

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

Order dated 27.7.05

Heard Mr. T. Rath, Ld. Counsel for the applicant and Mr. B. N. Udgate, Ld. Addl. Standing Counsel for the Respondents.

The applicant's grievance as ventilated in this O.A. is that although she was recruited through a regular process of selection and was appointed un-conditionally vide Supdt. of Post Offices (Res. No. 2) Bhadrak letter No. B/E-258 (Sub) dtd. 22.12.97 as EDBPM, Nandore she was not regularised against that post. On the other hand, by the order of Res. No. 2 dtd. 24.5.04 one Smt. Sabita Panigrahi was given appointment on re-instatement basis. At the same time her service was terminated by the same letter dtd. 24.5.04 and she was directed to hand over the charge of the office to Smt. Panigrahi.

Being aggrieved she has approached the Tribunal to quash the impugned order under Annexure-A/4 or in the alternative direct the Res. No. 2 to absorb her in the vacant post of BPM, Khaparapada, BO or absorb her in any other post fitting to her qualification.

The Respondents have opposed the application. Their stand is that the applicant was appointed against the put off vacancy and she was offered only a provisional appointment on the condition that should the earlier incumbent be reinstated or if the Respondents decided to fill-up the vacancy on regular basis her provisional appointment will be liable to termination. It is in this back ground that in the year of 2004, when the Respondents

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decided to drop the disciplinary proceedings initiated against the previous incumbent i.e., Smt. Sabita Panigrahi, the service of the applicant was terminated in terms of the appointment issued to her and accepted by her.

Regarding other relief that she has prayed for, they have raised the objection that though the applicant has completed 3 years of GDS service and as per instructions contained in DG Posts letter No.19-34/99-ED & Trg dtd. 30.12.99 such GDS are entitled to certain benefits but she was not entitled for the same on the ground that "she was not discharged from service due to administrative reason but solely due to conditions accepted by her at the time of provisional appointment." In support of that contention they have also enclosed a copy of DG Posts letter (containing clarification) dtd. 30.12.99 (Annexure-R/2).

Having heard both the sides and having perused the records placed before us, we have no doubt that the appointment of the applicant was only on provisional basis with the conditions as stipulated in her letter of appointment which is available at Annexure-R/1, we must, however, hasten to <sup>observe</sup> ~~observe~~ that the stand taken by the Respondents to deny her the benefit as contained in DG Posts letter dtd. 18.5.1979 and circular No.19-34/99-ED & Trg., dtd. 30.12.1999 is wholly without basis and liable to be dismissed being bad in law. The DG Posts letter/circular as referred to earlier states as follows:

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Order dt 27.7.05-

Copy of Order may  
be given to both the  
counsel.

4.8.05-

W  
S.O. 4/8/05  
(CJ)

"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons if at the time of discharge they had put in not less than three years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in DG., P.&T., Letter No.43-4/77-Pen dtd.23.2.1979."

From the above provision made in the DG letter/circular it is clear that it is the policy of the department to give alternative employment to GDS who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they have not put in less than 3 years continuous approved service.

That being the policy laid down by the authority it was not within the competence of Res.No.2 to take a contrary position as he has done in para-2 of the counter. Infact, the statement made therein tantamounts to dire unfair labour practice in administration which is a punishable offence. We, however, leave it to the Res.No.1 to take such remedy as he deems fit in this matter.

Regarding plea of the applicant, we have no doubt that she is fully covered <sup>by</sup> the guarantee given by DG in the matter of alternative appointment of provisional appointees. We, therefore, direct the Respondents to abide by the same DG Circular dtd.30.12.1999 both in letter and spirit. Accordingly this O.A. succeeds to that extent.

With the above direction this O.A. is disposed of. No costs.

Member (J)

Vice-chairman