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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

WP.CT 3 of 2019

SARITA KUMARI

Vs.

UNION OF INDIA & ORS.

Mr. Prasenjit Mukherjee

Ms. Sudakshina Dey

..... for petitioner

Mr. Samir Paul

..... for UOI

In this writ petition stands impugned order dated 3rd September, 2019 passed by Central Administrative Tribunal, Kolkata Bench. Mr. Mukherjee, learned advocate appears on behalf of petitioner and submits, impugned order dismissing his client's petition is bad in law and should be set aside. Rule 8 in Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011, whether applicable was only taken into consideration, while dismissing the original application. The Tribunal had itself by earlier order dated 2nd September, 2016, on adjudicating of his client's challenge to earlier order of dismissal dated 16th May, 2016, held, inter alia, as follows:-

“While exercising the power under Rule 8 the recruiting authority is not governed by the dictates of the superior authority like in the present case. In this case the superior

authority on the basis of vigilance report found that the appointment of the applicant was illegal and directed the recruiting authority to terminate the engagement of the applicant, as is evident from the order dated 09.05.2016 which is passed on the vigilance report by the superior authority. In such a situation Rule 8 cannot be invoked and the case shall certainly fall within the ambit of Rule 4 which prohibits taking any final decision by the superior authority without giving any opportunity of being heard to the aggrieved person including the GDS against whom the order is proposed to have been passed. Admittedly, in this case no such notice or opportunity has been afforded to the applicant. Admittedly, the case does not fall within the ambit of Rule 10 and no enquiry has been conducted. Therefore, the termination of engagement by letter dated 16.05.2016 would not be sustainable and is liable to be set aside.”

The second termination order dated 20th January, 2017 was passed in similar circumstances and view taken for setting aside earlier termination order, applies. Further submission of Mr. Mukherjee is that the second termination order was pursuant to an order dated 18th January, 2017 of review made by SSPO, Jalpaiguri Division. He refers us to rule 20, which says, the President may review. According to him, SSPO is not President and could not have

reviewed. Therefore, the basis of the termination order is erroneous or suffering from lack of jurisdiction. He relies on judgment of Supreme Court in **Patel Narshi Thakershi Vs. Shri Pradyumansinghji Arjunsinghi** reported in (1971) 3 SCC 844, paragraph 4.

Mr. Paul, learned advocate appears on behalf of Union of India and opposes the petition. He submits, merits of the case, regarding first termination, was expressly mentioned as not having gone into. Impugned order is a good order. The second termination order dated 20th January, 2017, was issued before petitioner could complete three years of service and, hence, application of rule 8 by the employer was correctly upheld by the Tribunal. There should be no interference. Regarding contention of review he submits, this point was not urged before the Tribunal. He reiterates, only contention was whether rule 8 could be resorted to in issuing the second termination dated 20th January, 2017, challenge against which termination was turned down by the Tribunal.

We have perused impugned order in context of rival contentions recorded above. We find, regarding earlier setting aside order of the Tribunal on first termination, following in impugned order were said:-

“6.4. The Tribunal had set aside the earlier order of termination on the ground that no show cause notice was issued to the applicant enabling her to react to the proposed termination. The respondent authorities thereafter issued her a show-cause notice, waited for the response, and, not having received any reply within the specified period of 15 days from receipt of notice, terminated her once again under Rule 8(2) of the 2011 Rules.”

Impugned order then goes on to say as follows:-

“In this case, the termination under Rule 8(2) issued on 20.1.2017 is not an unilateral action as because the respondents gave an opportunity to the applicant to explain her position and then decided on the termination consequent to irregularity of the recruitment process.”

Impugned order also says as follows:-

“The applicant has not been able to bring before us any provisions apart from Rule 8(2) of 2011 Rules which would be applicable to the applicant. Hence, there appears to be no legal infirmity in the termination order dated 20.1.2017; accordingly, we do not find this a fit case for interference and therefore hold that the Original Application fails to succeed on merit.”

We find that before the Tribunal contention was whether or not termination dated 20th January, 2017 could be under rule 8. It was decided as stated in

impugned order, parts of which we have extracted above. The question stands duly adjudicated. We find no reason to interfere. On query from Court regarding contention of review, Mr. Mukherjee's submission is, there was no order up for review by SSPO, Jalpaiguri Division. In the circumstances and where the point was not taken before the Tribunal, the contention regarding basis of the order of termination does not require anything further to be said. As such, **Patel Narshi Thakershi** (supra) has no manner of application.

The writ petition is dismissed.

(Arindam Sinha, J.)

(Biswajit Basu, J)