

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 350/01492/2017

Date of order : 12th February 2021

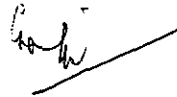
Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Uttam Halder
Son of Sukanta Halder of
Village - Jadavpur Halder Para,
Post Office - Jadavpur, P.S Mathurapur,
District - South 24 Parganas,
Pin 743336.

.....Applicant

-Versus-

1. Union of India,
Service through its Secretary,
Ministry of Communication,
Department of Post and Telegraph,
Dak Bhawan, New Delhi-1.
2. The Chief Post Master General,
West Bengal Circle,
Post & Telegraph Department,
Yogayog Bhaban,
Chittaranjan Avenue,
Kolkata-700012.
3. The Superintendent of Post Offices,
South Presidency Division,
District - South 24 Parganas,
Office at Baruipur,
District - South 24 Parganas,
Kolkata-700144.
4. The Sub-Divisional Post Master,
Diamond Harbour Sub Division,
P.S. Diamond Harbour,
District - South 24 Parganas,
Pin-743331.
5. The Inspector of Post Offices,
Diamond Harbour Head Office,
P.O. & P.S. Diamond Harbour,
District - South 24 Parganas,
Pin-743331.



6. Sub Post Master, Karanjali
Sub Post - Karanjali,
P.S. Kulpi, District South 24
Parganas, Pin- 743348.
7. Dipika Tikadar,
Working as D.R.M.(Packer) at
Karanjali Sub Post Office,
Post Karanjali, District South 24
Parganas, Pin -743348.

.....Respondents

For the Applicant : Ms. P. Das, Counsel

For the Respondents : Ms. P. Goswami, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) An order directing the respondents to engage/appoint the applicant as GDS (Packer) of Karanjali Sub Post Office, South 24-Parganas and ensure payment of due remuneration against service to the post.
- (b) Set aside the engagement/appointment of Respondent No.7 as GDS (Packer) of Karanjali Sub-Post Office, South 24 Parganas.
- (c) Call for the records of the case on perusal thereof considerable justice may be done in favour of the applicant.
- (d) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper.
- (e) Cost of the proceeding."

2. Heard both Id. Counsel, examined pleadings and documents on record.

3. The submissions of the applicant, as canvassed through his Id. Counsel, is, that the applicant was engaged in the post of GDS Packer at Karanjali Sub Post Office on 20.2.2013 on a vacancy created by superannuation of the regular incumbent. The applicant performed his duties on a regular basis and received honorarium on the basis

hsh

of sanction received from the competent authority, and, that he discharged additional duties of 'mail carrying' worker. The applicant worked in the said post upto 1.6.2017, after which he was not allowed to continue with his service without any prior notice of his disengagement. The applicant approached this Tribunal in first stage litigation in O.A. No. 350/00966/2017 which was disposed of on 26.7.2017, and, in compliance thereof, the authority issued a speaking order rejecting his prayer for regularization.

Aggrieved with the fact that private respondent No. 7 has been engaged in the post of GDS Packer in the said Karanjali Sub-Post Office, the applicant has approached this Tribunal praying for the above mentioned relief.

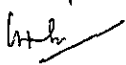
4. The respondents, on the other hand, would strongly oppose the claim of the applicant by contending as follows:-

(i) That, the Karanjali Sub-Post Office had one post of GDS Packer which had fallen vacant on superannuation of the regular incumbent. The then SPM of Karanjali Sub-Post Office, who was the father of the applicant, had engaged his son, the present applicant, as a Daily Rated Mazdoor w.e.f. 20.2.2013. As the said Sub Post Office (SO) did not require the services of the Daily Rated Mazdoor any further, the applicant's services were discontinued from 1.6.2017.

(ii) That, no appointment order / engagement letter was ever issued to the applicant because he was engaged on "as and when required" basis and, hence, his services were discontinued when there was no need for engaging DRMs in such capacity.

(iii) A DRM cannot be engaged in the vacant post of a GDS and that the applicant was engaged only on daily wage basis to cope with the extra workload and in the present case, the then SPM had engaged his own son purportedly on verbal orders.

5. Ld. Counsel for the applicant would draw our attention to the engagement order at Annexure A-4 to the O.A. which is reproduced as below:-



DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPDT OF POST OFFICES, SOUTH PRESY DIVISION
BARUIPUR, KOLKATA - 700144

To
The SPM,
Karanjali S.O.,
P.O. :- D/Harbour

No:- A-114/Ch-II/Karanjali

Dated at Baruiipur the 13.3.2013
02.04.2013

Sub:- Arrangement of DRM, for packer work at Karanjali S.O.
Ref:- A-1/Arrangement dated 1.3.2013.

In response to the letter under reference one DRM for five hours per day may be engaged for packer work at Karanjali S.O. on payment of Rs. 27.12/- per working day for a period of sixty days. In this connection it is intimated that same person cannot be engaged continuously and prior permission should be obtained from the undersigned for further engagement of DRM.

Supdt. Of Post Offices
South Presy Division
Baruiipur, Kol - 700 144



Copy forwarded for information and n/a to:-

1. The Postmaster, D/Harbour H.O.
2. The IOP, D/Harbour Sub Dn. PO: D/Harbour

Supdt. Of Post Offices
South Presy Division
Baruiipur, Kol - 700 144"

This communication appears to have been a temporary approval granted to the SPM, Karanjali S.O. to engage a DRM for a period of 60 days only. It was further clarified in the said order that the same person cannot be engaged continuously and prior permission should be obtained from the authorities for further engagement of DRM.

Although the Ld. Counsel for the applicant would aver that the applicant worked continuously upto 1st June, 2017, there are no authorization on record which would prove that his further engagement was on continuous basis and that such engagements had been renewed with the approval or authorization of the competent authority.

We would also refer to the speaking order issued at Annexure A-6 to the O.A. wherein the authorities have stated as follows:-

hpl

"DEPARTMENT OF POSTS", INDIA
O/O THE SUPDT. OF POST OFFICES, SOUTH PRESIDENCY DIVISION
BARUIPUR, KOLKATA - 700144

REGISTERED

To
Sri Uttam Halder
S/o Sri Sukanta Halder
Vill. Jadavpur Halder Para
P.O. Jadavpur
P.S. Mathurapur
Dist. South 24 Parganas, Pin 743336

No: A-I/CAT case/O.A. No. 966 of 2017 Dated at Baruiপুর, the 06.09.2017

Sub: Implementation of CAT case O.A. No. 966 of 2017 in the matter of Uttam Halder
-Vs- U.O.I. & Ors.

This is in pursuance of the Order of Hon'ble Calcutta Administrative Tribunal (CAT), Kolkata Bench in OA. No. 350/00966/ 2017 dated 26.07.2017.

The Post of GDS Packer of Karanjali Sub-Post Office fell vacant on retirement of superannuation of erstwhile incumbent. To pull up the work of the vacant post, services of Daily-Rated Mazdoor (DRM) were utilized.

It is to be noted that a DRM is engaged in a Post Office for work which is seasonal/ occasional in nature for which wages are paid on daily basis.

As the work of DRM is seasonal/ occasional in nature, no specific person is engaged/ appointed. So, your contention that you were appointed/ engaged verbally by the Postmaster, Karanjali Sub-Post Office is not tenable.

Therefore, your prayer "to regularize" or "engagement" cannot be accepted.

This is for your information.

Sd/
(S. Datta)
Supdt. of Post Offices
South Presy. Division
Baruiপুর - 700 144"

In their speaking order the respondents have reiterated that the applicant was temporarily engaged as a DRM to cope with the extra workload upon retirement of the GDS Packer of Karanjali Sub-Office, that, no specific person can be engaged or appointed on a continuous basis, and, as his work as DRM was seasonal or occasional in nature, his claim to continuous engagement and prayer for regularization was rejected.

In the instant matter, the applicant has not been able to establish that beyond the 60 days approval since 2.4.2013 (Annexure A-4 to the O.A.), his engagement was authorized or approved by any competent authority.

hsh

In the absence of any evidence thereof, the fact that he continued on verbal directions is untenable.

6. On 12.5.2017 (Annexure A-3 to the O.A.), the authorities directed that some local arrangement can be made for engagement of DRM in various Sub-Post Offices including the Karanjali Sub-Post Office but only for a restricted period. It is an admitted fact that the applicant was working as a DRM till 1.6.2017. Hence, his contention that he was replaced by another DRM during this period is not established by records.

7. The question of regularization of service arises mainly with relation to persons employed on adhoc/temporary or stop-gap basis, but it is settled law that such persons do not have any absolute or any unconditional right to be regularized in service with exceptions / qualifications whose scope was amply laid down in *Secretariat, State of Karnataka v. Uma Devi, (3) and Ors. (2006) 4 SCC 1*. Admittedly, the applicant was not engaged as an adhoc employee or had acquired temporary status.

As the applicant is not a casual worker, he could not claim the benefit of the ratio in *Dhirendra Chamoli v. State of U.P., (1986) 1 SCC 637* and the directions in *State of Haryana vs. Piara Singh (1992) 4 SCC 118*, which reprobates replacement of one set of adhoc/temporary employee with another, does not come to his aid.

Accordingly, the applicant's claim for regularization, not being substantiated by facts or law, fails.

8. At the same time, however, in the event the authorities decide to notify filling up the post of Packer in the concerned Sub-Post Office on a regular basis, the applicant will be at liberty to apply thereto and the authorities should consider his previous experience while conducting the selection process.

9. The O.A. is disposed of accordingly. There will be no order as to costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

SP