

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT RANCHI
OA/051/00155/2017

Date : 26.10.2018

CORAM

Hon'ble Mr. K.N.Shrivastava, Member [A]
Hon'ble Mr. Jayesh V. Bhairavia, Member [J]

Nitish Kumar, S/o Shri Sachidanand Mehta, aged 20 years, resident of village & PO – Masnodih, via Domchanch – 825407, District – Kodarma, Jharkhand :
Posted as : Gramin Dak Sevak Mail Carrier, DHORAKALA Branch Office in account with Domchanch Sub Office – 825407.Applicant

Vs.

1. The Union of India through the Secretary [Posts] & Chairman, Postal Service Board, Ministry of Communication and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General, Jharkhand Circle, PO & PS – Doranda, Ranchi – 834002.
3. The Director Postal Service, Jharkhand Circle, PO & PS – Doranda, Ranchi – 834002.
4. The Superintendent of Post Offices, Hazaribagh Division, PO & PS : Hazaribagh – 825301.
5. The Inspector Post, Kodarma Sub Division, Kodarma – 825510, PS & Distt. Kodarma, Jharkhand.Respondents.

Counsel for the applicant : Shri Rajendra Prasad

Counsel for the respondents : Shri A.K.Sharma

ORDER [oral]

Per K.N.Shrivastava, Member [A] : The respondents Postal Department issued Annexure-A/2 advertisement notice dated 23.2.2016 inviting

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application for the sole post of Gramin Dak Sevak Mail Carrier [GDSMC] at Dhorakola Branch Office in account with Domchanch Sub Post Office. The post was reserved for Atyant Pichda Varg [Most Backward Class]. The applicant applied for the post and participated in the selection process. A duly constituted selection committee recommended a select panel comprising of five candidates. The name of the applicant figures at Sl. No.1 of the list. A copy of the minutes of the selection committee is at Annexure-R/4 of the written statement.

2. On the basis of the recommendation of the selection committee, the applicant was issued order of engagement dated 10.06.2016 [Annexure-A/5] pursuant to which he joined on 14.06.2016 [Annexure-A/6].

3. The respondents subsequently issued an impugned Annexure-A/1 order dated 11.09.2017 whereby the engagement of the applicant has been terminated with immediate effect. The contents of the impugned order are reproduced below :-

“In pursuance of C.O. Ranchi letter No.COR/CC-21/2017 dated 06.09.2017, it has been decided by the competent authority that the engagement of Sri Nitesh Kumar S/o Sri Sachidanand Mehta to the post of GDSMC, Dhorakola BO in account with Domchanch SO should be cancelled with immediate effect because of irregularities noticed at stage of notification. The above is received vide Division letter No.B-3/GDS Engg/CAT-12/2017 dtd. 06.09.2017.

Hence, the engagement of said Sri Nitesh Kumar is hereby terminated with immediate effect.”

4. Aggrieved by Annexure-A/1 order, the applicant has approached in the instant OA praying for the following relief :-

“[i] That Your Lordship may graciously be pleased to call for the records pertaining to the impugned orders dated 11.092017 [Annexure-A-1] passed and communicated by the respondent No.5 and to declare the same as illegal, arbitrary, against Rules and in violation of Article 14, 16 and 21 of the Constitution of India and set aside and quash the said illegal orders.”

5. Pursuant to the notice issued, the respondents entered appearance and filed their written statement to which the applicant has filed rejoinder.

6. Arguments of the learned counsel for the parties were heard today.

7. Shri Rajendra Prasad, Id. counsel for the applicant submitted that the applicant was selected to the post of GDSMC through a proper selection process and has not been indulged in any kind of misrepresentation in securing the appointment. He belongs to OBC category and the post was reserved for the said category. His next line of argument was the impugned Annexure-A/1 was passed in complete violation of principles of natural justice. The applicant has only been paid one month's salary in lieu of one month's notice but has not been accorded any opportunity of being heard.

8. Shri A.K.Sharma, Id. counsel for the respondents submitted that there was a palpable mistake in the Annexure-A/2 advertisement dated 23.02.2016. The post was wrongly reserved for MBC whereas it should have been reserved for OBC. Since the applicant was selected as an OBC candidate, his selection has been challenged before the Tribunal by one of the unsuccessful candidate, namely Shri Dilip Kumar Sharma in OA bearing No.051/100/2017 which is still pending. Taking cognizance of this aspect, the respondents realized that indeed there was a mistake in the Annexure-A/2 advertisement and accordingly they have terminated the services of the applicant, vide Annexure-A/1 order. The learned counsel further submitted that it would not be correct to say that the applicant was not put to any notice. He said that the applicant has been given one month's salary in lieu of the notice as contemplated under Rule 8 of GDS [Conduct and Engagement] Rules, 2011.

9. Replying to the arguments of the learned counsel for the respondents, learned counsel for the applicant submitted that the respondents have not followed the provisions of Rule 4[3][C] of the GDS [Conduct & Engagement] Rules, 2011 in issuing the termination order.

10. Shri Rajendra Prasad, Id. counsel for the applicant further submitted that the respondents have issued a corrigendum to Annexure-A/1 order dated 11.09.2017, vide Annexure-A/12 series dated 22.12.2017 during the pendency of this OA.

11. We have considered the arguments of learned counsel for the parties and have perused the pleadings. It is not in dispute that in the Annexure-A/2 it was indicated that the post was reserved for MBC category. Unlike some State Governments the Central Government has not made any sub-categories in OBC category for the purpose of appointments. Even though the advertisement indicated that the post was reserved for MBC but it had to be construed that it was for OBC category. Even the Selection Committee has used this terminology only.

12. The impugned Annexure-A/1 order has been issued purportedly under Rule 8 of GDS [Conduct & Engagement] Rules, 2011, which is reproduced below :-

“[1] 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;

[2] The period of such notice shall be one month :

Provided that the service of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of one month.”

13. The above rule nowhere deals with a situation under which the services of the applicant has been terminated. It is not the case of the respondents that the applicant had indulged in any action of misrepresentation or has adopted any fraudulent means for securing the appointment. Rule 4[3][c] describes the procedure for termination of services of GDS and the same is extracted below :-

“[c] to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit.”

The respondents have not followed the provisions of this Rule in the real sense.

14. In view of the above, we hold that the impugned Annexure-A/1 has been passed without following the due process of law and in a knee jerk fashion. Such an order cannot be legally sustained. Accordingly, we quash and set aside the impugned order Annexure-A/1. As a consequence of it, the respondents are directed to reinstate the applicant in service within a period

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of four weeks with all consequential benefits. We, however, make it clear that the applicant shall not be entitled for any interest on the arrears of salary.

15. The respondents are given liberty to conduct a thorough enquiry in the matter in accordance with law and principles of natural justice if they wish to annul the engagement of the applicant.

16. The OA stands allowed in the above terms. No order as to costs.

Sd/-
[Jayesh V. Bhairavia]M[J]

Sd/-
[K.N.Shrivastava]M[A]

mps.