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OA Nos.636&637/2010

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No.636 & 637 of 2010

Cuttack, this the 15th day of July, 2013

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HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

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OA No.636/2010

Dilip Kumar Mohanty,
Aged about 46 years,
Son of Hrushiksha Mohanty,
At-Dadhisinga, Po-Mahima gadi,
GDS BPM (incharge),
Kabera Madhapur Branch Post Office,
Via-Mahimagadi Dhenkanal.

....Applicant

(Advocate(s):-Mr.T.Rath)

-Versus-

Union of India represented through –

1. Director General of Posts,
Dak Bhawan,
New Delhi.
2. Chief Postmaster General,
Orissa Circle,
At-Bhubaneswar,
Po.Bhubaneswar GPO,
Bhubaneswar-751 001.
3. Superintendent of Post Offices,
Dhenkanal Postal Division,
At/Po. Dhenkanal.

.....Respondents

(Advocate(s)-Mr.D.K.Behera)



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OA Nos.636&637/2010

OA No.637/2010

Nabaghan Behera,
Aged about 30 years,
Son of Narayan Behera,
Working as in charge GDSBPM,
Kaluria Branch Post Office,
I/a with Mahimagadi SO,
Dist. Dhenkanal.

....Applicant

(Advocate(s):-Mr.T.Rath)

-Versus-

Union of India represented through –

1. Director General of Posts,
Dak Bhawan,
New Delhi.
2. Chief Postmaster General,
Orissa Circle,
At-Bhubaneswar,
Po.Bhubaneswar GPO,
Bhubaneswar-751 001.
3. Superintendent of Post Offices,
Dhenkanal Postal Division,
At/Po. Dhenkanal.

.....Respondents

(Advocate(s)-Mr.D.K.Behera)

O R D E R

A.K. PATNAIK, MEMBER (J):

OA No.636 of 2010

The facts of the matter, in nut shell, are that the
Applicant while working as GDS DA/EDDA Gondiapatna Sub



Post Office, due to retirement of the permanent incumbent of the post of GDS BPM/ED BPM, Kabera Madhpur Branch Post Office, the said post fell vacant and consequently, vide Memo No.A/K.Madhapur BO dated 16.1.2006 (Annexure-A/2) the Applicant was directed to work in the said post w.e.f. 01.02.2006. Thereafter, by submitting representation dated 26.3.2006, the Applicant requested for his absorption in the said post. While the matter stood thus, Respondent No.3 issued notification dated 21.7.2010 inviting application from the general public for the post in question and on the other hand, in response to the representation, the Applicant was informed that if he wishes, he may submit his application in pursuance of the said notification which would be considered along with others in normal course. Being aggrieved by such action, the Applicant has approached this Tribunal in the instant Original Application seeking the following relief:

- “(i) Quashing the Annexure-A/4 & A/5;
- (ii) Direct the Respondents to appoint the applicant in the post of GDS BPM Kabera Madhapur, BO;



- (iii) In the alternative, if it is found that instructions contained in Annexure-A/6 and Annexure-A/7 have been repealed, the Hon'ble Court may kindly direct the respondents to restore the provision as contained under Annexure-A/6 and A/7 or to issue fresh instruction, providing opportunity for the existing GDS employees to be appointed in any higher post falling vacant in the Branch Post Offices."

OA No. 637 of 2010

2. Applicant (Nabaghan Behera) while working as GDSMD-MC in Kaluria BO, the post of GDSBPM of the same post office fell vacant on regular basis for which the applicant was directed to manage the work of the BPM of the said post office vide order under Annexure-A/2 dated 28th December, 2004 and accordingly he took the charge and continuing in the said post w.e.f. 28th December, 2004. Thereafter by submitting repeated representations he requested for his regular appointment in the said post. The representations of the applicant were considered and vide letter dated 30th August, 2010 (Annexure-A/4) he was informed that there is no provision for his appointment to the said post and if he possesses necessary qualification for the post, he may apply for

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consideration whenever the post is advertised. Being not satisfied with the reply, the Applicant submitted representation on 20th September, 2010 to Respondent No.1 for reconsideration. While his representation was pending before the Respondent No.1, Respondent 3 issued notification dated 8.11.2010 inviting application from the open market for the post in question. Being aggrieved the applicant approached this Tribunal in the instant OA praying for the following reliefs:

- “(i) Quash the Annexure-A/4;
- (ii) Direct the Respondents to appoint the applicant in the post of GDS BPM Kaluria Branch Post Office;
- (iii) In the alternative, if it is found that instructions contained in Annexure-A/6 and Annexure-A/7 have been repealed, the honourable court may kindly direct the Respondents to restore the provision as contained under Annexure-A/6 or to issue fresh instruction providing opportunity for the existing GDS employees to be appointed in any higher post falling vacant in the Branch Post Offices.”

3. Although two separate counters have been filed in both the cases, virtually the stand taken in both the cases are same and similar. The Department's stand in both the cases are that consequent upon the availability of GDS BPM vacancies

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on regular basis, the existing incumbents were kept in charge of the posts. Thereafter, both of them requested for their permanent appointment in the posts. The said requests were considered but were rejected on the ground that there is no such provision in the Department. They were also informed that in case they apply in pursuance of the notification, then their cases would be considered, as per rules, along with others.

They have further stated that as per DG Posts letter No.19-10/2004-GDS dated 1st September, 2004 transfer of an ED agent from one post/unit to another post/unit except in public interest is not permissible. Accordingly, both the posts were notified. Thereafter the applicant in OA No. 637 of 2010 represented the Postmaster General, Sambalpur Region, Sambalpur to consider his case for appointment to the post in question without going ahead with the selection from open market but as there is no provision, the said request of the applicant was rejected vide letter dated 18.10.2010 (Annexure-R/5). Despite the opportunity, none of them had applied in pursuance of the notifications and, therefore, they have lost the



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opportunity to be considered along with others. In OA No. 637 of 2010 it has been stated that though another candidate has been selected in pursuance of the notification, he could not be appointed in compliance of the interim order of this Tribunal dated 8.12.2010. It has further been stated that the ruling of the Department (copy of which has been placed at Annexure-A/6 by the applicant) is no more in existence as the same has been modified vide GI Department of Posts Lr.No.14-21/2000-PAP dated 6th February, 2001 (Annexure-R/3). On the above grounds, the Respondents have prayed for dismissal of both the OAs.

4. Both the Applicants have filed their rejoinder and the Respondents have also filed reply to both the rejoinders relaying on the decision dated 30.11.2009 in OA No. 407 of 2009 (Basanta Kumar Swain –Vrs-UOI & Ors) in which similar prayer of the applicant has been rejected by this Tribunal and have prayed for dismissal of the OAs in the light of the said decisions.

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5. Though we have heard Mr.T.Rath, Learned Counsel appearing for the Applicants and Mr.D.K.Behera, Learned Additional CGSC appearing for the Respondents one after the other for the sake of convenience this common order is passed which would govern both the cases.

6. Mr.Rath, Learned Counsel appearing for the Applicant in both the cases has contended that when both the Applicants have possessed the qualifications to hold the posts in question and they were asked to manage the work of the posts and they are managing the work smoothly for a long period removing them from the post so as to appoint fresh faces tantamount to hiring and firing which is not sustainable in the litmus test of judicial scrutiny. It has been stated that the applicants have gained sufficient experience. The Departments seeks to fill up the said post on regular basis. As such, there is no logic or reasonableness to go for fresh recruitment instead of allowing the applicants to continue in the post on regular basis. Therefore, by drawing our attention to the instruction dated 12th September, 1988, Mr.Rath, Learned Counsel appearing for the

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Applicants has contended that this is a fit case wherein this Tribunal should come to the aid of the Applicants to protect them from humiliation and harassment. In support of the aforesaid stand, Mr. Rath, Learned Counsel for the Applicants filed copy of the order dated 17.4.2001 in OJC No.8355 of 1999 (Achyuta Kumar Pradhan Vrs UOI and Ors.) of the Hon'ble High Court of Orissa in support of the relief claimed in these OAs.

On the other hand, Mr.D.K.Behera, Learned Additional CGSC appearing for the Respondents (in both the OAs) has contended that both the applicants were temporarily kept in charge of the posts pending final selection in accordance with the recruitment rules. The representations requesting permanent appointment were duly considered but the same were rejected as there is no provision for regular appointment of an ED agent to some other post without going through a recruitment process. Also as per D.G. Posts Letter No. 19.10.2004 GDS dated 1st September, 2004 an ED agent shall not be eligible for transfer in any case from one post/unit

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to another post/unit except in public interest. Both the applicants were advised that in case they apply pursuant to advertisement, their cases would be considered, as per Rules, along with others. But they did not avail of the said opportunity. Since neither Rule permit for permanent absorption nor their transfer from ED to BPM post, even if they possessed the requisite qualification, they cannot claim as a matter of right to be appointed on regular basis on the said posts. In this connection Mr. Behera, Learned Additional CGSC appearing for the Respondents has also brought to our notice the letter dated 1st September, 2004 and the letter dated 17th July, 2006 restricting transfer of GDS employees from one post/unit to other. Accordingly, Mr. Behera, has prayed for dismissal of both the OAs.

7.No ex facie provision has been produced by Mr. Behera, Learned Additional CGSC appearing for the Respondents imposing completely ban on giving affirmative consideration to the prayer of the Applicants. Be that as it may, we find that the relief sought by both the Applicants in the

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instant OAs was in fact sought by another Applicant namely Achyuta Kumar Pradhan in OA No.202 of 1999. The said OA was disposed of on 2.7.1999 by this Tribunal. Being aggrieved the Applicant therein approached the Hon'ble High Court of Orissa in OJC No.835 of 1999 which was considered and disposed of by the Hon'ble High Court of Orissa on 17.4.2001. Relevant portion of the order dated 17.4.2001 of the Hon'ble High Court of Orissa reads as under:

“4. Let us first consider the validity of the second ground ascribed by the Tribunal in support of its order. According to the Tribunal, the petitioner has been working as Extra Departmental Packer in Single Sub Post Office and the vacancy for the post of EDBPM having arisen at Dundakote (not at Singla), he cannot be appointed against the vacant post. In this connection, reliance was placed by the Tribunal on circular dated 12.9.1998 issued by the Director General of Posts. It reads as follows:-

“.....However, it has now been decided that exception may be made in the following cases:

- (i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against the post, he may be allowed to be appointed against that vacant post without coming

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through the Employment Exchange,
provided he is suitable for the other post
and fulfills all the required conditions.”
(emphasis supplied)

From the aforesaid circular it is evident that an existing EDA can be appointed against an ED post provided that post is available in the same office or in any office in the same place where the existing EDA is working. The vacant post being at Dundakote and not at Singla where the Petitioner has been working he cannot be appointed at Dundakote in view of the aforesaid circular.

Learned counsel for the petitioner has brought to our notice a clarificatory note issued by the Director General of posts in Letter No.19-21/94-ED & Training dated 11.8.1994 wherein the expression ‘place’ has been explained as follows:

“.....After taking into consideration the basic features of the ED system and other relevant considerations, it has been decided that the existing word ‘place’ occurring between the words “.....in any office in the same” and “if one of the existing Extra Departmental Agents” shall be substituted by the words “recruiting unit”. In other words, in place of “or in any office in the same place”, the words “in any office in the same recruitment unit” will be substituted”.
(emphasis supplied).

A bare reading of the aforesaid note would show that vacancy of the post has now to be considered from the angle of “recruiting unit” and not from the stand point of “same office or in any office in

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the same place." In other words, the zone of consideration has become wider. There is no dispute that Dundakote and Single come within one recruiting unit. Therefore the case of the petitioner has to be considered in the light of clarificatory note of the Director General of Posts, referred to above.

As regards the first ground given by the Tribunal, it may be stated that as a matter of fact the petitioner did apply for the post much prior to the notification inviting applications. He was advised to make fresh application after publication of the notification. Since the application was kept pending for consideration the same is now available to be considered in view of the circular dated 12.9.1988 and the clarificatory note dated 11.8.1994 of the Director General of Posts.


6. For the reasons aforesaid, we quash the order of the Tribunal at Annexure-4. The Opp. Parties are directed to consider the case of the petitioner in the light of the observations made above within two months of receipt of writ/production of certified copy of this order."


8. The order of the Hon'ble High Court of Orissa is binding upon this Tribunal. Hence, we quash the orders of rejection of the representations of the applicants impugned in both the OAs and direct the Respondents to consider/reconsider the case of the Applicants afresh keeping in mind the orders of the Hon'ble High Court of Orissa, referred to above and



communicate the decision in a well-reasoned order to the Applicants within a period of 90 days from the date of receipt of copy of this order.

9. In the result, both the OAs stand allowed to the extent stated above. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)