

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 25th day of Toray, 2012.

HON'BLE MR. D.C. LAKHA, MEMBER (A)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Original Application Number. 1226 OF 2005.

Chandra Shekhar Chaubey, S/o Shri Indrajeet Chaubey, R/o Village and Post- Khalishpur, District- Varanasi.

.....Applicant.

VE R S U S

1. Union of India through the Secretary , Ministry of Communication, Govt. of India, New Delhi.
2. Superintendent of Post Offices, West Division, Varanasi.
3. Sub Divisional Inspector of Post Offices (North) Sub Division, Varanasi, District- Varanasi.

.....Respondents

Alongwith

Original Application Number. 1227 OF 2005.

Shailesh Kumar Rai, S/o Sri Om Prakash Singh, R/o Village and post - Kanakpur, District- Varanasi.

.....Applicant.

VE R S U S

1. Union of India through the Secretary , Ministry of Communication, Govt. of India, New Delhi.
2. Superintendent of Post Offices, West Division, Varanasi.
3. Sub Divisional Inspector of Post Offices (North) Sub Division, Varanasi, District- Varanasi.

.....Respondents

Advocate for the applicant: Sri Sudama Ram

Sri Anand Kumar

Advocate for the Respondents: Sri N.P. Shukla

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Delivered by Hon'ble Mr. Sanjeev Kaushik, J.M.

Since both the O.As are on identical question of law and the impugned order are of same date. Merely having different dates in entry in service will not upset the ultimate finding to be given by this Tribunal on legal question. Therefore, both the O.A have been heard together and decided by a common order. For ready reference the facts of the O.A No. 1226/05 are taken.

2. The applicant through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for quashing the orders/letters dated 01.09.2005 (Annexure A-1), 03.10.2005 (Annexure A-1/A), 04.10.2005 (Annexure A-1/B), 14.11.2005 (Annexure A-1/C), and 10.12.2005 (Annexure A-1/D).

3. Factual matrix of the case are that vide order dated 20.07.2002 (Annexure A-2) the applicant was appointed provisionally as GDS/Mail Deliverer, Dabathua B.O till regular appointment. Later on the applicant was again appointed vide order dated 22.10.2003 as G.D.S Mail Deliverer, Phoolpur on provisional basis on account of promotion of regular incumbent of the post to the post of Postman. Thereafter vide order dated 30.04.2005 (Annexure A-6) the applicant was adjusted/absorbed on the post of GDS/Mail Deliverer, Phoolpur E.D.S.O, Distt. Varanasi on the ground of being completed three years continuous service.

4. It is alleged that the S.P.O, West Division, Varanasi vide letter dated 01.09.2005 directed the respondent No. 3 to stop the functioning of the applicant on the post of GDS/Mail Deliverer, Phoolpur (Annexure A-1). It is further alleged S.P.O, West Division, Varanasi vide his letter dated 03.10.2005 again directed the respondent No. 3 to terminate the services

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of the applicant and one Sri Shailesh Kumar Rai being irregular (Annexure A-1/A) and in response thereto the S.D.I, North, Varanasi, who is the appointing authority, vide letter dated 04.10.2005 relieved the applicant with immediate effect (Annexure A-1/B) and directed one Sri Ramesh Chandra Mishra, GDS/MC, Karsipur to take over the charge of the post. Against the order dated 01.09.2005 the applicant approached this Tribunal by way of the instant O.A in which this Tribunal vide its order dated 10.10.2005 passed add interim injunction in favour of the applicant and the applicant was allowed to continue in service. Despite the interim order dated 10.10.2005 the applicant was not allowed to work which led the applicant to file contempt petition against the respondents. It is alleged that prior to allowing duty the S.P.O (West), Varanasi/respondent No. 2 issued a notice dated 20.10.2005 to the applicant to present on 30.10.2005 at 11.00 AM in the office but despite the reply dated 31.10.2005 to the notice, the respondent No. 2 sent another notice dated 31.10.2005 to present on 07.11.2005. The applicant then submitted an application dated 07.11.2005 stating therein that as the O.A is pending before the Tribunal, issuing such notice is not proper. Thereafter the respondent No. 2 vide order dated 14.11.2005 cancelled the appointment letter dated 22.10.2003 and the order of absorption dated 30.04.2005 of the applicant (Annexure A-1/C) and in compliance thereto, the respondent No. 3 vide letter dated 10.12.2005 (Annexure A-1/D) cancelled the appointment order dated 22.10.2003. In view of the changed circumstances, as the order of appointment has been cancelled the applicant moved application for amendment of the instant O.A for challenging the subsequent orders, which was allowed by this Tribunal. The applicant has filed the instant O.A on the ground that termination of the provisional appointment of the applicant on the direction of higher

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authority is totally illegal and malafide. It is further alleged that the applicant has completed more than three years continuous service and moreover he has been adjusted/absorbed against the same post, hence termination of appointment of the applicant without prior notice is totally in violation of Article 14 & 16 and against principles of natural justice.

5. On notice, the respondents filed their Counter Affidavit denying the allegation of the applicant and submitted that the applicant was engaged as substitute on the post of GDS MD without following recruitment rules hence the appointment of the applicant was irregular and rightly reviewed by the superior authority. It is further submitted that a show cause notice dated 20.10.2005 was issued to the applicant to appear on 31.10.2005 in the office of Superintendent of Post Offices (West Division), Varanasi for personal hearing. Learned counsel for the respondents also submitted that the Superintendent of Post Offices is the reviewing authority and is empowered under rule 4 of GDS (Conduct and Employment) Rules 1964, wherein sub rule 3 has been incorporated by Amendment dated 09.05.2003, for reviewing any order passed by the lower authority against the rules.

6. Learned counsel for the applicant denying the pleas taken by the respondents in their Counter Affidavit, filed Rejoinder Affidavit. In para 5 of the Rejoinder Affidavit, it has categorically been stated that respondents were going to take over the charge of the post from the applicant without terminating his services and hence this Tribunal granted interim order dated 10.10.2005 in favour of the applicant and it is only thereafter the respondents passed the termination order and sent a letter dated 20.10.2005, which is illegal and arbitrary. It is further submitted that the

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applicant is being discriminated as several persons, who were appointed like the applicant, are still working whereas the applicant has been singled out on the grounds of irregular appointment.

7. We have heard Sri S. Ram, learned counsel for the applicant and Sri N.P.Shukla, learned counsel representing the respondents.

8. Learned counsel for the applicant vehemently argued that the impugned order terminating the services of the applicant is totally illegal, arbitrary and in colourable exercise of powers as before passing the impugned order neither the applicant was given opportunity of hearing nor any notice was given to the applicant. He further argued that the impugned order of termination is also contrary to rule 8 of Gramin Dak Sevak (Conduct and Employment) Rules 2001, which mandates that who so ever have completed three years of service, his service cannot be terminated without firstly issuing the notice. He placed reliance upon the orders passed by this Tribunal in the case of **Raghunath Singh Vs. U.O.I & Ors - 2002 (2) A.T.J pg. 606, Devi Singh and Anr. Vs. U.O.I & Ors - 2005 (1) ATJ pg. 274 and Y.P. Makwana Vs. U.O.I & Ors. -2003(1) ATJ pg. 352**. On the basis of above judgments, counsel for the applicant submitted that the impugned orders be set aside. Secondly he submitted that the impugned order is also violative of principle of natural justice. In this regard he placed reliance upon the judgment of Hon'ble Supreme Court in the case of **R. Sulochana Devi Vs. D.M. Sujatha and Ors. - 2005(1) ATJ pg. 671**. Counsel for the applicant further argued that the impugned order of termination has been passed on the direction given by the higher authority and , therefore, the same is bad in law as the appointing authority has not applied his mind and only on the direction

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given by the higher authority his services have been terminated. He argued that the higher authority cannot review the appointment of the applicant. In this regard he placed reliance upon the judgment of Cuttack Bench of this Tribunal in the case of **Bharat Chandra Gehra Vs. Secretary, Department of Posts, Ministry of Communication, New Delhi and Ors – 2001(1) ATJ pg. 592, R. Jambukeswaran and Ors. Vs. U.O.I & Ors – 2004 (2) ATJ (Full Bench) pg. 1, Jyotiraj Thirakappa Lalege Vs. The Senior Superintendent of Post Offices, Belgaum and Ors.- 2003(1) ATJ pg. 705 and U.O.I & Ors. Vs. Bikash Kuanar- 2006 (111) FLR 707 (S.C).**

9. On the other hand learned counsel for the respondents submitted that the services of the applicant has been terminated in terms of the conditions stipulated in the appointment letter. He further argued that there is no requirement under rules which says that even if the service of a substitute/provisional appointee is to be terminated then prior notice is ~~not~~ required. He argued that the applicant was appointed provisionally till regular appointment is made and, therefore, the prior notice is not required as the applicant is only a provisional appointee. He further argued that the applicant has been appointed in dehors of service rules as neither application was called from the open marked or any names were called from employment exchange. Therefore, applicant's initial appointment is bad in law and he cannot seek that before terminating his service, which is illegal, a notice must be given to him. Lastly he prayed for dismissal of the O.A.

10. We have considered the rival submissions and have gone through the record as well as judgment cited by the respective parties.

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11. The moot question which arises for consideration in the instant O.A and which is answered by us is whether the services of GDS/Mail Deliverer , who was appointed provisionally and have completed three years of service, can be terminated without issuing show cause notice or without applying the principles of natural justice ?

12. Before proceeding further it is relevant to note down the service rules, which governs ^{the} service conditions of the respondents' department i.e. known as Gramin Dak Sevak (Conduct and Employment) Rules 2001 (in short 'GDS Rules 2001'). Rule 8 of GDS Rules 2001, 'which is akin to rule 6 of old GDS (Conduct) Rules 1964, deals with the termination of employment , which 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.".

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13. The above provision of GDS Rules 2001 has come up for interpretation before various court of law and it is held that a substitute /provisional appointee , who has completed three years of service cannot be thrown out of service summarily without issuing show cause notice as envisaged in rule 8 of GDS Rules 2001. Reliance in this behalf is placed upon the order of Ahmadabad Bench of this Tribunal in the case of Y.P. Makwana (Supra) . The relevant para reads as under : -

"8. We, therefore, quash and set aside the order dated 14.03.2002 produced at Annexure A-3 and direct the department to reinstate the applicant in his original post with all backwages. Mr. Doctor at this stage submitted that liberty may be given to the Department to take further action after giving a show cause notice to the applicant. He, however, objects to the award of the full backwages to the applicant saying that backwages need not be given in full, but 50% may be allowed. So far the liberty for further action is concerned, we grant such a liberty and department may take any further action in this regard after issuing a show cause notice and considering the reply of the applicant to such notice. However, the respondents are directed to take an appropriate action only after the reply of the applicant to show cause notice is received and the same is duly considered. So far the backwages are concerned, since we have found that order of termination of service of the applicant was not based on any rules or regulations but was in the contravention of the department's own circular, we are not inclined to accept the say of Mr. Doctor that 50% of backwages should be given. The Supreme Court has already taken a decision that if an order of termination of service is illegal, the employee is entitled to get the full back wages i.e. in the case of A.I Kaira V/s Project and Equipment Corporation reported in ATJ 1988(2) Vol. 5 page 545. In any case, we direct the respondents to pay the full back wages to the applicant from the date of the termination of service till reinstatement and the same be paid within a period of three months from the date of receipt of a copy of this order and if not paid within the stipulated period, the same shall be payable at the rate of 12% per annum from the date of expiry of three months.

14. In another O.A No. 231/08 decided on 05.04.2011 , the Jodhpur Bench of this Tribunal after analyzing the issue on the earlier precedent has come to the conclusion that those provisional appointees, who have rendered three years continuous service cannot be thrown out of service

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without issuing show cause notice as per rule 8 of GDS Rules 2001. Against the order of Jodhpur Bench, Union of India filed DBCWP No. 6246/11 – U.O.I & Ors. Vs. Gopa Ram, which is dismissed by the Hon'ble High Court of Rajasthan at Jodhpur vide its judgment dated 24.09.2011. The relevant observation made by the Hon'ble High Court reads as under:-

"We have perused the judgment impugned . In our opinion, the order passed by the learned Tribunal is perfectly in consonance with the provisions of law in view of the fact that before passing the order impugned no opportunity of hearing was given to the respondent applicant which is mandatory in view of the judgment of the Hon'ble Supreme Court rendered in the case of D.K. Yadav Vs. J.M.A Industries Ltd. – 1993 SCC (L&S) 723.....

Thus, the view taken by co-ordinate Bench of this Court on interpretation of Rule 8 ibid. is clear to the effect that the employment of a GSBPM who has not rendered three years continuous service could be terminate at any time by notice in writing by either of the parties but when an incumbent has rendered three years service, no order terminating such service could be passed without opportunity of hearing. We find no reason to take any different view of the matter: and the Tribunal does not appear to have committed any illegality in holding, while following the decisions aforesaid that after continuous employment for over three years, the services of the applicant could not have been terminated by the petitioners without following the prescribed procedure. Though, a suggestion has been made that the safeguard under Rule 8 ibid. is available only to a regular GS who is appointed through regular process on substantive post by a competent authority but this suggestion neither appears to be in conformity with the plain language of Rule 8 or could be countenanced for the view already taken by this Court in Chandresh Kumar @ Chunni Lal (supra). In the aforesaid view

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of the matter and in the admitted fact situation that the services of the applicant were terminated without any notice, without any hearing, and without following the prescribed procedure, the only relevant point for determination is as to whether the employment of the applicant had been continuous for a period of three years or not; and, in this regard, we are unable to find any fault in the findings of the Tribunal that the applicant has indeed served for a continuous period of over three years. It is more than apparent that the repeated acts of so-called taking over and again over the charge' were aimed only at creating some artificial breaks in service. Obviously, the idea behind resorting to this methodology of artificial breaks had been to somehow obviate the operation of the GDS Rules, particularly Rule 8 *ibid.* that invests the incumbent with a right against termination after working continuously for three years".

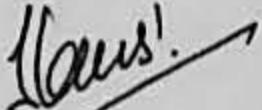
15. Not only this it is settled law of land that a vested right cannot be taken away without show cause notice to the effected person. In this behalf ~~reference~~ ^{reliance} is placed upon R. Sulochana Devi Vs. D.M. Sujata 2005(1) ATJ 671 and in the case of D.K. Yadav Vs. J.M.A Industries Ltd. – 1993 SCC (L&S) 723. Even from perusal of rule 8 reproduced above indicates that those provisional appointees who have completed three years service should not be thrown out of service summarily without notice. In view of the above we find that the impugned order is not sustainable on this ground.

16. The second question that whether the superior authority can direct the appointing authority to dispense with the service of an employee? This question has also been considered by this Tribunal in the case of Raghunath Singh Vs. U.O.I & Ors. – 2002 Vol. 2 ATJ 606. Even the Full Bench of this Tribunal in the case of R. Jambukeswaran and Ors. Vs.

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U.O.I and Ors - ATJ 2004(2) -F.B have considered the same proposition and have held in favour of the applicant. The Cuttack Bench of this Tribunal in the case of Bharat Chandra Behera (Supra) has held that the reviewing authority cannot cancel the selection.

17. In the instant case also the services of the applicant, who was initially appointed on 20.07.2002 as provisional GDS Mail Deliverer and continued to remain working as such till the impugned order has been passed, has been dispensed with on the direction of superior authority and that too without any show cause notice. Now applying the ratio of above settled law in the facts of the case of the applicant, the O.A is allowed and the impugned orders are set aside. No order as to costs.


(SANJEEV KAUSHIK)
MEMBER- J


(D.C. LAKHA)
MEMBER- A

/Anand/