

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 581 of 2016

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T.Jacob, Member (A)

Debasis Dey, aged about 47 years, S/o Madan Mohan Dey, permanent resident of At/PO-Budhakusumi, Via- Nampo, Dist- Balasore, at present working as GDSBPM, R.P.Line Branch Post Office, under Balasore Division.

.....Applicant

VERSUS

1. Union of India represented through its Secretary-cum-Director General (Posts), Dak Bhawan, New Delhi-110001.
2. Chief PMG, Odisha Circle, At-Bhubaneswar, PO-Bhubaneswar GPO-751001, Dist-Khurda.
3. Director of Postal Services (HQ), Bhubaneswar, At/PO-Bhubaneswar-751001, Dist-Khurda.
4. Supdt. of Post Offices, Balasore Division, At/PO/Dist-Balasore-756001.
5. Sri B.K.Singha, IO-Cum-Assistant Superintendent of Post (HQ), At/PO/Dist-Balasore-756001.

.....Respondents

For the applicant : Mr.T.Rath, counsel

For the respondents: Mr.A.K.Mohapatra, counsel

Heard & reserved on : 3.2.2021 Order on :01.04.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

“(a) To quash the order of appointment of Sri B.K.Singha as I.O. (Annexure A/6) and order of rejections under Annexure-A/8, Annexure-A/10, Annexure-A/12, Annexure-A/15 and Annexure-19.

(b) 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 facts of the case in a nutshell are that the applicant was appointed as GDS Stamp Vendor, Srikanthapur SO on compassionate ground on 8.3.2002. He was attached at R.P.Lines Post Office on 13.10.2010 and was working as GDSBPM, R.P.Lines. He filed a representation for issue of appointment memo in the post of GDSBPM R.P.Lines and during its pendency

respondent No.3 issued notification to fill up the said post from outside on 22.7.2013. The applicant approached this Tribunal in OA 533/2013 which was disposed of on 14.8.2013 with a direction to consider and dispose of the representation of the applicant within 30 days. On 9.10.2013 respondent No.4 ordered relieve of the applicant from the post of GDSBPM R.P.Lines pending disposal of his representation. The applicant again approached this Tribunal by filing OA 758/2013 against his relief order. On 18.11.2012 this Tribunal ordered maintenance of status quo regarding the relief of the applicant. On 1.4.2014 an FIR was lodged against the applicant and respondent No.4 issued charge sheet against the same matter on 27.3.2015. The applicant submitted his defence statement on 28.3.2015. On 28.4.2015 Respondent No.4 appointed Sri B.K.Singha as IO to enquire into the charges against the applicant. The applicant made representation on 21.5.2015 for change of IO which was rejected by respondent No.3. Again on 13.6.2015 he submitted representation alleging bias against the IO but the same was again rejected. On 7.8.2015 he submitted application to the IO (Respondent No.5) for production of 3 defence witnesses and 8 defence documents to disprove the charges. But the IO rejected 1 defence witness and 7 defence documents without showing any reason. The applicant repeatedly submitted representation alleging bias against respondent No.5 with a prayer to change the IO but respondent No.4 rejected the same. On 3.11.2015 the applicant submitted appeal to the DPS (HQ) to quash the charge sheet or change the IO. Respondent No.3 asked the applicant to prefer fresh representation which he submitted on 24.5.2016 but the same was also rejected by respondent No.3 on 8.8.2016. Being aggrieved with the rejection of his representation the applicant has filed the present OA.

3. The respondents have filed their Counter stating that the applicant was appointed as GDS Stamp Vendor of Srikanthapur SO on 8.3.2002 as per his own written unconditional willingness dated 14.2.2002. As per the reasoned and speaking order dated 20.9.2013 the respondents have elaborated the reason for non-absorption of the applicant in the post of GDSBPM R.P.Lines BO due to constraints in the departmental rules and guidelines in vogue. In

pursuance of the order of this Tribunal passed in OA 758/2013, respondent No.2 vide memo dated 31.1.2014 approved the transfer case of the applicant under limited transfer facility for GDS with condition laid down in the letter of the department dated 17.7.2006. But the applicant avode to accept the condition of limited transfer facility for which the above order of this Tribunal could not be implemented. Moreover, cases of misappropriate of Govt. money, intentional disobedience, unauthorized absence from duty and retention of excess cash beyond permissible limit were detected against the applicant for which he was ordered to work in a non-sensitive post like GDSMC, Manikula BO, because his continuation in the post of GDSBPM R.P.Line BO was not considered safe in the interest of service. After establishment of misappropriation/ fraud committed by the applicant, an FIR was lodged in the local police station. It is also submitted that the IO after considering the relevancy of the defence witness and defence documents from amongst the list submitted by the applicant has allowed two defence witnesses and one defence document which are relevant to the charges and hence the question of bias does not arise. It is further submitted that preferring bias allegation against the IO (Respondent No.5) is done by the applicant only to cause delay and halt the process of investigation. If any allegation against the IO was there, the applicant could have made such allegation as and when he received the memo of IO appointment on 30.4.2015, but he has not done so and hence the allegation of biasness against the IO at such a belated stage is nothing but his own dilatory tactics. It is humbly submitted that the applicant has been given ample opportunity for transfer to the post of GDSBPM R.P.Line BO on regular basis but the applicant has vehemently turned down the opportunity every time on some absurd plea. The respondents have therefore prayed for dismissal of the OA being devoid of any merit.

4. The applicant has filed a Rejoinder to the Counter filed by the respondents stating that the whole proceeding against the applicant being malicious is illegal and unsustainable.

5. Learned counsel for the applicant has taken us through the background and circumstances in this case, inter alia mentioning that the applicant has earlier approached this Tribunal by filing OA 533/2013 which was disposed of on 14.8.2013 and OA 758/2013 which was disposed of on 18.11.2013 in connection with his representation for issue of appointment memo and change of IO being biased against him. In view of the said background it was submitted on behalf of the applicant that the IO had applied pressure on the applicant to withdraw those cases and the applicant having not withdrawn the said cases the IO is biased against him. We do not accept this contention.

6. The applicant has prayed for change of IO on the specific ground of bias. He had filed one petition before the respondent authorities to that effect on 14.10.2015 with prayer to change the IO, after the first sitting of the enquiry was taken up as the applicant does not expect impartial inquiry by him. The allegation of bias made by the applicant against the IO was enquired into by the higher authority and the higher authority in his opinion as per order dated 8.8.2016 (Annexure A/19) did not accept the claim made by the applicant.

7. Learned counsel for the applicant in support of allegation of bias against the IO has drawn attention of this Tribunal to the contentions made in Annexure A/19 to the effect. In this regard learned counsel for the applicant has also submitted that the IO in his official capacity as Asst. Superintendent of Posts, I/C Balasore Sub Division, has previously filed an FIR against the applicant in Sahadevkhunta PS on 1.4.2014 alleging misappropriation of Rs.200/-. It is also submitted by learned counsel that the applicant has earlier approached this Tribunal by filing some OAs against the department and the IO in his official capacity as Asst. Superintendent (HQ) had tried to pressurize the applicant in withdrawing those cases and threatened to harass the applicant if he does not get himself relieved from the post of GDSBPM R.P.Lines and join as GDSMC. But since the IO in his capacity as higher authority to the applicant has failed to make the applicant succumb to such pressure and withdraw those cases, therefore he has got biased against the applicant and the applicant does not expect impartial enquiry by him.

8. Although learned counsel for the applicant had argued in details about the allegation of bias against the IO made by the applicant in the background and circumstances and about the contents of Annexure A/19, we do not want to go into the said details at this stage as the same is not necessary for the disposal of the present case. It is seen that the IO in his capacity as ASP (HQ) of Balasore Division had filed one FIR against the applicant on 1.4.2014 and this aspect has been averred in para 8 of the OA as well as para 13, 14 and 15 of the Counter. Since the IO himself lodged FIR in his official capacity prior to taking up of the enquiry in question, therefore taking into consideration the nature of the allegation made in the FIR and background and circumstances of the case, it will not be just and proper to allow the IO to continue the enquiry against the applicant, since justice should not only be done but should also appear to have been done. Besides, the actual prejudice which may be caused to the applicant may not be apparent at this stage but the applicant has been able to make out a *prima facie* case that there is likelihood of bias against the IO. In that view of the matter it will not be just and proper to continue the proceeding by the present IO. Therefore without passing any comment in the manner the enquiry was conducted, it will suffice to direct the respondents to appoint another IO in the departmental enquiry to enquire into the matter in accordance with law from the stage the enquiry was stayed by this Tribunal vide order dated 26.8.2016. It is also directed that the enquiry should be completed preferably within a period of six months from the date of receipt of the copy of this order, in view of the decision of Hon'ble Supreme Court in the case of Premnath Bali –vs- Registrar, Delhi High Court [(2015) 16 SCC 415].

9. Accordingly the OA is disposed of with the above direction. There will be no order as to costs.

(T.JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)