CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01696/2018

DATED THIS THE 1st DAY OF AUGUST 2019

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

NS.Harish,
S/o Srinivasappa,
Aged:25 years,Ex GDS MD/MC
Thippenahalli BO,
A/C Sidlaghatta SO 562 101
Residing at:
Narayanahalli
Chinnasandra PO
Chintamani Taluk ….Applicant

(By Advocate Shri P.Kamalesan)

vs.

1. Union of India,
Represented by Director General,
Department of Post,
Dak Bhavan,
New Delhi – 110116.

2.Postmaster General,
SK Region,
Bangalore 560 001

3. Chief Post Master General,
Karnataka Circle,
Bangalore 560 001

4.Senior Superintendent
of Post Offices,
Kolar Postal Division,
Kolar-563102

5.Inspector of Post Offices,
Chickballapur Sub Division,
Chickballapur – 562101 ...Respondents.

(By Shri K. Dilip Kumar, ACGSC)

ORDER (ORAL)

HON'BLE DR K.B.SURESH, MEMBER (J)

1. Heard. The applicant submits that he was regularly selected after sent for medical examination and after due process only he was appointed. The respondents say that he had been in a post where there was a temporary gap and had worked there only for 2 ½ years and therefore, not eligible for counting his service as 3 years. They rely on OA.No.731/2018 dated 9.4.2019 which we quote:-

“ Heard. The matter is in a very short compass. Applicant has worked as GDS for 2 ½ years and he was terminated for the re-instatement of some other person. Apparently that was not indicated in the appointment order also, as stated by the learned counsel for the applicant.

2.Shri P. Kamalesan, learned counsel for the applicant relies on Rule of GDS (Conduct and Engagement) Rules as well as proviso, which we quote;

“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 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 months."

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."

3. *Therefore, the applicant will be eligible for one month's pay along with Dearness Allowance, but then his termination order will stand. OA therefore, with the above observation and direction, dismissed. Payment as related to Rule 8 will be made available to him within the next one month. No costs."*

2. But Shri Kamalesan points out one distinction in this matter that before this on a stop gap arrangement the applicant had worked for one year or more. Therefore, his total service will be 3 ½ years and not 2 1/2 years as now contended by the respondents. Therefore, he is eligible for the benefit of the Rule which says that if he has worked for 3 years or more he cannot be terminated in-limine. But, then he has to be kept in waiting

list and consider him in the next arising vacancy. Therefore, there will be a mandate to the respondents to consider him

within a reasonable time for the next arising vacancy to be posted in accordance with law. OA is allowed to the limited extent.

3. At this point Shri Dilip Kumar has a doubt about the period he might have worked earlier and therefore, there will be further a mandate to the respondents to verify if the applicant has completed a total period of 3 years or more then he will be eligible for being kept in the waiting list to be posted in accordance with law and not otherwise. OA is allowed to the limited extent.

4. In another matter also which has come to our notice the applicant seems to have been orally terminated. We refer Delhi Transport Corporation vs. DTC Mazdoor Congress and others reported in 1991-Supplementary (1) SCC 600. We quote head notes from it:-

HELD:

Per Ray, J.:

(1). Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations,1952 which confers powers on the authority to terminate theservices of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the orders is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution. There is no guideline in the Regulations or in the Delhi Road Transport Authority Act, 1950 as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu thereof can be exercised.

Government Companies or Public Corporations which carry on trade and business activity of State being State instrumentalities, are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of fundamental rights embodied in Part 111 as well as to conform to the directive principles in Part IV of the Constitution. In other words, the Service Regulations or Rules framed by them are to be tested by the touchstone of Article 14 of the Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust.

The Rule of Law, which permeates the Constitution of India, demands that it has to be observed both substantially and procedurally. Rule of law posits that the power to be exercised in a manner which is just, fair and reasonable andnot in an unreasonable, capricious or arbitrary manner leaving room for discrimination.

Further, the 'audi alteram partem' rule which, in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting

prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do no supplant but supplement the Rules and Regulations.

It is impossible to hold by reading down the provisions of Regulation 9(b) framed under section 53 of the Delhi Road Trans- port Act, 1950 read with Delhi Road Transport (Amendment) Act, 1971 that the said provision does not confer arbitrary, unguided, unrestricted and uncanalised power without any guidelines on the authority to terminate the services of an employee without conforming to the principles of natural justice and equality as envisaged in Article 14

Per Sharma, J.

While in the interest of efficiency of the public bodies, however, they should have the authority to terminate the employment of undesirable, inefficient, corrupt, indolent and disobedient employees, but it must be exercised fairly, objectively and independently; and the occasion for the exercise must be delimited with precision and clarity. Further, there should be adequate reason for the use of such a power, and a decision in this regard has to be taken in a manner which should show fairness, avoid arbitrariness and evoke credibility. And this is possible only when the law lays down detailed guidelines in unambiguous and precise terms so as to avoid the danger of misinterpretation of the situation. An element of uncertainty is likely to lead to grave and undesirable consequences. Clarity and precision are. therefore, essential for the guidelines. [272D-F] 1.2 Regulation 9(b) of the Delhi Road Transport Authori- ty (Condition of Appointment and Service) Regulation, 1952 cannot, therefore. be upheld for lack of adequate and appro- priate guidelines.

Per Sawant, J. (Concurring)

Clause (b) the above that it applies not only in the case of retrenchment of employees on account of reduction in the establishment but also in circumstances other than those mentioned in

clause (a). Thus when the management decides to terminate the services of an employee but not for his mis- conduct 'or during his probation or because his tenure of appointment, contractual or otherwise, has come to an end, it is free to do so without assigning any reason and by merely giving either a notice of the specific period or pay in lieu of such notice. Reduced to simple non-technical language, clause (b) contains the much hated and abused rule of hire and fire reminiscent of the days of laissez faire and unrestrained freedom of contract. There is no dispute that although the language differs, the substance of the relevant rules of the other public undertakings which are before us, is the same and hence what applies to Regulation 9(b) of the Regulations will apply equally to the relevant rules of the other undertakings as well.

The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimiscal. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be con- signed to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

There is need to minimise the scope of the arbi- trary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals. however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of

life. liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness do not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can coveniently and easly be covered by the rule of law. Hence the absence of guidelines cannot be defended on the ground that the discription is vested in high authorities.

The doctrine of reading down is singularly inapplicable to the present.

Per K. Ramaswamy. J (concurring)

The impugned regulation 9(b) of the Regulations are arbitrary, unjust, unfair and unreasonable offend- ing Arts. 14, 16(1), 19(1)(g) and 21 of the Constitution. It is also opposite to the public policy and thereby is void under Section 23 of the Indian Contract Act.

Delhi Road Transport Corporation is a statutory Corporation under the Delhi Road Transport Act and the Regulations are statutory and its employees are entitled to the fundamental rights instrumentality under Art. 12 have statutory status as a member of its employees. The rights and obligations are governed by the relevant statutory provisions and the em- ployer and employee are equally bound by that statutory provisions.

A permanent employee of a statutory authority, corporation or instrumentality under Article 12 has a lien on the post till he attained superannuation or compulsorily retired or service is duly terminated in

accordance with the procedure established by law. Security of tenure enures the benefit of pension on retirement. Dismissal, removal or termination of his/her service for inefficiency, corruption or other misconduct is by way of penalty. He/She has a right to security of tenure which is essential to inculcate a sense of belonging to the service or organisation and in- volvement for maximum production or efficient service. It is also a valuable right which is to be duly put an end to only as per valid law.

The haunting fear of dismissal from service at the vagary of the concerned officer would dry up all springs of idealism of the employee and in the process coarsens the conscience and degrades his spirit. The nobler impulses of minds and the higher values of life would not co-exist with fear. When fear haunts a man, happiness van- ishes. Where fear is, justice cannot be, where fear is, freedom cannot be. There is always a carving in the human for satisfaction of the needs of the spirit, by arming by certain freedom for some basic values without which life is not worth-living. It is only when the satisfaction of the physical needs and the demands of the spirit coexists, there will be true efflorescence of the human personality and the free exercise of individual faculties. Therefore, when the Constitution assures dignity of the individual and the right to livelihood the exercise of the power by the executive should be cushioned with adequate safeguards for the rights of the employees against any arbitrary and capracicous use of those powers. The right to life, a basic human right, assured by Article 21 of the Constitution comprehends some thing more than mere animal existence; it does not only mean physical existence, but includes basic human dignity

Law is a social engineering to remove the existing irabal- ance and to further the progress, serving the needs of the Socialist Democratic Bharat under rule of law. The prevailing social conditions and actualities of life are to be taken into account to adjudging whether the impugned legislation would subserve the purpose of the society. The arbitrary, unbrid- dled and naked power of wide discretion to dismiss a perma- nent employee without any guidelines or procedure

would tend to defeat the constitutional purpose of equality and allied purposes referred to above. Courts would take note of actu- alities of life that persons actuated to corrupt practices are capable, to maneuver with higher echolons in diverse ways and also camouflage their activities by becoming syco- phants or chronies to the superior officers. Sincere, honest and devoted subordinate officer unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for their honesty, integrity and apathy and inertia towards the corrupt and tent to undermine or show signs of disrespect or disregard towards them. Thereby, they not only become inconvenient to the corrupt officer but also stand an impediment to the on-going smooth sipbony of cor- ruption at a grave risk to their prospects in career or even to their tenure of office. The term efficiency is an elusive and relative one to the adept capable to be applied in diverse circumstances. if a superior officer develops likes towards sycophant, tough corrupt, he would tolerate him and found him to be efficient and pay encomiums and corruption in such eases stand no impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential with delightfully vague language imputing to be 'not upto the mark', 'wanting public relations' etc. Yet times they may be termed to be "security risk" (to their activities). Thus they spoil the career of the honest, sincere and devoted officers. In- stances either way are gallore in this regard. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide arbitrary, uncanalised and unbriddled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule. Vesting arbitrary power would be a feeding ground for nepotism and insolence; in- stead of subserving the constitutional purpose, it would defeat the very object, in particular, when the tribe of officers of honesty, integrity and devotion are struggling under despondence to continue to maintain honesty, integrity and devotion to the duty, in particular, when moral values and ethical standards are fast corroding in all walks of life including public services as well. It is but the need and imperative of the society to pat on the back of those band of honest, hard-working officers of integrity

and devotion to duty. It is the society's interest to accord such officers security of service and avenues of promotion.

The right to public employment and its concomitant right to livelihood receive their succour and nourishment under the canopy of the protective umbrella of Articles 14, 16(1), 19(1)(g) and 21. Different Articles the Chapter on Fundamental Rights and the Directive Principles in Part IV of the Constitution must be read as an integral and incorporeal whole with possible overlapping with the subject-matter of what is to be protected by its various provisions, particularly the Fundamental Rights. when the provi- sions of an Act or Regulations or Rules are assailed as arbitrary, unjust, unreasonable, unconstitutional, public law element makes it incumbent to consider the validity thereof on the anvil of inter play of Arts. 14, 16(1), 19(1)(g) and 21 and of the inevitable effect of the provi- sion challenged on the rights of a citizen and to find whether they are constitutionally valid. All matters relating to employment include the right to continue in service till the employee reaches superannuation or his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution or the Rules made under proviso to Article 309 of the Constitution or the statutory provision or the Rules, regulations or instructions having statutory flavour made thereunder, But the relevant provisions must be conformable to the rights guaranteed in Parts III & IV of the Constitu- tion, Article 21 guarantees the_ right to live which in- cludes right to livelihood, to a many the assured tenure of service is the source, the deprivation thereof must be in accordance with the procedure prescribed by law conformable to the mandates of Articles 14 and 21 as be fair, just and reasonable but not fancyful oppressive or at vagary.

In today's complex world of giant corporations with their vast infra-structural organisations and with the State through its instrumentalities and agencies has been entering into almost every branch of industry and commerce and field of service, there can be myriad situations which result in unfair and unreasonable bargains between parties possess wholly disproportionate and unequal bargaining power. These

cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circum- stances.

The Supreme Court, as a court of consti- tutional conscience enjoined and is jealously to project and uphold new values in establishing the egalitarian social order, the Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscionable rules or conditions when the citizen is really unable to meet on equal terms with the State.

It is to find whether the citizen, when entered into contracts or service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to "take it or leave it" and if it finds to be so, this Court would not shirk to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social condi- tions. in the absence of specific head of public policy which covers a case, then the court must in consonance with public con- science and in keeping with public good and public interest invent new public policy and declare such practice or rules that are derogatory to the constitution to be opposed to public policy. The rules which stem from the public policy must of necessity be laid to further the progress of the society in particular when social change is to bring about an egalitarian social order through rule of law. In deciding a case which may not be covered by authority courts have before them the beacon light of the trinity of the Constitu- tion and the play of legal light and shade must lead on the path of justice social, economical and political. Lacking precedent, the court can always be guided by that light and the guidance thus shed by the trinity of our Constitution.

The Indian Contract Act is an amending as well as consolidating Act as held in Ramdas Vithaldas Durbar v.S. Amerchand & Co., 43 Indian Appeals 164. Thereby common law principles applicable in England, if they are inconsist- ent with or derogation to the provisions of the Indian Contract Act or the Constitution to that extent they stand excluded. Any

law, muchless the provisions of Contract Act, are inconsistent with the fundamental rights which guaran- teed in Part III of the Constitution, by operation of Arti- cles 13 of the Constitution, are void. Section 2(h) of the Indian Contract Act defines "an agreement" including an agreement of service and becomes a Contract only when it is enforceable by law. If it is not enforceable it would be void by reason of section 2(g) thereof.

Public policy having its inception in constitutions may accomplish either a restrict- ed or extended interpretation of the literal expression a statute. A statute is always presumed to be constitu- tional and where necessary a constitutional meaning will be inferred to preserve validity. Likewise, where a statute tends to extend or preserve a constitutional principle, reference to analogous constitutional provisions may be of great value in shaping the statute to accord with the statu- tory aim or objective.

The principles of natural justice is an integral part of the guarantee of equality assured by Arti- cle 14 . Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural Justice.Any law made or action taken by the employ- er, corporate statutory or instrumentality under Article 12 must act fairly and reasonably. Right. to fair treatment is an essential inbuilt of natural justice. Whenever there is arbitrariness in State Action whether it be of the Legislature or of the Executive or of an authority under Article 12, article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non/arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution. The concept of reasonableness and non- arbitrariness pervades the entire constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution. Therefore, the provision of the statute, the regula- tion or the rule which empowers an employer to terminate the services of an employee whose service is of an indefinite period till he attains the age of superannuation, by serving a notice of pay in lieu thereof must be conformable to the mandates of Arts. 14, 19(1)(g) and 21

It is no well tuned solace to say that in a court of law at the fag end of the currier or after superannuation in the interregnum which often over takes the litigation, that the employee would be meted out with justice (a grave uncertainty and exposing to frustrating pro- crastination of judicial process and expenses and social humiliation). Before depriving an employee of the means of livelihood to himself and his dependents, i.e. job, the procedure prescribed for such deprivation must, therefore, be just, fair and reasonable under Arts. 21 and 14 and when infringes Art. 19(1)(g) must be subject to imposing reasona- ble restrictions under Art. 19(5). Conferment of power on a high rank officer is not always an assurance, in particular when the moral standards are generally degenerated that the power would be exercised objectively, reasonably, conscien- tiously, fairly and justly without inbuilt protection to an employee. Even officers who do their duty honestly and conscientiously are subject to great pressures and pulls. Therefore, the competing claims of the "public interest" as against "individual interest" of the employees are to be harmoniously blended so as to serve the societal need con- sistent with the constitutional scheme.

In an appropriate case where there is no sufficient evidence available to inflict by way of disciplinary meas- ure, penalty of dismissal or removal from service and to meet such a situation, it is not as if that the authority is lacking any power to make Rules or regulations to give a notice of opportunity with the grounds or the material on records on which it proposed to take action, consider the objections and record reasons on the basis of which it had taken action and communicate the same. However scanty the material may be, it must form foundation. This minimal procedure should be made part of the procedure lest the exercise of the power is capable of abuse for good as well as for whimsical or capricious purposes for reasons best known to the authority and not germane for the purpose for which the power was conferred. The action based on recording reasoning without communication would always be viewed with suspicion.

Though it is open to the authorities to terminate the services of a temporary employee without holding an enquiry. But in view of the

march of law made, viz., that it is not the form of the action but the substance of the order which is to be looked into, it is open to the Court to lift the veil and pierce the action challenged to find whether the said action is the foundation to impose punishment or is only a motive. The play of fair play is to secure justice procedural as well as substantive. The substance of the order, the effect thereof is to be looked into. Whether no misconduct spurns the action or whether the services of a probationer is terminated without imputation of misconduct is the test. Termination simpliciter, either due to loss of confidence or unsuitability to the post may be a relevant factor to terminate the services of a proba- tioner. But it must be hedged with a bonafide over-all consideration of the previous conduct.

When the authority intends to take disciplinary action for imposing penalty of dismissal, removal or reduction in rank of an employee, an elaborate procedure has been provided in Regulation 15 to conduct an enquiry into misconduct after giving reasonable opportunity. Residuary power has been avowedly conferred in Regulation 9(b) with wide discretion on the appropriate authority to take actions on similar set of facts but without any guidelines or procedure at the absolute discretion of the same authority. The language of Regulation 9(b) is not capable of two interpretations. This power appears to be in addition to the normal power in Regulation 15. Thereby the legislative intention is manifest that it intended to confer such draconian power couched in language of width which hangs like Damocles sword on the neck of the employee, keeping every employee on tenterhook under constant pressure of uncertainty, precarious tenure at all times right from the date of appointment till date of superannuation. It equally enables the employer to pick and choose an employee at whim or vagary to terminate the serv- ice arbitrarily and capriciously. Regulation 9(b), thereby deliberately conferred wide power of termination of services of the employee with- out following the principles of audi alteram partem or even modicum of procedure of representation before terminating the services of permanent employee.

(2)Conferment of power with wide discretion without any guidelines, without any just, fair or reasonable proce- dure is constitutionally anathema to Arts. 14, 16(1), 19(1)(g) and 21. Doctrine of reading down cannot be extended to such a situation. [328A-C, 329B- C] 2.7 In view of the march of law, made by Article 14 it is too late in the day to contend that the competent author- ity would be vested with wide discretionary power without any proper guidelines or the procedure. When it is found that the legislative intention is unmistakably clear, unam- biguous and specific.

The Doctrine of Reading Down is an internal aid to construe the word or phrase in statute to give reasonable meaning. The object of reading down is to keep the operation of the statute within the purpose of the Act and consitutionally valid. the Courts though, have no power to amend the law by process of inter- pretation, but do have power to mend it so as to be in confirmity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. But when the offending language used by the legislature is clear, precise and unambiguous, violating the relevant provisions in the constitution, resort cannot be had to the doctrine of read- ing down to blow life into the void law to save from uncon- stitutionality or to confer jurisdiction on the legislature. Similarly it cannot be taken aid of to emasculate the pre- cise, explicit, clear and unambiguous language to confer arbitrary, unbridled and uncanalised power on an employer which is a negation to just, fair and reasonable procedure envisaged under Articles 14 and 21 of the Constitution and to direct the authorities to record reasons, unknown or unintended procedure.Statutory construction raises a presumption that an Act or a provision therein a constitutionally valid unless it appears to be ultra vires or invalid. The legislature, subject to the provisions of the Constitution, has undoubt- edly unlimited powers to make law.

The golden rule of statutory construction is that the words and phrases or sentences should be construed according to the intent of legislature that passed the Act. All the provisions should be read

together. If the words of the statutes are in themselves precise and unambiguous, the words, or phrases or sentences themselves alone do, then no more can be necessary than to expound those words or phrases or sentences in their natural and ordinary sense. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the inten- tion, to call in aid the ground and cause of making the statute, and to have the recourse to the preamble, which is a key to open the minds of the makers of the statute and the mischiefs which the Act intend to redress. In determining the meaning of statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intent of the legislature then it is proper to look for some other possible meaning then the court cannot go further.

It is for concerned authorities to make appropriate rules or regulations and to take appropriate action even without resorting to elaborate enquiry needed consistent with the constitutional scheme. The correctness of the decision in Tulsiram Patel's case though was doubted in Ram Chunder v. Union of India, [1986] 2 SCR 980 it is unneces- sary to go into that question. For the purpose of this case it is sufficient to hold that proviso to Art. 311(2) itself is a constitutional provision which excluded the applicabil- ity of Art. 311(2) as an exception for stated grounds. It must be remembered that the authority taking action under either of the clauses (b) or (c) to proviso

are enjoined to record reasons, though the reasons are not subject to judi- cial scrutiny, but to find the basis of which or the ground on which or the circumstances under which they are satisfied to resort to the exercise of the power under either of the two relevant clauses to proviso to Art. 311(2) of the Constitution. Recording reasons itself is a safeguard for preventing to take arbitrary or unjust action. That ratio cannot be made applicable to the statutory rules. the ratio in Brojonath's- case was correctly laid and requires no reconsideration and the cases are to be decided in the light of the law laid above."

5. There shall not be any doubt if a person has been appointed in writing he can be terminated only in writing and not otherwise. Now, other than what the applicant says there is no detail about when he was terminated or if he is still continuing, such a position should never arise in the future . The respondents are cautioned against doing so. OA is allowed to the limited extent. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA.No.1696/2018

Annexure A1: Copy of report Dtd. 3.1.2014

Annexure A2: Copy of letter dtd. 5.12.2014

Annexure A3: Copy of letter Dtd. 31.8.2015

Annexure A4: Copy of letter Dtd. 26.12.2014

Annexure A5: Copy of representation

Annexure A6: Copy of letter Dtd.21.6.2018

Annexure A7: Copy of letter Dtd.28.3.2018

Annexure A8: Copy of the order dated 21.12.1989 of CAT, Patna Bench in O.A. No.84/ 1989

Annexure A9: Copy of Rule 8 of GDS (conduct & engagement) Rules 2011.

Annexure referred in the reply by the Respondents

Annexure R1: Copy of notification dated 1.11.2014

Annexure R2: Copy of order dtd. 28.1.2014

Annexure R3: Copy of Swamy's Rule

Annexure R4: Copy of the order dated 9.4.2019 of CAT, Bangalore Bench in O.A. No.731/2018

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