15

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH, CUTTACK.

1) OA No.818/2010,
2) OA No.42/2011,
3) OA No.175/2011,
4) OA No.218/2011,
5) OA No.219/2011,
6) OA No.228/2011,
7) OA No.248/2011,
8) OA No.249/2011,
9) OA No.250/2011.

Dated : 05-12-2011.

Coram : Hon'ble Shri C.R.Mohapatra, Member (A)
Hon'ble Shri A.K.Patnaik, Member (J).

Original Application No.818/2010

Amulya Kumar Panda, AT/PO-Dekulba, Via Remunda S.O., Dist. Bargarh.

...Applicant

(By Advocate Shri D.P.Dhalsamant)

v.

1. Union of India, represented through its Director General of Posts, Govt. of India Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Director, Postal Services, O/O. PMG, Sambalpur Region, Sambalpur.
4. Superintendent of Post Offices, Sambalpur Division, Sambalpur-776801.

.....Respondents

(By Advocate Shri Lalatendu Jena, ASC)

Original Application No.42/2011.

Smt.Susmita Patel,
At/PO. Talpatia,
Via OMP, Jhasarguda,
Orissa. ...Applicant

(By Advocate Shri G.K.Acharya)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Superintendent of Post Offices,
Sambalpur Division,
Sambalpur-776801.
3. Post Master,
Jharsuguda. .....Respondents

(By Advocate Shri D.K.Behera, ASC)

Original Application No.175/2011.

Lingaraj Padhan,
AT/PO-Bara, Via Bhutka S.O.,
Dist Bargarh. ...Applicant.

(By Advocate Shri D.P.Dhalsamant)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Director Postal Services,
O/o. PMG, Sambalpur Region,
Sambalpur, AT/PO, Dist Sambalpur.

17

4. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801.

(By Advocate Shri U.B.Mohapatra, Sr.SC)

Original Appliction No.218/2011.

Ashis Pradhan,
AT/PO Nuria Jampali via Bardol,
Dist. Bargarh. ...Applicant.

(By Advocate Shri D.P.Dhalsamant)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Director Postal Services,
O/o. PMG, Sambalpur Region,
Sambalpur, AT/PO, Dist Sambalpur.
4. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801. ...Respondents

(By Advocate Shri P.R.J.Dash, ASC)

Original Application No.219/2011

Sobharam Sa, Vill/PO Jarabaga, Via Belpahar R.S., Dist : Jharsuguda, Permanent resident of Vill : Bishipali, PO : Sunari, Via I.T.P.S. Banaharpali, Dist : Jharsuguda – 768234. ...Applicant.

(By Advocate Shri P.K.Padhi)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi – 110 001.

18

2. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801.
3. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda. ...Respondents.

(By Advocate Shri S.Mishra, ASC)

Original Application No.228/2011.

Jagnyeswar Biswal,
AT/PO Bansajal, via Jajumura S.O.,
P.S. Charmal,
Dist. Sambalpur. ...Applicant

(By Advocate Shri D.P.Dhalsamant)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Director Postal Services,
O/o. PMG, Sambalpur Region,
Sambalpur, AT/PO, Dist Sambalpur.
4. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801. ...Respondents

(By Advocate Shri S.Mishra, ASC)

Original Application No.248/2011.

Achyutananda Pradhan,
Vill Chadeimara,
PO Aunli, Via Reamal,
Dist. Deogarh – 768109. ...Applicant.

(By Advocate Shri P.K.Padhi)

v.

19

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801. ...Respondents

(By Advocate Shri R.C.Swain, ASC)

Original Application No.249/2011.

Smt.Urmila Sahu,
Vill/PO Tungamal,
Via – Reamal,
Dist. Deogarh – 768109. ...Applicant.

(By Advocate Shri P.K.Padhi)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801. ...Respondents

(By Advocate Ms.S.Mohapatra, ASC)

Original Application No.250/2011.

Bansidhar Pradhan,
Vill. PO Batagaon,
Via Redhakhol,
Dist. Sambalpur. ...Applicant.

(By Advocate Shri P.K.Padhi)

v.

1. Union of India, represented through
its Director General of Posts,
Govt. of India Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg,
New Delhi – 110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.
3. Superintendent of Post Offices,
Sambalpur Division,
At/PO/Dist. Sambalpur – 776801. ...Respondents

(By Advocate Shri G.P.Mohanty, ASC)

ORDER:

MR.C.R.MOHAPATRA,MEMBER(A):

Though we heard these OAs one after the other, since common issues are involved in all these OAs, for the sake of consistency and convenience this common order is passed which would govern all these OAs.

OA No.818/2010.

The order under Annexure-A/4 dated 18-10-2010 terminating the service of the Applicant in exercise of the power under Rule 8 of GDS [Conduct & Employment] Rules, 2001 by the Superintendent of Post Offices, Sambalpur Division, Sambalpur has been

challenged by the Applicant in this Original Application filed under section 19 of the A.T. Act, 1985 with prayer to declare Rule 8 of GDS Rules, 2001 ibid as *ultra vires* to the Constitution of India and to quash the order of termination under Annexure-A/4.

According to the applicant, he was selected through a regular process of selection duly conducted by the Competent Authority to the post of GDSBPM, Dekulba Branch Post Office in account with Remunda Sub Post Office under Bargarh Head Post Office vide Memo dated 24-11-2009. Pursuant to the aforesaid order, he joined the post on 23.12.2009 but without any of his fault he has been issued with order of termination under Annexure-A/4 dated 18-10-2009.

Respondents have filed their counter in which it has been stated that in exercise of the power under Rule 4 (3) of DOP GDS [Conduct & Employment] Rules, 2001, the Director Postal Services, Sambalpur reviewed the selection file of Dekulba EDBO/GDSBO in account with Remunda SO and found that Respondent No.4 had

ignored as many as 12 candidates who had secured more marks than the applicant The selection made to the post in question was in contravention of the DGP&T instruction issued vide letter No. 22-12/2001-GDS dated 17-09-2003 [Annexure-R/2] in which it was provided that the selection should be based on merit subject to fulfilling other eligibility conditions viz; providing space for BO taking up residence in the BO village before appointment etc. by the candidates, with regard to the reservation principle provided by the Government.

Whereas, in the instant case most of the meritorious candidates though eligible to be considered their cases were ignored and the applicant who ranked at position 13th of the merit list was selected and appointed to the post in question. Hence, based on the order of the Respondent No.3 the service of the applicant was terminated by the Respondent No.4 by paying him one month basic allowance [TRCA + Dearness Allowance) in lieu of the notice as provided

23

under Rule 8 of the GDS [Conduct & Employment] Rules, 2001.

O.A. No.42/2011

The case of the Applicant is that in order to fill up the post of GDSBPM of Talpatia BO in account with OMP Line Jharsuguda SO under Jharsuguda HO Respondent No.2 while issuing open notification inviting application requisition was placed to the concerned Employment Exchange for sponsoring names of suitable candidates. Accordingly, checklist containing 28 names was prepared. The Applicant, Smt.Susmita Patel being found more meritorious than the candidates whose names figured in the check list, was issued the order of appointment under Annexure-A/1. However, complying with the conditions stipulated in the order of appointment the applicant joined the post in question on 19.5.2010. Thereafter, she has been issued with an order under Annexure-3 dated 17.1.2011 under Rule 8 of the GDS [Conduct and Employment] Rules, 2001 terminating her service forthwith by paying her one month pay in lieu of the one month's notice as provided

in the Rules. Being aggrieved by the said order under Annexure-3, the Applicant has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 praying therein to quash the said order under Annexure-3 dated 17.1.2011 and to direct the Respondents to reinstate her to the post in question with all consequential service and financial benefits retrospectively.

In substance the case of the Respondents (in their counter) is that the Applicant is not entitled to the relief claimed in this Original Application as the appointment of the applicant was not in accordance with the instructions of the DGP&T Memo No. 22-12/2001-GDS dated 17.0-9.2003 in which it has been provided that the selection should be based on merit subject to fulfilling other eligibility conditions viz; providing space for BO taking up residence in the BO village before appointment etc by the candidates with regard to the reservation principle provided by the Government. Consequently, the cases of three meritorious candidates

though secured more marks than the applicant were deprived of being considered and appointed to the post in question. On review of the selection file this fact having come to the notice as per the order of the higher authority the applicant's service was terminated by paying her one month's pay in lieu of the notice as provided under Rule 8 of the Rules ibid.

O.A. No.175/2011

In this case, the Selection and appointment of the applicant through a regular process of selection to the post Gramin Dak Sevak Branch Postmaster (GDS BPM) provisionally vide order dt. 9.2.2010 is not in dispute. He joined the post on 15.3.2010 is also not in dispute. However, while continuing as such in the post, he was serviced with an order of termination of his service by paying one month's pay under Rule 8 of the GDS Rules, 2001 under Annexure-A/4 dated 24.01.2011. The said order of termination has been challenged by the applicant in this OA with prayer to quash the same and to direct the Respondents to reinstate him to the post and pay him all

26

his consequential service and financial benefits from the date of his termination till reinstatement.

Respondents in their counter have stated that on review of the selection by the Regional Office, Sambalpur it was found that the post was reserved for ST candidate and in absence of ST candidate it should have been filled up by suitable/eligible SC candidate. Though one ST and five SC candidates were available, their candidature was rejected on flimsy ground i.e. non mentioning the other source of Income in Column No.9 of the application though the said clause has been deleted long since vide amended Note II (iii) below Rule 3 of Department of Posts GDS (Conduct & Employment) Rules, 2001 since 17,.09.2003. Hence, on the order of the higher authority, the appointing authority terminated the service of the applicant under Annexure-A/4 under Rule 8 of the Rules, ibid, 2001 by paying one month's pay in lieu of one month's notice as provided under the Rules. Hence the Respondents have prayed for dismissal of this OA.

97

O.A. No.218/2011

In this OA, the Applicant was provisionally selected vide order under Annexure-1 dated 14.5.2010 and after completion of other formality he was appointed to the post on 14.6.2010. While continuing as such, he was served with an order terminating his service with immediate effect vide order under Annexure-A/4 dated 11.4.2011 by paying him one month's pay in lieu of one month's notice as per Rule 8 of the GDS Rules, 2001. This order of termination has been challenged by the Applicant with prayer to quash the same and to direct the Respondents to reinstate him to service with all consequential service and financial benefits retrospectively.

Respondents' version (in their counter) is that the Applicant is not entitled to the relief claimed in this Original Application as the appointment of the applicant was not in accordance with the instructions of the DGP&T Memo No. 22-12/2001-GDS dated 17.0-9.2003 in which it has been provided that the selection should be based on merit subject to fulfilling other eligibility

conditions viz; providing space for BO taking up residence in the BO village before appointment etc by the candidates with due regard to the reservation principle provided by the Government. The applicant was selected by ignoring the candidature of other meritorious candidates. Hence, on review of the selection file this fact having come to the notice, the service of the applicant was terminated under Rule 8 of Rules, 2001. As such, the Respondents have prayed to dismiss this OA.

O.A. No.219/2011,

The case of the Applicant in nut shell is that he was selected through a regular process of selection duly conducted by the competent authority to the post of GDSBPM, Jarabaga Branch Post Office in account with Belpahar Railway Station Sub Post Office vide Memo dated 24.12.2009. Accordingly, he joined the post on 17.2.2010. But without following the rules or issuing any show cause notice to him in compliance with the principles of natural justice while he was discharging his duty to the utmost satisfaction of his authority and the

29

villagers, the Respondents in exercise of the powers provided under Rule 8 of the GDS [Conduct & Employment] Rules, 2001 terminated his service vide Memo under Annexure-A/4 dated 11th April, 2011 which is impugned in this Original Application filed under section 19 of the A.T. Act, 1985 with prayer to quash the impugned Memo under Annexure-A/4 and to direct the Respondents to reinstate him to service with all consequential service and financial benefits retrospectively.

In the counter the Respondents have stated that in order to fill up the vacant GDS BPM post of Jarabaga BO in account within Belpahar RS SO notification was issued vide office Memo No. PF/A-294 dated 25.08.2009 calling for applications from the open market and through employment exchange. Five candidates applied through employment exchange and 15 candidat6es applied directly for the post in question. A check list was prepared containing the name of 20 candidates. The Applicant who had secured 406 marks

30

out of 750 marks fulfilling the prescribed conditions was selected who joined as GDS BPM Jarabaga BO on 17.2.2010. Thereafter, the selection file was called for review by the Director of Postal Services, Sambalpur Region and discrepancy having been noticed in the matter of selection in question, directed for termination of the service of the applicant under Rule 8 of the Rules, 2001. Consequently, order of termination of the applicant was issued with immediate effect by ordering payment of one month's pay in lieu of one month's notice as provided in the rules. Accordingly, the Respondents have objected to the prayer of the Applicant. Hence they have prayed that this OA being devoid of any merit is liable to be dismissed.

O.A. No.228/2011

It is the case of the Applicant that on being selected through a regular process of selection he joined the post of GDSBPM of Basanjal BO on 12.3.2010. Since then he has been discharging his duties to the utmost satisfaction of his authority. As such, the order of termination passed under Annexure-A/4 dated

31

11.4.2010 under rule 8 terminating his service by payment of one month's pay in lieu of one month's notice is not sustainable in the eyes of law. Hence, he has prayed to declare the provision of Rule 8 as ultra vires to the Constitution of India and to quash the order of termination under Annexure-A/4 with further direction to the Respondents to reinstate him to service and pay him all consequential service and financial benefits retrospectively.

By filing counter, the Respondents contest the case of the Applicant inter alia stating that the authority is empowered to terminate the service of a GDS Employee before completion of three years of service under Rule 8 of the Rules if it is found that the selection was not in accordance with Rules inasmuch although more meritorious candidates were available for selection their cases were not considered. On review of the selection since it was found that in gross violation of the provisions the service of the applicant was terminated under rule 8 of the Rules, 2001 and as such

32

interference of this Tribunal in the matter is not warranted. Accordingly, Respondents have prayed for dismissal of this OA.

OA No. 248 of 2011

The order of termination from the post of GDSBPM Aunti BO in account with Reamal SO under Sambalpur HO dated 11.11.2009 (Annexure-A/3), 11.4.2011 has been challenged by the Applicant in this OA with prayer to quash the same and direct the Respondents to reinstate him to service with all consequential service and financial benefits; as according to him such termination was not sustainable being violative of Article 14 & 16 of the Constitution of India so also in gross violation of the principles of natural justice. Fact of the matter is that the applicant after being selected/appointed has been continuing in the said post since 8-12-2009.

Respondents' stand is that having noticed that the selection was not in accordance with Rules inasmuch although more meritorious candidates were available for selection their cases were not considered and as the

33

applicant had not completed three years of service order of termination under Rule 8 of the Rules, 2001 was issued which is in no way illegal. Hence they have prayed for dismissal of this OA.

OA No. 249 of 2011.

Applicant's case is that when he was selected through a regular process of selection to the post of GDS BPM Tangamal BO in account with Reaml SO under Sambalpur HO vide order dated 24.11.2009, joined the post on 15.12.2009 and since then has been continuing uninterruptedly to the satisfaction of his authority, the order under Annexure-A/3 was issued terminating him from service without following due process of rules and natural justice. Hence in this OA he has prayed to quash the order of termination and direct the Respondents to reinstate him to service with all consequential service and financial benefits retrospectively.

By filing counter, the Respondents contest the case of the Applicant inter alia stating that the authority is empowered to terminate the service of a GDS Employees before completion of three years of service

34

under Rule 8 of the Rules if it is found that the selection was not in accordance with Rules inasmuch although more meritorious candidates were available for selection their cases were not considered. On review of the selection since it was found that in gross violation of the provisions the appointment was made, the service of the applicant was terminated under rule 8 of the Rules, 2001 and as such interference of this Tribunal in the matter is not warranted. Accordingly, Respondents have prayed for dismissal of this OA.

OA No.250 of 2011.

The Applicant was selected through a process of selection to the post of GDSBPM of Batagaon Branch Post Office in account with Rairakhol Sub Post Office vide Memo dated 30.12.2009. He joined the post on 06.04.2010. While continuing as such he was issued with the order of termination under Annexure-A/3 dated 11th April, 2011 under Rule 8 of the Rules, 2001 by paying him one month's salary in lieu of one month's notice. This order of termination has been challenged by the Applicant in this OA with prayer to quash the order and

35

direct the Respondents to reinstate him to service with all consequential service and financial benefits retrospectively.

The Respondents contest the case of the Applicant. According to them when the selection was not in accordance with the rules and not done in a free and fair manner inasmuch although more meritorious candidates were available for selection their cases were not considered, the appointee cannot claim equity to continue in the post as because he was selected through a due process of selection. It has been contended that on review of the selection file the discrepancy in the matter of selection and appointment to the post having been noticed the order of termination was issued which needs no interference by this Tribunal.

2. Although in some of the OAs the prayer of the Applicants was to declare the provision 8 of Rules 2001 as *ultra vires,* the same was not pressed by the Learned Counsel for the Applicants. Hence, there is no need to

deal with the contention of the respective Applicants' counsel in this regard.

3. The first and foremost contention of the Learned Counsel for the Applicants in all the above OAs is that termination of service without initiating any disciplinary proceedings as provided in the Rules or without complying with the principles of natural justice is not sustainable. In this connection Learned Counsel appearing for the respective applicants have taken us through the provision of Rule 4 of the GDS (Conduct and Employment) Rules, 2001 to justify that issuance of termination without giving opportunity is not sustainable. Further by placing reliance on the decisions in the cases of **Tilak Dhari Yadav v. UOI & Ors.** (1997 36 ATC 539 FB) and **Sushil Kumar Patra v. UOI & Ors.** (101 (2006) CLT 253)it was contended by Learned Counsel for the Applicants that even if it is held that opportunity was not necessary for terminating the service of a GDS employee who has not completed three years of service then also the order of termination

is not sustainable as the higher authority has no authority/power to review the order of appointment of a GDS employee and since the termination of the employment of the applicants was on the basis of the review and direction of the higher authority the same is not sustainable in the eyes of law. The other limb of submission of the Learned Counsel for the Applicants is that irregularity can be cured but not illegality. The short comings pointed out and based on which termination has been ordered comes within the purview of irregularity that too the irregularity was committed by the Respondent-Department for which the Applicants after putting unblemished service should not be put to such disadvantaged position without giving them any opportunity. On the above grounds, applicants counsel sincerely prayed for quashing of the respective order of termination.

4. Per contra, Learned Counsel appearing for the Respondents have contended that Rule 8 of the Rules, 2001 does not provide for giving any notice prior to the

38

order of termination. In so far as the provision made in rule 4 of the Rules, 2001 it was contended by the Respondents' Counsel that as per the provision made in sub rule (C) of Rule 4 of the Rules, 2001 the superior authority has to afford the opportunity of being heard to the appointing authority and it does not mandate the appointing authority to allow opportunity to a Sevak while taking action under rule 8 of the Rules, 2001. It was further contended by the Respondents' Counsel that all persons eligible who applied pursuant to an advertisement have a right to be considered and the consideration must be fair and based in accordance with Rules/existing instructions. Since the selection was conducted and applicants were selected through a process of selection which was found to be illegal being not in accordance with the provisions of the Rules/existing instructions, on the direction of the higher authority the services of the applicants were terminated. Further contention of the respondents' counsel is that no where in the rules it has been

39

provided that termination under rule 8 must be preceded by notice and after considering their reply action is to be taken. In support of the contentions that since there was illegality in the selection the termination can be quashed, they have relied on the decisions in the cases of **Pramod Kumar v. U.P. Secondary Education Services Commission** {(2008) 7 SCC 153} and **State of M.P. and Ors. v. Shyama Pardhi** (AIR 1996 SC 2219). Accordingly, Respondents' counsel have prayed for dismissal of all these OAs.

5. We have carefully gone through entire factual matrix of all the above OAs. The termination orders of the persons who were appointed as GDS have been issued, as their appointment was in violation of the instructions of the DGP&T Memo No.22-12/2001-GDS dt. 17.9.2003. The selection criteria has been given as under :-

> "the selection should be based on merit subject to fulfilling other eligibility conditions viz; providing space for BO taking up residence in the BO village before appointment etc by the candidates with

regard to the reservation principle provided by the Government".

It is seen that out of these nine cases, according to the Respondents in eight cases, the merit position secured by the candidates has been ignored and in one case the reservation policy has been violated.

6. We find that in all the cases the termination was in exercise of the power under Rule 8 of the GDS rules, 2001. Rule 8 of the Rules 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."

Rule 4 of the Rules reads as under:

"(3) Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears :

(a) to have exercised a jurisdic-tion not vested in it by any law or rules time being in force; or

(b) to have failed to exercise a jurisdiction so vested; or

© 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.

7. It is seen that the provision made in Rule 8 of the Rules, 2001 is the replica of the provision of earlier Rule 6 of the EDA (Conduct and Service) Rules, 1964.

42

8. We have considered the rival submissions of the parties with reference to the materials placed on record vis-à-vis the rules and the decisions relied on by the parties. Affording of opportunity before termination under Rule 6 of the EDA Rules, 1964 was under consideration before the Full Bench in the case of Tilak Dhari Yadav (supra) as also before the Hon'ble High Court of Orissa in the case of Sushil Kumar Patra(supra) in which it was held that an EDA who has been appointed on a regular basis in accordance with rules is entitled to an opportunity to show cause before terminating his/her service under rule 6 of the Rules. Notice prior to termination, in compliance with principles of natural justice, is sine qua non in service jurisprudence. It is trite law that even an administrative order which involves civil consequences, as already stated, must be made in consistence with rules of natural justice i.e. after informing the case of the Respondent-Department, the evidence in support thereof and after giving an opportunity to the party concerned of being

heard and meeting or explaining the evidence. Further it is well settled law that principles of natural justice are implicit in the rules and have tobe read as part of the rule by necessary implication. Hence this ought tohave been followed by the Resopndents before effecting termination.

9. The decisions relied on by the Learned Counsel for the Respondents relate to the merit of the matter and now the question is to be decided whether termination by invoking the provision of Rule 8 of the Rules, 2001 is legal. At this stage it would be a futile exercise to deal with such an issue as according to us expressing any opinion on the said issue may be prejudicial to either of the parties. This apart, we are informed that similar order dated 16.03.2011 terminating the service of one Shri Amit Kumar Khamri who was appointed GDSMD/MC of Haldia Baripada BO in account with Kuchei SO, under rule 8 of the Rules 2001 by paying one month's pay in lieu of one month's notice was issued by the authority of the Postal

44

Department. He challenged the said order in OA No. 159 of 2011. After receipt of the notice from this Tribunal and the order of stay, the authority of the Postal Department cancelled the said order of termination vide order dated 8.4.2011. Hence, this Tribunal has declared the OA as infructuous. Law is well settled that application/adherence of different principle/policy for same set of employees being contrary to the principles of equality provided in Articles 14 and 16 of the Constitution of India is not sustainable. In view of the above, the Respondents are under obligation to follow the same principle/decision which has been followed/taken in case of the Applicant in OA No.159/2011. Hence the impugned orders of termination in all the OAs are hereby quashed and the Respondents are directed to reinstate the applicants (who are by now out of employment) to their respective posts forthwith. However, quashing of the impugned orders of termination shall not preclude the Respondents from taking decision after affording the

Applicants reasonable opportunity to show cause. In the result, all these OAs stand allowed to the extent stated above. There shall be no order as to costs.

(A.K.PATNAIK)
Member (Judl.)

(C.R.MOHAPATRA)
Member (Admn.)

Bala.