicitor and therefore the decision of the Hon'ble Apex Court will not be directly applicable to this case. Similarly, whether the EDAs are holding a civil post is also not an issue in this case and if they are being removed following a rule which expressly provides for it, it cannot be considered against that ruling of the Hon'ble Apex Court.

6. This brings us to the earlier decisions of this Tribunal quoted in para 4 above. We have gone through the decision in OA 612/2013. The matter was remitted back to the authorities for giving due opportunity in terms of Rule 4(3) and there was no claim by the respondents about having terminated their services under Rule 8 of the said Rules. The respondents in that case had in fact agreed to grant such an opportunity. In OA/050/00369/2016, the dismissal was under Rule-8 and the order was passed by the Director, Postal Services which was certainly an authority superior to the empowered authority and therefore it quashed by this Tribunal. In OA 120/2012 also the termination orders was issued by an authority higher than the appointing authority and therefore the termination order under Rule 8 was quashed. This leaves us with one case OA 309/2013 decided on 08.12.2014. In this case, the Tribunal did find the termination of the applicant therein on similar ground not as a termination

simplicitor and it was sent back to the concerned authorities for giving the applicants an opportunity to show cause before they could be removed. This finding was mainly based on the Tribunal's finding the facts in that case similar to those on which Jayakumar Parida's case was decided.

7. The only reason to presume that the termination was done by a superior authority is the endorsement made in the termination order to such superior authority. In the absence of any other evidence to support such presumption, we cannot come to that conclusion. We also take judicial notice of this Tribunal's decision in OA 397/2014 and OA 756/2014 vide order dated 19.11.2015 in which the earlier decisions including the one's discussed above were discussed at length and it was found that a termination under Rule 8, for a fundamental flaw in the engagement of an employee, cannot be questioned on the ground of if not having been done following Rule 4(3) of GDS Rules. Since this matter relates to the year 2015 and, as informed by the respondents, the vacancy caused by the Termination of the applicant has already been filled, it will also not be correct to re-open this matter at this stage. The OA is, accordingly, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member