

0.A350/614/2016

An application under Section 19 of the Administration Tribunal's Act, 1985

B E T W E E N



Shri Harendranath Dhara, Son of
Late Kartick Chandra Dhara, aged
about 46 years, worked as
E.D.B.P.M at Kantapurkur Branch
Post Office, residing at Vill. & P.O.
Kantapur, P.S. Bagnan, Dist.
Howrah, PIN-711303.

.... Applicant.

AND

1. Union of India, service
through the Secretary, Ministry of
Telecommunication, Department of
Posts, Dak Bhavan, New Delhi-100
001.

2. The Chief Post Master General
Yogayog Bhavan, C.R. Avenue,
Calcutta -700 012.

3. The Senior Superintendent of
Post Offices, Howrah Division,
Kadamtal, Dist. Howrah-711101.

.... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.350/614/2016

Date of order : 26.3.2016

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

HARENDRANATH DHARA
VS.
UNION OF INDIA & OTHERS
(D/O Post)

For the applicant : Mr. A. Chakraborty, counsel
Ms. P. Mondal, counsel

For the Respondents : Mr. B.P. Manna, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant in this O.A. has sought for the following reliefs:-

"i) Office Order being Memo No.PMG(SB)/SFC/CC-92/2010 dated 28.09.2015 issued by the Post Master General, South Bengal Region, Calcutta-700 012 and Office Order being Memo No.H2-47/Kantapukur BO/Pt dated 05.10.2015 issued by the Senior Superintendent of Post Offices, Howrah Division, Kadamtal, Dist. Howrah-711101 are bad in law and as such the same should be quashed;

ii) Fill up the post of GDSBPM under Kantapukur B.O. from the list of selected candidates at an early date;

iii) Consider the case of the applicant for his selection to the post of GDSBPM under Kantapukur B.O. at an early date;

iv) Costs of and incidental to this application;

v) Pass such further or other order or orders."

2. Brief facts leading to this application are as follows:-

The applicant while serving as Postmaster in Kantapukur Branch Office as a nominee of Sibnath Dhara, worked for 875 days as Gramin

Dak Sevak Branch Postmaster(GDSBPM) with intermittent breaks. He had to take a rent free accommodation for the purpose. A notice was issued inviting applications for appointment to the post of GDSBPM, Kantapukur Branch Office. The applicant preferred O.A.No.1001/2010 praying for appointment, which was disposed of vide order dated 04.05.2010 with a direction upon the applicant to prefer a comprehensive representation to be disposed of with a speaking order. Pursuant thereto, a speaking order was issued in which it was mentioned that the applicant has no claim for regularisation on the basis of the service rendered by him as a substitute. Being aggrieved the applicant moved O.A.No.1653/2010 before this Tribunal which was dismissed on 28.09.2012. The said order was carried to the Hon'ble High Court in W.P.C.T.No.409 of 2012 which was disposed of on 13.12.2012 with liberty to the applicant to apply for the post of GDSBPM within 2 weeks which the respondents would consider if he fulfilled all the criteria along with all other persons who have applied for the post. The applicant was called to appear in the interview on 16.04.2013. The interview was rescheduled on 19.04.2013 when the applicant duly appeared. He stood third in the merit list. The candidates who secured first and second positions did not turn up. As such, the applicant preferred a detailed representation praying for his appointment as GDSBPM but his prayer was not considered. He preferred O.A.No.813/2015 before this Tribunal which was disposed of on 05.06.2015 with a direction upon the Respondent No.2 to take a



decision on his representations. Thereafter office orders dated 28.09.2015 and 05.10.2015 were issued by the respondents rejecting the claim of the applicant on the ground that the validity of the panel had already expired on 18.04.2014. The applicant has assailed those impugned orders on the ground that the panel will remain valid till the selected candidates acquire residence within the jurisdiction of the branch office and such panel can expire only one year after verification of their residence, therefore, the respondents rejected his prayer on flimsy grounds which is not maintainable in the eye of law. The applicant has further alleged that the reason given by the respondents does not hold water in view of the fact that they have sent reminders to the first selected candidate in the merit list long after expiry of the panel.

3. At hearing, Id. counsel for the applicant in support of his contention would submit that the branch office is at his residence and it is functioning from 2004 when he was appointed as substitute in place of the erstwhile Branch Post Master. Placing the letter dated 15.09.2014 as contained in Annexure R-I to the written notes of arguments, Id. counsel would vociferously plead that the first selected candidate, namely Smt. Rituparna Mukherjee was offered provisional appointment vide letter dated 15.09.2014 i.e. long after the purported expiry of the validity of the panel, therefore, irrefutably and inarguably the panel had never lost its validity on the date mentioned by the respondent authorities i.e. 18.04.2014. Id. counsel would also place

Annexure R-4 to the reply which is a communication dated 25.06.2010 from the Department of Posts addressed to all the Chief Postmasters General and Postmasters General. Para 6 of the said communication clearly spells out and indicates as under:-

"6. It has been decided that in all cases of future engagement of all categories Gramin Dak Sevaks including the cases which are currently in process and selections not finalized, a select panel of the candidates may be drawn up based on the sole criterion of merit. The panel should be operated in the event of the following contingencies:-

- (i) *Refusal by the meritorious candidate*
- (ii) *Resignation by the 1st candidate even after joining within one year*
- (iii) *Review made by the higher authority within one year*

The select panel will be in the proportion of 5 candidates for one vacancy, i.e. 1:5. The select panel will be valid for one year from the date of finalization and after that it would lose its validity.



Ld. counsel for the applicant would submit that as selection of the post of Branch Postmaster gets finalised only with taking up of rent free accommodation by the selected candidate, therefore, the life of panel would expire one year thereafter. Ld. counsel would place the decision in **Union of India & Others vs. Shantiranjan Sarkar** reported in **(2009)3 SCC 90** that *"delay in filing original application should not have been a bar against granting of an equitable relief and Union of India as a benevolent litigant could not be permitted to take advantage of its own wrong"*. Ld. counsel would further submit that the post in question is not yet filled up and no further advertisement was ever issued for filling up of the said vacancy, therefore, the selection is not complete till date.

4. Per contra, the respondents would submit that the panel having expired on 18.04.2014, the applicant cannot seek consideration for the post at this distant date. In their reply, the respondents have stated

that the first selected candidate Smt. Rituparna Mukherjee secured 75.25% marks and the second selected candidate secured 72.62% marks whereas the present applicant who stood third in order of merit secured only 39.88% marks, therefore, the provisional appointment order was issued in favour of Smt. Rituparna Mukherjee but she neither turned up nor expressed her unwillingness to join. Thereafter no provisional selection/appointment letter was issued in favour of Sri Biswanath Karmakar who stood second in order of merit, therefore, question of issuing appointment letter in favour of third candidate in the select list should not arise. Further, the Apex Court repeatedly observed that "*Substitutes have no claim on the basis of having worked continuously and they worked as substitutes in place of a Gramin Dak Sevak in the risk and responsibility of such GDS.*"

5. We heard Id. counsel for the parties and perused the materials on record.

6. The issue that cropped up for determination is whether the panel that was drawn up in the year 2013 should be considered as valid till this date to accommodate the applicant who admittedly was the third selected candidate in order of merit.

7. At hearing, Id. counsel for the applicant would place the decision of Hon'ble Supreme Court in **Purushottam vs. Chairman, M.S.E.B. and Another** reported in **1999 Supreme Court Cases(L&S) 1050** wherein it was observed as under:-

"4.....The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the



said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself."

8. We have noted that the post in question has not been readvertised and that the respondent authorities have offered provisional appointment to the first selected candidate even on 15.09.2014 whereas they claim that the panel has expired on 18.04.2014. Further, the respondents have stated in their speaking order dated 05.10.2015 as under:-

"Hence, as the provisional appointment is still active, it is not possible to issue any further appointment. Moreover, if the selected 1st candidate is not turned up, preference will be given to the 2nd selected candidate who has already offered his willingness to this office. But at present the validity of the panel which formed in this selection on 19.04.13 has already expired on 18.04.14 for completion of one year. So issuance of further appointment in favour of 2nd or 3rd candidate is not possible at this juncture."

9. In view of the fact that we have noted that even as on 15.09.2014 the first selected candidate was offered appointment which she did not accept, we direct the respondent authorities to offer appointment to the 2nd selected candidate within 4 weeks and in the event, the said candidate did not turn up or expressed his unwillingness, to offer such appointment in accordance with law to the present applicant who is housing the branch office in his residence with the sole hope of getting a regular appointment as Branch Post Master or to hold the selection

afresh allowing the applicant to participate ignoring any age bar that may get attracted by now.

10. Accordingly the O.A. stands disposed of. No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member

