

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00128/2020

Date of Reserved :22.02.2021

Date of Pronouncement :12.04.2021

**CORAM :**

**HON'BLE MS. JASMINE AHMED, MEMBER (J)**

**HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Sohan Singh S/o Shri Jugat Singh aged about 46 years resident of Village and Post Chandrakh Via Osian, District Jodhpur (Official Address : Worked as GDS BPM, Chandrakh via Osian, Jodhpur).

**...Applicant**

**By Advocate: Mr. S.P. Singh present through VC.**

**Versus**

1. Union of India, through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi-11001.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur-302007.
3. The Post Master General, Western Region, Jodhpur – 342001.
4. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur – 342 001.

**..Respondents**

**By Advocate: Mr. K.S. Yadav present through VC.**

## **O R D E R**

**Per Ms. Jasmine Ahmed, Member (J)**

Heard Shri S.P. Singh, learned counsel for applicant and Shri K.S. Yadav, Additional Central Government Standing Counsel, present, through Video Conferencing.

2. The instant application has been moved under Section 19 of the Administrative Tribunals Act, 1985 mainly praying that the impugned Notification dated 22<sup>nd</sup> June, 2020 (Annex.A/1) qua Chandrakh BO under Jodhpur Division, be quashed and consequently, regularise his services as GDS BPM with all consequential benefits.

3. The facts giving rise to this application as stated by the learned counsel for the applicant are that applicant was appointed in February 2003 as GDS BPM and since he fulfilled all conditions including educational qualification and resident of same Post Office, therefore, vide letter dated 18<sup>th</sup> February, 2003 respondents had appointed him provisionally. The respondents vide Annex.A/1 dated 22<sup>nd</sup> June, 2020 invited applications for the post of GDS BPM, Chandrakh which post the applicant is holding for the last 17 years, that too without issuing him any notice, which was mandatory under Rule 8 of the GDS BPM Rules.

4. It is the contention of the applicant that he is working on the sanctioned post of GDS BPM, Village Chandrakh, therefore, there was no

occasion for the respondents to invite applications for the said post particularly when, the Annual Inspection Report clarifies the fact of his working as GDS BPM for last about 17 years.

5. Further, it is submitted that the applicant has also previously challenged the Notification for filling the vacancy of GDS BPM, Chandrakh and thereafter only, the respondents issued letter of appointment to him as GDS BPM, Chandrakh after completing entire formalities in 2002. He was offered appointment in 2003. It is further added that Rule 8 of the GDS (Conduct & Engagement) Rules specifically provides that "A Sevak who has not already rendered more than three years continuous service from the date of his engagement, shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak". The applicant, therefore, submitted that since he has rendered more than 17 years service, his services cannot be terminated and respondents be restrained from engaging any other GDS BPM under the Notification impugned in this application.

6. The respondents have filed a detailed reply as well as the reply on the point of interim relief to which, rejoinder has also been filed. However, no interim relief was allowed.

7. In the reply, the respondents contended that one Sh. Pannalal, GDS BPM, Chandrakh (Osian) was placed under put off duty vide Memo dated 14<sup>th</sup> May, 2002 and so to manage the work, the Inspector of Post Offices,

North Sub Division Jodhpur, was permitted vide letter dated 13<sup>th</sup> June, 2002 (Annex.R/1) to engage an eligible candidate as GDS BPM purely on temporary & provisional basis which fact is evident from applicant's own declaration form dated 14<sup>th</sup> February, 2003. Respondents have mentioned that the provisional appointment of applicant was tenable till the disciplinary proceedings against Sh. Pannal Lal were finally disposed off and he had exhausted all channels of departmental and judicial remedies viz. Appeals and Petition etc. Since Sh. Panna Lal was ultimately dismissed from service on 18<sup>th</sup> March, 2004 and, as a result of this, it was not possible to make a regular appointment on the post of GDS BPM, Chandrakh till that time.

8. As regards the previously filed OA No. 172/2004 is concerned, the respondents have categorically submitted in their reply that this Tribunal vide its order dated 8<sup>th</sup> May, 2007, although quashed and set aside the Notification dated 24<sup>th</sup> June, 2004 but did not stop the respondents to make a regular appointment on such post. Further, the Tribunal restrained the respondents from replacing the applicant by the same kind of employee. It is contended that the case of Pannalal was disposed off by the Court of Judicial Magistrate in 2008, and thereafter, a ban was imposed on recruitment process till 2010, therefore, no action could be taken for filling up the post which the applicant was holding. The CPMG, Jaipur, gave concurrence on 18<sup>th</sup> January, 2010 for issuing notification dated 16.3.2010 for regular appointment of GDS BPM, the applicant instead of applying for the same, challenged the very Notification and

prayed for regularisation on the post by filing OA No. 95/2010 which was dismissed on 2<sup>nd</sup> April, 2014 being devoid of merit. In the said O.A., this Tribunal declined to grant regular appointment to the applicant as GDS BPM, Chandrakh.

It is further pleaded that the applicant in contravention of his own declaration dated 14<sup>th</sup> February, 2003, challenged the order of this Tribunal dated 2<sup>nd</sup> April, 2014 in DB Civil Writ Petition No. 2703/2014 before the Hon'ble High Court of Rajasthan, which is reported to be pending and no interim order has been passed. It is the contention of the Department that this Tribunal has already considered the merits of the issue in the previous litigation therefore, the instant O.A. is not maintainable.

9. Further, it is stated by the respondent-department in the reply that the impugned Notification at Annex. A/1 dated 22<sup>nd</sup> June, 2020 for filling the vacant post of GDS BPM, Chandrakh BO, is in accordance with rules. As regards applicability of Rule 8 is concerned, the same is not applicable to the incumbents who were appointed on provisional basis and since the applicant was not appointed under the service rules, therefore, no interference is called for and the O.A. be dismissed with costs.

10. Applicant has filed rejoinder reiterating the stand taken in his O.A. to which, an additional reply has been filed. Both the counsels have filed their written submissions which have been taken on record.

11. Heard the learned counsel for the parties and perused the material available on record.

12. First of all the learned counsel for the applicant argued that the respondents should have given notice to the applicant before terminating his services but no termination order has been shown or placed before us which can be quashed or set aside. It is mere apprehension on the basis of the notification issued by the respondents that his services may be terminated. Be that as it may, without any termination order on record, the argument of the learned counsel for the applicant that respondents should have given notice before termination does not hold good.

13. It is not disputed that the appointment of the applicant was purely provisional as one Mr. Panna Lal was put off duty pending finalisation of disciplinary and judicial proceedings, as detailed above, hence for the functioning of the PO Chandrakh, the applicant was provisionally appointed which can be terminated without any notice vide Memo dated 18<sup>th</sup> February, 2003. In para 2 of the said Memo it is clearly written that "the provisional appointment is tenable till the disciplinary proceedings against Shri Panna Lal are finally disposed of and he has exhausted all channels of departmental and judicial appeals and petition, etc. (this clause may be deleted if the vacancy was caused by the dismissal / removal of an EDA) and in case, it is finally decided not to take Shri Panna Lal back into service till regular appointment is made then only the

claim of the applicant for his continuance as provisional appointee can be sustained.

14. In para 3 of the said Memo it is mentioned that "Shri Sohan Singh S/o Shri Jugat Singh is offered the provisional appointment to the post of GDS BPM, Shri Sohan Singh should clearly understand that if it is decided to take Shri Panna Lal ED Agent who has been put off / dismissed from service, the provisional appointment will be terminated without notice.

In Para 4 it is further stated that "the SSPOs, Jodhpur (Appointing Authority) reserves the right to terminate the provisional appointment any time before the period mentioned in para 2 above without notice and without assigning any reason.

15. Hence, a bare reading of the Memo dated 18.02.2003 unequivocally states that the appointment of the applicant was purely provisional. In other words, it can be said that the appointment of the applicant was co-terminus with the decision of the Panna Lal's case who was put off from duties.

16. This is the third round of litigation while the applicant has approached this Tribunal. The first O.A. No. 172/2004 was filed against the Notification dated 24.06.2004 which was allowed by this Tribunal quashing the impugned Notification vide its order dated 8.5.2007 and restrained the respondents from replacing the applicant by the same kind of employee(s) but did not stop the respondents to make a regular appointment on the post of GDS BPM. Meaning thereby, respondents

were directed not to remove the applicant who was a provisionally appointed employee by another provisional employee and accordingly, the applicant is continuing by virtue of order of this Tribunal. Thereafter when the ban was lifted i.e. almost after two years in the year 2010 again a Notification dated 16.3.2010 was issued by the respondent-Department for filling the post of GDSBPM, Chandrakh. The applicant being aggrieved by this Notification, again challenged the same by filing OA No. 95/2010 wherein, the applicant sought his regularisation by quashing the impugned notification dated 16.3.2010 but the O.A. was dismissed by this Tribunal in the following terms in para No. 7 which reads as under :-

***"7.We have considered rival contentions of both the parties and also considered the documents submitted by the counsel for the applicant. In our considered view, Para-12 as referred by the applicant in this OA at page 6 does not help the applicant because the applicant is not a regularly selected provisional appointee and he failed to produce any document in support of his contention that the applications were invited for regular selection and in the absence of any such evidence, we are not inclined to grant any relief to the applicant. The competent authority is free to recruit the persons by way of regular process of selection and pure ad hoc, provisional or temporary appointment does not create any right in favour of the applicant".***

17. The applicant challenged the said order dated 2.4.2014 passed in O.A. No. 95/2010 before Hon'ble the High Court in D.B.C.Writ Petition No. 2703/2014 wherein, a notice has been issued but no interim order was passed as informed by the counsel for the parties.



18. The main issue herein is whether a temporary / provisional employee is having any right to be regularised by virtue of his long service rendered to the respondents?

19. At this stage, the learned counsel for respondents has vehemently argued about the issue of res judicata in this O.A. stating that whenever Notifications were issued by the respondents once in 2004 and another in 2010 both the time, applicant without participating in the process of selection to be engaged permanently, has challenged the said notifications by approaching this Tribunal for quashing the same and consequently prayed for his regularisation which was denied by this Tribunal. The learned counsel for the applicant argued that even as per Uma Devi's case if an employee is working for ten years or more can be regularised as a one time measure. The judgment of Uma Devi came in the year 2006 and at that point of time, the applicant was having only three years service and he does not fulfill the requirement of ten years service as on 2006. The learned counsel for the applicant states that as the date of notifications were not same and in the present OA the applicant has challenged the notification dated 22.6.2020 which was not challenged by him earlier, therefore, no question of res judicata arises. We feel that in the previous OAs also the applicant has prayed for quashing the notifications for filling the post of GDSBPM as well as claimed his regularisation; however not the present notification but the subject matter of regularisation was same and identical in the earlier OAs filed by him, hence the question of res judicata cannot be ignored. It is

also seen that as the applicant has challenged the order of this Tribunal passed in OA No. 95/2010 before Hon'ble the High Court but said Writ Petition is still pending, hence the applicant after dismissal of an OA in the year 2010 cannot raise the same issue again. It is also to be noted that Rule 8 of the GDS BPM speaks about termination of temporary engagement. Here the services of the applicant have not been terminated yet even not by another same kind of employee, hence, the applicability of Rule 8 of the GDS BPM does not play any role here.

20. While arguing the learned counsel for the applicant raised an issue that who stopped the respondents to fill up the post in question earlier. It is seen that the respondents have tried twice firstly in 2004 and secondly in 2010 for filling the vacant post of GDS BPM, Chandrakh, hence, it cannot be said that respondents were sitting idle after the case of Panna Lal.

21. Learned counsel for the applicant also argued for following the judicial decorum and placed before us a judgment dated 28<sup>th</sup> March, 2014 and also a similar bunch matter wherein while disposing of the applications, the respondents were directed to consider the case of each of the applicants for regularisation independently on its own facts as per the ratio laid down by Hon'ble the Supreme Court in Para 53 of the Uma Devi's case. We feel that the present case cannot be treated on the same yard stick as the issue of regularisation of applicant has already been dealt with in the previous OAs and rejected the same summarily and thus

how the ground of following the judicial decorum could sustain while the issue does not res integra after deciding the issue of his regularisation. In this view of the matter the argument of judicial decorum does not get the field.

22. Even the case of the applicant does not fall within the category of clear vacancy as per Uma Devi's judgment because as the applicant was appointed not on a clear vacancy but on a temporary and stop gap arrangement, hence the same is also not applicable.

23. We have considered the contentions of both the counsels and given our thoughtful consideration and as per the settled law even in Piara Singh's case it has been held by Hon'ble Hon'ble the Supreme Court that even the applicant therein who was engaged temporarily/provisionally cannot be removed by another provisional or temporary employee but none prevented the respondents to fill up a clear vacancy by way of conducting regular selection. It is also not understood what stopped the applicant not to apply for the said post which was advertised by way of Notifications in 2004, 2010 and again on 2020, hence, we feel that the applicant has failed to made out a cast iron case in his favour for grant of the relief as prayed by him. As on the score of res judicata also, applicant has no legs to stand. The O.A. is therefore dismissed with no order as to costs.

**(ARCHANA NIGAM)**  
**MEMBER (A)**

mehta.

**(JASMINE AHMED)**  
**MEMBER (J)**