

डि.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

O. A. Nos. 448, 449, 451, 462, 463, and 412 / 2012

Jodhpur, this the ^{2nd} February, 2013

[Reserved on 06.02.2013]

CORAM

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

1. Praveen Kumar S/o Shri Mangi Lal aged about 43 years, R/o Village & Post Sadri, District Pali, presently working on the post of GDS MD (EDDA) at Post Office Mandigarh, District Pali Rajasthan.

..Applicant in OA No. 448/2012

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Pali Division, Pali (Rajasthan).
3. The Inspector of Post, Falna Sub Division, District Pali (Rajasthan).

Respondents

2. Shrawan Singh Raj Purohit S/o Shri Lal Singh aged 34 years, Ex. Gramin Dak Sevak Branch Post Master, Post Office Sanwalta, District Pali, R/o Village Sanwalta, District Jalore.

..Applicant in OA No. 449/2012

3. Padam Singh S/o Shri Roop Singh aged about 45 years, resident of Village & Post Narlai, Via Desuri, District Pali, presently working on the post of GDS Branch Post Master, at Post Office Narlai, Via Desuri, District Pali, Rajasthan.

..Applicant in OA No. 451/2012

4. Hukam Singh S/o Shri Padam Singh aged about 45 years, R/o Village & Post Babhan, Via Sojat Road, District Pali, presently working on the post of GDS BPM at Post Office Babhan, Via Sojat Road, District Pali, Rajasthan.

..Applicant in OA No. 462/2012

5. Om Prakash Maurya S/o Late Shri Umed Ram aged about 47 years R/o Village & Post Hariyamali, Via Sojat Road, District Pali, presently working on the post of GDS BPM, at Post Office Hariyamali, District Pali, Rajasthan.

..Applicant in OA No. 463/2012

Versus



I/11

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Pali Division, Pali Marwar Rajasthan.

..Respondents

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6. Hukam Singh S/o Shri Padam Singh aged about 35 years, R/o Village & Post Babhan, Via Sojat Road, District Pali, Rajasthan, presently working on the post of GDS Branch Post Master Babhan, Via Sojat Road, District Pali, Rajasthan.

..Applicant in OA No. 412/2012

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Pali Division, Pali Marwar Rajasthan.
3. The Assistant Superintendent of Post Offices, Pali Division, Pali Marwar, Rajasthan.

..Respondents

Mr. S.K. Malik, Advocate, for applicants. & Mr. Vineet Mathur Advocate.
Mr. Vineet Mathur along with Mr. Mrigraj Singh, Advocates, for respondents.

ORDER

[PER K.C.JOSHI, JUDICIAL MEMBER]

By way of this common order, we are going to decide these five applications filed by five different applicants. These OAs are being disposed of by a common order for the reason that all the applications are of similar nature and in all these applications, the Annex.A/1 dated 02nd November, 2012, the order of termination, has been challenged.

2. The brief facts of the cases are that Praveen Kumar, applicant of application No. 448/2012 was appointed as EDDA on 29th April, 1998

and later on, the same post was converted in to Gramin Dak Sevak (GDS). His services were terminated by the order of the Inspector of Post, Falna Sub Division, Falna, Pali vide Annex.A/1 dated 02.11.2012 under the provisions of Sub Rule 2 of Rule 8 of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001 [hereinafter referred to as "the Rules of 2001"]. In application No. 449/2012 Shrawan Singh, was appointed as EDBPM on 27th March, 1999 which was later on converted as GDS. His services were terminated vide order dated 02.11.2012 passed by the Superintendent of Post Offices, Pali Division, Pali Marwar. In application No. 451/2012 Padam Singh was appointed as ED BPM on 26th August, 1997 and his services were terminated vide order Annex.A/1 dated 02.11.2012. Hukam Singh, applicant of O.A. No. 462/2012 was appointed as ED BPM on 11th September, 2000 and his services were terminated vide order Annex.A/1 dated 02.11.2012 passed by the Superintendent of Post Offices, Pali Division, Pali Marwar and Om Prakash, applicant of OA No. 463/2012 was appointed on 10th December, 1997 and his services were terminated vide order dated 02.11.2012 passed by the Superintendent of Post Offices, Pali Division, Pali Marwar.

3. In all the aforesaid OAs, the applicants challenged the validity of the order Annex.A/1 on the ground that as they have rendered the services for more than three years, therefore, the respondent No. 2, while exercising the powers in pursuance of the proviso to note below Rule 8 (2) of the Rules of 2001 committed grave illegality in terminating the services of the applicants. Shri Hukam Singh, the applicant of OA No. 462/2012 has also filed another OA No. 412/2012 praying for the

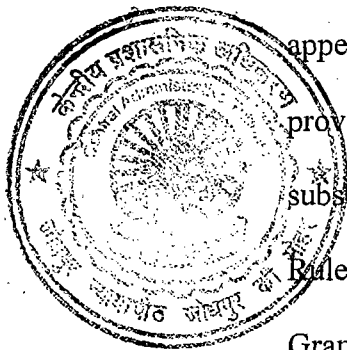
quashing of his oral termination order dated 10/11-10-2012 and the necessary facts for deciding this application has already been referred in OA No. 462/2012.

4. In the reply to the above applications, the respondents averred that the applicants were provisional / substitute employees and their services can be terminated forth-with without any notice at any time as also mentioned in their orders of appointment. It has been further averred that they have been appointed on the single application of the concerned employees and not by way of regular employment process. It has also been averred in the reply that the appointment order contains this condition that these persons shall not claim any regular appointment.

5. The point for our consideration in all the applications is that the order Annex.A/1 dated 02.11.2012 passed by the respondent No. 2 is legal or not.

6. We have heard the learned counsel for both the parties.

7. Upon the perusal of the termination order of the applicants, it appears that the said order was passed while exercising the powers under proviso to Sub Rule 2 of Rule 8 of the Rules of 2001 which were subsequently amended as the Rules of 2011. For the sake of conveyance, Rule 8 of the Rules of 2001 which is in paramateria to Rule 8 of the Gramin Dak Sewak (Conduct & Employment) Rules 2011, is reproduced below:-



"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 :

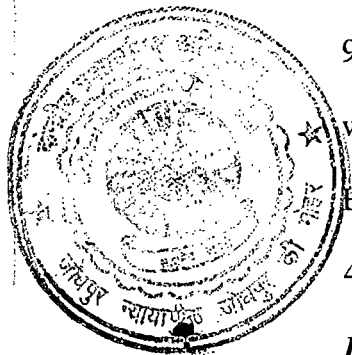
Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of notice at the same rates at which 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."

8. Upon perusal of the Rule 8 it is obvious that the employment of the Sevak who has not already rendered three years continuous service from the date of his first appointment can be terminated by a notice given in writing either by Sevak to the appointing authority or to the appointing authority by the Sevak. Here, in the cases in hand, admittedly the applicants were appointed on different dates i.e. in the year 1998, 1999, 1997, 2000 and 1997 respectively and the termination order ^{was} passed on 02.11.2012 which is much after three years.

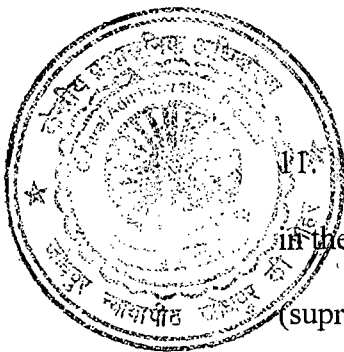
9. The counsel for the applicant contended that in a similar matter while interpreting the provisions to Sub Rule 2 of Rule 8 of the Rules, Hon'ble the Rajasthan High Court in D.B.Civil Writ Petition No. 4380/2009 – *Union of India and Anr. Vs. Chandresh Kumar @ Chunni Lal*, decided on 17th February, 2010, held that services of the applicant who has completed more than three years, cannot be terminated while invoking the powers conferred under proviso to Sub Rule 2 of Rule 8.

10. Per contra, the learned counsel for the respondents contended that the order passed by the respondent No. 2 in each case is legal because one



month salary has been paid to the concerned employee. It is settled position of law that before passing the order, opportunity of hearing has to be given to the affected person as held in the judgment of the Hon'ble Supreme Court in the case of *D.K. Yadav Vs. J.M. A. Industries Ltd.*, reported in 1993 SCC (L&S) 723 in which, the Hon'ble Supreme Court has expressly laid down in para 9 of its judgment as under :-

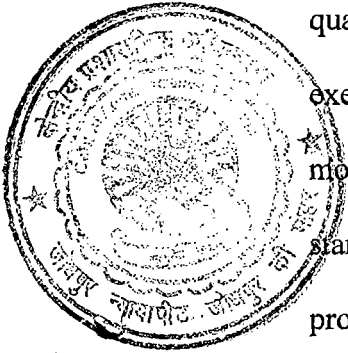
"9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him / her an opportunity of putting forward his / her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner the Constitution Bench held that 'civil consequences' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country ... they include ... rights capable of being enforced or redressed in a civil action In State of Orissa vs. (Miss) Binapani Dei this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice."



Thus, in view of the judgment of the Hon'ble Rajasthan High Court in the similar matter and the principles laid down in the *D.K. Yadav's* case (supra), we are of the opinion that the order Annex. A/1 passed by respondent No. 2 suffers from illegality and has not been passed in accordance with law and rules therefore, the applications are liable to be allowed.

12. Coming to the facts and circumstances of the case, we find that the services of the applicants have been terminated after more than 3 years.

This could not have been done by invoking the powers mentioned in the termination order. The impugned orders are, therefore, quashed and set aside. All the six OAs No. 448, 449, 451, 462, 463, and 412/ 2012 are allowed and the oral order passed by the respondent No. 2 in O.A. No. 412/2012 to terminate the services of the applicant Hukam Singh is also quashed. The respondents are directed to reinstate the applicants. This exercise shall be done expeditiously and as far as possible within two months from the date of receipt of a copy of this order. This order shall not stand in the way of the respondents in taking action under any other provisions of the rules. No orders as to costs.



COMPARED &
CHECKED

Rmr

sd
(Meenakshi Hooja)
Administrative Member

sd
(Justice K.C. Joshi)
Judicial Member

CERTIFIED TRUE COPY

Dated... 11.2.2013...

J.R. Sharma

Mehta

अनुमान अधिकारी (न्याय)
Section Officer (Judl.)
होमि सुप्रीम अफिसर
General Administrative Tribunal
कोर्ट ऑफिस, इलाहाबाद
Allahabad Bench, Allahabad.