

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00329/2019

Date of Order: This, the 09th Day of March, 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Sri Bulbul Lahon, aged about 42 years
S/O Sri Premo Gogoi
Resident of village Jotlibarigaon
Nawholia, P.O. -Jotlibari, Pin: 786191
District - Dibrugarh, Assam.

... Applicant

- Versus -

1. The Union of India
Represented by the Secretary
Ministry of Communication Department
Of Posts, Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. The Chief Post Master General
Assam Circle, Meghdoot Bhawan
Guwahati, Assam-781001
3. The Post Master General
Dibrugarh Division, Dibrugarh,
Assam-786001.
4. The Superintendent of Post Offices
Dibrugarh Division, Dibrugarh,
Assam-786001.

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...Respondents.

For the Applicant : Sri P. Mahanta &
Sri R.B. Gohain

For the Respondents : Sri R. Hazarika, Addl. CGSC

Date of Hearing: 24.02.2021

Date of Order: 09.03.2021

ORDER**NEKKHOMANG NEIHSIAL, MEMBER (A):-**

This O.A. has been filed by the applicant asking for the following reliefs:-

- "8.(a) Set aside and quash the advertisement dated 05.08.2019 so far as it relates to the post held by the applicant i.e GDS BPM, Zutlibari BO under Dibrugarh Division of Assam Circle.
- (b) Set aside and quash the impugned purported order of termination dated 15.05.2014 issued by the Chief Post Master General, Assam Circle.
- (c) Direct the respondent authorities to reinstate the applicant to the post of GDS BPM, Zutlibari BO under Dibrugarh Division of Assam Circle.
- (d) Any other relief(s) that the applicant is entitled to in the facts and circumstances of the instant case as may be deemed fit and proper by this Hon'ble Tribunal"

2. The respondents filed their written statement on 12.02.2020. Amongst others they have highlighted that

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temporary GDS of less than 3 years of service is liable to be terminated any time by giving a notice in writing either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak with notice period of one month under Rule 8(2) of GDS (Conduct and Employment Rules, [now GDS (Conduct and Engagement) Rules, 2011]. They also highlighted that as per directions of this Tribunal dated 22.08.2008 in O.A. No. 152/2008, the competent authority i.e. the Chief Postmaster General, Assam Circle, Guwahati has examined the issue on the representation/appeal of the applicant and issued speaking order under No. VIG/5/VII/08 dated 17.10.2008 and upheld the termination order No. A-307/EDA/Zutlibari dated 18.07.2008 of the services of the applicant. They also highlighted at para 17 of their written statement that application for the post of GDS was supposed to reach on or before 25.10.2007 by registered post. Under no circumstances, the application was to be accepted by hand and application received after stipulated date was not be accepted. This has been duly reflected in

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the rejection on the appeal of the applicant i.e. speaking order of the competent authority under No. VIG/5/XX/2008 dated 15.05.2014



3. During hearing, Sri P. Mahanta, learned counsel appearing for the applicant basically focussed on the shifting reasons of termination of the services of the applicant by respondent authorities in their different speaking orders. He contended that this only confirms the malafide intention of the respondent authorities to somehow reject the application/appeal of the applicant to remain in the services.

4. Sri R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents pointed out that the applicant was illegally recruited after due date and therefore, there was no any reason to allow him to continue in the service. The very fact that he was being given engagement after the due date is against the interest of other prospective candidates who also could have got job as per rules and this is against principles of

natural justice in the context of recruiting candidates from the open market.

5. In addition to giving hearings to both the parties, we also have gone through the papers and documents submitted by them. It is seen from the records that earlier O.A. No. 152/2008 was disposed of by this Tribunal vide order dated 22.08.2008 by directing the respondent authorities to treat a copy of the said O.A. as a representation/appeal and issue a reasoned and speaking order to the applicant. In compliance of the said direction, the respondent authorities vide speaking order No. VIG/5/VII/08 dated 17.10.2008 have examined the issues and disposed of the said representation rejecting the case of the applicant. In the speaking order, amongst others, they have indicated that his appointment was not made in accordance with the rules which have resulted in depriving of more deserving candidates. They also indicated that termination of service was strictly followed as provided in the rules and orders on the subject.



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6. It is further noted that on 14.08.2009, this Tribunal had passed a common order in respect of O.A. No. 171, 225, 226, 227, 228 229 and 230 of 2008. The O.A. No. 225/2008 was pertaining to the present applicant i.e. Shri Bulbul Lahon. In the common order dated 14.08.2009, this Tribunal had passed order as under:-



"Direction is issued to the Respondents to disclose clearly the reasons for termination (with all materials on the basis of which such decision was taken) to the Applicants and to provide adequate opportunity to them to make effective representations; which should receive consideration of the Respondent No. 2, if necessary, by giving personal hearing of the Applicants and on such consideration the Respondent No. 2 should pass a reasoned order. Till such orders are passed by the Respondent No. 2, status quo of the Applicants are to be maintained."

7. In compliance of the aforesaid direction, the respondent authorities issued a speaking order under No. VIG/5/XX/2008 dated 15.05.2014 wherein they have indicated again that as per public notification, application received after last date was not to be entertained and violative of public notification and termination notice issued by cancelling the candidature of Bulbul Lahon was considered to be fair and just.

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Accordingly, termination order was upheld by the competent authority.



8. After carefully going through the history of the case and also documents made available to this court as stated above, we have noticed that the allegation of Sri P. Mahanta, learned counsel for the applicant that the respondent authorities are shifting reasons for rejection of candidature/appointment of the applicant from time to time is not borne out by any facts or materials on records. As cited above, it is observed that the applicant was appointed irregularly against the existing rules at that time after closure of the public notification. If such appointment had been obtained by any individual by manipulating with the assistance of lower functionary if any, against the public notification, the respondent authorities are definitely on obligation to examine and take suitable action as necessary. In this present case, since the respondent authorities after examining the process of selection, has found that there is irregularity in the selection/appointment, they have

terminated the appointment of the applicant in accordance with the rules of the department.

9. Since the issue of fairness under the principles of natural justice has to be applied in the relevant context, in the present case, in the context of recruitment where all eligible candidates from the open market are entitled to apply and get selected, we found that the action on the part of the respondent authorities to terminate the services of the applicant as per rules of the department, is not denial of fairness and justice. Accordingly, after due consideration, we found that the present O.A. devoid of merit and liable to be dismissed.

10. Accordingly, O.A. is hereby dismissed. No order as to costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

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