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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00811/2016

Dated this Wednesday, the 12th day of February, 2020

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Shri Sambaji Rajaram Chavan, Age 46 years,
Working as GDS Mail Delivery, Ulwa BO,
Residing at At 271/ Sector 3, Kopar Khairne,
Navi Mumbai 400 706.

- Applicant

(By Advocate Shri Vicky Nagrani)

VERSUS

1. Union of India through Chief Postmaster General,
Maharashtra Circle, GPO, Mumbai 400 001.
2. The Superintendent of Post Office, Panvel Division,
Navi Mumbai 410 206.
3. The Assistant Superintendent of Post Office, Vashi Sub
Division, Vashi, Navi Mumbai 400 703.

- Respondents

(By Advocate Ms. Vaishali Choudhari)

ORAL ORDER

Per : R.N.Singh, Member (Judicial)

Heard the learned counsels for the parties.

2. In the present OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 24.11.2016 vide which his service as Gramin Dak Sevak (Mail Deliverer) [for short GDS (MD)] has been terminated by invoking Rule 8 of Gramin Dak Sewak (Conduct and Engagement) Rules, 2011. The impugned order dated 24.11.2016 provides that the applicant is entitled to claim a sum equivalent to the amount of his basic allowance plus dearness allowance for the period of notice at the same rates at which he

was drawing them immediately before termination of his service or as the case may be for the period by which such notice falls short of one month.

3. The precise facts of the present case are that in pursuance to the requisition sent by the respondents to the Employment Exchange, Panvel, the name of the applicant was endorsed for the post of Gramin Dak Sewak Mail Deliverer at Ulwe Branch Post Office, Panvel District, Raigad. The applicant underwent the selection process and in view of the recommendation of the concerned Selection Committee, he was appointed to the said post by the Competent Authority. The service of the applicant was subsequently confirmed by the respondents vide their letter dated 11.02.2014 (Annex A-3), which provided that the engagement of the applicant as GDS MD shall be in the nature of a contract liable to be terminated by the respondents by notifying the order in writing and that his conduct and service shall also be governed by Gramin Dak Sewak (Conduct and Engagement) Rules, 2011 and if such offer is acceptable to him, he should communicate his acceptance in the proforma prescribed and enclosed with the order dated 11.02.2014. The applicant accepted the offer and confirmed to join as GDS MD. However, abruptly without issuance of any show cause notice, the respondents have issued the order of his termination dated 24.11.2016 (Annex A-1).

4. Aggrieved of the impugned order the applicant has approached this Tribunal by way of the present OA and it is contended that the applicant is still continuing under the respondents in view of the interim order passed by this Tribunal.

5. In response to the notice received from this Tribunal, the respondents have filed reply affidavit.

6. The learned counsel for the applicant argues that the applicant has been endorsed by the Employment Exchange. He has undergone the selection process and has been recommended by the Selection Committee for such appointment. Once such recommendation was accepted by the Competent Appointing Authority leading to the applicant's appointment to post, there was no jurisdiction for any authority to doubt the competence of the Selection Committee and that of the Appointing Authority in absence of violation of any statutory provision or the same being result of *mala fide*. He further argues that authority higher than the Appointing Authority, if at all has taken a decision to review the applicant's appointment, it was incumbent upon the respondents to issue a show cause notice to the applicant before taking a final decision with regard to termination of his engagement.

7. Per contra, the learned counsel for the respondents with the assistance of the reply filed on behalf of the respondents argues that there was no illegality in the impugned order as on periodical

review, the Higher Authority has found that the engagement of the applicant was irregular and contrary to the relevant scheme on the subject and persons with higher educational qualification i.e. SSC / Xth pass have been ignored whereas the applicant was a mere VIII pass has been selected and appointed.

8. The learned counsel for the respondents further argues that the termination of engagement of the applicant is in consonance with the provisions of the Rule 8 of GDS (Conduct and Engagement) Rules, 2011. She further contends that the Higher Authority is always vested with the jurisdiction to review the action and order of the authority under it. She also invites our attention to the averment made in the reply affidavit wherein it is stated that Regional Office, Mumbai directed to disengage irregularly engaged applicant vide their office letter No.NMD/A/Irrregular Appt/GDS Ulwa/2016-17 dated 23.11.2016.

9. The applicant has filed rejoinder. The learned counsel for the applicant submits that till date the actual decision of the Higher Authority dated 23.11.2016 vide which a decision was taken by them to terminate the services of the applicant has not been supplied to the applicant. He further submits that what material has been considered by the respondents while taking the decision dated 23.11.2016 has also not been provided to the applicant to make any effective representation. He further places

reliance on the common oral judgment dated 09.05.2009 of this Tribunal, Camp Sitting at Nagpur in OA No.524/2005 title **Shri Ashish M. Anjankar Vs. Director Postal Services and Others** with a batch of OAs.

10. We have considered the pleadings on record and submissions made by the learned counsels for the parties carefully. Rule 8 of GDS (Conduct and Engagement) Rules, 2011 (Annex A-6) reads as under:

"8. Termination of Employment

(1) The employment of a Sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak:

(2) The period of such notice shall be one month:

Provided that the employment 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 employment, 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."

11. It is not in dispute that the Competent Authority is having the jurisdiction under Rule 8 of GDS (Conduct and Engagement) Rules, 2011 to terminate the services of the applicant after giving

a notice for the period stipulated under the rules or after giving the pay in lieu of such notice period. However, we cannot ignore the fact that the actual decision was taken by the respondents' higher authorities to terminate the services of the applicant vide their decision dated 23.11.2016 and before that neither any notice has been given nor any material has been provided to the applicant by the Competent Authority to make any effective representation against such decision. So far reliance of the learned counsel for the applicant on the judgment of this Tribunal in **Shri Ashish M. Anjankar** supra is concerned, it is not in dispute that in the said case proper notice had been issued to the applicant therein before being terminated from service and thus the facts of the present OA are different than those of the case of **Shri Ashish M. Anjankar**.

12. In these facts and circumstances, we are of the considered view that at this stage it cannot be construed that the claim of the applicant is squarely covered by the judgment in **Shri Ashish M. Anjankar** supra.

13. However, in the facts and circumstances, the OA is disposed of with a direction to the respondents to supply a copy of their decision dated 23.11.2016 referred to above within four weeks of the date of receipt of a copy of this order with liberty to the applicant to prefer an effective representation if he so desires and on receipt of such representation from him, the respondents

shall take a final decision on the representation of the applicant by passing a reasoned and speaking order as expeditiously as possible and in any case within six weeks from the date of receipt of his representation in this regard.

14. The respondents are further directed to not to give effect to the impugned order till a final decision is taken on his representation if preferred by the applicant within the time stipulated and such decision is communicated to the applicant.

15. The OA is disposed of in the aforesaid terms. However, in the facts and circumstances, no order as to costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

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04/03/2020

