

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH :: AT HYDERABAD**

OA/020/01033/2017

Date of CAV: 15.02.2022

Date of Pronouncement: 03.03.2022



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr.B.V.Sudhakar, Admn. Member

Between:

Mrs. K. Sunitha, W/o. K.P. Venkateswarlu,
GDS MC/MD, Mallapuram BO,
In account with Gudur (K) SO
Under Kurnool Postal Division, Kurnool.

...Applicant

(By Advocate: Mr. K. Venkateswara Rao)

And

1. The Assistant Superintendent of Post Offices,
Kurnool West Sub Division, Kurnool.
2. The Superintendent of Post Offices,
Kurnool Postal Division, Kurnool.
3. The Director of Postal Services,
O/o. the Post Master General, Kurnool Region, Kurnool.
4. The Post Master General, Kurnool Region,
Kurnool.
5. The Chief Post Master General, AP Circle,
Vijayawada.
6. The Director General, Department of Posts, New Delhi.
7. Union of India,
Rep. by its Secretary to the Department of Posts, New Delhi.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr. B.V.Sudhakar, Admin. Member)

Through Video Conferencing:

2. The OA is filed in regard to the termination of the services of the applicant.



3. Brief facts of the case are that the applicant was appointed as Grameen Dak Sewak Mail Carrier/Mail Delivery (for short **GDS MC/MD**) in 2012. Being unwell she went on leave from 1.5.2014 to 30.6.2014 by nominating Sri Shaik Shavali as her substitute and thereafter, she was forced to be on leave for health reasons till Dec. 2016. On 23.1.2017, applicant was medically certified to be fit for duty, but the respondents refused to allow her to join. Instead, a charge memo dated 23.8.2016 was issued for unauthorized absence, but later dropped on 31.7.2017 since the disciplinary authority was a witness in the case. However, vide memo dated 26.10.2017 the applicant's services were terminated. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the I.O/P.O have been appointed without disposing the representation submitted responding to the charge laid, thereby violating Rule 10 of GDS Rules. The impugned order dated 26.10.2017 is punitive in nature and is not a simplicitor. The applicant was on leave for medical reasons and that she is entitled for protection under Article 311(2) of the Constitution.

5. Respondents state that the applicant worked as GDS MC/MD from 26.11.2012 to 30.6.2014 and from 01.07.2014, as she was on unauthorized absence, charge memo dated 23.8.2016 was issued and later, dropped vide letter dated 31.07.2017, on being pointed out that the disciplinary authority was a material witness. Thereafter, her services were terminated by invoking Rule 8 of the GDS (Conduct & Engagement) Rules (for short **GDS Rules**) by paying one month's Time Related Continuity Allowance. On preferring an appeal dated 31.07.2017, it was informed vide letter dated 02.02.2018 that there is no provision to appeal against the order issued under Rule 8 of GDS Rules. Applicant did not prefer any representation to join duty or did she submit any leave applications for extension of leave.



At the admission stage, this Tribunal passed an interim order on 24.11.2017 suspending the impugned memo dated 26.10.2017 and the same was extended from time to time.

Applicant filed a rejoinder claiming that the termination was in violation of the Hon'ble Supreme Court dictum on the issue. Medical certificate dated 23.1.2017 was submitted for the entire period of absence.

The MA 323/2019 filed by the respondents for vacation of stay has also been perused.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the termination of the services of the applicant who was appointed as GDS MC/MD and worked in the said post from 26.11.2012 to 30.6.2014. For health reasons, from 1.5.2014 to 30.6.2014, she nominated a substitute in her place and went on leave. Later,

as her health deteriorated, she could not attend duty and when she was found fit vide medical certificate dated 23.1.2017, respondents did not permit her to join duty. Thereafter, a charge memo dated 23.8.2016 was issued, which was dropped as the disciplinary authority was the material witness. It was followed by terminating the services of the applicant vide memo dated 26.10.2017 without notice by invoking Rule 8 of the GDS rules, which is reproduced here under:



“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 the Sevak in lieu of notice of one month through money order.”

II. The applicant rendered less than 3 years of service and hence, Rule 8 was invoked to terminate her services. However, it is on record that the applicant was not able to attend duty due to elaborate medical reasons furnished in the medical certificate dated 23.1.2017. The same are extracted here under:

“This is to certify that Patient Smt. K. SUNITHA, age about 27 years, whose signature is available above, who was under my treatment for irregular periods and taken Rx for conceiving. She conceived in month of June, 2014 and was advised bed rest for a period of 3 months. Unexpectedly the pregnancy got aborted in month of July 7th 2014. She was advised rest for one month. Patient went into depression. Next cycle of treatment started and successfully she conceived in month of November, 2014 and that pregnancy also aborted in January, 2015, when patient went into severe depression. Patient was advised

Laparoscopic Surgery and further Rx. Due to depression patient was not well orientated towards any activities. Her behavior was also affected severely till December, 2016. In 2016 she underwent surgery for her problem of infertility and now she has recovered and well oriented and actively carrying her day to day activities with effect from 23.01.2017. Now she is medically fit to join her duty.”



From the above, it is clear that the applicant had serious health issues and due to the same, she could not attend duty. Indeed, they were factors beyond her control. Respondents proceeded to charge her for unauthorized absence by issuing charge memo dated 23.8.2016, which was dropped for reason that the disciplinary authority was a material witness in the case. However, the motive to proceed against the applicant being authorized absence remains well established. It has been observed by the Hon'ble Apex Court in ***Krushnakanth B Parmar and another Vs. Union of India*** reported in (2012) 3 SCC 178 that unauthorized absence due to compelling reasons like ill health beyond the control of the applicant cannot be considered as willful and therefore, is not grave misconduct, as under:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.”

III. Respondents realizing the mistake that the disciplinary authority was a material witness have dropped the charge sheet cited, on 31.7.2017. However, having failed to proceed with the charge memo respondents chose Rule 8 of GDS Rules cited supra to terminate the

services of the applicant vide impugned order dated 26.10.2017. The respondents have achieved what they could not achieve directly in an indirect manner by using Rule 8. This is not permitted under law as observed by the Hon'ble Apex Court in a series of judgments as under:



State of Haryana v. M.P. Mohla, (2007) 1 SCC 457, 'What cannot be done directly, cannot be done indirectly. { Also see Subhash Chandra v. Delhi Subordinate Services Selection Board,(2009) 15 SCC 458, Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas,(2008) 11 SCC 753 Babulal Badriprasad Varma v. Surat Municipal Corpn.,(2008) 12 SCC 401, Shiv Kumar Sharma v. Santosh Kumari,(2007) 8 SCC 600 Ram Preeti Yadav v. Mahendra Pratap Yadav,(2007) 12 SCC 385 State of Haryana v. M.P. Mohla,(2007) 1 SCC 457, BSNL v. Subash Chandra Kanchan,(2006) 8 SCC 279 Ram Chandra Singh v. Savitri Devi (2004) 12 SCC 713 }'

IV. Having issued the charge memo for unauthorized absence, the respondents should have proceeded with the same by appointing an adhoc disciplinary authority or drop the charge sheet and get a fresh one issued by an adhoc disciplinary authority. The issue of notice was not a simplicitor since by uncovering the veil, it is evident that the respondents wanted to proceed against the applicant for unauthorized absence. There was a specific motive behind the termination, as is evident from the history of the case and therefore, invoking Rule 8 in the background of the developments of the case was incorrect. Moreover, when the applicant has submitted a medical certificate stating the ground reality it was up to the respondents to verify and then come to a conclusion. When the medical condition of the applicant was as bad as that for some time she had serious behavioral issues, it could not have been expected of her to discharge her official duties. Without giving an opportunity to the applicant to explain her stand, respondents proceeding to invoke Rule 8 to terminate her services was violative of Principles of Natural Justice. More so, when the respondents

were aware that applicant went on leave due to medical reasons. Any decision taken without following the Principles of Natural justice is vitiated. Moreover, the case of the applicant need to have been dealt under Rule 7 of GDS Rules which is reproduced here under:



“7. Leave

The Sevak may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that –

(a) where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him , or

(b) where such a Sevak, who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave,

he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.”

As per the above Rule, the applicant should have been proceeded under Rule 10 of GDS Rules that provides for an inquiry to be conducted. Respondents should have continued with the charge memo dated 23.8.2016 as discussed supra in consonance with Rule 7. By not doing so, Rule 7 has been violated. Thus, the respondents having been aware that the applicant was not keeping good health, resorting to invocation of Rule 8 to terminate her services is unfair to say the least.

We must add at this juncture that Administrative power is subject to fairness, reasonableness and justness as observed by the Hon’ble Supreme Court of India in **Anoop Kumar vs. State of Haryana** on 15 January, 2020

in Civil Appeal No.315 of 2020 (arising out of SLP(C) No.18321 of 2011 as under:

It cannot be disputed that the administrative power exercised by the DGP is subject to the requirement of fairness, reasonableness and justness.



In the instant case, none of the 3 elements cited in the judgment are seen in the decision to terminate the services of the applicant. Rule 7 has not been followed. The applicant was not heard though the respondents were aware that the reason for her going on leave were medical reasons. The medical certificate issued on 23.1.2017 covered the period of absence. These grounds were not considered by the respondents. Hence the decision to terminate applicant services was violative of the legal principle cited and hence invalid.

V. Further, Hon'ble Apex Court in ***Chandra Prakash Shahi v State of U.P & Ors 2000 SCC (L&S) 613***, have held that even temporary Govt. Servants or Probationers are entitled for protection under Article 311 (2) of the Constitution despite the fact that temporary Govt. Servants have no right to hold the post and their services are liable to be terminated any time by giving one month's notice. The action of the respondents terminating her services without following Article 311(2) of the Constitution that provides for a regular inquiry to be conducted, is therefore irregular and arbitrary.

In addition, we find the termination of the services of the applicant for the reason of unauthorized absence, which is the main ground evidenced from the facts, as disproportionate and shocking the conscience the Court. It is well settled in law that the any penalty imposed which is shocking can be

remanded to the respondents for review or set aside. In the instant case, since the penalty was imposed way back in 2017 and nearly 4 years have elapsed, we are of the view that remanding the case at this distant date would not serve the interests of justice. Other contentions made by both the parties have been perused and they, being irrelevant, have not been commented upon.



VII. Therefore, viewed from any angle, the action of the respondents to terminate the services of the applicant is not in tune with the legal principles laid down by the Hon'ble Supreme Court cited supra and the rules on the subject. Consequently, the impugned order dated 26.10.2017 is quashed and set aside. The interim order passed on 24.11.2017 is made absolute. However, respondents are granted the liberty to proceed against the applicant by following the rules and law on the subject.

VII. With the above direction, the OA is allowed to the extent indicated. MA stands disposed accordingly.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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