(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the **08th** day of May 2019

Present:

Hon'ble Ms. Ajanta Dayalan, Member-A
Hon'ble Mr. Rakesh Sagar Jain, Member-J

Original Application No. 330/00908/2016
(U/S 19, Administrative Tribunal Act, 1985)

Sunil Kumar Pal, S/o Shri Hari Shankar Pal, R/o Village Jafrabad, Post Girsi, Musanagar, District Kanpur Dehat.

.....Applicant.

By Advocate – Shri Avnish Tripathi.

V E R S U S

1. Union of India through Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi 110001.
2. Director General of Posts Ministry of Communication Dak Bhawan Sansad Marg, New Delhi 110001.
3. Post Master General Kanpur Region Kanpur.
4. Superintendent of Post Office, Kanpur Dehat, Kanpur.

.....Respondents.

By Advocates : Shri R.K. Srivastava/Shri L.P. Tiwari

O R D E R

By Hon'ble Mr. Rakesh Sagar Jain, J.M. :

1. The present O.A. has been filed by the applicant Sunil Kumar Pal seeking following reliefs:-

> "(1) To issue an order, rule or direction for quashing and setting aside the impugned order dated 06.05.2016 by which the appointment of the applicant on the said post of GDS BPM, Kachgaon has been reviewed and cancelled by the respondent No.3.

(2) To issue an order, rule or direction for quashing and setting aside the impugned order dated 06.05.2016 passed by the respondents, by which the respondents have terminated the services of the applicant from the post of GDS BPM Kachgaon.

(3) To issue an order, rule or direction directing the respondents to allow the applicant to work on the said post and pay the monthly salary as and when due.

(4) To issue an order, rule or direction, which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case to which the applicant may be found entitled under law.

(5) To award the cost of the original application may also be awarded in favour of the applicant".

2. The brief facts of the case are that the applicant was appointed as Gramin Dak Sewak (in short GDS) under the respondents after participating in the selection process advertised by the respondents and he was appointed under the GDS (Conduct and Engagement) Rules, 2011 (in short Rules). The applicant joined as GDS BPM at Kachgaon BO (Pukhrayan) Kanpur Dehat on 21.12.2013. Subsequently, the superior authority (respondent no. 2) to the appointing authority (respondent no. 3) reviewed the cases related to the appointment of GDS and based on his instruction, the appointing authority issued the impugned order dated 06.05.2016 (Annexure No. 1 to the OA) cancelling the appointment of the applicant.

3. The case of the applicant is that no show cause notice has been issued as required under Rule-4 (3) (C) of the GDS (Conduct and Engagement) Rules, 2011 before passing the

impugned order and the impugned order has been passed under Rule-8 (2) of the GDS (Conduct and Engagement) Rules, 2011. Therefore, the impugned order is contrary to the existing rules and hence, it is illegal.

4. The respondents filed counter affidavit justifying the passing of the impugned order dated 06.05.2016 and for cancelling the appointment of the applicant on the ground that various irregularities were noticed by the competent authority in the recruitment of this applicant as detailed in counter affidavit. It is further stated that the decision of the respondents to terminate the services of the applicant under Rule 8 of the GDS (Conduct and Engagement) Rules, 2011 is justified.

5. We have heard the learned counsels for both the parties and also gone through the pleadings available on record.

6. Shri Avnish Tripathi, learned counsel for the applicant argued that in identical factual situation, the services of some of the GDS had been terminated and the issue was agitated before this Tribunal by concerned GDSs. OA No. 742 of 2016 along with other OA's with similar facts have been considered by this Tribunal and the same has been disposed of on merit vide order dated 14.07.2017 in the case of Birbal Vs Union of India and others. In the aforesaid cases, the GDS employees concerned were reinstated in service with consequential benefits. The respondents challenged the order dated 14.07.2017 passed by this Tribunal before Hon'ble Allahabad High Court by filing Writ-A No 49864 of 2017 – Union of India Vs. Archna Mishra clubbed with other similar writ petitions. These petitions have been dismissed by the Hon'ble Allahabad High Court by common order dated 30.04.2018 upholding the order dated 14.07.2017 of this Tribunal. Copy of the orders dated 14.07.2017 and 30.04.2018 have been filed by the learned counsel.

7. Learned counsel for the applicant further argued that the applicant in this OAs are similarly situated to the applicants of the bunch cases disposed of by this Tribunal vide order dated 14.07.2017, which has been upheld by the Hon'ble Allahabad High Court vide order dated 30.04.2018, for which the applicants are also entitled for similar relief.

8. Learned counsel for the respondents, on the other hand, reiterated his claim and submitted that the impugned order has been rightly issued because of serious irregularities observed in the appointment process of the applicant.

9. The main question to be decided in this case is whether the decision of this Tribunal dated 14.07.2017, which has been upheld by the Hon'ble Allahabad High Court vide order dated 30.04.2018, will be applicable to this case.

10 The applicant after being appointed as GDS was terminated vide impugned order dated 6.5.2016 and admittedly no show cause notice has been issued. The facts of the OAs disposed of by this Tribunal vide order dated 14.07.2017 are similar to the present case, as would be clear from the following paragraphs of the order dated 30.04.2018 of the Hon'ble Allahabad High Court upholding the order dated 14.07.2017 passed by this Tribunal. It is held by Hon'ble High Court as under:-

> *"3. The brief facts giving rise to all these writ petitions are that applicant respondents, mostly, were appointed in Gramin Dak Sevaks Service as Branch Postmaster, on various dates and terminated by taking recourse to Rule 8 of Rules 2011. Some of them were served with a charge-sheet alleging that they had obtained appointments, illegally, by concealment of facts or by submitting caste certificate not in prescribed format etc. Subsequently, even in cases where charge-sheets were served, disciplinary enquiry was not completed and they were terminated by orders of various dates but*

passed by referring to Rule 8(2) of Rules 2011. These orders were challenged before Tribunal by applicant-respondents individually in different original applications which have been decided by common judgment dated 14.7.2017 (except writ petition No. 61220 of 2017 and writ petition No. 7835 of 2018 where judgments of Tribunal are dated 25.8.2017 and 12.9.2017 respectively) and termination orders have been set aside.

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7. Tribunal categorized all cases before it in three categories and in para 29 of judgment and order dated 14.7.2017 held that termination orders in all three categories are bad. We may reproduce para 29 of the judgment as under:-

> *"Thus, all the cases in hand could be trifurcated as:-*
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> *(1) Cases where the termination is on the ground of certain irregularities in the very selection thereby attracting Rule 4(3) of the Rules which warrant issue of show cause notice, which admittedly has not been issued to the applicants, consequent to which the impugned orders are to be treated as legally unsustainable.*
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> *(2) Cases where on account of misconduct termination has taken place which, in fact, are to be proceeded under Rule 9 and 10 and, consequently, the order of termination under 8(2) becomes illegal and legally unsustainable.*
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> *(3) Cases which do not fall under the two categories and fall under Rule 8(2) of the Rules, but the ingredients thereof, i.e. unsatisfactory service or administrative ground do not exist, consequent to which the impugned order of termination becomes legally unsustainable."*
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> *.....*

9. Before us, learned Additional Solicitor General has confined his argument to the question of applicability of principles of natural justice i.e. requirement of show cause notice and opportunity to persons sought to be terminated under Rule 8 of Rules, 2011. He submits that aforesaid Rule nowhere contemplates any show cause notice and opportunity and it is only a termination simplicitor, therefore, Tribunal has erred in law in holding that orders of termination are bad since no opportunity was afforded to applicant respondents or in those cases where charge-sheet was issued and enquiry was not completed, it has erred in law in holding that orders of termination are founded on alleged misconduct of applicant-respondents.

10. Learned counsel for respondents, on the contrary, submitted that similar provisions were already considered and it was held by different Courts that persons already appointed cannot be terminated without giving a show cause and opportunity i.e. by complying principles of natural justice and, therefore, judgment of Tribunal warrants no interference. It is further contended that in all matters, orders of termination were passed by Appointing Authority on the direction of Higher Authorities, whereby Appointing Authorities were directed to terminate applicant-respondents since their appointments were made wrongly or there were some illegality and irregularities in their appointments and in such cases an order of termination by Appointing Authority could not have been passed unless an opportunity of hearing is given to applicant respondents, in view of Rule 4(3) of Rules 2011 read with Rule 8 and Tribunal having appreciated this fact, has rightly set aside orders of termination since no opportunity was afforded to applicant-respondents and there was complete non-compliance of Rules 4(3) of Rules 2011.

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18. Under Rule 6 of Rules 1964, earlier, the words "for generally unsatisfactory work" or "on any

administrative grounds unconnected with his conduct" existed. The aforesaid words were deleted from Rule 6 by an amendment made sometimes before 1983. However, Director General of Post and Telegraphs sent a letter on 13 April 1983 that this amendment would not make any change in the existing instructions and termination of service normally be ordered only in cases of unsatisfactory service or for administrative reasons unconnected with the conduct. It was also insisted upon that in the cases of specific acts of misconduct committed by an Extra Departmental Agent, who has less than 3 years of service, procedure of enquiry must be followed.

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21. Considering historical background as referred to above, we find that initially Posts and Telegraphs Department on the one hand created substantial categories of employees for its effective functioning but termed them as "Extra Departmental Agents" and declared that they are not holders of "civil post". However, in the light of constitutional provisions this was not accepted by Courts and as long back as in 1977, this question was considered by a three Judges Bench of Supreme Court in P.K. Rajamma Vs. Superintendent of 22 Post Offices reported in 1977 3 SCC 94. It was held that a post exists apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not holder of a post. A post under the State means a post under the administrative control of State. State may create or abolish the post and may regulate conditions of service of persons appointed to the post. Court then examined the scheme of Rules 1964 and said:- "...Turning now to the rules by which the respondents were admittedly governed, it appears that they contain elaborate provisions controlling the appointment, leave termination of services, nature of penalties, procedure for imposing penalties and other matters relating to

the conduct and service of these extra departmental agents. There is a schedule annexed to the rules naming the appointing authorities in respect of each category of employees. Rule 5 states that the employee governed by these rules shall be entitled to such leave as may be determined by the Government from time to time and provides that if an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him or if an employee who is granted leave is absent from duty for any period exceeding the limit upto which he could have been granted leave, he shall be removed from the service unless the Government decides otherwise in the exceptional circumstances of any particular time case. The services of employees who had not put in more than three years' continuous service are liable to be terminated at any time under Rule 6 for unsatisfactory work or for any administrative reason. The rules also indicate the nature of penalties which may be imposed on an employee and the procedure for imposing them. A right of appeal is provided against an order imposing any of the penalties on the employee. Various other conditions of service are also provided in these rules." 22. It was then further held that an Extra Departmental Agent is not a casual worker but he holds a post under administrative control of State. Employment of an Extra Departmental Agent is in a post which exists apart from the person who happens to fill it at any particular time. Though, such a post is outside the regular civil services, but there is no doubt that it is a post under the State. Relying on earlier judgment in State of Assam vs. Kanak Chandra Dutta reported in AIR 1967 SC 884, Court held that tests of a "civil post" laid down therein are clearly satisfied in the case of Extra Departmental Agents. It was further held that Extra Departmental Agents work under the direct control and supervision of authorities who obviously have right to control the manner in which they must carry out their duties. Thus, there is no doubt that relationship between postal authorities and Extra Departmental Agents is one of master and servant. 23. In State of Assam vs Kanak Chandra Dutta (supra),

it was already held that a person holding a "civil post", in the matter of termination would be entitled to protection under Article 311 (2) of the Constitution and this dictum has been relied and followed in Superintendent of Post Offices v. P.K. Rajamma (supra). 24. Thus, it cannot be doubted now that if an order of termination is passed not simplicitor but by way of punishment or founded on the conduct or omission constituting misconduct on the part of person, holding a "civil post", such termination will amount to a punitive termination i.e Removal or Dismissal and in such a case, procedure prescribed under Article 311 will have to be followed, otherwise such termination would be illegal.

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34. The proposition advanced above cannot be disputed and we find no reason to take a different view in the matter. However, here the fact situation is different. Applicant-respondents have been terminated with reference to Rule 8 of Rules 2011 by Appointing Authority but admittedly, said orders have been passed in furtherance of orders/directions given by Superior Authority, noticing some irregularities in appointment of Gramin Dak Sevaks, by exercising power under Rule 4(3). The mere fact that in termination orders, except a few one, reference of orders of Superior Authorities is not there but this is an admitted fact by petitioner that appointments were reviewed by Superior Authorities and finding irregularities, directions were issued and thereafter Appointing Authority issued orders of termination simplicitor, therefore, the manner in which orders of termination simplicitor have been passed is nothing but a camouflage so as to avoid specific requirement of compliance of principles of natural justice, enshrined under Rule 4(3) of Rules 2011. Hence, the aforesaid exposition of law laid down in ***Paras Nath Pandey Vs. Director, North Central Zone, Cultural Centre*** *(supra) has no application to the facts of present writ petitions.*

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35. We find that termination orders passed by Appointing Authority are in the backdrop of directions/orders of Superior Authority, noticing some irregularities etc. in appointments of Gramin Dak Sevaks and in view of noncompliance of Rule 4(3) i.e. opportunity of hearing to concern Gramin Dak Sevaks, the same are vitiated in law.

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36. In view of above discussion, we do not find any manifest error in judgments of Tribunal warranting interference. It is always open to petitioners to pass fresh orders after complying with the requirement of Rules. Hence, we find no valid reason to interfere with judgments of Tribunal, impugned in all these writ petitions."

11. It is further provided in para 29 of order dated 14.7.2017 passed in O.A No. 742 of 2016, which is also reproduced below:-

"29. Thus, all the cases in hand could be trifurcated as:-

(1) Cases where the termination is on the ground of certain irregularities in the very selection thereby attracting Rule 4 (3) of the Rules which warrant issue of show cause notice, which admittedly has not been issued to the applicants, consequently to which the impugned orders are to be treated as legally unsustainable.

(2) Cases where on account of misconduct, termination has taken place where, in fact, are to be proceeded under Rule 9 and 10 and, consequently, the order of termination

under 8 (2) becomes illegal and legally unsustainable.

(3) Cases which do not fall under the two categories and fall under Rule 8 (2) of the Rules, but the ingredients thereof, i.e. unsatisfactory service or administrative ground do not exist, consequent to which the impugned order of termination becomes legally unsustainable".

12. The operative part of the order dated 14.07.2017 of this Tribunal in OA No. 742 of 2016 – Birbal Vs Union of India and Others, is as under:-

> "*31. In view of the above, except the following O.As, in which pleadings are not completed, as held in para 16 above, all other O.As are allowed and the orders impugned therein are hereby quashed and set aside:-*
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> *(a) OAs 886/2016; (b) 32/2017, (c) 33/2017;*
> *(d) 564/2017; (e) 565/2017; (f) 602/2017;*
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> *(g) 685/2017 and (h) 690/2017*
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> *It is declared that the applicants are entitled to reinstatement and further, they are entitled to the consequential benefits, i.e., for full TRCA for the period they have been kept out of service. If any of their places has been filled up by someone, the applicants shall be accommodated in any other vacant post and at the earliest opportunity they shall be brought back to their original post. This order shall be complied with within a period of six weeks from today. Necessary orders for reinstatement be issued accordingly. Arrears of TRCA be disbursed within two months from the date of reinstatement.*
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> *Liberty is given to the respondents to proceed against the applicants falling under category (1) and (2) above."*

13. In view of the findings of this Tribunal and Hon'ble High Court as discussed above, it was appropriate on the part of the respondents to initiate action against the applicant under the Rule 4 (3) of the GDS (Conduct and Engagement) Rules, 2011, if the authorities have noticed irregularities in the appointment of the applicant as GDS. The action to terminate services of the applicant under Rule-8 (2) of the GDS (Conduct and Engagement) Rules, 2011 cannot be taken in these circumstances in view of the observations of Hon'ble Allahabad High Court as discussed above. For the same reasons, the impugned order cannot be treated as termination simplicitor.

14. In view of the above, we are of the considered view that the facts of this OA are similar to the facts dealt in OA No. 742 of 2016 in the case of Birbal Vs Union of India & others clubbed with other OAs with similar facts and the applicant is entitled for similar benefit as per the order dated 14.07.2017 of the Tribunal and the order dated 30.04.2018 of Hon'ble Allahabad High Court.

15. Accordingly, the impugned orders dated 06.05.2016 is quashed and set aside and the respondents are directed to reinstate the applicant to his post with all consequential benefits i.e., full TRCA for the period he has been kept out of service because of the impugned order. In case, his place has been filled up by another person, then the applicant should be accommodated in any other vacant post of GDS. This order should be complied within a period of six weeks from the date of receipt of certified copy of this order. The liberty is granted to the respondents to proceed against the applicant under the Rule 4(3) of the GDS (Conduct and Engagement) Rules, 2011 in the light of the order dated 30.04.2018 passed by

Hon'ble Allahabad High Court in view of allegations of serious irregularities alleged in the process of the applicant's recruitment. It is directed that necessary orders for reinstatement be issued accordingly. Arrears of TRCA be disbursed within two months from the date of reinstatement. Liberty is given to the respondents to proceed against the applicant in case he is falling under category (1) and (2) above.

16. The OA is allowed with the above directions. There will be no orders as to cost.

(**Rakesh Sagar Jain**)
Member-J

(**Ms. Ajanta Dayalan**)
Member-A

Manish/-