

**CENTRAL ADMINISTRATIVE
TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 814 OF 2016

Date Of Decision:- 05th February, 2019.

***CORAM: R. VIJAYKUMAR, MEMBER (A).
R. N. SINGH, MEMBER (J).***

Shri Ramrao Namdeo Pitalewad

Age 36 years, Occupation: Service,
GDS, MD/MC, Nandappa BO in Account
with Chandur SO

R/at. Malakwadi, Post Dayegaon,
Tal. Kinwat, Dist Nanded 431811.

...Applicant.

***(By Advocates Ms. Priyanka Mehndiratta and Shri Irle S.
Ravi)***

Versus

1. Union of India

Rep by Director of Postal Services,
O/o. Postmaster General,
Southern Region (MH)
Nagpur 440010.

2. Sr. Superintendent of Post,

Chanda Division, Chandrapur 442401

3. Inspector of Post, Chadrapur,

South Sub. Dn. Rajura,
Hq. Chandrapur 442401.

... Respondents.

(By Advocate Shri. A.M. Sethna)

ORDER (ORAL)

Per:-R. N.Singh, Member (J)

1. This application was filed on 22.11.2016 by the
applicant under Section 19 of the Administrative Tribunals Act
1985 seeking the following reliefs:

***"8(a) This Hon'ble Tribunal may call the record
and proceeding of order in Memo No.NR/LC/6-***

112/07/2016 dated 24.10.2016 Exh. 'A-1' and
order in Memo No:
IP/CD(S)/GDSMD/MC/Nandappa/Rectt/14
dated at Chandrapur the 04/08/2016 being Exh.
'A-2'

(b). This Hon'ble Tribunal may please to
allow the present application.

(c) This Hon'ble Tribunal may please
quash and set aside the impugned order in Memo
No.NR/LC/6-112/07/2016 dated 24.10.2016 Exh
'A-1' passed by Respondent No.1 and order
bearing No. Memo No:
IP/CD(S)/GDSMD/MC/Nandappa/Rectt/14
dated 04.08.2016 Exh. 'A-2' issued by
Respondent No.3.

(d) This Hon'ble Tribunal may please
order and direct to the respondents to reinstate
the applicant on the post of Gramin Dak Sevak,
Mail Deliverer cum MC Nandappa Branch Post
Office in account with Chandur Sub Post Office.

(e) This Hon'ble Tribunal may please
order and direct to respondents to pay all the
back wages from the date of impugned order till
the date of reinstatement and other consequential
benefits to the applicant.

(f) This Hon'ble Tribunal may please
pass any other orders which may be just and
equitable in view of the facts and circumstances
of the case.

(g) This Hon'ble Tribunal may please
award the cost of application."

2. The applicant participated in a selection process in pursuance to on the advertisement issued on 21.07.2014 for filling up the posts of Gramin Dak Sevak, Mail Deliverer/ Mail Carrier, Nandappa Branch Post Office, Rajura Chandrapur District. It transpires that the tabulation list of 34 applications was made and the applicant was seventh in that tabulation merit list. It also transpires from the version of the respondents that the first six persons refused appointment and the respondents issued a provisional selection order for appointment dated 01.12.2014 asking the applicant to appear for documents verification and after the documents verification and medical examination he was appointed vide order Memo No. GDS/Rectt/MD-Nandappa BO/2014 dated 01.01.2015 (Annexure A-6). The appointment order was issued to the applicant and he joined immediately and he has been discharging his duty to the entire satisfaction of the competent authority. However, Respondent No.3 who has issued an offer of appointment and allowed the joining of the applicant, had abruptly vide order dated 04.08.2016 (Annexure A-2) terminated the services of the applicant without even putting him any show cause notice. The applicant has preferred representation against of such impugned order dated 04.08.2016 and when his grievance was not redressed, the applicant has approached this Tribunal by

medium of OA No.621/2016 and this Tribunal has disposed of the aforesaid OA vide judgment and order dated 01.09.2016 which reads as under:

“

2.

3. *Learned counsel for the applicant submits that from January 2015 he has been discharging his service with full satisfaction from all corners. However, all of a sudden, without giving any notice or any intimation, the order of termination was issued by the Respondent No.3. The very right of the applicant to live, which includes livelihood, has been taken away arbitrarily and illegally. With no other alternate, the applicant submitted a detailed representation to the Director of Postal Service, Southern, Nagpur, on 10.08.2016 but the same has not been considered as yet.*

4. *Accordingly, in our considered view, justice will be met with if the Respondent No.1, being the Director of Postal Service, Southern Region, Nagpur, is directed to consider the representation of the applicant and decide the same within four weeks from the date of receipt of this order. Ordered accordingly.”*

3. In pursuance to such order dated 01.09.2016 of this Tribunal the respondents have passed the order dated 24.10.2016 (Annexure A-1) and the same along with the order

dated 04.08.2016 has been impugned by the applicant in the present OA. The learned counsel for applicant submits that the applicant has applied in response to the aforesaid advertisement dated 21.07.2014 issued by the competent authority on the subject and on finding himself eligible for the post in question the applicant applied and he participated in the selection process. It is the case of the applicant that on his such participation he was found as seventh in the merit list of the candidates who participated in the selection process and in view of this merit position he was issued an offer of appointment vide order dated 01.12.2014 and after due verification of documents and medical examination the respondents issued an offer of appointment on 01.01.2015 (Annexure A-6) and in response thereto the applicant has joined the services of the respondents on that very date. The learned counsel for applicant argues that once the applicant has been found eligible and suitable by the competent authority for his appointment after being selected therefor and after such appointment he has worked to the satisfaction of the respondents for more than one and half year. The abrupt termination is in flagrant violation of principle of natural justice. It is also the case of the applicant that while appointing the applicant there is no violation of any statutory or constitutional provisions and therefore as well, the abrupt

termination of the applicant is bad in the eyes of law. In response thereto, the learned counsel Shri. A.M. Sethna appearing for the respondents and argues that this was an irregular appointment in as much as the Respondent No.3 who had issued the advertisement though has been competent on the subject, however, he had concluded the selection process and in violation of the letter/circular No. 19-14/2010-GDS dated 25.06.2010 which *interlia* provides as under:-

"6. It has been decided that in all cases of future engagement of all categories Gramin Dak Sevaks including the cases which are currently in process and selections not finalized, a select panel of the candidates may be drawn up based on the sole criterion of merit. The panel should be operated in the event of the following contingencies.

- (i) Refusal by the meritorious candidate.*
- (ii) Resignation by the 1st candidate even after joining within one year.*
- (iii) Review made by the higher authority within one year.*

The select panel will be in the proportion of 5 candidates for one vacancy i.e. 1:5. The Select panel will be valid for one year from the date of finalization and after that it would lose its validity."

3. He further submits that once the candidates

appearing at serial No. 1 to 5 in the select list panel referred herein above have not come forward to join the post, it was incumbent upon the Respondent No.3 to issue a fresh advertisement and not to go ahead with the candidate whose name figured as subsequent to serial No.5 in the list. He submits that this letter is a statutory in nature in as much as this is issued by the approval of Secretary/ Department of posts/ Ministry of Communication and Information Technology/ Government of India under the provisions of the delegated powers and binding on the authorities under the Secretary/ Department of posts. He further submits that the provisions of the circular dated 25.06.2010 is required to be read with Rule 8 of the GDS (Conduct and Engagement) Rules 19 which reads as under in Para 8:-

"8. Termination of Engagement

(1) The engagement of a Sevak who has not already 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 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 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.

Note:- Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance plus dearness Allowance as admissible is being remitted to the Sevak in lieu of notice of one month through money order."

4. He further argues that the concerned Sub-Divisional Inspector of Post i.e. Respondent No.3 who failed to adhere to the provisions of the Letter/Circular dated 25.06.2010 has been proceeded against as a charge sheet has been issued against him.

5. In rejoinder, the learned counsel for applicant submits that at the end of the respondents to argue that the circular dated 25.06.2010 is a statutory in nature or for abrupt termination of the services of the applicant, there was no requirement to follow principle of natural justice, is misconceived and misleading.

6. We have considered the pleadings available on

record and rival contentions. We are of the considered view that at the best the circular dated 25.06.2010 referred herein above can be construed as a guidelines issued under the approval of the Secretary Department of Posts but in no manner the same can be construed as a statutory provisions held under Article 309 of the Constitution. It is only in nature of guidelines, violation thereof may invite action against the authority who has violated the guidelines issued by the senior authority i.e. Secretary, Department of Post but the same cannot make the appointment concluded in response to an advertisement published by the competent authority on the subject *void ab initio*. In these circumstances, it was incumbent upon the competent authority to accord pre-decisional hearing to the applicant and in absence thereof the impugned orders are in violation of the principle of natural justice and therefore, the same is liable to be set aside and quashed. We are of the further view that there has not been such a situation where proviso Rule 8 of the GDS Conduct and Engagement Rules was required to be brought in service. It is admitted case of the respondents that the applicant has applied in pursuance to the advertisement issued by the competent authority and he has been found eligible and suitable for the post and thereafter he has worked to the satisfaction of the authorities concerned for more than one and half year. In the

circumstances, the respondents invoking the proviso, Rule 8 is also misplaced. It is also admitted case of the respondents that the relevant rule does not give power of review of administrative decision to the Respondent No.3 i.e. Sub-Divisional Inspector Post and thus once he after due selection process he has issued an offer of appointment, he cannot recall the offer or cancel the appointment in absence of any express provisions of power of review to him. He cannot review his own order and thus he had gone beyond his jurisdiction. We may not ignore this fact also that the applicant has been admittedly found suitable and he has been discharging the duties to the satisfaction of officers and now at this stage when he has attained 38 years of age, he may not find any suitable employment.

7. In these facts and circumstances, we find sufficient merits in the claim of the applicant and accordingly impugned orders dated 24.10.2016 (Annexure A-1), 01.08.2016, 04.08.2016, 05.08.2016 (Annexure A-3) are hereby quashed and set aside. The respondents are directed to reinstate the applicant on the post of GDS, MC, Nandappa Branch Post Office with Chandur Sub Post Office within one month of receipt of certified copy of this order. However, in the facts and circumstances, though the applicant shall be eligible to count his service in continuity for the purpose of

seniority, fixation of pay, etc and other retiral benefits, if any admissible, applicant shall not be entitled for any back wages.

8. In the aforesaid terms the OA is partly allowed without any order as to costs.

(R. N. Singh)
Member (J)
srp

(R. Vijaykumar)
Member (A)

