

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12172 of 2017

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Abhay Kumar Singh, S/o Sri Gupteshwar Singh, Resident of Village-Simri, P.O.- Vishnupur Chatti, P.S.- Deo , District- Aurangabad.

.... 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 Superintendent of Post officers, Aurangabad Division, Aurangabad.
4. The Inspector, Post Offices, East Sub Division, Aurangabad.

.... Respondents

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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. Ravindra Kumar Sharma, 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 Sri Hemant Kumar Karan, learned advocate for the petitioner, and Sri S.D. Sanjay, learned Additional Solicitor General for the Union of India assisted by the learned advocate on record.

2. The petitioner, in the present case, is aggrieved by the order dated 21st July, 2017 passed by learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as “the Tribunal”) in O.A. No. 838 of 2013 as contained in Annexure P/9 to the present Writ Application. The said O.A. No. 838 of 2013 was filed by the writ petitioner for setting aside the



order of termination of the engagement of the petitioner as contained in Memo No. A-1/Araura BO / Deo SO / 2012-13 dated 16.12.2013 issued by the Inspector, Posts Offices, East Sub Division, Aurangabad as contained in Annexure P/7 to the Writ Application.

Brief facts of the case

3. It is the case of the petitioner that he was appointed as Gram Dak Sevak Mail Carrier (in short GDSCMC) after his name was sponsored through Employment Exchange, Aurangabad pursuant to an advertisement for filling up the vacant posts. A call letter dated 01.04.2013 was issued to the petitioner for verification of his certificates/documents and accordingly after verification of his certificates, he came to be appointed vide Memo No. A-1 / Araura BO / Deo SO / 2012-13 / Aurangabad dated 16.04.2013 issued by Inspector of Posts, East Sub Division, Aurangabad as contained in Annexure P/2 to the Writ Application. The order of engagement stipulates that the conduct and services of the applicant shall be governed by the Department of Posts Gramin Dak Sevak (Conduct and Engagement) Rules, 2011 (hereinafter referred to as “the Rules 2011”) as amended from time to time. The applicant – petitioner joined on 17.04.2013 and continued to render his services to the best of his abilities.



4. It is further case of the petitioner that the Inspector Posts, East Sub Division, Aurangabad vide Memo No. Memo No: A-1 / Araura BO / Deo SO / 2012-13, as contained in Annexure P/4 to the Writ Application, called upon the petitioner to show cause against his appointment as there were various complaints regarding the engagement of GDSMC and violation of the rules and procedures in the matter of appointment were noticed by the Inspector Posts, East Sub Division, Aurangabad. The petitioner was given 15 days' time from the date of receipt of the show cause to file his reply. The petitioner submitted his reply vide Annexure P/6 to the Writ Application and requested the concerned authority to withdraw the proposal for cancellation of engagement of the petitioner but thereafter the letter of termination was issued vide Memo No: A-1 / Araura BO / Deo SO / 2012-13 as contained in Annexure P/7 to the Writ Application.

5. The letter of termination speaks of termination under proviso to Rule 6(b) and Note below Rule 6(b) of P&T EDAS (Conduct & Services) Rules, 1964. According to the petitioner, in the last paragraph of the order of termination of engagement of the petitioner it is stated that the action was taken by him as per the letter issued by the Superintendent Posts, Aurangabad vide letter no. East/employment/SDI(P)/2013 Aurangabad dated 20.11.2013.



Thus the contention of the petitioner is that his engagement has been terminated under the 1964 Rules which is not in existence. The petitioner claims that he was appointed under the Rules 2011 and, therefore, if his engagement was being terminated because of some complaints and on the direction of the superior authority, the principles of natural justice need to be complied with.

6. According to the petitioner, termination of his engagement has been done in violation of the departmental rules. In Rule 4(3) of the Rules 2011, such power is vested in the authority superior to the appointing authority. It is also his case that the applicant is holder of a civil post and is protected under Article 311(2) of the Constitution of India and, as such, he cannot be terminated except after an enquiry in which he has to be informed of the charges against him.

7. Referring to the Written Statement filed on behalf of the respondents before the learned Tribunal, learned Senior Counsel for the Union of India submits that a perusal of the Written Statement would disclose that the motive behind the termination of engagement was certainly the complaints received from various corners. However, the termination is a termination simplicitor without causing any stigma and this is not a case in which any allegation of misconduct is there against the petitioner.



According to the respondents, one T. Ram (since deceased) the then SDI (P) East Sub Dn., Aurangabad, being the Appointing Authority for the posts of GDSMD/MC, made engagement on these posts but thereafter a series of complaints regarding irregular engagements made by him were being received in the Office of the Superintendent of Post Offices, Aurangabad by different persons / public representatives. In this situation, the engagement files were reviewed by the Divisional Office and during review of the files, the authorities found that it was not clear as to what were the sources of receipt of applications and how many applications were received for different posts in which 10 senior most in marks were sorted out by the Appointing Authority. It was noticed that every engagement files contained 10 applications only. In each file, Xerox copy of the registered cover being no. FF 409525240 was kept as if all the applications were received from the Employment Exchange only and not directly. No list of candidates being sent by the Employment Exchange was available in the file. No verification report of mark sheet of the candidates selected was available in the engagement file. In these circumstances, show cause notice was issued to the Appointing Authority also but as he died on 25.10.2013, the incumbent in SDI (P) was asked to explain the above irregularities with the office record, who



reported that no register for receipt of applications for engagement of GDS and no records of verification report of mark sheet are available in the office. In these circumstances, the SDI (P) East Sub Division, Aurangabad was ordered to terminate the engagements, observing due formalities. The respondents issued termination order accordingly.

8. The Tribunal considered the rival submissions and the materials available on the record. The Tribunal was of the view that the termination of the engagement of the petitioner is a termination simplicitor under the proviso to Rule 8(2) of the Rules 2011. The petitioner had not rendered more than three years of continuous service from the date of his engagement, therefore, the appointing authority has acted in exercise of its jurisdiction in terms of the proviso to Rule 8(2). The termination order has surfaced not due to any personal misconduct but due to not adhering to the rules/instructions of the department in undertaking recruitment process.

9. The learned Tribunal took a view that since the applicant has not completed three years of service there was no requirement of giving a prior notice to him. The only requirement was to make payment in lieu of notice. However, by way of abundant caution, the recruiting authority had issued a show cause



notice on 23.11.2013 (Annexure P/4 to the Writ Application) giving opportunity of making representation. The Tribunal also found that the Inspector Posts had quoted a wrong provision in the impugned notice and referred a rule which is non-existent. The Department of Posts, GDS (Conduct & Engagement) Rules, 2011 had already come into force on 18.04.2011, after supersession of the earlier Rules 2001. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of provision does not invalidate an order if the Court or the statutory authority had the requisite jurisdiction thereof. Quoting a wrong provision does not take away the jurisdiction of the authority, the exercise of power under a wrongly mentioned provision will not render the order illegal or invalid. The Tribunal has relied upon several judgments of the Hon'ble Supreme Court in this regard which are stated in Paragraph 14 of the impugned order of the Tribunal. The O.A. of the writ petitioner was dismissed being devoid of merit.

10. The Writ Application has been heard along with other Writ Applications, the lead case being **C.W.J.C. No. 11791 of 2017 (Nawnit Kumar Singh & Ors. Vs. Union of India & Ors.)**. The decision rendered in said Writ Applications contains a detail consideration of the submissions made at the bar. Paragraph 13 to 20 of the judgment rendered in the case of **Nawnit Kumar**



Singh & Ors. (Supra) squarely applies in the facts of present case, hence quoted hereunder:-

“13. A perusal of the order of engagement of these applicants read with the scheme of the Rules 2011 leave no doubt in our mind that the applicants’ status is not more than of a contractual worker. As submitted by the learned Senior Counsel, the 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). The only submission which has been agitated on behalf of the petitioners is that in the present case admittedly the order of termination has been issued on the direction of the superior authority, therefore, the order should have been passed only by the superior authority after giving an opportunity of hearing to the petitioners. We are unable to agree with the submission made on behalf of the petitioners. The orders of termination of the petitioners are in the nature of termination simplicitor. There is no stigma attached to the applicants which will be apparent from the contents of the orders of termination which we quote hereunder:-

“Office of the Inspector of Post Offices, East Sub Division, A.bad

Memo No:A-1/Malhana BO/Deo SO/2012-13 dated at Agb the 16.12.2013

In pursuance of the Proviso to Rule 6(b) and Note below Rule-6(b)



of P&T EDAS (Conduct and Service) Rule, 1964, I B.K. Pathak, Inspector of Post Offices, East Sub Division, Aurangabad here terminate forthwith the services of Sri Naresh Singh GDS MD/MC Malhana B.O. in a/c with Deo S.O. under Aurangabad H.Q. and direct that he shall be entitle to a sum equivalent to amount of his TRCA plus Dearness Allowance for the period of the notice at the same rate at which he was drawing immediately before the Termination of his service or as the case may be, for the period by which notice fails short of one month.

Notice has been issued in the interest of Administration and also for want of any documentary in respect of Conduct & Engagement to those engaged persons.

The Due Amount of same TRCA plus DA is remitted in lieu of notice of one month. This action has been done as per S. Posts, Aurangabad Letter No. East / employment / SDI (E)/2013 Aurangabad dated 20.11.2013.

Sd/-
(B.K. Pathak)
Inspector, Post Offices,
East Sub Division, Abad

Copy forwarded for information & Necessary action to:-

- (i) The Supdt. of Post Offices, Aurangabad Dn., Abad - with reference to his Letter No. East/employment/SDI East/2013 dated at Agb the 20.11.2013.
- (ii) The Postmaster, Aurangabad H.Q. – He will act as per Memo issued immediately.
- (iii) Office copy.”

14. 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. There were several complaints from different corners and ordinarily on the complaints filed several irregularities were noticed. The relevant records were not maintained and there were serious doubts over the manner in which the engagements were done by the then Superintendent of Post Offices, who was the Appointing Authority. In these circumstances,



without casting any aspersion on the petitioners and without recording any finding of misconduct against them, after the show cause notices were issued to the applicants and when they submitted their reply, it was thought just and proper to take recourse to the proviso to Rule 8(2) of the Rules 2011 and, accordingly, termination orders were issued by the Appointing Authority.

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

16. 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."

17. 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.”

18. 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 applications received from different sources were the motive behind taking the action for termination simplicitor. There was no finding against these petitioners, no stigma was attached to them and, for that reason, nothing wrong may be inferred from the orders of termination issued to the applicants –



petitioners.

19. In a last attempt learned counsel for the petitioners raised an issue that the petitioners were holding a civil post and, therefore, they were entitled for protection under Article 311 of the Constitution of India. In the facts of the present case where we have noticed the status of the GDS MD/MC after the Rules 2011 came into force and further that their termination 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.

20. The learned Tribunal has gone into all aspects of the matter and has rightly come to the conclusion that only because a provision of the Rules is not quoted or is wrongly quoted in any notice or order of termination, the same would not render the notice or the termination invalid. In the present case also, no doubt notice of termination mentioned Rule 6(a) and Rule 6(b) of the Rules 1964 but thereafter a corrigendum was issued by the respondents that the Rule 6 in the termination order may be read as Rule 8. Rules 1964 was not in existence and if the provision of Rules 1964 was wrongly quoted, which was later on rectified by the respondents, the same would not be a ground to nullify the order of termination. The superior authority having reviewed the fact and noticed the irregularities ordered the Appointing Authority to take recourse to the provision of Rule 8 of



the Rules 2011 and accordingly the Appointing Authority has issued the notice of termination simplicitor, it has caused no prejudice to the applicants – petitioners. The order of termination simplicitor has rightly been upheld by the learned Tribunal.”

11. We find no merit in the Writ Application and the same is hereby dismissed. However, 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	A F R
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