

Present :- Hon'ble Justice Amrita Sinha

Sajal Roy @ Rai

Union of India & Ors.

Judgment on :- 28.02.2020

In response to an advertisement dated 28th August, 2013 published for engagement of Gramin Dak Sevak Deliverer the petitioner applied for being appointed in the said post. A regular selection process was undertaken and the petitioner being successful was issued a provisional appointment letter by the Inspector of Post Offices on 30th August, 2013. The appointment letter of the petitioner mentions that pending verification of character and antecedents the petitioner was provisionally appointed as Gramin Dak Sevak Deliverer in the scale of pay (TRCA) Rs.2,665-50-4165+Admissible D.A. or as amended and circulated from time to time. It was mentioned that the employment was contractual, liable to be terminated by notifying the order in writing and his conduct and service shall be governed by the Gramin Dak Sevak (Conduct and Engagement) Rules, 2011 (hereinafter 'the 2011 Rules') as amended from time to time. It was further mentioned that if after verification of character and antecedents he was subsequently found unsuitable for appointment he shall be discharged forthwith.

A show cause notice dated 5th August 2019 was issued to the petitioner by the Superintendent of Post Offices, Jalpaiguri Division wherein it was mentioned that on review of the recruitment of the said post certain irregularities were noticed. The Superintendent of Post Offices exercised Rule 4(3)(c) of the 2011 Rules and directed the petitioner to show cause as to why his irregular selection/engagement would not be treated as cancelled/null and void.

The petitioner submitted his representation in his defense. The representation was considered. A further opportunity was given to the petitioner for a hearing and by an order dated 2nd September, 2019 the Superintendent of Post Offices cancelled the panel of recruitment by holding that the petitioner was a beneficiary of the irregular selection which cannot be continued.

By a communication dated 4th September, 2019 the Sub-Divisional Inspector (Posts) terminated the service of the petitioner with immediate effect.

The petitioner is aggrieved by the same.

The petitioner submits that the selection process was conducted strictly in accordance with the advertisement and the relevant Rules. The petitioner is neither aware nor in any way responsible for the irregularities committed by the recruiting authority and accordingly for the technical irregularities the service of the petitioner ought not to be terminated.

Apropos the allegation against the petitioner of being appointed even though he was the second empanelled candidate, the petitioner submits that, from records it is clear that the first empanelled candidate remained absent on the date of bio data verification and accordingly the petitioner being the second empanelled candidate was offered the job. It has also been submitted that the petitioner undertook the pre-engagement training as required. In terms of the service rules he

has taken up a residence within the local jurisdiction of the post office in which he is serving.

The petitioner strongly contends that the impugned order of termination has been passed de hors the service rules by which he is governed. The engagement of the petitioner could not have been reviewed after a period of seven years from the date of appointment. No disciplinary proceeding was initiated against him. No charge sheet was issued and no enquiry officer was engaged to enquire into the charges levelled against him.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Union of India & Ors. -vs- Bikash Kuanar reported in (2006) 8 SCC 192 on the issue that in the absence of allegation of favouritism or bias, selection cannot be presumed to be done in a mechanical manner.

He also relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Patel Narshi Thakershi & Ors. -vs- Shri Pradyumansinghji Arjunsinghji reported in (1971) 3 SCC 844 on the issue that the power to review is not an inherent power and it must be conferred by law either specially or by necessary implication. If the Government had no power to review its own order, it is obvious its delegates could not have reviewed its order.

The petitioner prays for setting aside the impugned order of termination along with consequential benefits.

The respondents at the very outset have raised a preliminary objection with regard to the maintainability of the writ petition before the High Court. It has been submitted that the service matters relating to Gramin Dak Sevak pertains to 'service' as defined in Section 14(c) of the Administrative Tribunals Act, 1985 and accordingly the issue will be amenable before the Central Administrative Tribunal and not before the High Court.

It has been submitted that the petitioner was a less meritorious candidate than one Badsha Biswas who stood first in the panel. Even though the petitioner was the second empanelled candidate he was offered the job by ignoring the claim of the first empanelled candidate. It has been submitted that as per the Government norms the candidate obtaining the highest marks ought to have been offered the appointment.

Apart from the above there were several other irregularities committed by the recruiting authority at the time of selection. The recruitment was conducted by one Shri. Sanjay Bhattacharjee. The said recruiting officer violated all the instructions by not maintaining the Recruitment File properly. There is no evidence in support of the mode and date of dispatch of the notification to all concerned. No selection panel was prepared as required under law. There is no evidence on record to ascertain whether the application was received through employment exchange or by post. Individual recruitment file was not maintained.

It has been submitted that a disciplinary proceeding has been initiated against the recruiting officer and it was only at the time of inquiry that these irregularities were discovered and necessary steps have been taken to rectify the same.

It has been contended that according to Rule 4(3)(c) of the 2011 Rules any authority superior to the recruiting authority may, at any time, on its own motion call for the records relating to the engagement of Gramin Dak Sevak made by the recruiting authority, and if such recruiting authority appears to have acted in 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.

It has been contended that the superior authority acted on its own motion and conducted an inquiry wherefrom a series of irregularities and illegalities were unearthed which prompted the superior authority to take action in accordance with the aforesaid Rule. It has been pointed out that the petitioner was one of the beneficiaries of the illegal recruitment process conducted by the recruiting officer and the entire panel of engagement was cancelled. The engagement of the petitioner stood terminated not by way of penalty imposed upon him but on cancellation of the panel for engagement.

The respondents submit that the illegalities committed by the recruiting officer cannot be allowed to be continued as the same will amount to illegal grant of benefit to non-eligible candidates.

The respondents pray for dismissal of the writ petition.

After hearing the submission made on behalf of both the parties it appears that an open advertisement was published on 28th August, 2013. The petitioner responded to the said advertisement. A regular selection process was conducted. The petitioner stood second in the panel of candidates eligible for engagement. As the first empanelled candidate did not appear on the day of bio data verification, the job was offered to the second empanelled candidate in usual course. The documents of the petitioner were verified at the time of engagement. The engagement is contractual and the same can be terminated in accordance with the 2011 Rule guiding the petitioner.

It further appears that there is no allegation against the petitioner with regard to his conduct. All the allegations are against the recruiting officer. A regular disciplinary proceeding is pending against the said recruiting officer. The superior authority *suo motu*, in the year 2019, reviewed the selection process which took place in August, 2013. In the meantime a considerable period of time has lapsed.

Valuable right has accrued in favour of the petitioner. Assuming that the selection process was illegal, the authority ought to have taken remedial measures in proper time to quash the same.

The expression “at any time” as appearing in Rule 4(3) of the 2011 Rule has to be read and interpreted in a reasonable way. ‘Any time’ should not stretch to such a long period of time so as to infringe the statutory and fundamental right of an employee. Any time does not mean an indefinite period of time. It always denotes a reasonable period of time. A span of seven years cannot be construed as reasonable for the purpose of *suo motu* review of the selection process.

There is a provision in the 2011 Rule under which an employee may be terminated and the nature of penalties that can be imposed upon an errant employee. In the instant case there is no direct allegation or imputation of charge against the petitioner. The first empanelled candidate has not lodged any complaint with the recruiting officer or any senior officer asserting his claim for employment. In the absence of any complaint or claim from the first empanelled candidate it can be safely concluded that the first empanelled candidate waived his right of engagement. It is only when the first empanelled candidate lodges a complaint against the illegal engagement of the second empanelled candidate, by bypassing his claim, then only the allegation of engaging a less meritorious candidate may be substantiated.

It cannot be lost sight of the fact that the marks obtained by the first empanelled candidate is 56.33, whereas the marks obtained by the petitioner is 56.25, that is, the difference between the marks obtained by the first and the second empanelled candidate is marginal.

In the disciplinary proceeding initiated against the recruiting officer the authority is yet to come to a conclusive finding with regard to the contention of the

recruiting officer that the candidate obtaining the highest marks remained absent on the day of bio-data verification. Until and unless it is proved that the second empanelled candidate was engaged ignoring the claim of the first empanelled candidate and unless the first empanelled candidate asserts his right of engagement, the issue of appointing a less meritorious candidate ought not to be opened at such a late stage. By the lapse of time the same ought to be treated as a closed chapter for all practical purposes.

The respondents ought to appreciate the fact that valuable statutory and fundamental right has accrued in favour of the petitioner for being in service till date, uninterruptedly, since 2013. The service of the petitioner can only be terminated in accordance with the provisions of law and not contrary thereto. In the absence of a conclusive proof that the petitioner was a beneficiary of an illegal act of a dishonest recruiting officer the service of the petitioner ought not to be terminated.

The Supreme Court in *Bikash Kuanar* (supra) clearly laid down that if a mistake is committed in absence of an administrative order, the same may be rectified. The rectification of a mistake, however, may in a given situation require compliance with the principles of natural justice.

In the instant case the principles of natural justice does not appear to have been complied. The service of the petitioner stood terminated as a fall out of the action taken against the recruiting officer for certain irregularities allegedly committed by him. The respondents have not been able to show before the court whether or not any penalty was imposed upon the delinquent recruiting officer and accordingly terminating the service of the petitioner without complying the principles of natural justice and in violation of the provisions of the 2011 Rule is not tenable in law.

As regards the objection of the respondents with regard to the maintainability of the writ petition before this court it appears that the 2011 Rule guiding the petitioner lays down the terms and conditions of engagement of Gramin Dak Sevak. According to 3A(v) of the said rule a Sevak has been kept outside the civil services of the Union. 3A(vi) says that a Sevak shall not claim to be at par with the Central Government employees. 3A(i) mentions that a Sevak shall not be required to perform duty beyond a maximum period of five hours in a day and 3A(ii) mentions that a Sevak shall not be retained beyond 65 years of age. 3A(iii) says that a Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family.

The service of the petitioner is absolutely contractual. The service is terminable in accordance with the 2011 Rule. There is no retirement age in respect of Gramin Dak Sevak but they are not retained beyond 65 years of age. From the aforesaid service conditions and the nature of service performed it can be conclusively said that the petitioner who is serving as a Gramin Dak Sevak cannot be treated as a regular employee of the Central Government holding a civil post.

The appointing authority of the petitioner may be a regular Central Government employee but Gramin Dak Sevaks are not regular employees of the Central Government. They do not hold any civil post under the Central Government and accordingly Gramin Dak Sevaks are not entitled to approach the Central Administrative Tribunal in the event there is any dispute regarding their service. As a corollary it may be said that the Central Administrative Tribunal does not have the jurisdiction to decide the disputes relating to service matters of Gramin Dak Sevaks.

Accordingly, the objection raised by the respondents with regard to the maintainability issue of the writ petition fails and the case is decided on merits.

In view of the discussions made hereinabove the impugned order dated 2nd September, 2019 cancelling the panel of recruitment by which the petitioner was engaged and the impugned order of termination of engagement dated 4th September, 2019 are set aside and quashed.

The respondent authorities are directed to immediately reinstate the petitioner in service along with all consequential benefits.

It goes without saying that the respondent authorities are free to take any action against the offending recruiting officer, but prior to taking any action against the petitioner, as a fall out of the action taken against the recruiting officer it has to be ensured that the statutory provisions and the principles of natural justice are strictly followed.

WPA 496 of 2019 is disposed of.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)