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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 7076/2015

UNION OF INDIA & ORS

..... Petitioner

Through: Mr. Arun Bhardwaj for UOI/CGSC

versus

TARUN KUMAR TIWARI

..... Respondent

Through: Mr. A.K. Trivedi & Mr. Vaibhav  
Trivedi and Mr. Abhishek Tiwari,  
Advs. for respondent

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**16.02.2016**

We are not inclined to interfere with the impugned order dated 21.04.2015 passed by the Central Administrative Tribunal , Principal Bench, New Delhi (Tribunal) in O.A. No. 738 of 2014 whereby the aforesaid application has been allowed with the direction that the respondent shall be taken back in service with consequential benefits of pay fixation and seniority but could not be entitled to any arrears for the period he has not actually worked. The petitioner has been given liberty, if so advised, to proceed afresh against the respondent in accordance with law.

On 29.08.2011, the respondent was appointed and started working as Gramin Dak Sevak till his services were terminated on 01.10.2013. No show cause notice or explanation from the respondent

was called and sought, before terminating his service. It is admitted and accepted by the petitioner that Rule 10 of the notification dated 12.01.2011, i.e. GDS (Conduct and Engagement) Rules, 2011 mandates issue of show cause notice before an order of penalty is passed. Rule 10, reads as:-

"10. Procedure for imposing a penalty.-

(1) No order imposing a penalty shall be passed except after -

(a) the Sevak is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make and

(b) such representation, if any, is taken into consideration by the Recruiting Authority."

The provision is mandatory, as is apparent from the plain and unambiguous words and expressions used, which reflects the legislative mandate. Even from the context, subject matter and the object of the provision it is apparent that mandate of the Rule is compulsory and not optional. Imposition of penalty is not a trivial or inconsequential matter.

Learned counsel for the Union of India submits that on an internal inquiry it was found that Kailash Kumar Sharma, uncle of the respondent who was working as Dealing Assistant in the office of the Senior Superintendent of Post Office, Aligarh had manipulated the appointment of the respondent. He submits that issue of show cause notice would be a useless formality. He relies on the decision of the Supreme Court in *Ashok Kumar Sonkar v. Union of India and*

*Others*, (2007) 4 SCC 54.

We are not inclined to accept this submission. The petitioner must and is duty bound act in accordance with Rule 10 of the notification dated 12.01.2011. Rule 10 postulates issue of show cause notice. This rule is not a mere procedural provision, violation of which is an irregularity and not an illegality.

Pertinently in the present case, the respondent does not admit the allegations. In *Ashok Kumar Sonkar* (supra), the appellant therein did not hold the requisite qualification as on the said cut-off date and therefore he was not eligible for the appointment. This fact was an accepted and admitted position. In the facts of the present case, when the respondent disputes the assertions against him he must be issued a show cause notice and after considering his reply, decision whether or not his services should be terminated, could be taken. The defence of the respondent may be fallacious and wrong, but no final finding or decision should be pronounced without following the prescribed procedure. This is the mandate and requirement of the Rule 10. . Merits of the allegations, as urged , would not determine whether a provision is mandatory or directory. The legislative intent is clear and must be respected.

In the circumstances, we dismiss the present writ petition. We reiterate that the petitioners are at liberty, if so advised, to proceed against the respondent in accordance with law. The impugned order also takes care of the interest of the petitioner as it is directed that the respondent would not be entitled to any arrears for the period he has not worked.

Learned counsel for the respondent states that the respondent has not been reinstated till date. The respondent shall be reinstated within a period of four weeks. We clarify we have not expressed or made any observations on merits.

**SANJIV KHANNA, J**

**NAJMI WAZIRI, J**

**FEBRUARY 16, 2016/acm**