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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11973/2016**

SONU KUMAR, BPM & ORS

..... Petitioners

Through: Mr. Mukesh K. Giri with Mr. Sudhir
Naagar, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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16.01.2020

Dr. S. Muralidhar, J.:

1. The Petitioners have filed the present petition challenging an order dated 30th August, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in OA No.2910 of 2015 rejecting the prayer of the Petitioners for declaring the separate orders dated 24th June, 2015 terminating their services as Gramin Dak Sewak, Branch Post Master ['GDS, BPM'] as illegal.

2. It must be mentioned here that pursuant to an advertisement issued on 5th March, 2014 by the Senior Superintendent of Post ('SSP'), Aligarh Division for filling up the substantive vacancies of GDS, BPM, the Petitioners applied and qualified in the selection. The Petitioners were included in the

list of selected candidates and were issued engagement orders stating that they had been engaged as GDS, BPM. However, the appointment was stated to be on contract basis without specifying any time schedule.

3. In a judgment dated 9th December, 2014 in WP(C) 17 of 2009 (***Vinod Kumar Saxena v. Union of India & Ors.***) the Supreme Court held that the Petitioners were holders of civil posts and on that basis, they could approach the CAT to agitate their grievance.

4. After the Petitioners joined their respective posts, all of a sudden on 24th June, 2015 separate orders were issued terminating the services of each of the Petitioners. The orders, which were identically worded, read as under:

“In pursuance of the proviso to Rule 8 and the Note below Rule 8 of GDS (Conduct & Engagement) Rules, 2011, I Vinod Kumar Gupta Senior Superintendent of Post Offices Aligarh Division Aligarh, hereby terminate the services of Shri Vishnu Kumar GDS BPM Kapsiya B.O. in account with Sikandra Rau Hathras with immediate effect and direct that he/ she shall be entitled to a sum equivalent to the amount of his basic TRCA plus dearness allowance for the period of notice at the same rates at which he/she was drawing them immediately before the termination of his engagement. The due amount of TRCA plus dearness allowance is being remitted through Money Order in lieu of the notice of one month.”

5. On 1st July, 2015 the Petitioners filed OA No. 2910 of 2015 in the CAT challenging the above termination orders. On 15th September, 2015 the Respondents filed a reply in which *inter alia* reference was made to a complaint dated 25th January, 2015 received from an Ex Member of Parliament (‘MP’) Chaudhary Vijendra Singh regarding the irregular

working of the Senior Superintendent of Post Offices, Aligarh in the matter of engaging GDS, BPM in the Aligarh Division. On this basis the Chief Postmaster General [CPMG], UP Circle, Lucknow issued an instruction that all appointments in the various divisions should be reviewed. According to the Respondents, upon such review the Post Master General ('PMG'), Agra Division found the following irregularities in the engagement of GDS, BPM in the Aligarh Division:

“(i) The Notification issued inviting applications for this post was in contravention of GDS (Conduct and Engagement) Rules, 2011. Thus, while the prescribed maximum age limit was 60 years in the Notification issued on 24.09.2014 by SSPO Aligarh, this was mentioned as 64 years. Further, as per provision of the Rules, the crucial date for determination of age limit was closing date for receipt of applications from, candidates whereas SSPO Aligarh prescribed this to be the date on which the Notification was issued.

(ii) Last date for receipt of application was extended' by SSPO Aligarh, on his own, with ulterior motive.

(iii) As per Court orders on the subject in cases of engagement of GDS, a reserved panel was required to be prepared to take care of situations where the selected candidate refuses to join or resigns within one year of joining. The select panel was to be in proportion of 05 candidates for each vacancy and was to remain valid for a year. However; SSPO, Aligarh did not prepare any such panel.

(iv) In cases of 71 engagements; made by the SSPO, it was found that in 55 cases meritorious candidates were ignored. The respondents have given an account of how merit was overlooked in the selection process (pages 6-to 21 of their reply)

(v) There were also allegations, that contrary to Instructions, the meritorious candidates were called to the office of the SSPO

and asked to submit their Mobile Nos. and affidavits. A bribe amount was fixed and engagement orders were issued only in favour of those who paid the money. It was alleged that a bribe of Rs. 3 to 4 lacs per appointment was taken.

(vi) The engagement file was not routed through the office Supervisor, which was against the settled position of the department.

(vii) Medical certificate of fitness of selected candidates was not obtained, which was also against the departmental instructions.

(viii) Certificate of computer knowledge was not got verified before issuing the engagement orders.

(ix) Post engagement formalities were also not completed.

(x) Sh. Govind Singh applied for leave from 17.06.2015 to 20.06.2015. Additional charge of SSPO was given to Sh. V.K. Gupta, who was a regular Group-A officer and senior to Sh. Govind Singh. Post Master General, Agra Region vide his letter dated 23.06.2015 issued directions to Sh. V.K. Gupta for cancellation of all the 71 appointments made by Sh. Govind Singh. In compliance of these instructions cancellation orders of the applicants were issued on 24.06.2015. The said orders were delivered to the applicants through special messenger.”

6. The CAT in the impugned order has held the termination orders to be valid and consistent with Rule 8 of Gramin Dak Sewaks (Conduct and Engagement) Rules, 2011 which reads thus:

“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 be Sevak in lieu of notice of one month through money order."

7. The CAT observed that as regards the violation of principles of natural justice since irregularities that had occurred 'were in the violation of the Respondents themselves,' the issuance of a show cause notice to the Petitioners 'would have been an empty formality and an exercise in futility.' It was further observed that:

"No purpose would have been served by issuing such notice as there was nothing that the applicants could have explained in response to this notice. Hence, it is a case in which issue of notice for compliance of the principles of natural justice was rightly dispensed with."

8. As regards the ground urged by the Petitioners that the PMG by giving directions for terminating the appointments had illegally delegated the

powers of the appointing authority, it was held that the PMG, on finding that the complaint ‘had some merit’ had directed the Senior Superintendent of Post Office (‘SSPO’) and authority subordinate to him to cancel the appointments, and that ‘this was purely an administrative action and we do not find any fault in the same.’

9. The CAT concluded that in view of the following irregularities there was no error in the issuance of the termination orders:

“Thus, the maximum age limit prescribed for the candidates was not in accordance with rules. The date prescribed for assigning the maximum permissible age was also not in accordance with the rules. They were engaged without verification of certificates and without verification of their computer knowledge. There is also an allegation of appointment letters been issued to those who paid the bribe money, since the applicants had been called to the office of SSPO for giving their consent for appointment, in violation of the rules.”

10. It is seen that by an order dated 2nd May, 2017 this Court issued notice to the Respondents but declined to stay the operation of the order of the CAT or even issue directions to the Respondents not to fill vacancies against which the Petitioners were appointed. As regards the counter-affidavit, it was directed on 29th November, 2017 that since the entire pleadings before the CAT were on record ‘the requirement of filing the counter-affidavit/rejoinder is, therefore, dispensed with.’

11. This Court has heard the submissions of Mr. Mukesh K. Giri, learned counsel for the Petitioners. Although none appeared for the Respondents despite a pass-over the Court has examined a detailed reply filed by the

Respondents in the CAT.

12. It is seen that in terms of Rule 4(3) of the GDS (Conduct and Engagement) Rules, 2001 power was conferred upon an authority superior to the appointing authority either on its own motion or otherwise to call for the records relating to appointment of GDS and if the superior authority found that the appointing authority has exercised jurisdiction not vested in it or has failed to exercise jurisdiction so vested or has acted in exercise of jurisdiction illegally or without material irregularity 'it may make such order as it thinks fit.' The above Rule 4 has been reiterated in the 2011 Rules which replaced 2001 Rules. Rule 4 of the 2001 Rules reads as under:

“Rule-4 Appointing Authority

(1) The Appointing 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 Appointing 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 Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing 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.”

13. Rule 4 of the 2011 Rules reads as under:

“Rule-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 Sevaks 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.”

14. Thus it is seen that in the present case it is not the authority superior to the appointing authority who has terminated the services. In other words, the termination was done by the appointing authority itself i.e. the SSPO and not the authority superior to him i.e. the PGM. The PGM has simply delegated

that function to his subordinate.

15. The CAT, Allahabad Bench by an order dated 14th July, 2017 in a batch of OAs preferred by persons appointed as GDS BPM, and subsequently terminated by orders identical to the ones challenged in the present case, allowed their OAs, set aside the termination and directed their reinstatement. Following the said order, the CAT Allahabad Bench issued separate orders on 25th August, 2017 and 12th September, 2017 in other batches of similar writ petitions.

16. These orders of the CAT were challenged before the Allahabad High Court in an entire batch of writ petitions the lead matter of which was Writ - A No. 49864 of 2017 (*Union of India v. Archana Mishra*). By a judgment dated 30th April, 2018 a Division Bench of the Allahabad High Court dismissed the writ petitions upholding the orders of the CAT. The Allahabad High Court held that since the Petitioners were holders of a civil post the order of termination amounted to a punitive termination and the procedure under Article 311 (2) of the Constitution would have to be followed. It held:

“26. However, this power conferred upon superior authority is guarded by providing that it shall not be exercised unless an opportunity of being heard has been afforded. The reason as we understand for conferment of such power, is that with respect to appointments of Gramin Dak Sevaks, spread across the country, even in small areas also. Government may have come across in a large number of cases that appointments made by Appointing Authority on the post of Gramin Dak Sevaks were not consistent with Rules, or vitiated for any other reason, hence, power co-extensive with Appointing Authority was conferred upon the authority superior to Appointing Authority, but in

such a case, since the power is to be exercised by superior authority after perusal of record, it was found necessary and, in our view, rightly that affected person must be given an opportunity of being heard and that is consistent with principles of natural justice read with spirit of Article 311 (2) of the Constitution.

27. In the present set of writ petitions, we find that applicant-respondents working in different categories of Gramin Dak Sevaks have been terminated under the directions given by superior authority to the Appointing Authority after forming an opinion that appointments were not validly made or there had occurred some irregularities and pursuant to their directions, termination orders by referring to Rule 8 (2) have been passed by Appointing Authority.”

17. There was another category of employees than those who were terminated but the observations in that regard in the judgment in ***Union of India v. Archana Mishra*** (*supra*) need not engage this Court since the Petitioners before this Court would stand on the same footing as the Respondents in the Allahabad High Court referred to in paras 26 and 27 of its judgment extracted hereinbefore.

18. In regard to the same category the Allahabad High Court further held in ***Union of India v. Archana Mishra*** (*supra*) as under:

“29. So far as first category is concerned, we find that Rule 4(3) of Rules 2001 and Rules 2011 consistently have maintained the scheme that no direction or order shall be passed by Superior Authority in respect of appointment made by Appointing Authority on the post of Gramin Dak Sevak unless an opportunity of being heard is afforded. But circumventing the aforesaid specific provision, the Appointing Authority has passed termination order only by referring to Rule 8(2) and

thereby an attempt has been made by authorities of petitioners to flout the specific mandate of Rules in a designed manner. When confronted, learned Additional Solicitor General could not dispute that under Rule 4(3) no orders could have been passed by Superior Authority without giving opportunity of hearing and even if a direction has been issued to Appointing Authority to terminate any Gramin Dak Sevak, the mere fact that termination order passed by Appointing Authority refers to only Rule 8(2) will not detract from logical consequence that such an order founded on the direction of Superior Authority, would be illegal as no opportunity was afforded to the concerned Gramin Dak Sevak.”

19. The Allahabad High Court in *Union of India v. Archana Mishra* also distinguished the decision in *Brij Mohan Singh v. Union of India (2002) 9 SCC 453* and a decision of the Allahabad High Court itself in *Paras Nath Pandey v. Director, North Central Zone, Cultural Centre 2008 (10) ADJ 283*, and observed:

“34. The proposition advanced above cannot be disputed and we find no lesson to take a different view in the matter. However, here the fact situation is different. Applicant-respondents have been terminated with reference to Rule 8 of Rules 2011 by Appointing Authority but admittedly, said orders have been passed in furtherance of orders/directions given by Superior Authority, noticing some irregularities in appointment of Gramin Dak Sevaks, by exercising power under Rule 4(3). The mere fact that in termination orders, except a few one, reference of orders of Superior Authorities is not there but this is an admitted fact by petitioner that appointments were reviewed by Superior Authorities and finding irregularities, directions were issued and thereafter Appointing Authority issued orders of termination simplicitor, therefore, the manner in which orders of termination simplicitor have been passed is nothing but a camouflage so as to avoid specific requirement of compliance of principles of natural justice, enshrined under

Rule 4(3) of Rules 2011. Hence, the aforesaid exposition of law laid down in *Paras Nath Pandey Vs. Director, North Central Zone, Cultural Centre* (supra) has no application to the facts of present writ petitions.”

20. The Court is informed by Mr. Giri that the above judgment of the Allahabad High Court has been accepted by the Respondents and the Respondents before the Allahabad High Court i.e. the successful Applicants before the CAT Allahabad Bench have been reinstated in service. Mr. Giri further informs that the former MP Mr. Chaudhry Vijendra Singh, on whose alleged complaint the termination orders were issued, has made an endorsement on a copy of the said complaint on 23rd September 2015 denying that he ever wrote or signed such a complaint.

21. In that view of the matter the Court finds no reason to take a view different from that taken by the Allahabad High Court in *Union of India v. Archana Mishra* (supra). Since the identically placed GDS, BPMs have been reinstated pursuant to the said judgment, the Court sees no reason why the present Petitioners should be treated any differently.

22. For the aforementioned reasons, the Court sets aside the impugned order of the CAT and directs that the Respondents be reinstated forthwith and necessary orders be issued not later than 8 weeks from today. For the purpose of seniority, promotion and notional fixation of pay, the period between the date of termination of service and date of reinstatement will be treated as period in service. However, on the principle of ‘no work no pay’ the Petitioners would not be entitled to any arrears of pay for the said period.

23. The petition is disposed of in the above terms with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 16, 2020

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