
(2021) 12 GAU CK 0039

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4750 Of 2021

Bulbul Lahon

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 311(2)
GDS (Conduct and Employment) Rules, 2001 — Rule 8

Citation : (2021) 12 GAU CK 0039

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : P Mahanta

Final Decision : Disposed Of

Judgement

1. Heard Mr. P. Mahanta, learned Advocate appearing for the writ petitioner. Also heard Mr. R.K.D. Choudhury, learned Assistant Solicitor General of India, appearing for the respondents.

2. The petitioner before this court has challenged the order dated 09.03.2021, passed by the Central Administrative Tribunal (CAT), Guwahati Bench, in O.A. No. 329/2019, by which the Original Application filed by the present writ petitioner has been dismissed.

3. The material facts for our consideration are as follows:

In response to an advertisement in the newspaper way back in the year 2007, the writ petitioner was one of the candidates who had applied for the post of Gramin Dak Sevak (GDS) under the Postal Department, Government of India. Thereafter, the Committee appointed for selection of the candidates for the aforementioned posts selected the petitioner after going through the relevant documents etc. and the petitioner was appointed as GDS BPM, Zutlibari BO vide order dated 25.10.2017. However, while the petitioner was working in the said post, he received an order dated 19.08.2008, issued by the Superintendent of

Post Offices, Dibrugarh Division, by which the service of the petitioner was terminated. The aforesaid order merely states that the service of the petitioner stood terminated forthwith. In other words, no reason has been assigned for the termination of service.

The petitioner challenged the termination order before the CAT, Guwahati Bench in O.A. No. 152/2008, which was disposed by the Tribunal with the direction that the concerned authority in the Postal Department shall consider the Original Application filed by the petitioner as a representation of the petitioner and shall pass a speaking order thereon. Pursuant to the order passed by the Tribunal, the Postal authorities again passed an order dated 17.10.2008. The order refers to an enquiry conducted in the case of the petitioner, the case as put forward by the petitioner and then it states as under:-

"I have gone through the application. I have also gone through the letter alleging irregularities in appointment made by the Superintendent of Post Offices, Dibrugarh Division. I have gone through the enquiry report which investigated the allegations made. I have consulted the Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 by which the Extra Departmental Agents (Conduct and Service) Rules, 1964 has been replaced.

I find from the above that the appointment of Shri Bulbul Lahon as BPM, Zutlibari BO under Dibrugarh Division was not made in accordance with the rules. This has resulted in a more deserving candidate being deprived of the appointment. As per Rule 8 of the GDS (Conduct and Employment) Rules, 2001 which have been replaced the P&T EDA (Conduct and Service) Rules, 1964 the power to terminate services of GDS employees has not been limited only to instances arising out of misconduct. Neither does the rule require any show cause notice to be issued. Accordingly, the action of the Superintendent of Post Offices, Dibrugarh Division in terminating the services of Shri Bulbul Lhaon has been in accordance with the rules in force. It is also clear that the action has been taken for good and sufficient reasons and is not based on whim and caprice as has been alleged. I do not agree with the allegation that the termination has been ordered in order to favour some particular person. There is no basis for such allegation. Appointments are made as per rules and established procedure and where such procedure has not been followed there is provision for undoing the irregularity. It is not proposed to go into the legal issues that have been raised by the applicant as the undersigned is not qualified to deal with the same.

In view of the circumstances stated above, I find that the action of the Superintendent of Post Offices, Dibrugarh Division taken under his Memo.No.A-307/EDA/Zutlibari dated 18.07.2008 has been in accordance with the rules in force. I find no grounds for ordering any modification in the above order. The appeal as contained in O.A.No.152/2008 is rejected."

Even in the aforesaid order, apart from referring to some irregularities etc., no reason has been assigned as to why the service of the petitioner was terminated.

What were these irregularities and whether these irregularities were committed by the petitioner was never explained.

Nevertheless, the petitioner again approached the CAT, Guwahati Bench for the second time by filing O.A. 225/2008. This time the Original Application was disposed of by an order dated 14.08.2009, whereby the Postal authorities were directed to issue a speaking order assigning the reason for terminating the petitioner's service after hearing the petitioner. This order was again apprised to the Postal authorities but no action was taken by the Postal authorities. Thereafter, an Execution Proceeding was initiated by the petitioner, being Execution Petition No. 35/2014, wherein an order was passed by the Tribunal on 07.04.2014 directing the Postal authorities to comply with the directions of the Tribunal. Thereafter, finally a speaking order was passed by the Postal authorities on 15.07.2014, which reads as under:

"SPEAKING ORDER

As per the direction of Hon'ble CAT, Guwahati Bench, Guwahati in E.P. No.35/2014 arising out of OA Nos.225 to 230 of 2008, personal hearing was given to applicant No.1, Sri Bulbul Lahon, the then GDS BPM, Zutlibari BO in OA No.225/2008. The service of the applicant was terminated due to the following reasons.....

As per the Public Notification vide Memo No.A-307/EDA dated 26/09/2007 applications should reach the Appointing Authority on or before 25/10/2007. The applicant submitted the application to the appointing authority on 03/11/2007. In the Public Notification it was specifically mentioned that application received after last date will not be entertained. Even though one month time was given to the applicant to submit the application, yet the applicant did not submit the application on due date.

As the selection is in violation of terms and references made in the Public Notification, the termination notice issued cancelling the candidature of Sri Bulbul Lahon is considered to be fair and just. The applicant is at liberty to apply for any other vacant post and the same will be opened to all fresh applicants, however, the appointing authority reserves the right of selection as per merit and rule in force.

I, therefore, do not find any grounds for modifying the order issued by the Superintendent of Post Offices, Dibrugarh Division vide Memo No.A-307/EDA/Zutlibari dated 18/07/2008."

4. Now, for the first time after a period of more than six years of litigation the authorities had finally given the reason as to why the petitioner's services were terminated and the reason was that although the last date for submission of application for the post of Gramin Dak Sevak was 25.10.2007, the petitioner, while applying for the said post had submitted his application on 03.11.2007, i.e. after the closing date and, that being the anomaly, his service had been

terminated!

5. This court fails to understand as to how on such a ground the service of an employee can be terminated and, more importantly, why this reason was not disclosed to the petitioner while terminating his service.

6. Meanwhile, not discouraged as yet the petitioner files a third Original Application before the CAT, Guwahati Bench, being O.A. No. 040/00329/2019, and this time the Original Application was dismissed by the Tribunal by the order dated 09.03.2021. Paragraphs 8, 9 and 10 of the order dated 09.03.2021 are reproduced below:

"8. After carefully going through the history of the case and also documents made available to this court as stated above, we have noticed that the allegation of Sri P. Mahanta, learned counsel for the applicant that the respondent authorities are shifting reasons for rejection of candidature/appointment of the applicant from time to time is not borne out by any facts or materials on records. As cited above, it is observed that the applicant was appointed irregularly against the existing rules at that time after closure of the public notification. If such appointment had been obtained by any individual by manipulating with the assistance of lower functionary if any, against the public notification, the respondent authorities are definitely on obligation to reexamine and take suitable action as necessary. In this present case, since the respondent authorities after examining the process of selection, has found that there is irregularity in the selection/appointment, they have terminated the appointment of the applicant in accordance with the rules of the department.

9. Since the issue of fairness under the principles of natural justice has to be applied in the relevant context, in the present case, in the context of recruitment where all eligible candidates from the open market are entitled to apply and get selected, we found that the action on the part of the respondent authorities to terminate the services of the applicant as per rules of the department, is not denial of fairness and justice. Accordingly, after due consideration, we found that the present O.A. devoid of merit and liable to be dismissed.

10. Accordingly, O.A. is hereby dismissed. No order as to cost."

7. We have heard the learned counsel for the parties at length. The argument of the learned Assistant Solicitor General of India, appearing for the Postal Department would be that, admittedly, the last date for submission of application for the post of Gramin Dak Sevak was 25.10.2007, whereas the petitioner submitted his application on 03.11.2007, i.e. after the closing date and, therefore, such application was not liable to be considered at all. Moreover, if the petitioner's application was to be considered then similar opportunity would have to be given also to other eligible candidates who could have applied for the post and thus they have been deprived. It is further argued by the learned Assistant Solicitor General of India that this anomaly in respect of the petitioner was found while the Postal Department conducted an enquiry and, therefore, the service of

the petitioner was terminated.

8. Learned counsel for the petitioner, on the other hand, would argue that although the petitioner had submitted his application after the closing date, the fact remains that the petitioner had responded to the advertisement and the same was accepted by the Postal authorities and if the petitioner had filed application beyond the last date, it should not have been accepted. But having accepted the same, and then acting upon it and on consideration of all the relevant factors, including the candidature of the petitioner as against that of the rest of the applicants, the petitioner was selected and then appointed as Gramin Dak Sevak. However, after having joined his post and after serving for almost a year, his service was terminated on a ground which could not have been a ground for termination of service. It is also not a case of the respondent authorities that he was not working sincerely nor is there any allegation of misconduct or any other complaint against him during his service as a Gramin Dak Sevak.

9. Mr. P. Mahanta, learned counsel for the petitioner has argued that Gramin Dak Sevak holds a civil post under the State and, therefore, is entitled to the protection of Article 311(2) of the Constitution of India. He would argue that in the case of *State of Assam -Vs- Kanak Chandra Dutta*, reported in (1967) 1 SCR 679, a 'Mauzadar' was regarded as a person holding a civil post under the State and hence was liable to be given protection under Article 311(2) of the Constitution. Following the aforesaid decision, the Hon'ble Apex Court in the case of *Superintendent of Post Offices -Vs- P. Narayana Rao*, reported in (1977) 3 SCC 94, has held that Extra Departmental Agent, which is another name given to Gramin Dak Sevak, too holds a civil post and is liable for the protection under Article 311(2) of the Constitution of India. In Paragraph 4, it was held as under:-

"4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists 'apart from' the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in *Kanak Chandra Dutta's case* (supra) are clearly satisfied in the case of the extra departmental agents."

10. The argument of the learned counsel for the petitioner further would also be that even if, at the relevant point of time, the petitioner was working on probation, since it is the case of the respondent authorities that an enquiry had been conducted, the petitioner was liable to be given an opportunity of hearing. In this regard, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Apex Court in the case of *The State of Bihar vs. Gopi Kishore Prasad*, reported in 1960 0 AIR (SC) 689, where the Hon'ble Apex Court relied on the seminal case of *Parshotam Lal Dhingra v. Union of India* (1958 SCR 828), where it was held that in the case of a probationer if the employer chooses to hold an

enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

11. In the case in hand, the admitted position is that an enquiry had been conducted but no opportunity of hearing was given to the petitioner and, therefore, the order of termination is bad in law, learned counsel for the petitioner would argue.

12. After hearing the learned counsel for the parties, we are of the considered view that there is not only a clear violation of the principles of natural justice and fair play but even on merits the petitioner's service was not liable to be terminated on the ground which has been assigned by the respondent authorities. The only ground which the respondent department has assigned, that too, after seven years of litigation is that the petitioner's service was terminated as he had applied for the post after the closing date. This, admittedly, the department realised when the incumbent had already completed almost one year of service. Even assuming for the sake of argument that the petitioner had applied after the closing date, the fact remains that the application was accepted by the respondent department and, thereafter, on selection by a valid Selection Committee he was declared selected and subsequently he was appointed. It is not the case of the respondent department that there was any fraud or cheating, or withholding of any document or any information at the hands of the petitioner. It is clearly a case where the application, which was submitted beyond the closing date, was accepted by the employer and, therefore, it is not open for the respondent department to cancel his candidature, after his joining in service and rendering service for almost one year, on the ground that the application was submitted after the closing date. Leaving aside this main reason for terminating the service of the petitioner, the fact remains that even this ground was not disclosed to the petitioner when his services were terminated. Therefore, the petitioner approached the CAT, Guwahati Bench twice where orders were passed directing the respondent department to disclose the reason for his termination, but the reason was withheld by the department. It was only when the petitioner filed an Execution Petition before the CAT, Guwahati Bench, against non-compliance of the direction of the Tribunal and the Tribunal directed the respondent department to comply with the directions passed in the Original Application, the reason was disclosed to the petitioner. By this time seven years had passed.

13. On a specific query made to the learned Assistant Solicitor General of India, appearing for the respondent department, this Court has been informed that the post of Gramin Dak Sevak, to which the petitioner was appointed is still lying vacant.

14. There has been total apathy at the hands of the Postal Department in this case. Moreover, as we have already discussed above, in this case there has been

total violation of the principle natural justice and fair play. The department had, admittedly, held an enquiry and the petitioner was liable to be given an opportunity of hearing in the said enquiry. However, no such opportunity was given to the petitioner before his service was terminated.

15. In view of the above, the writ petition succeeds. The impugned dated 09.03.2021, passed by the CAT, Guwahati Bench is hereby set aside. The respondent authorities are directed to re-instate the petitioner in service within one month from the date of receipt of a certified copy of this order.

We have been told that at present the salary of the Gramin Dak Sevak is Rs.12,000/- per month but it was much less at the time the petitioner joined the service in the year 2007. Since we have held the termination of the petitioner from service to be bad in law and have ordered the petitioner to be re-instated in service, we further ordered that this shall be done with 50% of the back wages/ remuneration as applicable to the petitioner.

16. Writ petition stands disposed of in terms of the above.