

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

CIRCUIT SITTING AT INDORE

OA No.862/2003

Indore, this the 7th day of March, 2005.

C O R A M

HON'BLE MR V.K.MAJOTRA, VICE CHAIRMAN
HON'BLE MR.A.S.SANGHVI, JUDICIAL MEMBER

Manohar Choudhary
S/o Shri S.R.Choudhary
Gram + Post: Siroliya
Distt. Dewas (M.P.)

Applicant.

(By advocate : Shri S.Paul)

Versus

1. Union of India
Through its Secretary
Ministry of Communication
Dept. of Post
New Delhi.
2. The Chief Post Master General
M.P.Circle
Hoshangabad Road
Bhopal.
3. Assistant Superintendent of Post Offices
Dewas Division
Distt. Dewas 'M.P.)
4. Post Master General
Indore Region
Indore.

Respondents.

(By advocate Shri K.N.Pethia)

O R D E R

By A.S.Sanghvi, Judicial Member

The applicant who was appointed as a Gramin Dak Sevak
Mail Carrier, Siroliya Branch Office vide order dated 27th
February, 2002, being aggrieved by the order of his termina-
tion from service issued by Assistant Superintendent of
Post Offices, Dewas Sub Division on 3.11.2003 invoking the
provision/^{of} the Rule 8 of Department of Posts, GDS (Conduct
& Employment) Rules, 2001, has approached this Tribunal under
Section 19 of the Administrative Tribunals Act, 1985,
challenging his termination and also challenging the vires

of Rule 8 of GDS (Conduct & Employment) Rules, 2001. He has prayed for reinstatement in service with full back wages.

2. The case of the applicant, briefly stated, is that he was appointed on regular basis as Gramin Dak Sevak and had been working continuously since then. The respondents had, without any reason and without any show cause notice to him, suddenly terminated his services vide order dated 3.11.2003, invoking the provisions of Rule 8 of the GDS (Conduct & Employment) Rules, 2001. He has contended that his service could not have been brought to an end without giving him a show cause notice and without affording him an opportunity to explain the reason for which his services have been brought to an end. He has maintained that his services could not have been terminated contrary to the provisions of Articles 14 and 311 of the Constitution of India and since the action has been taken without affording him an opportunity to be heard, the order terminating his services can easily be construed to be an arbitrary order and it deserves to be quashed and set aside. He has also alleged that the powers under Rule 8 are misused by the authorities and since Rule 8 gives such unfettered powers, the same deserves to be declared as unconstitutional and ultra vires.

3. The respondents in their counter, defended the action of terminating the services of the applicant, contending that he was found to have been appointed by not adopting the prescribed procedure and his appointment was irregular. They have contended that the appointing authority had overlooked the instructions issued by the

respondents and without obtaining prior permission from the competent authority to make appointment, issued the orders of appointment. The appointing authority had failed to follow rules and regulations and since it was found later on that the appointment was illegal and de-horse the rules, a decision was taken to bring to an end his services by invoking Rule 8 of the GDS (Conduct & Employment) Rules. They have also contended that the applicant has already been provided with one month TRCA allowance plus DA by money order in lieu of the notice period but the applicant has not accepted the same. They have denied that the order terminating the services of the applicant is illegal or arbitrary and have contended that the same is issued in view of the illegal and irregular appointment made of the applicant. They have prayed that the OA be dismissed with cost.

4. We have heard the learned counsel for both parties and duly considered the rival contentions.

5. At the outset, Mr.S.Paul, learned counsel appearing for the applicant has submitted that he is not pressing the relief prayed of the constitutionality of Rule 8 of the GDS (Conduct & Employment) Rules and that he is mainly relying on a decision of this Tribunal in the case of Y.P.Makwana V. Union of India & Ors., decided by the Ahmedabad Bench of C.A.T. in OA No.153/02 and reported in 2003 (1) ATJ page 353. He has submitted that in a similar and identical case, the Tribunal had taken a decision relying on the circular dated 13.1.1997 of the Department of Posts, that the provisions of EDDA (Conduct & Service) Rules could not have been invoked in such cases and that termination of services of an ED Agent without issuing a show cause notice is bad in law.

6. The reply of the respondents makes it clear that without issuing any show cause notice to the applicant, the respondents have issued the order dated 3.11.2003 terminating the services of the applicant by invoking the provisions of Rule 8 of the GDS (Conduct & Employment) Rules, 2001. The respondents do not dispute that the applicant was appointed on a regular basis by order dated 27th February, 2002 and that since then the applicant had been working as GDS MC, Siroliya. They have further contended that his appointment was subsequently found not to have been made in accordance with rules and procedure and as such the decision terminating his services was taken. The order dated 3.11.2003 is a simple order of termination and reads as under:-

"In pursuance of the Rule 8 of Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules 2001, I, A.K.Gupta, Asst. Supdt. of Post Offices, Dewas, Sub-division Dewas hereby terminates the services of Shri Manohar Chaudhary, GDS MC Siroliya BO (Dwas HO), with immediate effect and direct that he shall be entitled to claim a sum equivalent to the amount of his one month's Time Related Continuity Allowance plus Dearness allowance in lieu of the period of notice at the same rates at which he was drawing them immediately before the termination of his service. The due amount of TRCA plus Dearness Allowance is being remitted through Money Order in lieu of the notice of one month."

7. It is quite clear that the above cited order does not give any reason for termination of the services of the applicant nor does it give notice of termination as prescribed under Rule 8. Mr. Paul, learned counsel of the applicant, has placed strong reliance on the circular dated 13.11.1997 issued by the Department of Posts and contended that the order dated 3.11.2003 is in clear violation of the circular issued by the Department of Posts. The same circular, inter-alia, provides that the

question of appointment of a particular ED Agent to a post was erroneous or not, should be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments. In regard to appointment which was made ~~in contravention~~ in contention of executive or administrative instructions, there is no objection to the competent authority passing an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise, it would amount to perpetuation of the mistake and would be detrimental to the larger interests of Government. However, in these cases, the principles of natural justice should be complied with by giving the ED Agent a show cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke the ED Agents (Conduct & Service) Rules while passing final orders in such cases.

8. The ED Agent (Conduct & Service) Rules are 'Pari Materia' to the GDS (Conduct & Employment) Rules, 2001 and the circular issued by the Department of Posts also applies ^{with} full force to the GDS (Conduct & Employment) Rules. This circular leaves no room for any doubt that the authority who had issued the order dated 3.11.2003 terminating the services of the applicant had acted in contravention of this circular. The applicant has not been afforded any opportunity of being heard prior to the issuance of the impugned order. The reply of the respondents makes it abundantly clear that his services were sought to be terminated only on the ground of his appointment having been made erroneously or illegal. It is quite obvious that

When on such a ground the termination order was issued, the same could not have been issued without first giving a show cause notice to the applicant and obtaining his ^{question of erroneous apprehension of} representation on the ~~reported exercise of terminating~~ ~~his services~~. It is hence quite clear that the termination order does not follow the circular issued by the Department of Posts and is issued in complete disregard of the circular. It has been clearly instructed by the department in the same circular that there is no need to invoke the ED Agents (Conduct & Service) Rules while passing the final orders in such cases. In spite of this instruction from the department, respondent No.3 has terminated the services of the applicant by invoking Rule 8 of the GDS (Conduct & Employment) Rules, 2001 which is 'Pari Materia' to Rule 6 of ED Agents (Conduct & Service) Rules. No opportunity of defending himself has been given to the applicant prior to terminating his services and, therefore, it can easily be construed that the principles of natural justice were not followed and the termination order, therefore, deserves to be quashed and set aside on this ground alone.

9. The same view has been taken in the case of Y.P.Makwana Vs. UOI (Supra) by the Ahmedabad Bench of the Tribunal and incidently the same has been upheld even by the High Court of Gujarat. We do not see any reason to take a different view than the one taken in the case of Y.P.Makwana and we are of the considered opinion that the same deserves to be followed in this case also. Therein also, while passing and setting aside the termination order, an opportunity was given to the respondents to issue show cause notice and take further action after obtaining reply to ~~the~~ show cause notice, from the applicant.

10. Following the decision of the Supreme Court in the case of A.I.Kaira Vs.Project & Equipment Corporation reported in ATJ 1988 (2) Vol.5 page 545, the Tribunal had also awarded full back wages to the applicant therein. In the instant case also, we are of the considered opinion that the respondents will have to be directed to pay back wages to the applicant from the date of termination of his services till his reinstatement.

11. In view of the aforesaid discussion and in the facts and circumstances of the case, we quash and set aside the termination order dated 3.11.2003 issued by respondent No.3 and direct the respondents to reinstate the applicant in service with full back wages from the date of termination of service till reinstatement. The same shall be paid within three months from the date of receipt of a copy of this order, failing which, the same shall be payable with interest at 9% per annum from the date of expiry of three months. The respondents shall, however, be at liberty to take any further action, as deemed fit, after serving a show cause notice to the applicant and considering reply of the applicant to such show cause notice.

12. With the above directions, the OA is disposed of.
No order as to costs.

A. S. Sanghvi
(A.S.SANGHVI)
Judicial Member

V.K. Majotra
(V.K.MAJOTRA)
Vice Chairman

F. B. 05

aa. पृष्ठांकन सं अे/न्सा..... जबलपुर, दि.....
पत्रिलिपि उपर्ये दिनाः—
(1) सचिव, उच्च न्यायालय का एवं न्यायिकाज, जबलपुर
(2) आनेकक श्री/श्रीमती/—को कार्यालय
(3) प्रस्तरी श्री/श्रीमती/—को कार्यालय
(4) अध्यपाल, केप्रा, जबलपुर एवं रायगढ़ी
सूचना एवं आवश्यक कार्यालयी देते
उच्च एजिस्ट्रार

S. Patel Adv. O.B.D
K. K. Pathak Adv. O.B.P

*Issued
on 16.02.05*