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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.132/2012

Jodhpur this the 18th day of July, 2013

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Mukesh Sharma S/o Shri Radhey Shyam Sharma, aged about 30 years, by caste Sharma, R/o Maderna Colony, Jodhpur, lastly working as GDS MD, Nandri Banar S.O. Jodhpur (Rajasthan).

.....Applicant
Mr.B.Khan, counsel for applicant.

Versus

1. Union of India, through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Jodhpur Division, Jodhpur (Rajasthan).
3. Superintendent of Post Office, Jodhpur Division, Jodhpur (Rajasthan).

.....Respondents
Smt. K. Praveen, counsel for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

Applicant, Mukesh Sharma, has filed this application under Section 19 of the Administrative Tribunals Act, against the verbal termination order dated 02.02.2012 by which his services on the post of GDS BPM were terminated.

2. The short facts of the case as averred by the applicant are that the applicant was initially appointed on the post of GDS MD on

01.01.2009, after conducting the due selection process but however, the applicant was given appointment on temporary basis by the respondents. The respondents while working in arbitrary manner, appointed the applicant on provisional basis, which is evident from the charge report of the applicant. The applicant while working on the post of GDS MD was assigned duties and task of GDS BPM also in addition to his duty. The applicant discharged the duties of the GDS BPM upto January, 2012, thus he completed three years of regular service under the respondent department without any break. But the respondents on receipt of the representation dated 15.01.2012 from the applicant for regularization of his services, terminated the services of the applicant contrary to the provisions of Rule 8 of the GDS Rule, 2001 because as per provisions of Rule 8 of the Rules of 2008, no ED agent/GD agent can be terminated from the services who had rendered three years continuous services. Being aggrieved by the oral order of termination, the applicant has filed the present OA for the following relief(s):-

- “(i) That this application may kindly be allowed and
- “(ii) That the verbal order dated 01.02.2012 may be declared illegal and the respondents may be directed to allow the applicant to discharge the duties, in continuation as if not termination w.e.f. 01.02.2012 took place,
- “(iii) The applicant may be paid all the consequential benefits by regularizing his absence period.
- “(iv) Any other relief which this Hon’ble Tribunal deems just and proper in favour of the applicant may be passed.”

3. In reply, the respondent department has averred that the applicant was not selected by the due process of law and as per

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rules, and he was engaged/appointed on temporary basis against the leave vacancy. Therefore, no right accrues in favour of the applicant as he was not appointed/engaged after due process of selection but was simply allowed to work in place of any other employee availing the leave , and therefore, no question of violation of Rule 8 of GDS Rule 2001 is made out, and the services of the temporary persons/employees can be terminated at any time even without notice. It has been further averred that the applicant was engaged as substitute vice leave vacancy and his services were no more required on selection of Shri Ajay Sharma on 29.11.2011 on regular basis after due process of selection as per rules.

4. By way of rejoinder, the applicant while reiterating the same facts contended that the averments made in the reply that the applicant worked for short period is not correct and the applicant was selected by the regular process and it is further averred that the action on the part of the respondents is arbitrary, discriminatory and illegal and it is also against the rules.

5. Heard both the parties. Counsel for the applicant contended that the applicant has been regularly selected after conducting the due process of selection but however, the applicant was given appointment on temporary basis by the respondent, which is evident from the charge report of taking over the charge by the

charge report, and no appointment order was issued in favour of the applicant, and he has worked continuously for more than three years, but after submitting the representation dated 15.01.2012, his services were terminated without following the provisions of Rule 8 of GDS Rule 2001 and the averments made in the reply regarding the short engagement vice leave vacancy are not correct.

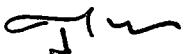
6. Per contra, counsel for the respondents contended that no appointment order has been produced by the applicant and in the absence of any such order, the contentions made by the applicant cannot have any force and the fact is that he was engaged vice leave vacancy and no right accrues in favour of the applicant.

7. We have considered the rival contentions of both the parties. The applicant in his application averred that he was selected after conducting the due selection process but, however, he was given appointment on temporary basis by the respondents. But the applicant has failed to produce any advertisement or any other correspondence relating to the process of examination or process of selection and simply he produced the charge report dated 01.01.2009 (forenoon), which does not substantiate the averments made in para 4.2 of the application. Accordingly, if no order of appointment as well as the other communication of documents

relating to his selection process have been issued in favour of the applicant then no case of his regularization is made out.

8. In view of the above discussions, no case for regularization is made out in favour of the applicant that the applicant has been terminated in violation the Rule 8 of the GDS Rules, 2008. Accordingly, no right is made out in favour of the applicant and the OA is devoid of merit and the same is dismissed with no order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member