

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

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2020

W.P.C.T. 2 of 2019

**Sanjeev Rai
Versus
Union of India i& Ors.**

**Mr. Prosenjit Makuerjee.
.....for petitioner.**

**Mr. Samir Paul.
.....for Union of India.**

Mr. Mukherjee, learned advocate appears on behalf of petitioner and submits, impugned in this writ petition is order dated 3rd September, 2019 passed by Central Administrative Tribunal, Kolkata Bench, Kolkata. According to him, offending part of impugned order is as follows:-

“Admittedly, as indicated in the list of dates in the Original Application, the advertisement was issued on 28.6.2013 and the applicant having received his engagement letter on 28.10.2013 joined on 29.10.2013. Hence, he would have rendered three years’ continuous service as on 28.10.2016. As the applicant, however, was terminated on 17.5.2016 he had been terminated prior to completion of three years’ continuous service. It is noted here that even if the applicant was reinstated after issue of Tribunal’s order dated 2.9.2016 and finally

terminated on 20.1.2017, the additional period of engagement would not count towards continuous service. This being an undisputed factual detail, the applicant has not been able to establish that he had rendered three years' continuous service from the date of her engagement and that Rule 8(1) of 2011 Rules does not apply to him."

Point in issue is regarding application of rule 8 in Gramin Dak Sevak (Conduct and Engagement) Rules, 2011, which is set out below:-

"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 Basis 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.”

Therefore, as on 20.1.2017 petitioner’s termination could only to have been under rule 4 and not rule 8.

We put query to Mr. Samir Paul, learned advocate appearing on behalf of Union of India regarding whether the period of engagement commencing from date of set aside termination (17th May, 2016) to second termination on 20.1.2017, would be period of new service? If it is not, inevitable conclusion is that petitioner is deemed to have been in continuous service. At this stage Mr. Paul, submits, this issue be remanded to the Tribunal. Mr. Mukherjee submits, that be done.

In view of the submission made on behalf of Union of India, we set aside impugned order and restore the matter to the Tribunal, for it to consider question on the point, as recorded above. Pending adjudication of the question, petitioner will be entitled to apply for interim measure before the Tribunal.

The writ petition is disposed of.

(Arindam Sinha, J.)

(Biswajit Basu, J.)