

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 563 of 2015

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

Prabin Kumar Sahu, aged about 26 years, S/o Sri Fakir Mohan Sahu, of village Nuabhuin, PO-Tainsar, Via-Purunagarh, PS/Dist-Deogarh, at present removed from the post of GDS Mail Carrier-cum-Packer, PIET Mandiakudar SO, under Sundargarh Division.

.....Applicant

VERSUS

1. Union of India represented through its Secretary-cum-director General (Posts), Dak Bhawan, New Delhi- 110001.
2. Postmaster General, Sambalpur Region, At/PO-Sambalpur-768001, Dist.-Sambalpur.
3. Senior Supdt. of Post Offices, Sundargarh Division, At/PO/Dist-Sundargarh-770001.
4. Inspector of Posts, Rourkela West Sub Division, Rourkela-769012, Dist-Sundargarh.
5. Sunil Kumar Ekka, aged about 40 years, S/o Florence Ekka presently working as GDS Mail Carrier, PIET Mandiakudar SO, Dist.-Sundargarh.

.....Respondents

OA No. 841 of 2015

Narahari Barik, aged about 38 years, S/o Late Chintamani Barik, of village Saladei, PO-Olapada, PS-Ramachandrapur, Dist-Keonjhar, at present working in the post of GDS SV/PKR, Main Road redeployed as GDSMC, Rourkela-Barsuan Line.

.....Applicant

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4. Inspector of Posts, Rourkela West Sub Division, Rourkela-769012, Dist-Sundargarh.

.....Respondents

For the applicant (in both the OAs) : Mr.T.Rath, Counsel

For the respondents (in both the OAs) : Mr.D.K.Mallick, Counsel

Order reserved in both the OAs on : 16.10.2020 Date of Order :02.11.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In both the OAs the nature of dispute and factual circumstances are similar. Hence, these OAs were heard together. This common order is applicable to both the OAs. The applicant in the OA No. 563/15 has prayed for the following reliefs :

“Under the facts and circumstances stated above, this Hon’ble Court may kindly be pleased to issue notice to the Respondents and upon hearing the counsel for the Respondents, pass the following reliefs :

- (a) To quash the orders contained in Annexure-A/7 & A/8;
- (b) That the respondents may please be directed to issue regular appointment order to the applicant by ignoring artificial breaks in terms of the judgment of the Hon’ble Apex court in the case of Raninarayan Mohapatra –vs- State of Orissa and Ors. AIR 1991 Supreme Court 1286;
- (c) Call for the file dealing with the engagement of Respondent No.4 and quash such order, if any, engaging the Respondent No.4 on daily wage basis;
- (d) And pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost.”

2. The reliefs sought for in OA No. 841/15 are as under:-

“Under the facts and circumstances stated above, this Hon’ble Court may kindly be pleased to issue notice to the Respondents and upon hearing the counsel for the Respondents, pass the following reliefs :

- (a) To quash the order of the Respondent No.3 under Annexure-A/6;
- (b) To direct the Respondents to issue regular appointment order to the applicant;
- (c) And pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost.”

OA No. 563/2015

3. The facts as per the OA are that the applicant was initially engaged by the respondent no.4 provisionally as GDSMC/Packer, PIET Mandiakudar NDTSO w.e.f. 15.9.2011 for 89 days and was extended from time to time for further periods of 89 days with one day break in between. He was allowed to work as MTS Uditnagar HO on daily wage basis from 1.1.2012 till 9.4.2015, giving a substitute in the first post of GDSMC/Packer and he was sent back to the said post of GDSMC/Packer PIET Mandiakudar NDTSO w.e.f. 10.4.2015. The applicant claims that he is continuing there as such. He had represented on 1.4.2015 (Annexure-A/4) for regularization and then filed OA No. 191/15 which was disposed of vide order dated 17.4.2015 (Annexure-A/6) with a direction to the respondents to dispose of his representation dated 1.4.2015. It is alleged in the OA that the respondent no.4 disengaged him w.e.f. 24.4.2015. On 25.5.2015, the applicant served a copy of the Tribunal’s order dated 17.4.2015. Vide order dated 21.7.2015 (Annexure-A/8), the respondent no.3 rejected the representation of the applicant. It is further alleged that the

respondents after terminating his engagement, are engaging the respondent no.6 on daily voucher basis. The decision has been challenged on the ground that substituting one temporary employee by another is not permissible in law.

4. Counter filed by the respondents submitted that the applicant was provisionally appointed for 89 days on temporary basis and he has not performed duty continuously. It is stated that the applicant filed OA No. 191/15 on being aggrieved by termination of his engagement on 21.4.2015 and the said OA was disposed of 17.4.2015 with direction to dispose of his representation dated 1.1.2015, which was not received by the respondents. However, the said representation has been rejected vide the impugned order. It is further averred that the applicant was engaged for the post without following due procedure and without complying with the circular of DG Posts dated 18.5.1979 (Annexure-A/5). It is also stated that the applicant's engagement was governed under the GDS (Conduct & Engagement) Rules, 2011 with clear understanding that his provisional engagement will be terminated any time without any notice or assigning any reason. The contention in the OA regarding working as MTS on daily wage basis in Uditnagar H.O. has not been disputed in the Counter.

5. Heard learned counsel for the applicant who submitted that the facts of this OA are similar to the facts in OA No. 562/2015 which has been allowed vide order dated 13.5.2020, copy of which has been filed by him giving a copy to the respondents counsel. He further submitted that the present OA No. 563/15 be also disposed of in the light of the aforesaid order.

6. Learned counsel for the respondents was heard, reiterating the averments in the Counter. He submitted that the engagement of the applicant was not continuous basis and hence, he has no right to be considered as per the circular of DG, Posts at Annexure-A/5..

7. We have considered the pleadings on record and submissions by learned counsels for both the parties and have also perused the order dated 13.5.2020 of this Tribunal passed in OA No. 562/2015. In that OA, the concerned applicant was engaged as a GDS from 22.7.2011. He had filed OA No. 204/15 which was disposed of with direction to dispose of his representation dated 1.1.2015. The respondents had also passed the order dated 21.7.2015 rejecting the representation, like in the present OA. The grounds mentioned for rejection in OA No. 562/15 are almost identical with the grounds in OA No. 563/15. The pleadings of the parties in OA No. 562/15 were on similar grounds. It was held in OA No. 562/15 vide order dated 13.5.2020 as under:-

“10. With due regard to the submissions as well as the pleadings by both the parties, only issue to be decided is whether the circular at Annexure-A/6 of the DG, Posts will be applicable to the applicant. The paragraph 2 of this circular dated 18.5.1979 (A/6) states as under:-

“Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years’ continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G.P. & T., Letter No.43-4/77-Pen., dated 23.2.1979.”

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16. Regarding continuous engagement, the respondents have shown that the applicant was not engaged continuously as a driver. But about his engagement as a GDS, it has been simply stated in the impugned order dated 21.7.2015 (A/9) that the applicant “has not rendered approved and continuous service,” without furnishing any details in support of such contentions. Hence, from the facts and circumstances on record, the applicant has worked as GDS for continuously from 2011 till 22.4.2015 when he was disengaged by the respondent No. 4. Even if the period the applicant has worked as GDS by virtue of the interim order dated 3.12.2015 of this Tribunal passed in this OA is ignored, then also the applicant has completed three years of engagement as GDS and this period is to be treated as continuous but for the breaks in between two periods, which are to be ignored since no details of such break periods have been furnished by the respondents in their pleadings. Hence, we are unable to agree with the contentions of the respondents that the applicant was not engaged continuously for more than three years as GDS. As a result, the applicant will be entitled for consideration as per the provisions of the circular dated 18.5.1979 (Annexure-A/6 of the OA), which was not done by the respondents before passing the order dated 21.7.2015 (A/9). Hence, the said order is not sustainable under law.

17. In the circumstances, the impugned order dated 21.7.2015 (Annexure-A/9 of the OA) is set aside with a direction to the respondent No.3/competent authority to re-consider the applicant’s case in accordance with the circular dated 18.5.1979 (Annexure-A/6 of the OA) and communicate his decision to the applicant through a speaking order within three months from the date of receipt of a copy of this order and till then, the status quo of the applicant’s engagement as a GDS will be maintained.

18. The OA is allowed as above. No order as to costs.”

8. In the present OA, the applicant was engaged from 15.9.2011 till 21.4.2015 when he was disengaged by the respondent no.4. Though there were breaks in between, but no details of such breaks have been furnished by respondents in their pleadings. Therefore, the findings in a similar OA No. 562/2015 are also applicable to this OA. In the circumstances, the impugned order dated 21.7.2015 in OA No. 563/2015 (Annexure-A/8 of the OA) is set aside with a direction to the respondent No.3/competent authority to re-consider the applicant’s case in accordance with the circular dated 18.5.1979 (Annexure-A/5 of the OA) and communicate his decision to the applicant through a speaking order within three months from the date of receipt of a copy of this order and till then, the present status quo of the applicant’s engagement as a GDS will be maintained.

OA No. 841/2015

9. In this OA, the applicant was engaged first as GDS Stamp Vendor/Packer provisionally for 89 days and then was redeployed as GDSMC Barsuan Line by

the respondent no.4 and he also continued till filing of the OA No. 144/15 which was disposed of with a direction to dispose of his representation. His representation was rejected vide order dated 20.7.2015 (Annexure-A/6 of the OA) on identical ground as in OA No. 563/15. The pleadings of the parties in this OA are also similar to the OA No. 563/15. Learned counsel for the applicant and respondents also reiterated the grounds as in their respective pleadings. Applicant's counsel also submitted that the order dated 13.5.2020 covers this OA as well.

10. In view of the above position, the decision for the OA No. 563/2015 as recorded in paragraph 8 above will also be applicable to the OA No. 841/2015. In the circumstances, the impugned order dated 20.7.2015 in OA No. 841/2015 (Annexure-A/6 of the OA) is set aside with a direction to the respondent No.3/competent authority to re-consider the applicant's case in accordance with the circular dated 18.5.1979 (Annexure-A/3 of the OA) and communicate his decision to the applicant through a speaking order within three months from the date of receipt of a copy of this order and till then, the present status quo of the applicant's engagement as a GDS will be maintained.

11. The OA Nos. 563 and 841 of 2015 are allowed in terms of the directions in paragraphs 8 and 10 respectively of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath