

**(2022) 12 CAT CK 0015**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 260, 0022 Of 2015**

Tapan Kumar Nayak

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision : 12-12-2022**

**Acts Referred:**

<i>Gramin Dak Sevaks (Conduct & Engagement ) Rules, 2011 — Rule 4, 5, 8, 8(2)</i><i>Gramin Dak Sevaks (Conduct & Engagement ) Rules, 1964 — Rule 6, 6(3)(C), 6(4)(C)</i>  
Constitution Of India, 1950 — Article 14

**Citation : (2022) 12 CAT CK 0015**

**Hon'ble Judges :** Swarup Kumar Mishra, Member(J); Pramod Kumar Das, Member (A)

**Bench :** Division Bench

**Advocate :** D.P. Dhalsamant, B.P. Nayak

**Final Decision :** Allowed

## Judgement

Swarup Kumar Mishra, Member (J)

1. As it reveals from the record, vide order dated 30.01.2014 under Annexure-A/1, the applicant was ordered to work as GDS PKR/MC, Sector 15, NDSO under Rourkela HO w.e.f. 01.02.2014 until further orders. Thereafter, vide order dated 03.03.2014 under Annexure-A/2, he was offered provisional appointment for the post of GDS PKR/MC, Sector 15, for a period of 89 days from 01.02.2013 to 30.04.2014 or till regular appointment is made to the post in question, whichever is shorter. The period of his engagement was extended from 02.05.2014 to 29.07.2014 vide order dated 12.05.2014 under Annexure-A/3. In order dated 23.06.2014 under Annexure-A/4, he was engaged in the said post with TRCA of Rs. 2295-45-3695/- along with usual allowances admissible from time to time with clear understanding that such engagement was in the nature of contract liable to be terminated without any notice. Subsequently, vide order dated 12.01.2015 under Annexure-A/8, the applicant was offered provisional appointment for a period of 89 days from 12.12.2014 to 18.02.2015. Being

aggrieved by the said order, the applicant filed the present O.A. seeking to quash the order dated 12.01.2015 under Annexure-A/8. Respondents have filed their counter enclosing thereto an order dated 19.12.2014 wherein in cancellation of the order dated 23.06.2014 under Annexure-A/4 the engagement of the applicant was terminated with immediate effect. Hence, through amendment, the applicant has brought the said order to the purview of this O.A. with prayer to quash the order under Annexure-A/9 dated 19.12.2014. The wholesome case of the applicant is that the order under Annexure-A/8 and A/9 being passed without complying with the basic principle of natural justice and the rules/law, the same are not sustainable.

2. It is the case of the respondents both in the counter and consolidated counter that the post of GDS Packer-cum-Mail Carrier of Sector 15, Non-Delivery Town SO fell vacant on 09.11.2011 due to promotion of the then incumbent. As it was not feasible to combine the duty among the existing GDS staff and no alternative arrangement was possible immediately, to manage the work, the applicant, an outsider, was ordered to work in the said post purely on temporary basis w.e.f. 01.02.2014. He was allowed to continue on provisional basis from 01.02.2014 to 30.04.2014 and, thereafter, from 02.05.2014 to 29.07.2014. The applicant was engaged on regular basis vide order dated 23.06.2014 in an illegal manner without following due procedure of rules/recruitment and without approval of the competent authority. The appointment of the applicant having been found illegal, on inquiry by the SSPO, Sundergarh Division, Sundergarh, cancellation of provisional engagement of the applicant was ordered. Accordingly, in cancellation of the order dated 23.06.2014, the service of the applicant was terminated with immediate effect vide order dated 19.12.2014. It has been submitted that for smooth functioning and to avoid dislocation of exchange of mails, the applicant was again given provisional engagement from 22.12.2014 to 28.02.2015 vide order dated 12.01.2015 (Annexure-A/8). Further, GDS (Conduct & Employment) Rules, 2001 envisages for termination of services of GDS at any time even without any notice and the appointee shall have no claim for appointment to the said post or any other post. Since, the engagement of the applicant was not in accordance with the rules by following due procedure, the procedure required to be followed in case of termination was not attracted. It has been stated that for drawal of TRCA, every employee, be it temporary or regular, has to furnish the fidelity bond and, therefore, submission of the fidelity bond by the applicant in the instant case cannot confer any right on him to claim his continuance when his engagement was illegal. Non-exhaustion of departmental remedy against the impugned order has been taken as one of the grounds for dismissal of this O.A. In stating so, the respondents have prayed that this OA being devoid of any merit is liable to be dismissed.

3. In the rejoinder, the applicant has taken stand that following his provisional appointment, he was engaged on regular basis by the competent authority, i.e. Respondent No.5 and the said Respondent No.5 has no authority to cancel the engagement/terminate once an incumbent is appointed on regular basis. It has

been submitted that the authority superior to the recruiting authority has the power to pass any order in respect of disengagement/termination of a GDS, which shall only be done after giving opportunity of being heard in terms of Rule 4 and 5 of GDS Conduct Rules, 2011. But, in the instant case, the termination has been made without complying with the basic principles of natural justice of being heard. It has been submitted that the engagement of the applicant may be irregular but not illegal as the applicant has fulfilled all the requisite educational qualification and other criteria for the post of GDS PKR/MC and was appointed by the competent authority. In stating so, applicant has submitted that since the impugned order is contrary to law inasmuch as without complying with the principles of natural justice, the same is liable to be quashed.

4. Ld. Counsel for the applicant has submitted that before passing the order dated 19.12.2014 Annexure-A/9, it was never communicated to the applicant prior to issuing the order dated 12.01.2015 under Annexure-A/8 and for the first time he could come to know from the counter that such an order has been passed. No opportunity of being heard and one month's notice in lieu of one month's pay was given to the applicant. It has been submitted that it is not the case of the respondents that the applicant was in any manner was at fault for such appointment. It is the authority concerned, who had appointed him on regular basis and thus, for any irregularity in the appointment, it is between the authorities and for which the applicant should not be made to suffer. The next limb of submission of Ld. Counsel for the applicant is that if at all any irregularity or illegality was found in the appointment by higher authority, in terms of Rule 4 and 5 of GDS Conduct Rules, 2011 the same could have been done by the superior authority but in the instant case, the termination order has been passed by the appointing authority. Further, Ld. Counsel for the applicant has brought to our notice the order of the Division Bench of this Tribunal in a batch of cases in OA No. 818/2010 and others disposed of on 05.12.2011 in the case of Amulya Kumar Panda & Ors. Vs. UOI & Ors. wherein the termination of GDS Rules by applying Rule 8 without giving opportunity of being heard was quashed by this Tribunal, which was also upheld by the Hon'ble High Court of Orissa vide order dated 27.01.2014 in W.P(C) No. 1797/2012. Accordingly, applicant has prayed to allow the relief sought by him in this OA.

5. On the other hand, Ld. Counsel for the respondents has submitted that since the very appointment of the applicant was illegal and is in violation of the provision of the rules and the mandate enshrined in Article 14 of the Constitution of India, the termination for non-compliance of the principles of natural justice or of that non-payment of one month's pay in lieu of one month's notice cannot be a ground to nullify the order of termination, which is just and proper. To buttress his stand, he has placed reliance on the decision of the CAT, PB, New Delhi in OA No. 660/2016, Kalpana & Ors. Vs. UOI & Ors. It has been submitted that the termination of the applicant has been made in exercise of the power under Rule 8 of the GDS Rules, 2011 and, therefore, none of the ground taken by the applicant to nullify the order of termination can have any help to him.

6. The facts of the matter noted above are not in dispute. The only question that arises for consideration of this Tribunal is that in the given circumstances termination of Applicant without giving him any opportunity of being heard is how far justifiable. For this purpose, it is worth mentioning that fair play is part of public policy and a guarantee for justice to citizens. In our system of Rule of Law, every social agency conferred with power is required to act fairly so that social action would be just, and there would be furtherance of the well-being of citizens. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representation on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they had to meet. Even when a State agency acts administratively, rules of natural justice would apply and suffice to place reliance, in this regard, on the celebrated decision of this Hon'ble Apex Court in the case of *K.I. Shephard & Ors. vs Union Of India & Ors*, 1988 AIR 686. Thus, in the present case it is not in dispute that no such notice was put to the Applicant before cancelling his regular appointment or terminating his service on the direction of the higher authority.

7. Now coming to the facts as to whether the termination was in exercise of power conferred under Rule 8 or under Rule 4 & 5 of Rules, 2011. In this regard, the impugned order is conspicuously silent. Law is no more *res integra* that public orders publicly made in exercise of statutory power cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself vide *Mohinder Singh Gill & Another Vs The Chief Election Commissioner, New Delhi & Ors.*, (1978) 1 SCC 405). Thus, the stand that the order has been made under Rule 8 and thus no notice was required cannot be accepted at this stage; especially when it has been stated in the counter that on the direction of the higher authority the regular appointment of the applicant was terminated thereby attracting the provisions made under Rule 4 & 5 of Rules, 2011 but without giving any opportunity of being heard as provided in the said Rules and law. We have gone through the decision of CAT, PB, New Delhi in the case of *Kalpna (supra)* cited by the Respondents' counsel, on perusal of which it appears that the said decision has no application to the present case because in the said case the termination was in exercise of 8(2) of Rules as will be evident from paragraph 11 of the said order.

8. It is also not out of place to mention the well settled principle of law in the case of *Chandra Kishore Jha v Mahavir Prasad*, (1999) 8 SCC 266, that where a statute provides a thing to be done in particular manner then it has to be done in that manner and in no other manner.

9. This Tribunal has also gone through the decision of the Hon'ble High Court of Orissa dated 27.01.2014 in WP(C) No. 1797/2012 upholding the order of the Division Bench of this Tribunal in similar matters. It is apt to quote the order of the Hon'ble High Court of Orissa as under:

"Facts reveal that the opposite party was working as Gramin Dak Sevak and posted as a Branch Postmaster. He was served with an order of termination terminating his services forthwith with payment of an amount equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible in lieu of one month's notice as per proviso to Rule-8 of the Rules The Tribunal following its earlier judgment passed in a batch of Original Applications (O.A. No. 818 of 2010 and the connected matters) allowed the O.A. No. 818 of 2010. Being aggrieved, the petitioner-Union of India has preferred the present writ petition.

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 materia. 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 - Union of India and others, 101 (2006) CLT 253 came to the conclusion that the order of termination passed against the applicants cannot 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.

In view of the above conclusion, we do not find any merit in this writ petition, which is accordingly dismissed."

10. In view of the discussions made above as well as the law laid down by various courts, it is deducible that the order of termination is in gross violation of the rules/principles of natural justice/law and, in such circumstances, the

irresistible conclusion would be that the impugned order under Annexure-A/8 and A/9 are not sustainable in the litmus test of judicial scrutiny.

11. Accordingly, the impugned order dated 12.01.2015 under Annexure-A/8 and impugned order dated 19.12.2014 under Annexure-A/9 are hereby quashed. Consequently, the OA stands allowed but without any order as to costs.