

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 10295 of 2019**

- Lalit Das Mahant S/o Late Gyandas Mahant, aged about 45 years, Occupation- Ex-employee (Postal Assistant) R/o G.P. Halwai, Adarsh Mukti Dham, Podibahar, Korba, C.G. 495377

----Petitioner**VERSUS**

1. Union of India through the Secretary, Department of Post & Communication, Dak Bhawan, Sansad Marg, New Delhi, India 110001
2. The Chief Post Master General, Chhattisgarh Circle, Raipur C.G. 492001
3. The Senior Superintendent of Post, Raipur Division, Raipur C.G. 492001

-----Respondents

For Petitioner	:	Mr. Ashok Kumar Shukla, Advocate
For Respondent-UOI	:	Mr. B.Gopa Kumar, Assistant S.G.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per P.R. Ramachandra Menon, CJ.****06/12/2019**

1. The correctness and sustainability of Annexure A-1 order passed by the Tribunal, whereby interference was declined and award came to be passed, virtually affirming the disciplinary action finalized against the applicant/petitioner, dismissing the service in connection with the financial irregularities is put to challenge in this writ petition.
2. Heard Mr. Ashok Kumar Shukla, learned counsel appearing for the petitioner as well as Mr. B.Gopa Kumar, Assistant Solicitor General representing the Union of India.
3. Sequence of events reveals that the petitioner was appointed to the post of 'Postal Assistant' by the then Senior Superintendent of Post Offices Raipur, (SSPOs) way back in the year 1991 and was continuing as above. During the period of service, some serious financial irregularities were noted on the part

of the petitioner, which made the respondents to proceed with disciplinary action. A charge-sheet was issued, followed by a preliminary enquiry and finally based on the finding in the enquiry, the 'dismissal' was ordered as per Annexure P-3 order dated 29-11-2010, by the SSPOs.

4. The petitioner sought to challenge the said order by filing an appeal before the Chief Post Master General, raising various grounds, including that the authority who passed the 'dismissal order' was actually not competent to pass such order. The said contention was raised pointing out that, the said authority was appointed/ promoted to the said post only on ad-hoc basis who could not have continued beyond one-year, without approval of the Director and in the instant case, the said authority was not having any approval to continue beyond one-year, by virtue of which, the entire proceedings would become null and void. However, the appeal came to be dismissed as per Annexure P-4 order dated 07-05-2012, which made the petitioner to have it challenged by moving a Revision Petition under Rule 29 of CCS[CCA] Rules, 1965, before the Director.
5. Since, the Revision Petition was not finalized on time, the petitioner approached the Tribunal by filing OA No. 203/00132/2015, which was disposed of as per order dated 12-02-2015, directing the Revisional Authority to have the Revision finalized within 90 days. The matter was considered accordingly and the Revision Petition came to be rejected as per Annexure P-7 order dated 25-08-2015, which was sought to be challenged by filing OA No.203/00310/2016 before the Tribunal.
6. The prayers were sought to be resisted by the Department. After hearing both the sides, the Tribunal held that there was absolutely no basis with regard to the contentions raised by the petitioner, as to the alleged incompetency of the disciplinary authority who had passed the order. It was accordingly, that the OA was dismissed, which made the petitioner to approach this Court by filing

this writ petition.

7. The learned counsel for the petitioner submits that the documents produced by the petitioner including the records obtained by resorting to the remedy under the Right to Information Act, 2005, clearly reveal that the disciplinary authority was continuing for more than one-year and that too, without any approval of the Director, by virtue of which, there was no legal authority to have passed the Dismissal Order. Any order passed by an authority who is having no jurisdiction, power or competency to pass such order makes it a nullity and hence, the entire proceedings ought to have been interdicted by the Tribunal, submits the learned counsel.
8. The learned counsel makes a specific reference to Annexure P-8 order dated 31-12-2008 to point out that the disciplinary authority was appointed to the post in question as per the said order and was continuing for much more than 1 year as discoursed from Annexure P-9 dated 03-03-2009, Annexure P-10 dated 11-02-2010. Infringement in this regard is sought to be highlighted in the light of Annexure P-11 instructions dated 18-08-2004, issued by the Ministry of Communications, Department of Post, to all the heads of circles. The learned counsel submits that, non-granting of approval by the Director is evident from Annexure P-13 dated 23-02-2012. Specific reference is made to paragraph-3, which is reproduced below to understand the nature of the case:

“3. As per SPG Section record, no approval has been granted by this office (SPG Section) in respect of Sh. S.K. Soni to officiate him for longer and indefinite duration in JTS grade. The instructions in this regard issued from the Deptt. of Personnel & Training was intimated to Sh. Mahant and for the rest of the action as adhoc promotion comes under the purview of concerned circle under the instructions issued by Govt. of India”

9. The factual position brought on record before the Tribunal by filing an affidavit by the respondents concerned, has been specifically adverted to and

discussed in paragraph 13 and 13.1, 13.2 and 14 of the OA No. 203/00310/2016 which are reproduced below for convenience of reference:

“13. This is a case of misappropriation of Government money. The case of the applicant is that Shri S.K. Soni, who has issued the dismissal order, was not competent to do so. The affidavit filed by respondent No. 2 reads as under:-

'2. That the applicant Shri L D Mahant was dismissed from service on 29-11-2010 by Shri S K Soni as a Sr Supdt of Post Office Raipur division, Raipur. Document enclosed AS D/2.

3. That the Shri L D Mahant Ex PA was appointed by the Sr Supdt of Post Offices Raipur Division Raipur in the post of Postal Assistant and the punishment of Dismissal From Service was also awarded by the Sr Supdt of Post Offices Raipur Division Raipur.

4. That Shri S K Soni was working as Sr Supdt of Post Office Raipur Division Raipur on the date of issue of punishment order and he was also the competent authority to impose the Punishment of Dismissal Order From service on the Applicant. Document enclosed As D/3.

13.1 The document D-3 is the promotion order of Shri S.K. Soni, which was issued on 11.02.2010 for a period of 11 months (i.e. less than one year).

13.2 Perusal of the office order dated 11.02.2010 (Annexure D-3) very clearly indicates that Shri S.K. Soni is being promoted in the grade of Junior Time Scale of Indian Postal Services, Group- A, purely on temporary and ad-hoc basis for a period of 11 months. Therefore, on the said date, i.e. 29.11.2010, Shri S.K. Soni had not completed 11 months from the date of his ad-hoc promotion and, therefore, was competent to issue a dismissal order.

14. It is also clear that the documents filed by the applicant with his rejoinder, are not relevant as Shri S.K. Soni did not continue in the Junior Time Scale continuously from 03.03.2009 (Annexure A-9) till the date of passing of the dismissal order, thereby violating the instructions of the Department communicated on 18.08.2004 (Annexure A-10).”

10. The Tribunal has made a specific reference to the appointment order of the disciplinary authority (which was only on 03-03-2009) and since the dismissal order was passed by the said authority on 29-11-2010, it was held as well within time and hence that there was no illegality in any manner. The learned

counsel submits that the said finding is not correct in view of the materials produced before this Court. Annexure P-8 order dated 31-12-2008 is an order, whereby additional charge has been given to the disciplinary authority to function as SSPOs. The said order Annexure P-8 is as follows:

“DEPARTMENT OF POSTS
OFFICE OF CHIEF POSTMASTER GENERAL
CHHATTISGARH CIRCLE, RAIPUR-492001

Memo No. STA 7-4/Ch. VI/370
Raipur, Dated 31.12.2008

Consequent upon superannuation of Shri C.P. Soni SSPOs Raipur with effect from 31.12.2008 afternoon, the following arrangement has been ordered by the competent authority :-

Shri S.K. Soni ADPS-I Circle Office Raipur will hold additional charge of SSPOs Raipur till further orders without any extra remuneration.

Sd/-
Asstt. Director (Staff)
Chhattisgarh Circle, Raipur”

From the above, it is clear that the said Officer who was functioning as ADPS-I, Circle Office Raipur was given an additional charge of SSPOs Raipur till further orders, without any extra remuneration. This is not an appointment order or promotion order and the first order to promote the said Officer as SSPOs, Raipur is by way of Annexure P-9 dated 03-03-2009. The said order is in the following terms:

“DEPARTMENT OF POSTS
OFFICE OF CHIEF POSTMASTER GENERAL
CHHATTISGARH CIRCLE, RAIPUR-492001

Memo No. STA 7-4/Ch. VI/383
Raipur, Dated 03.03.2009

The Chief Postmaster General, C.G. Circle, Raipur is pleased to promote Shri S.K. Soni, an officer of P.S. Group 'B', to the grade of Junior Time Scale of India Postal Services Group 'A' in the pay scale of Rs. 8000-275-13500(pre revised) [Revised – Corresponding Pay Band Rs. 9300-34800 + Grade Pay Rs. 5400(P.B. II)] purely on temporary and adhoc basis and post him as Sr. Supdt. of Post Offices Raipur Dn. Raipur by restoring both the post of APMG (Staff) to A.D.P.S.-I and SPOs Raipur to the post of SSPOs Raipur respectively superseding this office Memo No. Estt 23-10/Raipur D.O./825 dated 18-11-

2008.

2. The posting of Shri S.K. Soni in Group 'A' of Indian Postal Services is subject to formal approval by the Directorate and it will be regulated in accordance with the Directorate instructions issued from time to time. The officer will have no claim from permanent absorption in the cadre and he will have no claim for seniority in Group 'A' cadre also.

3. This arrangement is for the period of eleven months (i.e. less than one year) only. However it may be terminated earlier also.

4. Shri S.K. Soni is directed to join his new assignment immediately.

Necessary charge reports may be sent to all concerned.

Sd/-

Asstt. Postmaster General (Staff)
Chhattisgarh Circle, Raipur"

11. The next order sought to be relied upon by the petitioner to show that the Officer concerned was continuing for more than one-year without any approval, is Annexure P-10 dated 11-02-2010. The said order reads as follows:

"DEPARTMENT OF POSTS
OFFICE OF CHIEF POSTMASTER GENERAL
CHHATTISGARH CIRCLE RAIPUR-492001

Memo No. STA 7-4/ChVI/435
Raipur dated 11-02-2010

The Chief Postmaster General C.G. Circle Raipur is pleased to promote Shri S.K. Soni an officer of P.S. Group B to the grade of Junior Time Scale of Indian Postal Service Group A in the pay band Rs. 15600-39100+ Grade Pay Rs. 5400/- purely on temporary and Adhoc basis and post him as Sr. Supdt. of Post Officer Raipur Dn. Raipur w.e.f. 15.02.2010.

2. The posting of Shri S.K. Soni in Group A of Indian Postal Service is subject to formal approval by the Directorate and it will be regulated in accordance with the Directorate instruction issued from time to time. The officer will have no claim for permanent absorption in the cadre and he will have no claim for seniority in Group 'A' cadre also.

3. This arrangement is for the period of eleven months (i.e. less than one year) only. However it may be terminated earlier also.

Necessary charge report may be sent to all concerned.

Sd/-

Asst. Director (Staff)
Chhattisgarh Circle Raipur"

12.The alleged violation is with reference to the mandate of the instructions given by the Ministry as per Annexure P-11, which is to the following effect:

"No.4-23/2004-SPG
Government of India
Ministry of Communications
Department of Posts

Date 18.08.2004

To

All Heads of Circles,
Sub: Adhoc officiating arrangements for more than one year.

Sir,

I Am directed to invite attention to this Department's letter of even number dated 10th June, 2004 regarding strict adherence to the instructions issued by Department of Personnel & Training in cases of adhoc appointments. Reference have been received from the circles regarding continuance of adhoc arrangements beyond one year due to no-availability of regular Group-A and Group-B officers in time and other compulsions. In this connection, it is mentioned that as per DOPT instructions adhoc promotions will be limited to one year only. In case it is envisaged to extend the adhoc arrangement beyond one year, approval of DOPT is required in advance. If the approval of DOPT to the continuance of adhoc arrangement beyond one year is not received before expiry of one year period the adhoc arrangement shall automatically ceases after one year period. In view of the existing instructions of the DOPT if it is foreseen that continuance of adhoc promotion beyond one year is unavoidable the matter may be referred to the Directorate for taking DOPT approval. Even if at any time it is seen that continuance of adhoc arrangement beyond one year is not required the same can be discontinued without any problem. In recent years while taking ex-facto approval for adhoc arrangement beyond one year, DOPT had adversely commented on the continuance of this practice. This situation may be avoided in future.

2. You are, therefore, requested that instructions on the adhoc promotions are followed strictly.

Yours faithfully,

Sd/-
(V.K. Tiwary)
Director (Staff)"

13.The learned counsel for the petitioner also seeks to place reliance on the information obtained from the Ministry under the Right to Information Act, 2005, in response to the specific question as borne by Annexure P-14. We

find it appropriate to extract the contents of the said document as well, for effective adjudication.

“F.No 24-83/2011-SPG
Government of India
Ministry of Communications and IT
Department of Posts
Dak Bhawan, Sansad Marg, New Delhi-110001

Dated the Dec 20, 2011

To,
Sh. L. D. Mahant Ex. PA Neora,
C/o GP Halwai
Adarsh Muktidham Podibahar,
Korba (C.G.)

Subject: Information under RTI Act.

Sir,
With reference to your application dated 01.10.2011 the requisite information pertaining to this office is as below.

S. No.	Information sought	Reply
1	Information regarding officiating arrangement of Sh. S.K. Soni as SSPOs, Raipur	
1	Whether approval of the appointing authority i.e. President of India had been conveyed to fill up the post for such a longer and indefinite duration. At present Shri S.K. Soni is continuously working we.f. 15.02.2010 i.e. for more than 19 months regularly and interruptedly. Whether the Head of the circle of Chhattisgarh postal circle is competent to fill up the post for such a longer duration without seeking the approval of the appointing authority at his own accord. In this connection the powers of the Head of the circle may kindly be intimated along with the relevant ruling/instruction.	(i) information is not available in material form. (ii) As per instructions contained in Deptt. Of Personnel and Training O.M. No. 28036/8/87-Estt. (D) Dated 30.03.1988 extending of adhoc appointment period for more than one year requires the prior approval at least two months in advance before the expiry of the one year period. If the approval of the Department of Personnel & Training to the continuance of the adhoc arrangements beyond one year is not received before the expiry of the one year period the adhoc appointment/promotion shall automatically cease on the expiry of the one year term. (iii) Your application is being forwarded to the CPIO, O/o CPMG, Chhattisgarh Circle for necessary action.
2.	The copy of approval given by the appointing authority i.e. the President of India. In this context may also kindly be supplied.	Information is not available in material form. Hence, cannot be made available to you as per the provisions of RTI Act.
3.	This may kindly also be intimated that whether the Adhoc	Your application is being forwarded to the CPIO, O/o

	SSPS Raipur can remove/dismiss and also get statutory powers to dismiss to an official appointed by the regular SSPOs Raipur, if so a copy may kindly be supplied.	CPMG, Chhattisgarh Circle for necessary reply in respect of supply of information on points 3, 4 and 5 as these relate to Chhattisgarh Circle.
4.	This may kindly also be intimated that as to how Shri S.K. Soni the Junior most PSS Group 'B' officer has been promoted hereby ignoring his senior i.e. Shri J.K. Tiwari, Halim Khan, D.K. Shukla, P.R. Rahi and J. Kanwar. The reasons may kindly be intimated.	
5.	The Director Postal Services Raipur say's that the post of SSPOs Raipur is of JTS Group 'A' with PB-3 where as Shri S.K. Soni adhoc SSPOs Raipur say's that the post is of SSPOs Raipur J.T.S. with pay Band-2 + GP Rs. 5400/- the factual position in this respect may kindly be intimated together with the relevant Gazette Notification a copy there of must be supplied.	

2. DDG (P), Department of Posts is the appellate authority in the matter and time limit for making an appeal against this reply is 30 days from the date of receipt of this letter.

Sd/-
(Raj Kumar)
Director (Staff) & CPIO
Phone: 011-23036656”

The learned counsel submits that, by virtue of the above position, if at all the 'ad hoc' appointment was to be extended, prior sanction by submitting necessary application before 2 months, ought to have been obtained and that the same is lacking in the instant case.

14. We find it difficult to agree with the above proposition. As mentioned already, Annexure P-9 is the first order giving 'ad hoc' promotion to the disciplinary authority, which is only for '11 months' i.e. less than 1 year. Annexure P-10 order dated 11-02-2010 as extracted already, clearly shows that it is a fresh appointment by way of 'ad hoc' promotion given to the very same person w.e.f. that day and it is not an extension of the previous order. Nothing is discernible from the said order to infer that it was an order whereby the ad hoc promotion

given earlier as per Annexure P-9, was extended, so as to come within the purview of the answer given in Annexure P-14.

15. In the above circumstances, we are of the view that the issue has been approached correctly and the same has been decided by the Tribunal in accordance with the law. The factual finding, the alleged infringement of the relevant provisions and the contents of the enquiry have been subjected to scrutiny at different levels, firstly at the Appellate level, then the revisional level and also by the Tribunal. We do not find any reason to interfere with the concurrent findings. The writ petition fails and it is hereby dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge