

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 496/2016

Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member

Kalpana Nayak, aged about 20 years, D/o Shri Radhamohan Nayak, resident of At-Kusambi, PO – Sunguda, PS – Salipur, Dist. – Cuttack, Odisha, Pin – 754221.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist. – Khurda, Odisha – 751001.
3. The Superintendent of Post Offices, Cuttack North Division, Cuttack – 753001.

..... Respondents.

For the applicant : Mr.C.P.Sahani, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 19.12.2018

Order on : 3.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant had applied for the post of Gramin Dak Sevak Branch Post Master (in short GDSBPM), Ostapur BO in response to an advertisement by the respondents (Annexure-A/3) and she was selected for the said post. After verification of documents, the applicant was appointed with the approval of the competent authority, vide order dated 9.5.2014 (Annexure-A/8). But vide order dated 18.4.2016 (Annexure-A/9), the respondent no. 3 terminated the service of the applicant without issuing any show cause notice. When no action was taken on her representation, she filed the first OA No. 365/2016, which was disposed of directing the respondent No. 2 to consider the representation of the applicant. In compliance, the respondent no.2 have passed the impugned speaking order dated 22.6.2016 (Annexure-A/13), rejecting the representation dated 14.6.2016 of the applicant. Being aggrieved, this OA has been filed by the applicant seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

"(i) Admit the original application, and

(ii) After hearing the counsels for the parties be further pleased to quash the order of termination made vide Memo No.B/ED-360 dated 18.4.2016 at Annexure A/9 and the order dated 22.6.2016 at Annexure A/13 and direct the respondent (s) to reinstate the applicant to her post with all consequential service and financial benefits retrospectively."

2. Following main grounds have been advanced in the OA:-

(i) No show cause notice was issued before termination of her service when she was appointed as per the due process selection on merit. This action is against the judgment of Hon'ble Apex Court in the case of D.K. Yadav vs. J.M.A. Industries Ltd. (1993) 3 SCC 259.

(ii) Although the applicant was holding the post of GDS, which has been held to be a civil post, her service was terminated without following the provisions of Article 311(2) of the Constitution of India.

(iii) The termination order on the direction of the higher authority is bad in law in view of the judgment of Hon'ble Apex Court in the case of Union of India vs. Bikash Kuanar (2006) 8 SCC 192 and the order of this Tribunal in the case of Bharat Chandra Behera vs. Secretary, Department of Posts, 2001(1) ATJ Pg. 592.

(iv) The applicant was discharging her duty sincerely without any complaint of misconduct. The reason mentioned in the impugned order for termination was that the applicant was below 18 years at the time of selection. But as per the rules, there is no minimum age specified under the rules.

3. The respondents have opposed the OA by filing the counter stating therein that the applicant was less than 18 years of age as on the last date of submission of the application, for which she did not fulfil the age criteria as stipulated in the notification dated 14.8.2013. Hence, the applicant was selected wrongly on the basis of the highest marks secured by her. This was detected at the time of preparation of the combined seniority list of the GDSs and the order of termination was issued by the respondent no.3, giving one month TRCA plus DA was paid to the applicant.

4. At the time of oral submissions, learned counsel for the applicant argued on the point that the applicant was not given any opportunity of hearing and the provisions of the Article 311(2) were not followed. He also submitted the written notes of arguments, reiterating the grounds in the OA and citing the following judgments:-

- (i) The Supdt. Of Post Offices –vs- P.K.Rajamma [Air 1977 SC 1677]
- (ii) D.K.Yadav –vs- M/S. J.M.A. Industries Ltd. [(1993) 3 SCC 259]

- (iii) Union of India & Ors. -vs- Bikash Kuanar [(2006) 8 SCC 192]
- (iv) Jyothiraj Thirakappa Lalege -vs- Sr. Supdt. Of Post Offices & Anr. [2004 (1) SLJ 65 CAT]
- (v) Bharat Chandra Behera -vs- Secretary, Dept. Of Posts. Ministry of Communication, New Delhi & Ors. [2001 (1) ATJ pg. 592]
- (vi) Ganesh Ram -vs- State of Jharkhand & Ors. [2006 (2) JCR 489 Jhr.]
- (vii) State of M.P. & Ors. -vs- Lalit Kumar Verma [(2007) 1 SCC 575]

5. Learned counsel for the respondents submitted that the applicant was below 18 years of age as on the last date of submission of application, hence, she was not eligible for consideration as per the terms and conditions stipulated in the notification for the post.

6. The only point to be decided in this case is whether the procedure as specified under the rules has been adopted by the respondents to terminate the services of the applicant. Admittedly, no show cause notice was issued to the applicant or any opportunity of hearing was allowed to the applicant before terminating her service on the ground that she did not fulfil the age criteria for being an eligible candidate for the post of GDSBPM, Ostapur. The termination order dated 18.4.2016 (Annexure-A/9) did not specify any rules under which the order to terminate was passed. The order states as under:-

"In pursuance to the Superintendent of Post Offices, Cuttack North Division memo No. B/ED-360 dated at Cuttack the 18.4.2016, the engagement of Ms Kalpana Nayak as GDSBPM, Ostapur BO i.a.w. Nischintakoili SO is hereby terminated with immediate effect.

The following arrangement is hereby made to have immediate effect:

1. Sri Krushna Ch Mallick, GDSMD/MC, Ostapur BO i.a.w. Nischintakoili SO is directed to manage the work of GDSBPM, Ostapur BO in addition to his own duties of GDSMD, Ostapur BO with combine duty allowances.
2. Sri Arakhita Samal, GDSMD/MC, Gotara BO i.a.w. Nischintakoili SO is directed to manage the work of GDSMC, Ostapur BO in addition to his own duties with combine duty allowances."

It is clear from the order dated 18.4.2016 as above that it has been passed as per the instructions of the respondent no. 3 who is the superior authority to the appointing authority for the applicant. Neither the impugned order mentions any rule under which it is passed, nor any rule has been mentioned in the counter, under which the termination order was issued. From the counter as well as the language of the order dated 18.4.2016, it would appear as if the appointing authority of the applicant has terminated the applicant's service as per the instructions of the respondent no.3, not under any statutory rules.

7. It is the settled position of law that a person's service, who has been selected as per the established process for recruitment, cannot be terminated

on the basis of an executive order. As stated in para 5.3 of the OA, Hon'ble Apex Court in the case of Bikash Kuanar (supra) has held as under:-

"7. The Division Bench after hearing the counsel for the parties observed that the power of review is conferred by the statute. In case of an appointment made under the Rules framed for the purpose of appointment, such appointment could not be cancelled either by the same authority or higher authorities in exercise of power of administrative exigency.

8. The High Court in the impugned judgement also stated that the civil rights had already accrued to the respondent who rendered one and a half years of service. Once such civil rights had accrued, the authorities exercising their executive power cannot review the appointment."

8. In the case of Sri Bikas Kuanar vs. Union of India and Ors. in OJC Case No. 8819/1999, Hon'ble High Court of Orissa has held as under:-

"11.....In case of an appointment made under the rule framed for the purpose of an appointment, such appointment could not be cancelled either by the same or higher authorities in exercise of power of administrative exigency. In this case, the civil rights have already accrued to the Petitioner who rendered 1 ½ years of service. Once such civil right has accrued, the authorities by exercising their executive power cannot review the appointment. Thus the administrative instructions having no statutory force, therefore, those cannot be enforced and following such instruction, the Petitioner's appointment could not be cancelled....."

9. In the case of [R. Jambukeswaran and ors. vs. Union of India & Ors.](#) reported in 2004 (2) ATJ 1, the Full Bench of Madras Bench of this Tribunal, while considering validity of the letter dated 13.11.1997 allowing the higher authority to review and terminate the appointment in case of irregularity in the appointment process, has held as under:-

"12. With this basis principle of mind, we deem it necessary to mention that two earlier Full Bench had gone into this similar controversy though the instructions were issued under the Rules. IN the decision rendered by the Full Bench at Allahabad in the case of [Tilak Dhari Yadav v. Union of India](#), (1997) 36 ATC 539 (FB), the question before the Full Bench was:-

"Whether Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964, confers A power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee without giving him an opportunity to show cause?"

The answer given was:-

"Rule 6 of Post and Telegraphs Extra- Departmental Agents (Conduct and Service) Rules, 1964 down not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause."

Another Full Bench of this Tribunal at Hyderabad in the case of N. Ambujakashi (supra) was also concerned with almost a similar controversy. The two questions posted before the Full Bench were:-

"(i) Whether Rule 16 of EDA Conduct and Service Rule, 1964 confers power upon the higher administrative authority to revise the order of appointment passed lower authority;

(ii) Whether the administrative has power to revise the order of appointment passed by lower administrative authority on the ground that the former is administrative head of the later, i.e. whether the superior administrative authority has inherent power to revise the order of appointment passed by the lower administrative authority, for setting aside the same?"

The answer provided was almost the same that a higher administrative authority has no power inherent or otherwise to revise the order of appointment passed by a lower administrative authority. The same reads:-

"(i) Rule 16 of the Posts and Telegraphs Extra- Departmental Agents (Conduct and Service) Rules, 1964 does not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower authority or to set aside the same."

(ii) Under the Rules, a higher administrative authority has no power either inherent or otherwise to revise the order of appointment passed by the lower administrative authority or to set aside the same."

13. Once the question had been answered and there are no judicial pronouncement in this regard, normally fresh instructions which are presently under the gaze of this Tribunal should not have been issued. The same, as we have reproduced above, are totally contrary to the pronouncement of the two Full Benches.

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29. In fact, it appears that the mistake has now been rectified because the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001 have come into force. They have replaced the earlier Rules of 1964. In the year 2003, the rules of the year 2001 had been amended giving superior authority the power to act. The amendment reads:-

"The following rules are issued under the authority of Government of India to amend the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001, except as respects things done or omitted to be done before such amendment, manly:-

1. (i) These rules may be called the Department of Posts Gramin Dak Sevaks (Conduct and Employment) Amendment Rules, 2003

(ii) They shall come into force from the date of their circulation.

2. In the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001, in Rule 4, after sub- rule (2), the following Sub-rule shall be inserted, namely: "(3) Notwithstanding anything contained in these rules, any authority superior to the Appointment Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing 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 of its 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 makes such order as it thinks fit".

This obviously shows that presently the mistake has been corrected. So far as the instructions of 1997 are concerned, the same must be held to be unreasonable and arbitrary.

30. For these reasons, we allow the present application and order:-

(a) The instructions under question dated 13.11.1997 are quashed;

- (b) The impugned orders terminating the services of the different applicants are quashed; and
- (c) The said applicants are entitled to re-instatement forthwith with all consequential benefits No costs."

10. When the administrative action of the authorities to cancel the appointment in case of irregularity in the appointment process of the GDS could not be sustained without any provision in the rules, the provision to that effect was incorporated in the GDS (Conduct and Employment) Rules, 2001 and subsequently in the rule 4(3) of the GDS (Conduct and Engagement) Rules, 2011, which states as under:-

"(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."

It is noted that in this case no action was taken under the rule 4(3)(c) of the GDS (Conduct and Engagement) Rules, 2011 by the respondents, who have issued the impugned order dated 18.4.2016 on the basis of administrative instructions, which cannot be sustained in view of the authorities and judgments as discussed in paragraphs 7,8 and 9 above.

11. Learned counsel for the applicant has cited the judgment of Hon'ble Jharkhand High Court in the case of Ganesh Ram vs. State of Jharkhand and Ors. One of the issue examined in that case was whether a minor can be appointed in the Government service and it was held as under:-

"7.Appointments of minors even below 18 years of age are still permissible on one or other post, reference of some of them are given hereunder:

Employments by the State Government/Central Government for construction or maintenance of Roads, Runways, Dam, Irrigation Work etc. are guided by the [Minimum Wages Act](#), 1948. The definition of 'employee', as laid down under [Section 2\(i\)](#) of the Act, means any person, who is employed for hire or reward or to do any work, skilled or unskilled, etc. and also includes an employee, employed by the appropriate Government i.e. State Government or Central Government. Clause (a) to [Section 2](#) defines "adolescent" means a person, who has completed his fourteenth year of age but has been completed his eighteenth year. "Adult" has been defined under Clause (aa) of [Section 2](#), which means a person, who has completed his eighteenth year of age and "child", as defined under Clause (bb) of [Section 2](#), means a person, who has not completed his fourteenth year of age. [Section 3](#) of Minimum Wages Act, 1948 while prescribes the manner in which the appropriate Government will fix the minimum rates of wages, under Sub-section (3) appropriate Government is empowered to fix different minimum rates of wages for "adults", "adolescent", "children" and "apprentices". This simply shows that even in the Government employment, an

"adolescent", though minor, can be appointed for whom different wages may be fixed.

8. The State of Bihar has issued Police Order No. 209-82, circulated vide Memo No. 6568/P2/43-271-88, dated 11th August, 1988. This Police Order is also applicable in the State of Jharkhand, in view of Section 84 of the Bihar Reorganization Act, 2000. As per this Order, in every distinct, out of the sanctioned strength of police force, two posts can be reserved in which dependent children of police force, below 18 years of age, can be appointed on compassionate ground, if the police personnel dies while on duty. Those children, so appointed, are commonly known "as Bal-Arakshi" and are paid minimum of the scale of pay of the post, without annual increment, till they attain majority. It is only on attaining majority, if the "Bal-Arakshi" so wishes and is qualified, they are appointed as Constable against such posts. The children, on appointment, are provided with two half-pants, two shirts two-sets of socks, one pair of shoes etc. This simply goes to show that there is no bar on appointment of a minor in the services of the State.

9. However, there is a prohibition of employment of child in certain occupation and processes under [Section 3](#) of The Child Labour (Prohibition and [Regulation](#)) [Act, 1986](#). As per [Section 2\(iii\)](#) of the Child Labour (Prohibition and [Regulation](#)) [Act, 1986](#), "child" means a person, who has not completed his fourteenth year of age. From the statement of objects and reasons, it will be evident that the Bill was intended to ban the employment of children ie, those, who have not completed their fourteenth year, in specified occupations and processes. Even under the said Act, there is no prohibition of employment of "adolescent" i.e., those who have completed their fourteenth year but are below eighteenth year of age.

[The Indian Majority Act, 1875](#) does not impose any prohibition of employment of a minor in the services of the State, Civil Body/Government Institution, Public Sector Undertaking or in any Government Organization. The said Act relates to marriage, dower divorce, adoption etc. As such there is no minimum age limit prescribed, except for appointment against certain posts or services, as stated above. The general instruction, prescribing minimum age of 18 years, was issued by the State Government for the first time ie, sometime after 1964 but that guideline is applicable only where the Rule/Guideline relating to minimum age is silent."

12. A similar issue was of termination of services of the GDSs was under consideration by Hon'ble Allahabad High Court in Writ A No. 49684/2017 in the case of Union of India and 2 others vs. Archna Mishra, alongwith other writ petitions with similar issue in which it was held as under:-

*"5. Petitioners before Tribunal raised issue of jurisdiction on the ground that persons appointed in Gramin Dak Sevaks Service are not holders of civil post and, therefore, O.As are not maintainable. This argument has been rejected by Tribunal. Relying on **P.K. Rajamma Vs. Superintendent of Post Offices reported in 1977 3 SCC 94**, it has held that applicant-respondents were holders of civil post and entitled to have protection of Article 311 of Constitution of India wherever it is applicable.*

6. Orders of termination in all cases were challenged on the ground that neither any enquiry was conducted nor any show cause notice or opportunity of hearing was afforded to applicant-respondents, though in respect of an earlier similar Rule there were various judicial authorities, holding that opportunity is necessary and, therefore, orders of termination were bad.

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:-

(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.

(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.

(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."

8.

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 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.

25. Scheme of Rules also demonstrates that earlier power of termination simplicitor was conferred upon Appointing Authority, besides power of punishment. Simultaneously, Rule 3-A of Rules 1964 also empowers Head of Circle to confer power of imposition of punishment as specified in Rule 7 to Authorities shown in Schedule annexed to those Rules which is other than Appointing Authority. This Scheme was expanded in Rule 2001 and maintained in Rules 2011, vide rule 4(3), by conferring power upon an authority superior to Appointing Authority, either on its own motion or otherwise, to call for records relating to appointment of Gramin Dak Sevaks and if it finds that Appointing Authority has exercised jurisdiction not vested in it, or has failed to exercise jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity, it may make such order as it thinks fit.

26. However, this power conferred upon superior authority is guarded by providing that it shall not be exercised unless an opportunity of being heard has been afforded. The reason as we understand for conferment of such power, is that with respect to appointments of Gramin Dak Sevaks, spread across the country, even in small areas also, Government may have come across in a large number of cases that appointments made by Appointing Authority on the post of Gramin Dak Sevaks were not consistent with Rules, or vitiated for any other reason, hence, power co-extensive with Appointing Authority was conferred upon the authority superior to Appointing Authority, but in such a case, since the power is to be exercised by superior authority after perusal of record, it was found necessary and, in our view, rightly that affected person must be given an opportunity of being heard and that is consistent with principles of natural justice read with spirit of Article 311 (2) of the Constitution.

27. In the present set of writ petitions, we find that applicant-respondents working in different categories of Gramin Dak Sevaks have been terminated under the directions given by superior authority to the Appointing Authority after forming an opinion that appointments were not validly made or there had occurred some irregularities and pursuant to their directions, termination orders by referring to Rule 8 (2) have been passed by Appointing Authority.

28. Another set of applicant respondents are such in respect of whom allegations have been made in respect of work, performance, acts and omissions constituting misconduct, but without following procedure of enquiry. Charge-sheets were issued to many of applicant-respondents, alleging certain misconduct on their part, but thereafter in view of directions of Superior Authority, termination orders were passed by referring to Rule 8 instead of completing enquiry by following procedure prescribed in Rules 9 and 10. It is true that if enquiry was not completed, an order of termination simplicitor could have been passed without completing enquiry, but testing stone in all such matters is whether termination is founded on misconduct or it is only motive. In the present case, we find that directions of Superior Authority clearly held concerned employees guilty of some act or omission, constituting misconduct and that has been relied by Appointing Authority to pass orders of termination under Rule 8. But when Superior Authority has given direction and Rule 4(3) which requires opportunity of hearing to person concerned, in our view, looking into entire facts of such cases, as in present matters, where alleged misconduct can logically be taken as foundation to terminate concerned applicant-respondents, but this could not have been done by camouflaging an order of termination simplicitor though, in fact, it is punitive and stigmatic. Even if we take a view that it was not incumbent upon petitioners to complete enquiry and they could have passed order of termination under Rule 8, still, vice of Rule 4(3) which enforces application of principles of natural justice, vitiates the order of termination in such cases also where initially charge-sheet was issued but thereafter termination order was made by referring to Rule 8.

29. So far as first category is concerned, we find that Rule 4(3) of Rules 2001 and Rules 2011 consistently have maintained the scheme that no direction or order shall be passed by Superior Authority in respect of appointment made by Appointing Authority on the post of Gramin Dak Sevak unless an opportunity of being heard is afforded. But circumventing the aforesaid specific provision, the Appointing Authority has passed termination order only by referring to Rule 8(2) and thereby an attempt has been made by authorities of petitioners to flout the specific mandate of Rules in a designed manner. When confronted, learned

Additional Solicitor General could not dispute that under Rule 4(3) no orders could have been passed by Superior Authority without giving opportunity of hearing and even if a direction has been issued to Appointing Authority to terminate any Gramin Dak Sevak, the mere fact that termination order passed by Appointing Authority refers to only Rule 8(2) will not detract from logical consequence that such an order founded on the direction of Superior Authority, would be illegal as no opportunity was afforded to the concerned Gramin Dak Sevak.

30. With respect to other matters, where alleged misconduct of Gramin Dak Sevaks is the foundation, again it could not be disputed that being holders of "civil post", protection of Article 311(2) was available and such Gramin Dak Sevaks in the garb and pretext of termination simplicitor could not have been terminated without following the Procedure prescribed under Rule 10 of Rules 2011.

31. In none of the cases filed by petitioners before us any distinction has been pointed out to bring their cases beyond the ambit of aforesaid Rule 4(3) or 10. In all these matters, orders of termination are vitiated for one or other reason as noticed above, hence, we do not find any manifest error in judgment of Tribunal warranting interference.

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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."

13. It is clear from the discussions above that the facts of the case of **Bikash Kuanar (supra)** and **Archna Mishra (supra)** squarely cover the present OA, for which the impugned order dated 18.4.2016 (Annexure A/9) is violative of the principles of natural justice as well as the GDS (Conduct and Engagement) Rules, 2011 and for that reason, it is not sustainable in law. Consequently, the order dated 22.6.2016 passed by the respondent no. 2 upholding the order dated 18.4.2016 and rejecting the applicant's representation is also not sustainable and both these impugned orders are liable to be quashed.

14. It is submitted in the OA (para 5.5) that under the rules, there is no minimum age prescribed for appointment of the GDS in the GDS (Conduct and Engagement) Rules, 2011, which has not been contradicted by the respondents. Thus, the selection of the applicant, who was below the age of 18 years as on the last date of submission of the application, was not illegal although it violated the stipulation of the age criteria in the notification. After selection, the applicant has worked from 9.5.2014 till 18.4.2016 i.e. about two years without any complaint from any other candidates who had participated in the selection.

15. For the reasons as discussed above and the case laws discussed in this order, the impugned orders dated 18.4.2016 (Annexure-A/9) and dated 22.6.2016 (Annexure-A/13) are set aside and quashed and the respondents are directed to reinstate the applicant in place of her posting before termination i.e. as GDSBPM, Ostapur BO, within three months from the date of receipt of a certified copy of this order, with consequential service benefits like seniority, notional fixation of TRCA and other allowances as per the rules. Given the circumstances of the case, the applicant shall not be entitled for any back wages based on the principle of 'no work no pay'. But if the applicant's reinstatement is delayed beyond three months from the date of receipt of a certified copy of this order, then the applicant shall be entitled for full back wages for the period for which she was out of service by virtue of the termination order dated 18.4.2016 and in such an event, the officials responsible for delay in implementation of the order will be liable for reimbursing the Government the amount paid towards back wages of the applicant in accordance with the provisions of the rules .

16. The OA is allowed in terms of directions in paragraph 15 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath