

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11970 of 2017

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Md. Firdaus Shamshi, S/o Md. Haroon, resident of Village & P.O.- Muria, District-Darbhanga.

.... Petitioner

Versus

1. The Union of India through the Secretary cum D.G., Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Post Master General, Northisn Region Muzaffarpur.
4. The Director of Postal Services, Northisn Region, Muzaffarpur.
5. The Superintendent of Post Offices, Darbhanga Division, Darbhanga.
6. The Inspector Posts, North Sub Division, Darbhanga.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Hemant Kumar Karan, Advocate.

For the Respondent/s : Mr. S.D. Sanjay, Addl. Solicitor General with
Mr. Satyavrat Verma, CGC.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 06-10-2017

Heard learned counsel for the petitioner and learned
Additional Solicitor General with learned Assistant Counsel for the
Union of India.

2. The present Writ Application arises out of an order
dated 21st July, 2017 passed by the Central Administrative Tribunal,
Patna Bench, Patna (hereinafter referred to as “the Tribunal”) in O.A.
No. 050/00398/2014 as contained in Annexure-6 to the Writ
Application. The petitioner, by filing the said Original Application



(O.A.), challenged his order of termination from engagement, as contained in Memo dated 28.05.2014 (Annexure-P/3 to the Writ Application), as Gramin Dak Sevak Mail Carrier (in short 'GDSMC') at Loam BO in Darbhanga Division. The petitioner also challenged the communication being Letter no. A-GDSMC/Loam BO/Part Dtd 26.5.2014 issued by the Superintendent of Post offices, Darbhanga Division, which has been referred in the order of termination but not communicated to the petitioner.

Brief facts of the case

3. The petitioner was engaged as GDSMC at Loam Branch Post Office vide his letter of engagement dated 14.12.2011 issued by Inspector Posts, North Sub Division, Darbhanga, which is enclosed as Annexure P/1 to the Writ Application. It is the case of the petitioner that he was rendering his services against the post of GDSMC at Loam Branch Post Office to his best of abilities and no complaint whatsoever was there against his work and conduct.

4. The petitioner has further stated that some frivolous complaints were made by the unsuccessful candidates against the engagement on the post of GDSMC in the Darbhanga Postal Division; acting upon such complaints, the Office of the Postmaster General, Northern Region, Muzaffarpur and pursuant thereto without assigning any show cause or notice to the petitioner, all of a sudden on



28.05.2014 the petitioner was served with Memo No. A1/IP(N) / Loam / GDSMC / 2014 dated 28.05.2014 issued by Inspector Posts, North Sub Division, Darbhanga through Overseer Mails whereby the engagement of the petitioner has been terminated under Rule 8(2) of the Department of Posts, Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011 (hereinafter referred to as “the Rules 2011”). The order of termination is contained in Memo dated 28.05.2014 which has been enclosed as Annexure-P/3 to the Writ Application.

5. The petitioner assailed the order of termination of his engagement on the following grounds:-

(A) The petitioner is holder of a civil post and has got protection under Article 311(2) of the Constitution of India as such he cannot be terminated except after an enquiry in which he has to be informed of the charges against him and has to be given a reasonable opportunity of being heard in respect of those charges.

Reliance in this regard was placed on the judgment of the Hon’ble Apex Court in the case of **Union of India Vs. Jay Kumar Parida**, reported in **1996 SCC (L&S) 320**, wherein the Hon’ble Apex Court has held that if any material adverse to the respondent formed a foundation for termination, principles of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply appropriate order may be passed giving reasons in support thereof.

(B) The order of termination has been issued on instruction



from an authority superior to her Appointing Authority, i.e., the Superintendent of Post Offices, Darbhanga Division vide his letter referred as Letter No. A-GDSMC/Loam BO/Part Dtd 26.5.2014 but neither its copy has been given to the petitioner nor its contents have been reflected in the impugned order, the contention of the petitioner is that when the order of termination has been passed on account of orders passed by a higher authority, his termination could have been done only under Rule 4(3) of the Rules 2011 after giving an opportunity of being heard but in violation thereof, the order of termination has been issued applying Rule 8(2) of the Rules 2011.

6. Union of India and its authorities, who were respondents before the Tribunal, filed a Written Statement in which they have stated that in course of review of the engagement files of GDSMC / Loam at Regional Office (RO) level, a number of omissions were found, those are reproduced hereunder:-

“(i) The appointment file related to the appointment of GDS MC Loam BO in account with Muria S.O. was reviewed at the R.O Level and the following omissions were noted:-

(i) Application form of not even a single candidate including those called for verification of documents is available in the file.

(ii) 32 candidates have been informed regarding verification of documents on 24/10/2011 at KDSU P.O Darbhanga vide his letter no. A1/Recruitment/EDDS/2011 dated 13/10/2011. On perusal of dispatch particulars available in the file. It is found that some letter have been dispatched on 17.10/2011 thus the



candidates had no been afforded at least ten days time as in practice for submission of documents. 25 out of 32 candidates appeared for the documents verification as per attendance sheet dated 24/10/2011.

(iii) A Comparative Merit Chart dated 24/10/2011 prepared for 30 candidates name of Santosh Kumar. He was not shown in the merit chart on the ground that his application has been received after due date but receipt particular of that very application is not available in the file.

(iv) Service certificate obtained in respect of Md. Imram Azam from BEO Darbhanga on 9/11/2011 but this fact maintained in the selectionh note dated 20/10/2011 there is no letter number mentioned in the certificate even the certificate is not addressed to any person. Even there is no denial application from md. Imram Azam is available in the file. Selection note has been prepared prior to obtaining of service certificate. It is worth to mention that Md. Imran Azam has more marks than of Md. Firdaush Shamsi.

(v) Selection note dated 20/10/2011 mentioned that marks sheet of Md. Firdaush Shamsi has been verified on 07/12/2011 from Madarsa Noorul Islam Chhatwan Darbhanga by he has written to the head Master Asha Atul oloom, PO. Muria, Darbhanga for verification of marks sheet of Md. Firdaush Shamsi vide his letter no. A1-A Loam/GDS MC/2011 dated at Darbhanga the 7/12/2011 but the selection note has been prepared assuming the genuineness of marks sheet but the genuineness confirmation proof is not available in the file. Marks Sheet of the selection candidate has not been verified from the concerned board.

The S.D.I.(P) North Sub Division Darbhanga was ordered by SPOs Darbhanga vide letter no. A-GDSMC/Loan BO/Part



dated 26/5/14 to cancel the appointment of Md. Firdaush Shamsi GDS MC, loan BO in account with Muria S.O.

Accordingly S.D.I. (P) North Sub Division Darbhanga terminated the service of Md. Firdaush Shami vide Memo no. A1/IP(N)/Loam/GDS MC/2014 dated 28/5/14 Shri Shamsi received copy of this memo Sri Subodh Kumar Yadav, Mail Overseer Keoti Line on 28/5/14 and made over the charge of GDS MC to the Sri Faizullah, GDS BPM Loam BO on 28/5/14.”

Order of the Tribunal

7. The case of the parties were considered by the Tribunal and the Tribunal came to a conclusion that the engagement of a Sevak, who has not rendered more than three years of continuous service, can be terminated at any time by a notice in writing and when such termination is made forthwith, 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. Sub-rule (2) of Rule 8 of the Rules 2011 clearly speaks that the period of such notice shall be one month and when such period is not exhausted, in lieu of such notice of one month, the Sevak shall be entitled to remuneration equivalent to the amount of TRCA for the period for which the notice falls short of one month. The Tribunal was, therefore, of the opinion that the spirit of Rule 8 is that the termination can be with immediate effect. The action of



termination of engagement was taken under the proviso to Rule 8(2) of the Rules 2011 and, therefore, there is no illegality or infirmity in the impugned order of termination.

8. Before us, the learned counsel for the petitioner has emphasized on his argument that in fact the termination of engagement has been done at the instance of the superior authority, therefore, Rule 4(3) of the Rules 2011 is attracted; therefore, the termination under Rule 8(2) of the Rules 2011 by the Appointing Authority without giving any opportunity to be heard is not just and proper. It is also contended that the petitioner is holding a civil post and, therefore, he would be entitled for protection under Article 311(2) of the Constitution of India.

CONSIDERATION

9. We have considered the rival submissions, perused the records and the order passed by the learned Tribunal. It would be just and proper to quote the relevant Rule 4 and Rule 8 of the Rules 2011 as under:

“4. Recruiting Authority

(1) The Recruiting Authority in respect of each category of Sevak shall be as shown in the Schedule annexed to these rules.

(2) If any doubt arises as to who is the appropriate Authority in any case, the matter shall be referred to the Government, whose decision thereon shall be final.

(3) Notwithstanding anything contained in these rules, any authority superior to the Recruiting Authority as shown in the Schedule, may, at any



time, either on its own motion or otherwise call for the records relating to the engagement of Gramin Dak Sevak made by the Recruiting Authority, and if such Recruiting Authority appears-

(a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or

(b) to have failed to exercise a jurisdiction so vested; or

(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.”

“8. Termination of Engagement

(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.

Note.- Where the intended effect of such termination has to be immediate, it should be mentioned that one month’s Time Related Continuity Allowance *plus* Dearness Allowance as admissible is being remitted to the Sevak in lieu of notice of one month through money order.”

10. A perusal of the order of engagement of the petitioner

read with the scheme of the Rules 2011 leave no doubt in our mind



that the petitioner's status is not more than of a contractual worker. As submitted by the learned senior counsel, Rules 2011 has superseded the earlier existing Rules 2001 and in course of revision / supersession the word 'Employment' has been removed and the word 'Engagement' has been brought into existence, therefore, the applicants cannot claim their continuance on the post if the respondents have taken recourse to the provisions contained in the order of engagement read with the proviso to Rule 8(2).

11. We are unable to agree with the submissions advanced on behalf of the petitioner that because of the order of termination of engagement has been issued on the direction of the superior authority, the order should have been passed under Rule 4(3) of the Rules 2011. We find that the order of termination of engagement is in the nature of termination simplicitor. No stigma has been attached to the present petitioner which will be apparent from the contents of the order of termination, the same is quoted hereunder for a ready reference:-

**"Department of Posts, India
Office of the Inspector of Posts, North Sub Division, Darbhanga-846005**

Memo No: A-1/IP (N)/Loam/GDSMC/2014
Dated at Darbhanga the 28.05.2014

Form-II

Order of termination of service issued under the Proviso to Rule 8 (2) of the
Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011

In pursuance of the Proviso to Rule 8 and Note below
Rule 8(2) of the Department of Posts Gramin Dak Sevaks



(Conduct and Engagement) Rules, 2011, I, Ashutosh Aditya, Inspector Posts, North Sub Division, Darbhanga hereby terminate forthwith the service of Shri Md. Firdaus Shamsi, GDSMC Loam B.O in a/c with Muria S.O and direct that she shall be entitle to a sum equivalent to amount of his basic allowance plus dearness allowance for the period of notice at the same rates at which he was drawing them immediately before termination of his service, or, as the case may be, for the period by which notice fails short of one month. One month's basis TRCA plus dearness allowance as admissible is being remitted to the Sevak in lieu of the notice of one month through Money Order.

Sd/-
(ASHUTOSH ADITYA)
Inspector Posts
North Sub Division, Darbhanga

Copy for information and necessary action to:-

1. The SPOs Darbhanga Division, Darbhanga w.r. to his letter no. A-GDSMC/Loam BO/Part dtd 26.5.2014
2. The Postmaster Darbhanga HO, Darbhanga to draw One month's advance basic TRCA plus dearness allowance as admissible to the GDS MC Loam BO.
3. The Sub Postmaster, Muria SO
4. The Branch Postmaster, Loam BO in A/c with Muria SO
5. The Mail Overseer Keoti Line, Darbhanga
6. Sri/Smt. Firdaus Shamsi, GDSMC, Loam BO. He will handover the complete charge of GDSMC, Loam BO to the GDSBPM, Loam.

Sd/-
(ASHUTOSH ADITYA) 28/05/2014
Inspector Posts
North Sub Division, Darbhanga

Acknowledgement

I hereby acknowledge the receipt on this day of the notice of termination from service.

Station:

Date:”

12. The Written Statement filed on behalf of the respondents has narrated in detail the reasons which we term here ‘motive’ behind issuing such order of termination by the appointing authority at the instance of the superior authority. In other cases we



have seen that there were several complaints from different corners alleging several irregularities in the matter of engagement of GDSMC. In the present case, the respondents reviewed the engagement file at Regional Office level and found several omissions which have been taken note of here-in-above. In these circumstances, without casting any aspersion on the petitioner and without recording any finding of misconduct against him if the order of engagement has been terminated by the appointing authority taking recourse to the proviso to Rule 8(2) of the Rules 2011, no illegality or infirmity may be found in the same.

13. We have taken notice of the contents of the termination orders here-in-above and safely come to a conclusion that the termination order is in the nature of a termination simplicitor.

14. In the case of **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**, reported in **(2015) 15 SCC 151**, the Hon'ble Supreme Court has considered the distinction in a case where termination takes effect on the foundation of guilt and where the termination is based on a complaint which may, at best, be a motive for such termination. Their Lordships, in Paragraph 21, quoted Paragraphs 28 & 29 from the judgment rendered in the case of **Chandra Prakash Shahi v. State of U.P.**, reported in **(2000) 5 SCC 152**, which read as under:-



“21. In **Chandra Prakash Shahi v. State of U.P. (2000) 5 SCC 152** after addressing the history pertaining to “motive” and “foundation” and referring to series of decisions, a two-Judge bench had held that: (SCC p. 167, paras 28-29)

“28. The important principles which are deducible on the concept of ‘motive’ and ‘foundation’, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of ‘motive’.

29. ‘Motive’ is the moving power which impels action for a definite result, or to put it differently, ‘motive’ is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.”



15. Further, their Lordships, in Paragraph 22 of the judgment in **Ratnesh Kumar Choudhary** (Supra), took note of Paragraph 10 of the judgment rendered by a three-Judge Bench in **Union of India v. Mahaveer C. Singhvi, (2010) 8 SCC 220**, which reads as under:-

“22. A three-Judge Bench in **Union of India v. Mahaveer C. Singhvi (2010) 8 SCC 220** dwelled upon the issue whether the order of discharge of a probationer was simplicitor or punitive, referred to the authority in **Dipti Prakash Banerjee v. Satyendra Nath Bose national Centre for Basic Sciences, (1999) 3 SCC 60**, and came to hold thus: (Mahaveer C. Singhvi case, SCC p. 225, para10)

“10. It was held by this Court in **Dipti Prakash Banerjee case (1999) 3 SCC 60** that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the cause of the termination are the motive or foundation. It was observed that if findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, a simple order of termination is to be treated as founded on the allegations and would be bad, but if the enquiry was not held, and no findings were arrived at and the employer was not inclined to conduct an enquiry, but, at the same time, he did not want to continue the employee’s services, it would only be a case of motive and the order of termination of the employee would not be bad.”

16. In view of what has been held by the Hon’ble Supreme Court in the aforementioned cases, in the present case we find that the omissions noticed by the respondents at the Regional



Office level were the 'motive' behind taking the action for termination simplicitor. There was no finding against this petitioner and, therefore, it cannot be said to be a case where termination has taken place because of any foundation of misconduct against the petitioner. No stigma has been attached to the petitioner in the order of termination, therefore, nothing wrong may be inferred in the decision making process.

17. The petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of State of **Uttar Pradesh Vs. Singhara Singh & Ors.**, reported in **AIR 1964 SCC 358 (V 51 C 45)** to submit that if a statute has conferred a power to do an act and has laid down a method in which the power has to be exercised, it necessarily forbids doing of the act in any other manner and that which has been prescribed.

18. We are of the view that the ratio of the said judgment is not applicable in the present case. In the said case, the Hon'ble Apex Court was considering admissibility of confessional statement recorded under Section 164 Cr.P.C. by a magistrate. In that case, the magistrate had adduced his oral evidence to prove the statement recorded by him which was held to be bad and not admissible.

19. In the facts of the present case where there is no argument against the power of the appointing authority to pass an



order of termination of engagement in terms of the proviso to Rule 8(2) of the Rules 2011, the judgment of the Hon'ble Supreme Court, on which reliance has been placed on behalf of the petitioner, cannot be applied.

20. In a last attempt, learned counsel for the petitioner raised an issue that the petitioner was holding a civil post and, therefore, she was entitled for protection under Article 311(2) of the Constitution of India. In the facts of the present case where we have noticed the status of the GDSMC under the Rules 2011 and further we have held that the termination of the petitioner is a termination simplicitor, the submission of the learned counsel in the facts of the present case is totally irrelevant and need not be dwelt upon.

21. We also find that the ratio of the judgment of the Hon'ble Apex Court in the case of **Union of India Vs. Jaykumar Parida, reported in 1996 SCC (L&S) 320** factually goes against the petitioner because we have held that the present termination is not based on any form of foundation of misconduct against the petitioner. Since no stigma has been attached and there is no foundation of misconduct against the petitioner, the principle of natural justice has not been violated if the respondents have acted perfectly in accordance with the statutory law under the proviso to Rule 8(2) of the Rules 2011.



22. In the result, we find no merit in the Writ Application. The same is dismissed. There will be no order as to costs.

(Rajeev Ranjan Prasad, J)

I agree.
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

AFR/NAFR	NAFR
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