

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.259 of 2011

Cuttack this the 5th day of January, 2016

Umesh Chandra Singh...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *No*

(R.C. MISRA)
(R.C.MISRA)
MEMBER(A)

(A.K. PATNAIK)
(A.K.PATNAIK)
MEMBER(J)

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O.A.No.259 of 2011

Cuttack this the 5th day of January, 2016
CORAM;

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Umesh Chandra Singh
Aged about 29 years
S/o. late Sachidananda Singh
At present working as GDSBPM of Kirmira B.O.
Via-Bagdehi
At/PO-Kirmira
PS-Kolabira
Dist-Jharsuguda

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through

1. Superintendent of Post Offices
Sambalpur Division
Sambalpur
2. Inspector of Posts
Jharsuguda
PO/PS-Jharsuguda
Dist-Jharsuguda
3. Postmaster, Jharsuguda
PO/PS-Jharsuguda
Dist-Jharsuguda
4. Biplab Hharua
S/o.late Siba Charan dharua
GDS BPM, Kirmira BO
Via-Bagdehi S.O.
Dist-Jharsuguda

...Respondents

By the Advocate(s)-Mr.S.Behera



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ORDER**R.C.MISRA, MEMBER(A):**

Grievance of the applicant in this Original Application is directed against the order dated 11.4.2011(A/4) by virtue of which his services have been terminated under the proviso to Rule-8 of GDS(Conduct & Employment) Rules, 2001 (in short Rules, 2001).

2. The sum and substance of the facts is that applicant ^{was} a candidate for selection to the post of GDSBPM, Kirmira B.O. in account with Bagdehi S.O. and on being selected, he was appointed and joined in the said post on 17.3.2010. While working as such, he was issued with the order of termination of his service vide A/4, inter alia with an instruction that he should be paid a sum equivalent to the amount of his one month basic allowance (TRCA + Dearness Allowance) for the period of one month notice, at the rate at which he was drawing immediately before the termination of his service. It was indicated that the due amount was being paid to him in lieu of one month notice. Aggrieved with this, applicant submitted a representation dated 30.4.2011(A/5) to the Superintendent of Post Offices, Sambalpur Division praying therein to allow him to continue in the service and simultaneously, he moved this Tribunal in the present O.A. seeking the following relief.

“...to quash the impugned order of termination of service of the petitioner under Annexure-4 and to pass any other order/orders as deemed fit and proper to give complete relief to the applicant”.

3. This matter came up on 9.5.2011 for admission and this Tribunal, while directing notice to respondents, as an interim measure, stayed the operation of the impugned termination order at A/4. Thereafter, vide order dated 21.11.2011, this Tribunal dismissed the O.A. for default. While the matter stood thus, M.A.No.308 of 2013 for restoration of O.A. along with M.A.Nos.309 and 603 of 2013 for condonation of delay was filed. Accordingly, respondents were noticed to file reply thereto. In the reply, the respondents had taken a stand that after dismissal of the O.A. for default, as no step was taken by the applicant for restoration of the O.A., they filled up the vacancy by issuing notification in consequence of which, one Biplab Dhurua had been selected and appointed as GDSBPM, Kirimira BO with effect from 13.6.2013. This Tribunal, having regard to the submissions made by both the parties, did not feel inclined to restore the O.A. and in effect, dismissed all the M.As vide order dated 6.8.2014. Not being satisfied, applicant moved the Hon'ble High Court of Orissa in W.P.C.No.16310/14 challenging aforesaid orders of this Tribunal and the Hon'ble High Court, vide order dated 1.9.2014, set aside the said order and restored the O.A. No.259 of 2011 to file, with a direction to dispose of the matter as expeditiously as possible. In the above background, an amendment to arraign Shri Biplam Dhurua, the selected and appointed candidate as party-respondent to the O.A. having been sought, the same was allowed by this Tribunal



vide order dated 8.12.2014. Thereafter, vide order dated 12.1.2015, Biplam Dhurua (Res.no.4) was issued with notice vide order dated 26.3.2015 of this Tribunal. Despite several opportunities, he neither appeared nor filed any counter and therefore, the matter was directed to be listed for hearing and final disposal.

4. It is the case of the applicant that since his joining, he had been satisfactorily discharging his duties to the satisfaction of the authorities and at no point of time neither he has been reprimanded nor reproached. It has been submitted that there has been ^{no} disciplinary proceedings contemplated against him. It has been urged that before issuing the order of termination he ought to have been issued with notice to put forth his grievance and having not done so, the order of termination is ab initio void inasmuch as it has been issued by not following the principles of natural justice.

5. In addition to the above, applicant has placed reliance on the decision of this Tribunal taken by a common order dated 05.12.2011 in O.A.Nos.818 of 2010, 42,175,218,219,228,248,249 and 250 of 2011, as affirmed by the Hon'ble High Court of Orissa vide order dated 27.01.2014 wherein the sustainability of order of termination under Rule-8 of GDS(Conduct & Employment) Rules, 2001 was the subject matter of challenge and accordingly, he has renewed his submission for the same relief to be granted in his case herein.




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6. Resisting the claim of the applicant, official-respondents have filed their counter. At the outset, while admitting the selection and appointment of the applicant to the post of GDSBPM, Kirmira BO, they have submitted that as per Rule-4(3) of DOP GDS(Conduct & Employment) Rules, 2001, any authority superior to the appointing authority at any time may call for the records pertaining to GDS appointment by the appointing authority and if such appointing authority appears to have exercised his jurisdiction contrary to rules or acted with material irregularity, such superior authority may make such order as it thinks fit. Accordingly, the Director of Postal Services, Sambalpur Region called for the selection file and reviewed the same and found that the selection of the applicant to the post in question was in contravention of the instruction of the directorate for the fact that Note II(III) below Rule-3 of DOP GDS(Conduct & Employment) Rules, 2001 has been amended vide Directorate Memo No.22/12/2001-GDS dated 17.09.2003, according to which, the selection should have been finalized based on merit. But the Superintendent of Post Offices, being the appointing authority did not finalize the same based on the extant rules thus leaving aside the more meritorious candidates from the purview of consideration. This being the background, the Director of Postal Services, Sambalpur Region issued order for cancellation of appointment of the applicant in consequence of which termination order at A/4 came to be



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issued. Therefore, it is the case of the official respondents that the order of termination being issued in accordance with Rules, 2001, ^{as amended}  their action cannot be called in question.

7. Upon perusal of records, we have heard the learned counsel for both the sides. We have also gone through the written notes of submission filed by both the sides.

8. Admittedly, applicant had been selected and appointed to the post of GDSBPM, Kirmira B.O. through a regular process of selection. It is also an admitted position that the authority superior to the appointing authority is empowered to review the selection so as to ascertain whether the action taken by the appointing authority in that behalf is within his jurisdiction and/or de hors the rules, as the case may be. It is not in dispute that the Director of Postal Services, Sambalpur Region, during the course of review of selection and appointment to the post of GDSBPM, Kirmira B.O. detected some irregularity and in the process, he issued order for cancellation of appointment of the applicant in pursuance of which order of termination at A/4 has been issued and is the subject matter of challenge in this O.A. The main thrust of the O.A. is that the order of termination has been issued without complying with the principles of natural justice. Of course, the counter-reply filed by the official respondents in this regard is silent. No doubt, order of termination in this matter has not been issued as a measure of punishment, but at the same time, it has ~~the~~ ^{an} prejudicial effect to



the interest of the applicant. It is the settled position of law that before taking any action prejudicial to the interest of an employee, principles of natural justice demand that he/she should be given an opportunity to show cause against the action proposed to be taken. In fact Rule-4 as mentioned above at (3)© substituted by letter dated 9.5.2003 reads as follows "to have acted in the 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 appears from the record that no such opportunity of being heard was provided. Such a failure on the part of the official respondents is writ large in the instant case. Therefore, we come to the conclusion that the impugned termination order at A/4 suffers from the lacunae of non-compliance of the principles of natural justice.

9. In addition to the above, we may note that the conclusion on action taken in pursuance of Rule-8 of Rules, 2001 is no longer res integra. In support of this, learned counsel for the applicant has relied on the decision of this Tribunal in common order dated 5.12.2011 in O.A.No.818 of 2010 etc. etc. (supra). In Paragraph-7 of the said common order, this Tribunal, came to a conclusion that the provision made in Rule-8 of Rules, 2001 is the replica of the earlier Rule-6 of the EDA(Conduct and Service) Rules, 1964 and cosequently, relying on the decision of the Full Bench in Tilak Dhari Yadav vs . UOI & Ors.(1997 36 ATC

539 FB) and in Sushil Kumar Patra vs. UOI & Ors. (101 (2006) CLT 253) wherein it has been 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, quashed the orders of termination issued under Rule-8 of the Rules, 2001 in those OAs with direction to reinstate the applicants therein forthwith. The orders of the Tribunal were challenged in the Hon'ble High Court in WPC No.1800/2012, and the Hon'ble High Court in their order dated 27.1.2014 upheld the view of the Tribunal. On a reference being made, we find that there is no factual or conceptual distinction between the case in hand and the common order in O.A.s based on which relief has been sought by the applicant. Therefore, we are not inclined to make a departure from the view already taken by this Tribunal in similar facts and circumstances.

10. Having regard to the discussions held above, we quash the order of termination dated 11.04.2011(A/4) terminating the service of the applicant as GDSBPM, Kirmira B.O. and direct the official respondent to reinstate the applicant forthwith and in such eventuality, Shri Biplab Dhurua (res.no.4) shall be directed to vacate the post in favour of the applicant. However, nothing would prevent the respondents from taking any decision only after affording the reasonable opportunity to the

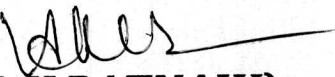


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applicant to show cause, which in our considered view, would meet the ends of justice. Ordered accordingly.

11. In the result, the O.A. is thus allowed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS

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