



**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

Original Application No. 1166 of 2012.

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

Ms Kakali Hait
Daughter of Sri Ranjan Kumar Hait
Village & P.O. Bhagwanpur
District Purba Medinipur
Pin - 721633.

..... Applicant.

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 Superintendent of Post Offices,
Tamluk Division, P.O. Tamluk,
Dist Purba Medinipur, PIN - 721631.
4. Sub-Divisional Inspector of
Post Offices, Math Chandipur
Sub-Division, P.O. Math Chandipur,
District Purba Medinipur
Pin - 721650.
5. Mr Swapan Adhikary,
Ex Sub-Divisional Inspector of
Post Offices, Math Chandipur
Sub-Division, residing at Raja Bazar,
P.O. Midnapore, District Pachim Medinipur

Pin - 721101.

..... Respondents.

For the Applicants : Mr A.B.Ghosh & Mr G.Guria, Counsel

For the Respondents : Mr U.P.Bhattacharyya, & Ms R.Basu, counsel & Mr T.K.Biswas, Counsel for Pvt.Respdt. No.5)

Date of Hearing : 27.09.2016

Date of order: 30.09.2016

ORDER

JUSTICE V.C. GUPTA, JM

This application has been filed by Ms Kakali Hait seeking the following reliefs:

- "a) Commanding the respondents authorities, their men and/or subordinates not to give any effect or further effect to the impugned letter of Termination against the applicant being Memo No.A2/Khagda Birgram B O dated 04.12.2012 issued by the Inspector of Post's Math Chandipur Sub-Division pursuant to the Memo No.SP/Con/DISC/01/2012/Khagda Birgram/ TAMLUK dated 27.11.2012 and further commanding them to rescind and/or to recall the decision of the termination of the applicant as Gramin Dak Sevak Mail Deliverer at Khagda Birgram BO under Narghat SO, District Purba Medinipur as well as to reinstate the applicant in her post forthwith;
- b) Commanding the respondents concerned to certify and/or to transmit the records relating to the matter so that consonable justice may be administered by quashing the illegal Memo.
- c) Pass such other or further order/order/direction/directions as to the Hon'ble Tribunal may deem fit and proper.
- d) Cost/costs of an incidentals thereto."

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2. The brief facts of the case are that the applicant in pursuance of a Notification dated 10.09.2009 inviting application for the post of Gramin Dak Sevak Mail Deliverer (GDS MD for short) at Khagda – Birgram B.O in account with Narghat S.O., applied for the post .The applicant thereafter, found suitable for the post and selected. Consequently offer of engagement was made by letter dated 25.01.2010 and she accepted and was provisionally engaged with effect from 01.02.2010. She took charge on 04.02.2010. But all of a sudden her engagement was terminated by an order dated 04.12.2012 issued by appointing Authority on the instruction of his Superior officer. A copy of which is annexed as Annexure A-4, which is reproduced herein below:

"O/O The Sub-Divisional Inspector of Post Offices

Mathchandipur Sub Division, Mathchandipur SO-721629.

Memo No.A2/Khagda Birgram BO Dated at Mathchandipur the 04.12.2012.

In pursuance of the Supdt. Of Post Offices, Tamluk Division, Tamluk memo no.SP/CON/DISC-01/2012/Khagda Birgram/TAMLUK dated 27.11.2012, the proviso to Rule 8(2) of Gramin Das Sevak (Conduct and Engagement) Rules 2011 [previously known as Gramin Dak Sevak (Conduct and Employment) Rules, 2001], I Shri Kajal Chatterjee, Inspector of Posts, Mathchandipur Sub Dn, hereby terminate forthwith the services of Smt Kakali Hait GDSMD, Khagda Birgram BO and direct that she shall be entitled to claim a sum equivalent to the amount of her basic allowance plus dearness allowance for the period of notice at the same rates at which she was drawing them immediately before the termination of her 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.

To
Smt Kakali Hait,
GDSMD, Khagda Birgram B.O, Via Narghat SO
Purba Medinipur.

(KAJAL CHATTERJEE)
Inspector of Post's Mathchandipur Sub Dvn
Mathchandipur-721629."

3. It was alleged that the order is violative of principles of natural justice as no show cause notice has been given before passing this order. Moreover, no reason has been assigned to terminate the engagement. It was further submitted that on perusal of the termination letter it reveals that decision to disengage the applicant was not the mental act of the appointing authority i.e. the Inspector of Post but the same was passed in compliance of the Memo No.SP/ CON/ DISC -01 / 2012 / Khagda Birgram / TAMLUK dated 27.11.2012 issued by Superintendent of Post Offices, Tamluk Division, Tamluk. On these grounds the termination order was sought to be set aside.

4. The reply has been filed by the respondents. The facts narrated in the application were not denied. However, it was contended that the engagement of the applicant was not fair and based on serious irregularities in selection process. The matter was initiated on receipt of several complaints against regular selection and engagement of the GDS MD against Sri Swapan Kumar Adhikary, Inspector of Post Offices, Tamluk Division. A regional level enquiry was conducted and some serious

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irregularities in selection for engagement of GDS were found. Some person moved this Tribunal for ordering the enquiry/disciplinary proceeding against Shri Swapan Kumar Adhikary i.e. recruiting authority who committed the irregularities. After invoking the jurisdiction under Rule 4(3) of the GDS (Conduct and Discipline) Rules 2011 the Superior officer reviewed and ultimately on finding irregularities in engagement of applicant, the directions were issued to the appointing authority to terminate the engagement of the applicant and in pursuance thereof the impugned order for terminating the engagement of applicant as GDSMD was passed.

5. Admittedly no show cause notice has been issued before termination of the engagement.

6. The controversy in this case is whether order of termination falls within the scope of rule 4(3) or Rule 8(2) of GDS(C&E) Rules,2011? The same is fully covered by a judgment of this Tribunal delivered in bunch of cases with O.A. No. 769/2016 (by both of us as a member of the Division Bench) on 02.09.2016. Hence, we are of the view that this O.A may be decided in terms of conclusions arrived at and the decision rendered in the aforesaid O.As. The findings and conclusions arrived at in paragraphs no. 16, 17, 18, 19, 24 and 25 are extracted herein below:

"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

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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 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 04.12.2012 would not be sustainable and is liable to be set aside.

Conclusion

24. In view of the above mentioned facts and circumstances we left with no option except to set-a-side the order of termination of engagement dated 04.12.2012. 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."



The present O.A No.1166 of 2012 is accordingly allowed in terms of
the aforesaid judgment but with no costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member

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