
(2008) 01 PAT CK 0018
In the Patna High Court
Case No : CWJC No. 1175 of 2007

The Chief Post Master General, Bihar, Patna
Vs

APPELLANT

Nirbhay Kumar and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2008) 3 PLJR 344

Hon'ble Judges : Rajesh Balia, C.J;Barin Ghosh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. This petition is directed against the order of the Central Administrative Tribunal dated 5th June, 2006 allowing the Original Application submitted by the respondent Nirbhay Kumar. The said Nirbhay Kumar had been appointed as temporary Postal Assistant in the Office of the Superintendent of Post Offices, Nalanda vide order dated 16.4.2003 after proper selection and verification of his original document. While he was serving, an investigation took place about the mark-sheet submitted by the applicant Nirbhay Kumar by the Central Bureau of Investigation under FIR RC-11(A)/04 in which the applicant Nirbhay Kumar and some other public servants were involved. A charge-sheet has been submitted on 13.9.2004 in that case arraying the applicant only as an accused person. In connection with that case, the respondent Nirbhay Kumar had been arrested on 4th June, 2004 and was released on bail on 3rd September, 2004. Thereafter, by the order dated 18th October, 2004, the respondent's services were terminated. The order of termination reads as under:-

"Department of Post, India

Office of the Supdt. of Post Offices, Nalanda Dn. Biharsharif

Memo No. SP/PA/Con/2002 dated at Biharsharif, the 18.10.2004

Shri Nirbhay Kumar was selected for appointment in Postal Assistant cadre in Nalanda Division, Bihar Sharif vide Circle Office, Patna letter no. B2-3/Rectt/Outsider/PA/96-97 dated 21.4.2003.

In course of verification of mark-sheet of Intermediate Science examination from Bihar Intermediate Education Council, Patna, it was found that Shri Nirbhay Kumar had submitted bogus mark-sheet of Bihar Intermediate Education Council, Patna and was got employment as Postal Assistant in Nalanda Division, Bihar Sharif.

A show-cause notice vide this Office No. SP/PA/Con/2003 dated 11.2.2003 was served to Shri Nirbhay Kumar, Postal Assistant, Mokamaghat Sub-Post Office. Shri Nirbhay Kumar submitted the reply of show-cause which was received in this office on 25.11.2003.

In this connection a case has also been registered ... (sic) Branch, Patna under his case marked No. RC-11(A) 2004-PAT in which Shri Nirbhay Kumar, Postal Assistant, Mokamaghat Sub-Post Office surrendered before the court of Special Judge (C.B.I.), Patna on 4.6.04 and remanded into judicial custody and was sent-up to Beur Central Jail, Patna.

The undersigned is the appointing authority of the Postal Assistant cadre, hereby issued the order of termination of the service of Shri Nirbhay Kumar. Postal Assistant, Mokamaghat Sub-Post Office with effect from the date of surrendered before the court of Special Judge (C.B.I.) Patna i.e. 4.6.2004.

Sd/- (L. Rawat) Supdt. of Post Offices, Nalanda Dn. Bihar Sharif

2. The termination order has been challenged before the Central Administrative Tribunal by the respondent. The Tribunal held that the termination order is not a termination simpliciter but being punitive founded on the factum of producing forged mark-sheet and since the order has been passed without holding any enquiry in accordance with the rules, the order of termination is invalid and the same has been quashed with liberty to the respondents to proceed in accordance with law as also to take action for deciding the intervening period in accordance with rules and regulations.

3. The learned counsel for the petitioner urges that it was a condition of employment that he being in temporary employment, his services could be terminated any time without any notice, therefore, the termination cannot be held to be bad. It was also urged that the appointment letter also included the term that if the mark-sheet is found to be bogus, the services were liable to be terminated and, therefore, the termination being in accordance with the terms of appointment, the termination order cannot be faulted with.

4. Having perused the termination order as produced before us, we are of the opinion that the contentions of the learned counsel for the petitioner are not sustainable. There is well known distinction between an order, which is punitive, and an order, which is innocuous. Apparently the impugned order of termination

is not of simply terminating the temporary service but is ingrained with accusing finger to a misconduct attributable to the incumbent viz. securing employment with the aid of a forged document about qualification.

5. The termination order, in the present case, from every angle appears to be founded on the findings that the incumbent produced a bogus mark-sheet for entering in employment. It being a causal nexus between the conduct of the applicant and the termination order, it cannot be termed as a termination simpliciter of a temporary employee but is a punitive order of removal or dismissal from service.

6. It is also well settled that where order of termination is punitive, it has to be brought about by a fair procedure, namely, holding a proper enquiry into alleged misconduct in accordance with procedure laid under disciplinary rules, if any, and in accordance with requirement of Article 311 of the Constitution. Even if there are no rules laying down procedure for holding such enquiry it must accord to norms of a fair and just procedure in which the civil servant has been provided with adequate opportunity to defend himself. Undisputedly the impugned order has been made without holding a departmental enquiry, the termination of respondent's services cannot be said to be in accordance with law.

7. Therefore, we are in agreement with the order of the Tribunal that the respondent-applicant has been dismissed from service without holding a full departmental enquiry and thus the order of termination cannot be sustained.

8. However, we make it clear that as a result of quashing of the termination order, the petitioner's relationship with the respondent-applicant as employer and employee will be restored, but the respondent shall remain under suspension because he has remained in jail for almost three months, and where an incumbent remains in jail for more than 48 hours, as per rules, suspension is automatic.

9. For the period during which suspension continues, the respondent's entitlement to any remuneration shall be in accordance with rules governing the subject. The petitioner shall be at liberty to hold Departmental Enquiry, if so desires, in accordance with law. Accordingly, subject to the aforesaid direction, the petition fails and the same is hereby dismissed.