

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 295 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Purusottam Karua, aged about 24 years, S/o Late Susil Kumar karua, At/PO-Sarei, Via-Champua, Dist.-Keonjhar, presently working as GDSBPM, Sarei BO in account with Champua SO.

.....Applicant

VERSUS

1. Union of India, represented through its director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.- Khurda – 751001.
3. Director Postal Services, O/o PMG, Sambalpur Region, Sambalpur.
4. Superintendent of Post Offices, Keonjhar Division, Keonjhar- 776801.
5. Sub Divisional Inspector (Posts), Champua Sub Division, Champua-755041.
6. Pradip Kumar Sethy, S/o Madhusudan Sethy, At/PO-Sarei, Via-Champua, Dist-Keonjhar.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamanta, counsel

For the respondents: Mr.D.K.Mallick, counsel (Resp.No. 1 to 5)
Mr.N.R.Routray, counsel (Resp.No.6)

Heard & reserved on : 6.9.2019 Order on : 22.10.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“(8.1) That the termination of services of the applicant vide memo dated 7.5.2015 (A/4) be quashed.

(8.2) And further be pleased to pass any other order/orders as deemed fit and proper.”

2. The applicant, belonging to SC community, was appointed as GDS BPM Sarei Branch Post Office under Champua Sub Office of Keonjhar District, after being selected in a regular selection process in pursuance to the public notification dated 30.12.2013 issued by the respondents. He was asked vide memo dated 26.7.2014 (Annexure A/1) for verification of documents and

thereafter he was appointed in the said post vide order dated 6.8.2014 (Annexure A/2) and 27.8.2014 (Annexure A/3). He is aggrieved by the fact that he has been issued a memo dated 7.5.2015 (Annexure A/4) by which he was given a notice of one month for termination of his services as per the Rule 8(1) of the GDSs (conduct & Engagement) Rules, 2011.

3. The order dated 7.5.2015 has been challenged in this OA on the following grounds :

(i) No notice was given before terminating the service of the applicant within one month although he was regularly selected by the competent authority through a process of selection. Such action of the respondents also violated the principles of natural justice.

(ii) Similar issue was considered by Allahabad Bench of this Tribunal in the case of Tilakdhari Yadav -vs- Union of India & Ors. [1997 (36) ATC 539 (FB)], wherein Full Bench of the Tribunal had decided that Rule 6 of the EDAs (Conduct and Service) Rule, 1964 which was same as the Rule 8 of the 2011 Rules, does not confer power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an EDA who has been appointed on a regular basis, for reasons other than unsatisfactory service or for administrative reasons, without giving an opportunity to show cause.

(iii) Similar disputes before the Tribunal have been decided in favour of the GDSs concerned in batch cases (OA No. 818/2010, 42, 175, 218, 219, 228, 248, 249, 250 of 2011) and the Tribunal order has been upheld by Hon'ble High Court of Orissa vide order dated 27.1.2014.

(iv) Rule 8(1) of the GDS (Conduct & Engagement) Rules, 2011 be declared ultra vires to the Constitution of India/Article 14 of the Constitution because of the unbridled power it confers on the authorities.

4. The Tribunal on consideration of the OA on 27.5.2015, admitted the same and as an interim measure directed that the operation of the order dated 7.5.2015 (Annexure A/4) be stayed till further orders. Thereafter another person namely Pradip Kumar Sethy filed the MA No. 526/2015 for intervening in the OA and the MA 527/15 for modification of the order dated 27.5.2015 stating that he had challenged the illegal selection of the applicant by submitting a representation to the respondent No.4, which was rejected and the rejection order was challenged by the petitioner of the MA (Sri Sethy) in OA No. 175/2015. The said OA was disposed of with a direction to respondent No.4 to reconsider the matter. Thereafter, the order dated 7.5.2015 was issued by the respondents for termination of the applicant. It is stated in the MA that the respondent No.4 did not assign any reason while issuing the order dated 7.5.2015, which was stayed by the Tribunal vide order dated 27.5.2015. It is further stated in the MA that by virtue of the said interim order passed by the

Tribunal dated 13.4.2015 in OA No. 175/20125 filed by MA applicant Sri Sethy has been effectively stayed, who prayed for modification of the order dated 27.5.2015. Both the MA No. 526/2015 and MA No. 527/2015 were opposed by the official respondents. MA No. 526/2015 was allowed vide order dated 8.9.2016 of this Tribunal and Shri Sethy was included as the respondent No.6 in the OA.

5. The counter has been filed by the respondents stating that to fill up the vacancy in Sarei Branch Office notification was issued. The applicant, securing highest percentage of marks and belonging to SC community was selected for the post by respondent No.4 and he joined the said post on 2.9.2014 after observing all the formalities. However, the applicant had not submitted his Caste Certificate along with the application form but he has submitted a Court affidavit with the application to the effect that he will submit his Caste Certificate subsequently. His Caste Certificate was duly submitted before his selection. After joining of the applicant as GDSBPM Sarei, Sri Sethy who was also one of the candidates for the said post challenged the selection of the applicant vide his representation dated 11.2.2015. This was rejected and being aggrieved Sri Sethy filed OA No. 175/2015 which was disposed of by the Tribunal with a direction to respondent No.4 to reconsider the matter. In pursuance to that order, the respondent No.4 issued one month's termination notice dated 7.5.2015 to the applicant under the Rule 8. This order has been stayed vide interim order dated 27.5.2015 passed by the Tribunal in OA No. 295/2015. It is also stated that one month's notice of termination was issued under Rule 8 to the applicant as he has not rendered more than 3 years of continuous service. It is averred that the said notice is in accordance with the rules and in pursuance to the order dated 13.4.2015 passed by the Tribunal in OA No. 175/2015.

6. The counter has also been filed by Sri Sethy, who is the respondent No.6 in the OA. It is stated that after the selection of the applicant, respondent No.6 sought for information under RTI Act and came to know that the applicant had not submitted his Caste Certificate along with the application form as required by the notification for the post and submitted an undertaking to submit it in a later date. The Caste Certificate issued by the Tahsildar, Champua dated 11.2.2014, was submitted by the applicant vide his letter dated 14.2.2014 (Annexure R/E to the counter of respondent No.6). Hence the Caste Certificate was filed after the last date of the notification dated 30.12.2013 (Annexure R/A), i.e. 28.1.2014, for which the applicant was not eligible for selection under SC quota. He pointed out these facts in his representation which was rejected. Then he filed OA No. 175/2015 which was disposed of with a direction to respondent No.4 to reconsider the matter. After the said order dated 27.5.2015 the respondent No.4 has disposed of the representation of the respondent No.6

vide letter at Annexure R/I stating that due to stay order the applicant is continuing in the said post.

7. Heard Mr.D.P.Dhalsamant, learned counsel for the applicant, Mr.N.R.Routray, learned counsel for the respondent No. 6 and Mr.D.K.Mallick, learned counsel for the respondent No. 1 to 5. Applicant's counsel filed a copy of the order dated 27.1.2014 of Hon'ble High Court passed in WP(C) No. 1802/2012 which was also referred in the applicant's averment in para 5.10 of the OA. Learned counsel for the parties broadly reiterated their stand in their respective pleadings.

8. The issue to be decided in this case is whether impugned order dated 7.5.2015 (Annexure A/4) issued under Rule 8 of the GDSs (Conduct & Engagement) Rules, 2011 is sustainable in the eyes of law. On perusal of the judgment dated 27.1.2014 of the Hon'ble High Court in WP(C) No. 1802/2012 cited by the applicant's counsel, it is noted that in the said case, the concerned GDS was also served with an order terminating his services forthwith on payment of amount equivalent to the allowances payable for him every month in lieu of one moth's notice as per provisions of Rule 8. Hence, factually the case of the GDS in WP(C) No. 1802/2012 was similar to the case of the present applicant except a difference that the applicant instead of forthright termination, was issued a notice of one month for termination. But the dispute related to application of the Rule 8 in both the cases. It was held by Hon'ble High Court in WP(C) 1802/2012as under :

"The judgment which was followed by the Tribunal in the instant case has been annexed as Annexure-4 to the writ petition. On perusal of the said judgment, it appears that the Tribunal arrived at a finding that Rule-8 of the Rules is a replica of Rule-6 of the GDS (Conduct & Employment) Rules, 1964. On comparison of the two rules, we also find that both the rules are in pari material. The Tribunal in the said judgment referring to the decision in a batch of Original Applications which was passed relying upon the judgment of this Court in the case of **Sushil Kumar Patra -vs- Union of India and Others**, 101 (2006) CLT 253 came to the conclusion that the order of termination passed against the applicants canot be sustained.

This Court in the case of Sushil Kumar Patra (supra) examining such order of termination relying upon the judgment of the Hon'ble Supreme Court in the case of **Basudeo Tiwary -vs- Sido Kanhu University and others**, 1998 (5) SCALE 300, came to the conclusion that even while exercising the jurisdiction under Rule 6 of the Rules along with sub clause (c) of Clause-3 of Rule 4 of the said Rules, the termination of service cannot be made without giving an opportunity of being heard. This Court reiterated the ratio of the decision laid down by the Supreme Court that non-arbitrariness is an essential facet of Article 14 of the Constitution.

In view of the above discussion, we find no apparent error in the impugned order passed by the Tribunal in quashing the order of termination of the opposite party. We, therefore, direct the petitioners to reinstate the opposite party in his earlier post, holding that the impugned order of termination shall not preclude the Union of India or the petitioners from taking decision after affording the applicant (opposite party herein) with reasonable opportunity to show cause and hearing."

9. Since the present OA is factually similar to the case of the respondent GDS in WP(C) No. 1802/2012, the judgment dated 27.1.2014 of Hon'ble High Court will squarely be applicable to this OA. However, in this OA, the applicant has not been relieved since one month termination notice at Annexure A/4 has been stayed by this Tribunal vide interim order dated 27.5.2015. Hence, following the judgment dated 27.1.2014 of Hon'ble High Court we are also of the view that impugned order dated 7.5.2015 under the Rule 8, issued for the reason of irregularity in the process of selection of the applicant is not sustainable. It is noticed that there is specific rule 4(3) of GDS (Conduct and Engagement) rules, 2011 for taking action against a GDS appointed irregularly in violation of the rules. As held by Hon'ble High Court vide the judgment dated 27.1.2014, termination of service under the Rule 8 of the GDS (conduct and Engagement) Rules, 2011 without giving any opportunity of hearing will not be sustainable. Hence the impugned order dated 7.5.2015 is quashed. It is however, clarified that the respondents will have liberty to proceed further in the matter in accordance with law if they decide that the selection of the applicant for the said post was irregular.

10. The OA, is therefore, allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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