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CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

O.A. 350/00769/2016

Moumita Kar
Daughter of Saradendu Kar
Residing at Post Office – Jiti Tea Garden
Via- Nagrakata, District Jalpaiguri
Pin – 735225.

O.A. 350/00770/2016

Sanjeev Rai, son of Late Bhagiman
Rai, residing at Government IPECAC
Plantation, Village – Gairibas, Police Station
Jaldhaka, District Darjeeling, PIN – 734503.

O.A. 350/00771/2016

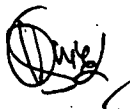
Rabi Banik, son of Kalachand Banik
Residing at Village Dakhin Majgram,
Post Office – Krantihat
District Jalpaiguri, Pin – 735218.

O.A.350/00772/2016

Pritam Biswas, son of Hitendra
Chandra Biswas, residing at South
Colony near Kishalaya School,
Ward No. 9, P.O. Mal, District
Jalpaiguri, PIN – 735221.

O.A. No. 350/00773/2016

Sarita Kumari,
Daughter of Ram Swarup Singh,
Residing at Village – Baraghariya
Bazar Anandapur,
Post Office – Rajadanga
Via Krantihat,



District : Jalpaiguri,
Pin – 735 218.

..... Applicants.

Versus

1. Union of India
Service through the Secretary,
Department of Post,
Government of India,
Ministry of Communication and
I.T. Dak Bhawan,
New Delhi – 110 001.
2. The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan, 5th Floor,
Kolkata – 700 012.
3. The Senior Superintendent of
Post Offices,
Jalpaiguri Division,
Jalpaiguri, PIN – 735 101.
4. Sub-Divisional Inspector of
Post Offices,
Sub-Division – Malbazar,
PIN – 735 221.

..... Respondents.

For the Applicants : Mr A. Banerjee & Mr P.Sanyal, Counsel

For the Respondents : Mr S. Pal, Counsel, Counsel.


Date of Hearing : 24.08.2016

Date of order: 02.09.2016

ORDER

JUSTICE V.C. GUPTA, JM

In these bunch of cases common question of facts and law are involved with regard to validity of termination of engagement of applicants



working as Gramin Dak Sevaks (GDS) under rule 8 of Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011.

RELIEFS CLAIMED

By means of these applications under Section 19 of the Administrative Tribunals Act, 1985 the applicants are seeking the following similar reliefs. For convenience, the relief claimed in one of the O.A. No.773 of 2016, Sarita Kumari Vs. Union of India and others are given herein below:

“(i) An order declaring Rule 8 of GDS (Conduct and Engagement) Rules, 2011 as ultra vires being violative of Article 14, 16 and 21 of the Constitution of India.

“8.(i) An order declaring Rule 8 of GDS (Conduct and Engagement) Rules, 2011 as ultra vires being violative of Article 14, 16 and 21 of the Constitution of India.

(ii) An order directing the concerned authority to desist from implementing the said provision i.e. Rule 8 of GDS (Conduct and Employment) Rules, 2011, considering the facts and circumstances of the case.

(iii) An order directing the respondents to rescind, revoke and / or withdraw the order of termination issued under Memo No. A-1/ Kathambari BO, dated 16.05.2016 and further directing them to allow your applicant to resume duty in her existing post and capacity

(iv) And to pass such other or further order or orders as Your Lordships may deem fit and proper.”

FACTS

2. To understand the controversy in all these matters the facts of O.A.No773/20166 are being placed here. The brief facts as pleaded in original application No.773 of 2016 are that the applicant in pursuance of

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an open advertisement for the post of Gramin Dak Sevak Packer in Banarhat SO applied for the post. The Advertisement dated 28.06.2013 has been annexed with the application. On 12.05.2014 the applicant was intimated that she has been selected for the post of GDS (Mail Deliverer), Kathambari BO in account with Krantihar Sub Post Office. She was asked to attend the office within 7 days with all original certificates for verification. Thereafter, a letter has been issued on 19.6.2014 by which pending verification of character and antecedents offer has been made to the applicant that if conditions mentioned in the offer of appointment are acceptable to her, she should communicate her acceptance in the enclosed proforma. It has been also informed that she has been provisionally appointed. The provisional appointment letter cum offer of appointment is reproduced herein below for ready reference:

"Number.A-1/ Rectt/ Kathambari BO Dated at Mal the 19-06-2014.

Pending verification of character and antecedents of the candidate for the post of Gramin Dak Sevak Mail Deliverer of Kathambari BO in account with Krantihat SO. Smt Sarita Kumari, D/o Ram Swarup Singh, Anandapur, Rajadanga, Dist - Jalpaiguri with DOB 30-12-1989, Community - OC is hereby provisionally appointed as Gramin Dak Sevak Mail Deliverer in the scale of pay (TRCA) Rs. 4220-75-6470+admissible DA or as amended & circulated time to time.

2. Smt Sarita Kumari should clearly understand that his employment as Gramin Dak Sevak Mail Deliverer shall be in the nature of a contract liable to be terminated by him/her or by the undersigned by notifying the order in writing and that his/her conduct and service shall also be governed by the Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 as amended from time to time.

[Signature]

3. It is also mentioned that if after verification of character and antecedents, he/she subsequently found unsuitable for the appointment, then he/she shall be discharged forthwith.

4. If these conditions are acceptable to him/her, he/she should communicate his acceptance in the enclosed proforma (ACKNOWLEDGEMENT).

Sub-Divisional Inspector
Dooars Sub-Division
Mal-735221"

3. The applicant accepted the offer and resume duty on 23.6.2014. Thereafter, on 16.05.2016 the engagement of the applicant was terminated by issuing a letter, which is extracted herein below:

"Memo. No. A-1/Kathambari BO Dated at Mal the 16.05.16

In pursuance of CO, Kolkata letter no. Vig/Z-12/2015/S Bhattacharjee dated 05.05.2016 and the SSPOs, Jalpaiguri memo. No. Est/Vig/Complaint/JPG Dn dated 09.05.2016, the following order of termination of service is issued to have immediate effect.

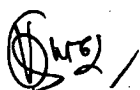
Order of termination of service issued under Rule 8(2) of GDS (Conduct & Engagement) Rules 2011.

In pursuance of the Proviso to Rule 8(2) and the Note below Rule 8(2) of the GDS (Conduct & Engagement) Rules, 2011, I Smt. Manita Tamang, SDI (P), Dooars Sub-Division, Mal hereby terminate Smt. Sarita Kumari, GDS MD, Kathambari BO under Krantihat SO and direct that he shall be entitled to claim a sum equivalent to the amount of his basic allowance plus dearness allowance for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month. The due amount of basic allowance plus dearness allowance is being remitted in lieu of the notice of one month or for the period by which such notice falls short of one month.

Station: Mal

Date: 16.05.16

Signature of the Appointing Authority"



4. Aggrieved by the aforesaid termination order this O.A No773 of 2016 was filed challenging the same on the ground that no notice to show cause has ever been given before terminating the engagement. It is also stated that no reason has been assigned for terminating the engagement. As such the order is violative of principle of natural justice and fairness of procedure and fair play. It was also contended that there was no stipulation in the advertisement that the services of the applicant was contractual in nature. She has been brought under various social security schemes which make the applicant as a confirmed staff and her services are not contractual service and respondents cannot terminate the service of the applicant without holding any enquiry. It is also contended that the services of the applicant were terminated under Rule 8(2) of Gramin Dak Sevak (Conduct and Engagement) Rules 2011, which is not applicable and is ultra vires being violative of Article 14, 16 and 21 of the Constitution of India. At the most provisions of Rule 4(3) of the aforesaid rules can be invoked in the matter which requires a pre-condition to serve a notice to show cause.

5. Reply has been filed by the respondents. Respondents pleaded in the reply that the advertisement for the post was published on 09.10.2013 against which the applicant applied. They have filed copy of the advertisement, which is being reproduced herein below for ready reference:



"Number: A-1/Rectt / Kathambari BO Dated at Mal the
09-10-2013

ADVERTISEMENT

Applications are invited for recruitment to the post of Gramin Dak Sevak Mail Deliverer, of Kathambari Extra Departmental Branch Post Office in account with Krantihat S.O.

To fill the above mentioned post, applications from eligible/suitable candidates are invited in the enclosed prescribed format. The applications must reach to the office of the undersigned on or before 08-11-2013 by Registered post only (By Name). Incomplete applications, applications without prescribed enclosures & applications received after the due date will not be entertained.

2. The vacancy is unreserved.

3. Eligibility conditions:

(i) AGE:

Above 18 years and below 65 years of age as on the last date of receipt of applications.

(ii) Minimum Educational Qualification: - Class VIII-th passed. Preference will be given to the candidates with Matriculation or equivalent qualification.

No weightage will be given for higher qualification. However, this does not bar the candidates with higher qualification from applying for the post.

(iii) Residence:-

Candidates belonging to the place other than the Post village can also apply for the post and such candidate should take up his/her residence to the post village and to reside there in the event of his/her selection. The selected candidates should produce a proof to that effect within the date prescribed by the undersigned after selection.

(iv) A Gramin Dak Sevak Mail Deliverer should have to furnish security of Rs. 10,000/- (Rs. Ten thousand) only in the form of Fidelity Bond.

4. The candidate should not be an elected member of the Panchayat/Other Statutory Bodies.

5. The candidate should not be an agent of Insurance/Finance Companies.

6. The cover containing the applications should be superscribed in bold letter as "APPLIATION FOR THE



POST OF GDSMD, KATHAMBARI E.D.B.O." & should be sent by Regd. Post only.

7. The appointment is purely temporary and in the nature of a contract liable to be terminated by the competent authority at any time with one month's prior notice. The work is part time in nature and the appointment will not confer any right on the candidate to claim any regular full time post in the Department. The post carries time related continuity allowance of Rs. 4,220-75-6,470 + admissible D.A. or as amended & circulated time to time.

8. The candidate should have adequate means of livelihood and he/she should have to give an undertaking to this effect that he/she has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself or his family.

9. Any kind of influence brought by the candidates regarding selection/appointment will be considered as a disqualification. No correspondence attempting to influence the selection process will be entertained.

10. The candidates are required to enclose the following documents with application.

a) Two Character Certificates issued by prominent persons of the locality. One of which must be Gazetted Officer.

b) Attested copy of admit Card of Madhyamik or equivalent examination issued by a Competent authority.

c) Attested copy of Marksheet of Class VIII th standard passed / Matriculation or equivalent qualification.

d) Attested copy of Caste Certificate (in case of candidates belonging to SC/ST/OBC) granted by the competent authority.

e) Declaration about the vacation and private income.

11. If any information furnished by the candidate is found to be false at a later date, the selection/appointment is liable to be terminated apart from original prosecution.

12. Selection will be made on the basis of merit (in case of Madhyamik or equivalent examination, marks obtained in additional subject will be excluded) and fulfilment of other eligibility conditions as per GDS



(Conduct and engagement) Rule 2011 and various circular issued time to time by the Department. The candidate will be called for verification of Application and certificates/qualification with original records. No TA/DA will be paid in such case and if any candidate fails to attend and fails to produce original certificate etc. his/her candidature will be cancelled straight way. No further chance/written intimation will be given. The candidate should bring one photo identity card (in original) issued by the competent authority to proof his/her identification (i.e. voter identity card, driving license, PAN card etc.) in course of verification.

13. The undersigned reserves the right to cancel/alter the notification any time without assigning any reason.

Enclo:- Proforma of Application.

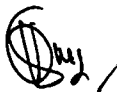
(Sanjoy Bhattacharjee)
Inspector of Pos/.....
Dooars Sub-Divn/.....
Mal-735221/....."

6. In pursuance of the aforesaid advertisement the applicant applied for the post and selected. Her engagement was terminated under Rule 8(2) after complying with the provisions as contained in the rules. The termination was for the reason that complaints have been received with regard to the serious irregularities in making the recruitment. Grounds mentioned in para 5 (f), (g) and (h) of the reply are quoted herein below:

"(f) That on the basis of said irregularities leading to misappropriation of money caused by the concerned Inspector of Post Offices , Dooars Sub-Division for GDS and having found the large scale corruption in respect of said engagement, from the report of Vigilance Department, authority concerned issued the order of termination which the applicant received in hand giving their signature in the receipt thereof.

(The Photo copy of the receipt dated 17-05-16 is annexed herewith being marked as Annexure R-6)

(g) That your petitioner states and submits that this is not the case of arbitrary termination but the case of



engagement on the basis of corrupted measures as a result thereof the department cannot remain as sitting as idle but to take a drastic steps against the corruption and this termination is a part of transparent administration system which cannot be equated other case, hence, the interim order passed on 23-05-16 was very much wrong as the applicant suppressed the real incident, if there were the opportunity to divulge it out on 23-05-16 before this Hon'ble Tribunal by the department then the applicant would have never the opportunity to get this exparte order.

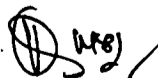
(h) That the engagement was the outcome of the foul play and the Respondent being the authority cannot remain idle without taking appropriate steps like termination."

7. The perusal of the aforesaid paragraphs of the reply reveals that the termination was the outcome of the alleged irregularities in making the appointment. It has also been pleaded that applicant has not completed 3 years of uninterrupted service, so while terminating the service of the applicant; no reason requires to be assigned by the recruiting authority.
8. It was also pleaded that O.A is also hit by Section 20 of the Administrative Tribunals Act 1985 because the applicant failed to exhaust by availing channels of remedies departmentally as provision of appeal, revision and review were available to her.
9. It was also pleaded that a Vigilance Enquiry was conducted before taking action in the matter. The enquiry report and the action taken thereof have also been filed on record as Annexure R-3 and Anx-4 which are extracted herein below:

(ANNEXURE R-3)

**"Memo No. Est/Vig/Complaint/JPG Dn Dated at
Jalpaiguri, the 09.05.2016**

**Investigation in connection with selection made
by Sri Sanjay Bhattacharya, Inspector of Postal Doors**



Sub-Dn for GDS posts under the administrative jurisdiction of SDI(P) Doors and enquiry of complaints in PG Portal the investigation was carried out on 06-01-2016 & 07-01-2016.

Whereas, Inspector Posts, Dooars Sub Division, Mal submitted the work load of the post of GDSMD, Kathambari Branch Post Office requesting permission for recruitment to the post of GDSMD, Kathambari BO to the Sr. Superintendent of Post Offices, Jalpaiguri Division through his letter no A-1/Kathambari BO/Corr dtd 01.10.2013 and permission for recruitment of the same was given by the Sr Superintendent of Post Offices, Jalpaiguri Division through letter no A-91(b)/Kathambari BO dtd 07.01.2013.

The post was unreserved. Inspector Posts, Dooars Sub Dn issued notification through letter No A-1/Rectt/Kathambari BO dtd 09.10.2013 to the all concerned with mentioning last date of receipt of application on 08.11.2013.

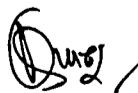
It appears from the available records and computerized list of candidates that forty (40) applications are found noted as received.

A panel of following five candidates were found prepared;

Sl No	Name of the Candidates	Secured Marks	Name of Board
1	Rakesh Banik	57.88%	
2	Sarita Kumari	51.00%	
3	Pradip Adhikary	50.50%	
4	Latif Islam	49.50%	
5	Safiqul Islam	46.75%	

Sri Rakesh Banik was asked for bio-data verification at the SDI(P) office vide letter no A-1/Rectt/Kathambari BO dtd 27.12.2013 within seven days. Engagement/Appointment letter was issued to Sri Rakesh Banik vide letter no A-1/Rectt/Kathambari BO dtd 08.01.2014. Sri Rakesh Banik joined on 01.12.2014. Subsequently, he resigned on 01.03.2014 and next highest marks secured candidate Smt Sarita Kumari joined in the post.

However, following irregularities were noticed during the investigation conducted by the Vigilance Officer, o/o the Chief PMG, WB Circle, Kolakta 700012 from 06.01.2016 to 07.01.2016;



1. Individual recruitment file was not maintained.
2. No evidence kept in the file in support of mode of dispatch and date of dispatch of the notification to all concerned.
3. Neither register for receiving application forms nor proper filing of applications received within due date was found maintained. No evidence was found on record so that it can be ascertained that which application was received with in the last date of receipt of application and which was after prescribed date.
4. No evidence was kept on record so as to ascertain whether the application was received through Employment Exchange or by post.
5. Selection Committee as per Circle Office order no Vig/Z-5/2012 dated 07.02.2013 was in vogue at that time. But no request for formation of Selection Committee was made for this recruitment by the recruitment authority and no Selection Committee was formed for this recruitment.
6. List of candidates found without signature of the Recruitment Authority.

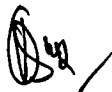
Khalilur Raham (mention at sl no 18 in the list of applications received) actually got 51.87% but marks noted in the list as 39.37%. If the name of Khalilur Rahaman is included in the zone of consideration, which would definitely come under the zone of consideration, he would have occupied 2nd position in the list and get change of engagement after resignation of Rakesh Banik instead of Smt. Sarita Kumari. Hence, the appointment of Smt Sarita Kumari is irregular. Moreover, the mark-sheet and genuineness of Board from where Smt Kumari passed is a Ranchi based institution and was not got verified before engagement.

7. Date of dispatch and mode of dispatch of engagement/appointment letter have not been kept on record.
8. The Inspector of Posts, Dooars Sub Division allowed the candidate to join without imparting prescribed training before joining violating DG Posts guidelines vide letter no 17-220/88-EDC & Trg dated 26.12.1998.
9. Moreover, the above action of the SDI(P), Dooars Sub Division, i.e. recruiting authority is not in conformity with the recruitment rules circulated under Postal Directorate's orders issued from time to time."

(ANNEXURE R-4)

ORDER

Hence, in pursuance of CO, Kolkata letter no Vig/Z-12/2015/S Bhattacharjee dated 05.05.2016 and in view of



above analysis, I, Ms Neetu, Sr Superintendent of Posts Offices, Jalpaiguri Division do hereby cancel the order of the SDI(P), Dooars Sub Division memo of engagement issued to Smt. Sarita Kumari vide memo no A-1/Rectt/Kathambari BO dated 12.03.2014 and direct the SDI(P), Dooars Sub Division to act in accordance immediately.

Sr. Supdt of Post Offices,
Jalpaiguri Division,
Jalpaiguri 735101"

10. **Rejoinder affidavit** has been filed, wherein it has been emphasised that the complaint alleged to have been made appears to be anonymous and no action ought to have been taken in view of the Circular issued by Central Vigilance Commission on 23.01.2015, which is reproduced herein below:

"Dated 23rd January,

2015

Circular No. 01/01/2015

Subject:- Procedure for dealing with complaints - regarding.

The Commission under its powers conferred under Section 8 (1)(d) of CVC Act, 2003, causes inquiry/investigation into allegations of corruption and seeks reports from the CVOs of Ministries/Departments/Organisations. All CVOs are informed that henceforth, the Commission would be seeking confirmation from the complainant for owning / disowning the complaint, as the case may be. Therefore, any further confirmation would not be required to be sought by the CVOs from the complainant in respect of the complaints sent to CVOs for inquiry and report by the Commission. However, clarifications / any additional information, if required, could be obtained from the complainant (s) as part of inquiry in the matter undertaken by the CVOs.

2. As regards complaints received directly by the CVOs of Ministries / Departments / Organisations, if a complaint contains specific and verifiable allegations of corruption / vigilance angle and it is proposed to take

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cognizance of such complaints, the complaint will be first sent to be complainant for owning/disowning, as the case may be. If no response is received from the complainant within 15 days of sending the complaint, a reminder will be sent, 15 days after sending the reminder, if still nothing is heard, the said complaint may be filed as pseudonymous by the CVO of the Ministry/Department/Organisation concerned. CVOs are advised that in no case, any inquiry/investigation be initiated on complaints without receipt of confirmation from complainant on any complaint.

3. *In so far as complaints sent by the Commission for 'necessary action' to CVOs of Ministry/Departments/Organisations, no such confirmation would be made from the complainant by the Commission. In case the CVO on scrutiny of such complaints propose to inquire into the allegations, confirmation as stated in Para 2 above should be made by the CVO.*

*[J. Vinod Kumar]
Officer on Special Duty"*

11. In all other cases almost similar offer of appointment and termination of engagement letters were issued but are of different dates.

In all other cases the vigilance enquiry of the same date made the basis of disengagement of the applicants. Therefore, their letter of offer of appointment, letter of termination of engagement and vigilance report and order passed thereon are not separately given. The Ground of termination of engagement as well as ground to challenge the same are also the same in all the cases.

12. We have heard Mr P.Sanyal, learned counsel for the applicants and Mr S. Paul, learned counsel for the respondents and perused the record along with the Rules regulating the engagement of GDS.

[Signature]

Scheme under Department of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules 2011

13. The engagement of the GDS is governed by the Rules known as **Department of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules 2011**. The scheme enshrined under these Rules in short is that GDS will be of 5 category i.e GDS(BPM), GDS(MD), GDS(MC), GDS(MP) and GDS (SV). These categories of GDS are engaged to perform the duties under these regulations. The terms and conditions of engagement are given in Rule 3(A), which reads as under:

3-A. Terms and Conditions of Engagement

- (i) A Sevak shall not be required to perform duty beyond a maximum period of 5 hours in a day;*
- (ii) A Sevak shall not be retained beyond 65 years of age;*
- (iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family;*
- (iv) A Sevak can be transferred from one post / unit to another post / unit in public interest;*
- (v) A Sevak shall be outside the Civil Service of the Union;*
- (vi) A Sevak shall not claim to be at par with the Central Government employees;*
- (vii) Residence in post village / delivery jurisdiction of the Post Office within one month after selection but before engagement shall be mandatory for a Sevak; Failure to reside in place of duty for GDS BPM and within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sevaks after engagement and liable for disciplinary action under Rule 10 of the Conduct Rules, requiring removal / Dismissal;*
- (viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;*
- (ix) Combination of duties of a Sevak shall be permissible;"*

Under Rule 4 the recruiting authority in respect of each category of Sevak has been mentioned. In sub-rule 3 of this Rule, the power has been

D. Singh

conferred upon any authority superior to the Recruiting Authority as shown in the schedule annexed with these rules, to call for record relating to engagement of GDS made by recruiting authority at any time either on his own motion or otherwise and if such recruiting authority appears to have exercised the jurisdiction not vested in it by any authority for the time being in force or failed to exercise the jurisdiction vested in it or have acted in the exercise of his jurisdiction illegally or with material irregularity the superior authority after giving an opportunity of being heard make such orders as thinks fit. Rule 4 is extracted herein below for ready reference :

"4. Recruiting Authority

- (1) *The Recruiting Authority in respect of each category of Sevak shall be as shown in the Schedule annexed to these rules.*
- (2) *If any doubt arises as to who is the appropriate Authority in any case, the matter shall be referred to the Government, whose decision thereon shall be final.*
- (3) *Notwithstanding anything contained in these rules, any authority superior to the Recruiting Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the engagement of Gramin Dak Sevaks made by the Recruiting Authority, and if such Recruiting Authority appears-*
 - (a) *to have exercised a jurisdiction 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*
 - (c) *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."*

Rule 5 provides that GDS shall only be entitled to payment of Time Related Continuity Allowance (for short "TRCA") and other allowance as may be prescribed by the Government on the basis of work load as per the standards of assessment decided by the department from time to time.

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Rule 6 provides that GDS shall not be entitled to any pension. However, they shall be entitled to ex-gratia gratuity or any other payment as may be decided by the Government. Rule 7 provides leave of 20 days in a year. Rule 8 provides procedure of termination of engagement of GDS. It provides that GDS who has not already rendered more than 3 years continuous service from the date of his engagement his engagement may be terminated at any time by a notice in writing to GDS or the GDS may also by giving notice in writing disengage himself. The relevant Rule 8 is also extracted herein below:

"8. Termination of Engagement

(1) The engagement of a Sevak who has not already rendered more than three years' continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the service 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 which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month."

Rule 9 provides the nature of penalties which may be imposed against the GDS by recruiting authority. Rule 9 is also extracted herein below:

"9. Nature of penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Sevak by the Recruiting Authority, namely:-

(i) Censure;

- (ii) Debarring of a Sevak from appearing in the recruitment examination for the post of Multi-Tasking Staff Group 'C' and / or Postman and / or from being considered for recruitment as Postal Assistants / Sorting Assistants for a period not exceeding three years;
- (iii) Debarring of a Sevak from being considered for recruitment to Multi-Tasking Staff, Group 'C' on the basis of selection-cum-seniority for a period not exceeding three years;
- (iv) Recovery from Time Related Continuity Allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (v) **Removal from engagement which shall not be a disqualification for future employment;**
- (vi) Dismissal from engagement which shall ordinarily be a disqualification for future employment."

The perusal of Rule 9(v) reveals that removal from engagement which shall not be a disqualification for future employment, is also one of the mode for providing punishment. Rule 10 provides the procedure for imposing the penalty, which is also relevant for the purpose of this *lis* therefore, extracted herein below:

"10. Procedure for imposing a penalty

- (1) *No order imposing a penalty shall be passed except after –*
 - (a) *the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make; and*
 - (b) *such representation, if any, is taken into consideration by the Recruiting Authority:*

Provided that the penalty of dismissal or removal from engagement shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges:

Provided further that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry.

(1) The record of proceedings shall include –

- (i) *a copy of the intimation to the Sevak of the proposal to take action against him;*
- (ii) *a copy of the statement of allegations, along with a list of evidence in support thereof, communicated to him;*
- (iii) *his representation, if any;*

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- (iv) *the records of the enquiry proceedings along with the enquiry report of the Recruiting Authority or Enquiry Officer, if any, appointed in a case where a format enquiry is necessary;*
- (v) *the representation, if any, of the Sevak on the Inquiry Officer's report;*
- (vi) *findings of the Recruiting Authority in respect of the allegations, with reasons therefor; and*
- (vii) *the order imposing the penalty."*
- (viii)

Rule 11 provides where Rule 10 will not apply, which reads as under:

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"11. Provisions of Rule 10 shall not apply

- (i) *Where any penalty is imposed on a Sevak on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) *Where the Authority empowered to dismiss or remove a Sevak is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or*
- (iii) *Where the President is satisfied that in the interest of the security of the State it is not expedient to follow the procedure prescribed in that rule; and the Recruiting Authority may consider the circumstances of the case and make such orders thereon as it deems fit."*

Rule 12 prescribes the procedure of put off duty which virtually amounts to suspension. Rule 13 provides appeal against certain orders which includes any order passed imposing penalty under Rule 9 or the order passed under Rule 12 for put off duty. Rule 13 is also extracted herein below for ready reference:

"13. Appeal

(1) *A Sevak may appeal against an order putting him off duty to the authority to which the authority passing the order regarding putting him off duty is immediately subordinate.*

(2) *A Sevak may appeal against an order imposing on him any of the penalties specified in Rule 9 to the authority to which the authority imposing the penalty is immediately subordinate."*

[Handwritten signature]

Rules 14, 15, 16, 17 and 18 are related to procedure to file and decide the appeal. Rule 19 provides the remedy of revision. Rule 20 provides remedy of review by President. Rule 21 to 29 relates to conduct of the GDS. Rule 30 relates to power, interpretation of any question referred to the Government and 31 dealt with power of delegation

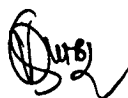
Discussion

14. The undisputed facts in these case are that the engagement of applicants were terminated by exercising the power conferred under Rule 8 without assigning any reason as is evident from the letter dated 16.5.2016. The case of the applicants is that Rule 8 is not at all applicable in the present cases because in view of the averment made by the respondents in their reply the disengagement of the applicants is not simplicitor for non availability of work or otherwise. The termination of the engagement is a result of alleged irregularities and malpractices in making the recruitment of the applicants as contended in the vigilance report referred herein above. Admittedly, no departmental enquiry was initiated against the applicants. Admittedly no opportunity of being heard has been provided to the applicants before passing the order of termination of engagement, either by the Superior Officer or by Recruiting Authority.

15. In the aforesaid fact and circumstances we have to test the validity of orders impugned on the touchstone of scheme governing the engagement of GDS which has been introduced in the form of the aforesaid Rules of 2011.



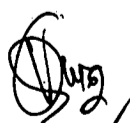
16. Rule 3(a) speaks that the engagement of GDS is purely on contractual basis and shall not be required to perform duty beyond the maximum period of 5 hours in a day. Moreover, GDS has to give an undertaking that he has adequate means of livelihood for himself and his family by other source of income besides the allowances paid to him. He shall not be treated as civil servant and cannot equate himself with Central Government employee. It shall be incumbent upon the GDS to reside within the jurisdiction of delivery post office and the post office may be located in the accommodation provided by the GDS BPO. This makes abundantly clear that it is not a service rendered by a Government servant as a civil servant but it is a part time engagement of a person to perform the job of the postal services in such area where post offices are not located for providing postal services. Rule 4 gives power to the superior authority to the recruiting authority, to call for record and examine the same with regard to the recruitment of the GDS by the recruiting authority and if he found something wrong he may pass any suitable order. It is not necessary for exercising the powers under rule 4 that any complaint or any application should have been made; he may take *suo moto* action or otherwise call for the record. The power under Rule 4 of the superior authority to invoke the jurisdiction of examining the record is very wide. The only rider for exercising such power before reaching to the conclusion and before passing any order, is that he shall give opportunity of being heard to the affected person or who may be aggrieved by the outcome of



the examination of record. Therefore, this rule prescribes that even without resorting to the procedure of Rule 10 the superior authority may examine the case of recruitment and in case he found some illegality or irregularity may set aside the appointment or direct the recruiting authority to terminate the engagement. But that cannot be done without giving an opportunity of being heard.

17. Admittedly, in these cases the procedure prescribed under Rule 10 has not been adopted. No enquiry was conducted by issuing any notice to the applicant. Rule 9 (v) prescribes the power of removal from engagement which shall not be a disqualification for future employment. The present order of termination of engagement of the applicant may fall within that parameter of Rule 9(v). If the procedure prescribed under Rule 10 has not been adopted, the order of termination of engagement cannot be passed by the authority as a punishment.

18. The respondent's case is that the applicants had not been punished as no punishment has been awarded in terms of Rule 9 by Recruiting Authority. In pursuance of the power conferred upon the superior authority and under his direction the Recruiting Authority acted and proceeded to disengage the applicant. The case of the respondents is also that as the applicants have not completed 3 years continuous service, therefore her engagement can be terminated in view of Rule 8 without



assigning any reason. Therefore, there is no illegality in passing the order of disengagement.

19. The scope of Rule 4, 8 and 10 is necessary to be looked into. Rule 8 no doubt gives power to recruiting authority to disengage the GDS in case he has not completed 3 years continuous service from the date of his engagement and in that case he has to give a notice in writing of a stipulated period or in lieu thereof allowances payable to him or for any short fall in the stipulated period under the rule. Power under Rule 8 could be exercised only by recruiting authority by applying his mind to the matter and this disengagement would be simplicitor without imputing any misconduct against the GDS. For example if the recruiting authority finds that there is no need to continue to render services in the area where improvised facility of postal departmental started then on cessation of postal services, the engagement of GDS may be terminated or where the GDS himself volunteers to disengage himself, the recruiting authority after stipulated period permit the GDS to disengage himself. While exercising the power under Rule 8 the recruiting authority is not governed by the dictates of the superior authority like in the present case. In this case the superior authority on the basis of vigilance report found that the appointment of the applicant was illegal and directed the recruiting authority to terminate the engagement of the applicant, as is evident from the order dated 09.05.2016 which is passed on the vigilance report by the superior authority. In such a situation Rule 8 cannot be invoked and the

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case shall certainly fall within the ambit of Rule 4 which prohibits taking any final decision by the superior authority without giving any opportunity of being heard to the aggrieved person including the GDS against whom the order is proposed to have been passed. Admittedly, in this case no such notice or opportunity has been afforded to the applicant. Admittedly, the case does not fall within the ambit of Rule 10 and no enquiry has been conducted. Therefore, the termination of engagement by letter dated 16.05.2016 would not be sustainable and is liable to be set aside.

Validity of Rule 8 of Department of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules 2011

20. So far as the question of validity of Rule 8 is concerned, in view of the aforesaid discussion it could safely be concluded that Rule 8 does not confer unfettered discretion to terminate the engagement of GDS to Recruiting Authority and as such it cannot be declared as ultra vires being violative of Article 14, 16 and 21 of the Constitution of India.

21. More over the GDS is not a civil servant and thus, the aforesaid Rules of 2011 cannot said to be framed under Article 309 of Constitution of India. It is crystal clear that the services of GDS are governed by the Rules which at the most could be termed as administrative instructions of the competent Government/Authority to regulate the functioning of postal services by outsourcing methodology by non civil servants. It is also worth notice that earlier the nomenclature of GDS was 'Extra Departmental Agents' and the Hon'ble Supreme Court ruled in **Union of India and others**



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Vs. Bikash Kuanar, 2006 SCC(L&S) 1937 that the Rules of 1965 for engagement of EDA could not be termed as Rules framed under Article 309 of Constitution of India and they are administrative/departmental instructions.

22. It is also worth notice that the applicants consciously accepted the job with a clear stipulation and binding themselves that they will be governed by the aforesaid Rules of 2011 as is evident from letter of offer of engagement. As such the applicants shall be estopped from challenging the Rules after acceptance of offer.

Bar of Section 20 of Administrative Tribunals Act, 1985

23. So far as the plea of bar of Section 20 of the Administrative Tribunals Act is concerned, admittedly the case of the respondents is not that the order passed was in under Rule 9 or Rule 12, so the order impugned cannot said to be appealable under Rule 13. Consequently the provisions of Revision and Review shall not come in the way of seeking relief from this Tribunal in the light of section 14 of A.T. Act. Hence we are of the view that the argument advanced by respondents of bar of Section 20 is not sustainable at all.

Conclusion

24. In view of the above mentioned facts and circumstances we left with no option to set-a-side the order of termination of engagement dated 16.05.2016. However it will be open to the respondents that if they want

to proceed to disengage the applicants they could do so by adopting the procedure prescribed under the aforesaid Rules of 2011.

25. We also make it clear while delivering the judgment we simply discussed the legal aspect of the matter and have not make any comment on the merit of the case. The Respondent Authorities would be free to take any decision without being influenced by this order so far as the merit of this case is concerned.

26. The relief sought for declaring Rule 8 of the aforesaid Rules of 2011 as ultra vires being violative of Article 14, 16 and 21 of the Constitution of India is declined and to that extant all these O.As. shall stand dismissed.

27. With these observations the O.A Nos.769/2016, 770/2016, 771/2016, 772/2016 and 773 of 2016 are partly allowed but with no costs. The interim orders passed in these circumstances need no extension.


(Jaya Das Gupta)
Administrative Member


(Justice V.C. Gupta)
Judicial Member