
(2015) 05 DEL CK 0414

In the Delhi High Court

Case No : W.P.(C) 8901/2014 and CM Appl. No. 20378/2014

Union of India and Others

APPELLANT

Vs

Ankit Kumar

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2015) 05 DEL CK 0414

Hon'ble Judges : Kailash Gambhir and I.S. Mehta, JJ.

Bench : Division Bench

Advocate : B.K. Berera, Advocate, for the Appellant; A.K. Trivedi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—Challenge in the present Writ Petition is to the impugned order dated 18.02.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "learned Tribunal") whereby the learned Tribunal has allowed the Original Application (in short "OA") No. 2803/2013 preferred by the respondent and order dated 16.10.2014 in R.A. No. 59/2014.

2. The brief facts of the case are as follows:

"The petitioners invited applications on 31.03.2012 for filling up the posts of GDS, BPM, Malpura. The respondent applied for the same and was appointed on 02.07.2012. He was given two days training and thereafter posted on 07.07.2012 at Branch Post Office, Malpura. According to the respondent, he was performing his duty without any complaint when on 05.04.2013 the petitioners issued impugned order whereby cancelling his appointment. On 05.04.2013 an order was issued in which it was stated that some complaint was made against his appointment and an enquiry was conducted by the Chief Post Master General, Lucknow and Post Master General, Bareilly though neither a copy of the

complaint nor a copy of enquiry report was made available to him. No reasons for cancellation of his appointment were mentioned and moreover, no reasonable opportunity to submit defence by as much as giving him a show cause notice and allowing him to reply to the same was given. A complaint on 17.07.2012 was received from one Sh. Laxman s/o Sh. Rajiv Singh against his appointment. An enquiry on 16.03.2013 was conducted by the Department and it was found that the Sh. Laxman had secured 61.16% marks in the matriculation exam whereas the respondent had secured 53.83% marks and thus, finding irregularity in the appointment of the respondent, his appointment was terminated. Feeling aggrieved by the order dated 05.04.2013, the respondent had preferred the O.A. No. 2803/2013 and vide order dated 18.02.2014 the said order was quashed."

3. Assailing the legality and correctness of the impugned order passed by the learned Tribunal, Mr. B.K. Berera, the learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate the fact that the respondent was a probationer and being a probationer, there was no obligation on the part of the petitioners to have given him an opportunity of hearing before taking a decision to cancel his appointment. The learned counsel also submits that the learned Tribunal also failed to appreciate that the order of cancellation was not stigmatic in nature and the decision to cancel his appointment was a result of an inquiry conducted by the Central Vigilance Committee (hereinafter referred to as the "CVC") in which it was found that the respondent secured lesser marks in his Class 10th Examination as compared to the marks secured by one Sh. Laxman and yet the respondent was appointed to the concerned post instead of Sh. Laxman. The learned counsel thus submits that the appointment of the respondent on the post of GDS, BPM, Malpura was an irregular appointment and his appointment was cancelled only after the said irregularity in his appointment was exposed after an inquiry was conducted by the Chief Post Master General, Lucknow and Post Master General, Bareilly. The learned counsel further submits that it is a well settled legal position that by mere fact that a preliminary enquiry has been conducted against a temporary servant and based on the outcome of the enquiry the services of such a temporary servant is dispensed with, then it would not mean that such termination would be stigmatic in nature or will tantamount to infliction of punishment of dismissal or removal within the meaning of Article 311(2) of the Constitution of India. The learned counsel further argued that the respondent was well aware of the fact that his appointment was contractual in nature which was liable to be terminated either by the respondent himself or by the employer by notifying such order in writing and therefore, the respondent cannot take the plea that he was entitled to an opportunity of being heard before the cancellation of his appointment. In support of his submissions, the learned counsel for the petitioner placed reliance on the following judgments:

"a) Champaklal Chimanlal Shah Vs. The Union of India (UOI),

b) Hari Kant Choudhary Vs. The Union of India (UOI) and Others, "

4. Per contra, Mr. A.K. Trivedi, the learned counsel for the respondent strongly contested the contentions raised by the learned counsel for the petitioners. The learned counsel submits that there is no illegality or any sort of perversity in the reasoning given by the learned Tribunal and also no such illegality has been pointed out by the learned counsel for the petitioners.

5. We have heard the learned counsel for the parties.

6. The respondent herein was appointed as GDS, BPM, Malpura vide appointment letter dated 02.07.2012. As per the appointment letter issued in his favour, the appointment of the respondent was contractual in nature. The respondent was given two days' training and thereafter posted on 07.07.2012 at Branch Post Office, Malpura. As per the respondent, he was performing his duties with all due diligence without there being any sort of complaint from any corner but nevertheless his appointment was cancelled by an order dated 05.04.2013 passed by the petitioners. It is not in dispute between the parties that prior to the cancellation of the appointment of the respondent no Show Cause Notice was served upon him. As per the petitioners, the order of cancellation has been passed using the powers conferred by Rules 8(1) and 8(2) of the GDS (Conduct and Employment) Rules, 2011. It is also the case of the petitioners that a complaint was received from one Sh. Laxman regarding the appointment of the respondent. This complaint of Sh. Laxman was enquired into by the vigilance and in the enquiry it was found that there was an irregularity in the appointment of the respondent as he had secured lesser marks in his Class 10th Examination than the marks obtained by Sh. Laxman. As per the petitioners, it was Sh. Laxman who was to be appointed on the said post but in his place the respondent was appointed.

7. The learned counsel for the petitioners also took a stand that the order of cancellation dated 05.04.2013 is not stigmatic in nature and the same is a simplicitor order of cancellation. The learned counsel also submits that the said order of cancellation does not attribute any kind of misconduct, negligence or insufficiency on the part of the respondent and therefore, the respondent cannot term the said order as stigmatic or punitive in nature.

8. To appreciate this contention raised by the learned counsel for the petitioners whether the order of cancellation is stigmatic or not it is worthwhile to reproduce the order of cancellation as under:

"Department of Posts

O/O The Sr. Supdt. Of Post Offices, Muzaffarnagar DN.,

Muzaffarnagar- 251001

Memo No. B-2/GDSBPM/Recruitment/2012-13 dated 05.04.2013 Sh. Ankit Kumar S/o Sh. Chandra Pal Singh, VPO-Behra Throo (Bhopa) was engaged over the post of DGSBPM (Malpura) vide this office letter No. even dated 02.07.2012. On receipt of complaint of above engagement, its CVC inquiry was got conducted

by CO/RO and CPMG, LKO reviewed the appointment case and PMG Bareilly ordered to cancel the above appointment vide R.O. letter No. RPB/Vig/Misc-I (A)/06/2012 dated 04.04.2013.

Therefore, the undersigned in exercise of powers conferred vide Rules 8(1) and 8(2) of the GDS (Conduct and Employment) Rules, 2011 issued by Postal Directorate New Delhi letter No. 21-8/2010- GDS dated 10.06.2011, further endorsed vide CO, LKO No. Estt./M-377/34GDS Committee Report/2009/1 dated 20.06.2011 and PMG Bareilly endorsement No. RPB/Estt./R-5/E.D. Ruling/99/Ch-I/2011 dated 05.07.2011 is hereby cancelled the above appointment of Sh. Ankit Kumar S/o Chandra Pal Singh, VPO- Behra Throo (Bhopa) made vide this office memo No. B-2/GDSBPM/Rectt./2012-13 dated 02.07.2012 with immediate effect. The due TRCA+D.A. is being remitted to the candidate in form of money order in lieu of one month notice as per rule.

B.K. Gupta Sr. Supdt. Of Post Offices, Muzaffarnagar Dn, Muzaffarnagar, 251 001

Copy of information and n/a-

1-2. The SDI(P) East, Muzaffarnagar. He will please deliver the copy of memo to Sh. Ankit Kumar under receipt and make suitable arrangement over the said post and relieve the said Sh. Ankit Kumar, GDS BPM (Malpura) immediately and send the charge report and detailed to this office.

3. The Sr. Postmaster, Muzaffarnagar. He will remit the TRCA+ D.A. in the form of money order in lieu of one month notice as per law.

4. The SPM Bhopa.

5. The PMG Bareilly Region, Bareilly write his letter for information.

6-7. The office copy/spare."

9. On bare perusal of the contents of the said letter, it is quite evident that it refers to the CVC enquiry which was got conducted by the petitioners by CO/RO and thereafter based on the enquiry the appointment case of the respondent was reviewed by CPMG, LKO and which ultimately resulted in cancellation of the appointment of the respondent. To say that such an order is not stigmatic in nature is an argument which does not find support from the contents of the aforesaid cancellation order. This order nowhere discloses as to what kind of enquiry was got conducted by the CVC against the respondent and what was the role of the respondent and what were the findings of the enquiry in so far as the role of the respondent was concerned. Once the petitioners have referred to some enquiry got conducted by CVC in the cancellation order, then it cannot be said that such insertion in the order will not cause any kind of stigma on the service of the respondent rather the order of cancellation dated 05.04.2013 is per-se stigmatic in nature. We thus, find ourselves in agreement with the reasoning given by the learned Tribunal that in such like case, the respondent

was entitled to an opportunity to explain his conduct before the cancellation of his appointment and by not doing so the petitioners have violated the principles of natural justice and also circumvented their own departmental instructions.

10. Reliance in this regard can be placed on a judgment of the Hon''ble Supreme Court in the case of State Bank of India and Others Vs. Palak Modi and Another etc., wherein it was held:

"The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general suitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

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A combined reading of Rules 15(1) and 16 and paragraph 5 of the conditions of appointment makes it clear that a person appointed as a Probationary Officer remains on probation for a minimum period of two years at the end of which he is entitled to be confirmed if the competent authority is of the opinion that he has satisfactorily completed the training in any institution to which he may have been deputed and the in-service training in the Bank. The Probationary Officer can also be subjected to screening for judging his merit and suitability. If the Probationary Officer fails to satisfactorily complete the training(s) or fails to pass the screening test or his service is not satisfactory, then the Bank can extend the period of probation by a further period of which the outer limit is one year. In a given case, the competent authority can, if it is of the opinion that the Probationary Officer is not fit for confirmation, terminate his service by one month's notice or payment of one month's emoluments.

It is thus evident that satisfactory performance during the period of probation, successful completion of training(s) and passing of the test conducted by the Bank for judging his suitability for the post constitute the touchstone for his confirmation.

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There is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehavior or misdemeanor. In a given case, the competent authority may,

while deciding the issue of suitability of probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanor constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non stigmatic order, the Court can lift the veil and declare that in the garb of termination simplicitor, the employer has punished the employee for an act of misconduct.

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The proposition laid down in none of the five judgments relied upon by the learned Counsel for the Appellants is of any assistance to their cause, which were decided on their own facts. We may also add that the abstract proposition laid down in paragraph 29 of the judgment in Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences (supra) is not only contrary to the Constitution Bench judgment in Samsher Singh v. State of Punjab (supra), but large number of other judgments - State of Bihar v. Shiva Bhikshuk Mishra (supra), Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (supra) and Anoop Jaiswal v. Government of India (supra) to which reference has been made by us and to which attention of the two-Judge Bench does not appear to have been drawn. Therefore, the said proposition must be read as confined to the facts of that case and cannot be relied upon for taking the view that a simple order of termination of service can never be declared as punitive even though it may be founded on serious allegation of misconduct or misdemeanor on the part of the employee."

(Emphasis Supplied)

11. In the light of the aforesaid discussion, we find no tangible ground to disagree with the reasoning given by the learned Tribunal in the impugned order.

12. The judgments cited by the learned counsel for the petitioners being distinguishable from the facts of the present case are not found applicable.

13. There is no merit in the present Writ Petition and the same alongwith the pending applications are hereby dismissed.

14. We accordingly, uphold the order passed by the learned Tribunal and direct the petitioners to comply with the direction given by the learned Tribunal within a period of four weeks from the date of this order.