

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 353 of 2012

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

Rabindranath Biswal, aged about 51 years, S/o Trilochan Biswal, GDS-BPM, Mancheswar Railway Branch Office, Mancheswar, Bhubaneswar, Dist.- Khurda.

.....Applicant

VERSUS

1. Union of India represented through its Direction General of Post, Dak Bhawan, Sansad Marg, New Delhi, Pin – 110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.-Khurda, Pin – 751001.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, Dist. Khurda, Pin – 751009.
4. Assistant Superintendent of Post Offices, Bhubaneswar, North Sub Division, Bhubaneswar, Dist. Khurda. Pin – 751001.

.....Respondents.

For the applicant : Mr.T.K.Mishra, counsel

For the respondents: Mr.L.Jena, counsel

Heard & reserved on : 13.1.2020 Order on :

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

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

- (i) This Hon'ble Tribunal pleased to quash the advertisement dt. 25.01.12.
- (ii) This Hon'ble Tribunal be pleased to direct the respondent No.3 to absorb the applicant in Mancheswar Railway Station BO permanently.
- (iii) And/or in alternative this Hon'ble Tribunal be pleased to direct the respondents to adjust/absorb the applicant in a stationary post.
- (iv) And any relief/reliefs be passed in favour of the applicant as this Hon'ble Court deem fit and proper."

2. The applicant was engaged as Gramin Dak Sevak Stamp Vendor (in short GDSSV) under the respondents on 8.8.1994. As per the instructions dated 21.7.2010, the post of stamp vendors were abolished and the applicant was deployed against vacant post of GDS Mail Deliverer (GDSMD) at Naharkanta Branch Post Office vide order dated 17.2.2011 (Annexure-A/1). Thereafter, the post of GDS Branch Post Master (in short GDSBPM) at Mancheswar Railway Station Branch Office fell vacant. The applicant was asked to manage the work of GDSBPM, Mancheswar while giving a substitute at his own risk for the work

of GDSMD, Naharkanta vide order dated 31.3.2011 (Annexure-A/2). The respondent no. 3 published an advertisement dated 25.1.2012 (Annexure-A/4) to regularly fill up the post of GDSBPM, Mancheswar.

3. It is the case of the applicant that he had submitted a representation dated 8.11.2011 (Annexure-A/5) to absorb him permanently against GDSBPM, Mancheswar on medical ground and after publication of the advertisement dated 25.1.2012, he submitted another representation dated 9.4.2012 (Annexure-A/6) to be adjusted against the post of GDSBPM. It is also stated that the applicant had also applied in response to the advertisement for the post of GDSBPM, Mancheswar. The applicant challenges the issue of advertisement and avers that as per the circular dated 26.2.2009 (Annexure-A/8), he should have been adjusted against the said post.

4. In the Counter filed by the respondents denying receipt of the representation dated 8.11.2011 (A/5) and stating that the representation dated 1.3.2011 was received from him for absorption in the post of GDSBPM, Mancheswar or Pahal Branch Office on his health ground and his case for regular absorption as GDSBPM was not found to be permissible. In para 3 of the Counter, it is averred as under:-

“However, the applicant had submitted an application dated 01.03.2011 for his absorption in the post of GDS BPM, Mancheswar Rly. Station BO or Pahal BO on his health ground. The same is considered under the provisions of relevant service rule and found not permissible,. In the D.G.Posts, New Delhi letter dated 21.07.2010 under Annexure R/1 it has been clearly stipulated that the GDS Stamp Vendors may be redeployed for delivery work redesignating them as mail Deliverers since the slabs of TRCA of Stamp Vendors and mail Deliverers are identical. It is also clarified in the D.O. letter No.ST/10-1/65/Rlg/Corr dated 28.03.2012 of Director Postal Services (HQ), O/o the Chief PMG, Odisha Circle, Bhubaneswar (copy enclosed herewith as Annexure R/3) that “a GDS BPM cannot be transferred as GDS MC/MD/MP and vice versa”. In view of this, the request of the applicant could not be acceded to. However, no other application of the applicant is pending with the Respondents. Without awaiting the result of the selection and without abiding the terms and conditions of the service rule concerned, the applicant has filed this case.”

5. It is further contended in the Counter that the applicant had submitted his application dated 21.2.2012 (Annexure-R/2) for the post of GDSBPM, Mancheswar in response to the advertisement dated 25.1.2012 for the post of GDSBPM. It is stated that the selection for the post will be as per the marks secured in Matriculation and the applicant will be duly considered for the said post.

6. Rejoinder has been filed by the applicant stating that the applicant's representations to permanently absorb him as GDSBPM, Mancheswar are pending for consideration.

7. Heard learned counsel for the applicant who submitted that the request of the applicant for permanent absorption as GDSBPM, Mancheswar is to be considered as per the DG Post's instructions in the letter dated 26.2.2009 (Annexure-A/8) as stated in para 4 (m) of the OA.

8. Heard learned counsel for the respondents. He submitted that in this case, the respondents are not able to proceed with the regular selection for the post of GDSBPM, Mancheswar due to the interim order dated 23.5.2012 directing that the 'applicant will not be disturbed from his present posting'. He further submitted that as per the DG Post's circular dated 21.7.2010 (Annexure-R/1 of the Counter), the surplus GDSSVs are to be deployed as GDSMD since the TRCA slabs for GDSMD is same as GDSSV. It is further submitted that as per the guidelines at Annexure-R/3 for transfer of GDSs, a GDSBPM cannot be transferred as GDSCMC/MD and vice versa.

9. With due regard to the pleadings as well as submissions by both the parties, it is noted that the applicant claims for consideration of his case as per the circular dated 26.2.2009 (A/8), which states as under:-

"The matter has been further examined and it has been decided that consequent upon the abolition of GDS posts, the surplus Gramin Dak Sevaks should be accommodated in the alternative posts in the following manner: -

(1). the surplus Gramin Dak Sevak may be accommodated as far as possible under the accounts jurisdiction of the Sub Office where he is working subject to availability of vacancies and also fulfillment of the conditions of educational qualification prescribed for the post, etc.

(2). if there is no vacancy in the Branch Offices under the Accounts jurisdiction of the Sub Office, the surplus Gramin Dak Sevak may be informed of the details of the vacancies available in the whole division / sub-division and he will be asked to exercise option for choosing the post.

(3). if he is not willing, his name may be kept in the waiting list which will be maintained for two years for offering him any vacancy that may arise subsequently in the Accounts jurisdiction of the Sub Office and if he refuse to avail himself to the opportunity, his name may be deleted from the waiting list.

(4). the interim period of non-employment will count for qualifying service for eligibility to take departmental examination of Group 'D' and Postmen. However, this period will not be counted for purposes of ex gratia gratuity (as per Letter No. 17-128/88-EDC & Trg., dated 6-4-1989) and payment of severance amount.

(5) It is reiterated once again that GDS is not a transferable position and no GDS can be transferred unless he asks for it and fulfills the conditions as prescribed in the Letter No. 19-10/2004-GDS, dated 17.7.2006. These have to be examined very stringently by the CPMG before a transfer is allowed."

10. The applicant was declared surplus as GDSSV and was given alternative posting as GDSMD, Naharkanta BO which was accepted by the applicant without any objection and he joined there on 22.2.2011. He had submitted an application on 1.3.2011 for absorption in Mancheswar Railway Branch Post Office. This representation could not be accepted by the respondents in view of the circular dated 21.7.2010 (Annexure-R/1) of the DG, Posts, which has not

been challenged in this OA. But still he was deployed as GDSBPM, Mancheswar on temporary arrangement from 1.4.2011 in spite of the fact that it was not permissible as per the circular at Annexure-R/1. When his transfer was not permissible as per the DG's circular, the reason for deploying him as GDSBPM even on temporary arrangement when he had represented on 1.3.2011 for his permanent absorption has not been clarified by respondents.

11. Although it has been averred in the Counter that his permanent absorption as GDSBPM, Mancheswar BO is not permissible as per the DG's circular at Annexure-R/1, no order has been passed to dispose of the representation dated 1.3.2011 of the applicant for permanent absorption against the post of GDSBPM.

12. In view of the above discussions, the OA is disposed of with a direction to the respondents to consider the case of the applicant for his engagement as a GDS against a suitable vacancy in accordance with the DG's circular dated 26.2.2009 (Annexure-A/8), keeping in view his representations at Annexure-A/5 and A/6 and his medical conditions as furnished already by him and pass a speaking order to be intimated to the applicant within three months from the date of receipt of a copy of this order and pending communication of the speaking order to the applicant as stated above, the status quo as on date in respect of the applicant's engagement in the station will be maintained by the respondents.

13. The OA stands disposed of as above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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