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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.772 of 2011
Cuttack, this the 23rd day of February, 2015

Sri Muralidhar Behera Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?

2. Whether it be referred to PB for circulation?


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

(6)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.772 of 2011
Cuttack, this the ~~25~~ ²⁵ day of February, 2015

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Sri Muralidhar Behera,
aged about 56 years,
S/o.Late Bharat Behera,
Resident of Vill/Po: Kankili,
Via:Talcher, Dist:Angul,
Presently working as
GDSBPM of Dharmapur B.O.,
At/Po-Dharmapur,
Via-Talcher, Dist-Angul.

...Applicant

(Advocates: M/s. P.K. Padhi, J. Mishra)

VERSUS

Union of India Represented through

1. Chief Post Master General,
Orissa Circle,
At/Po-Bhubaneswar,
Dist-Khurda, 751001
2. Director of Postal Services,
Sambalpur Region,
At/Po/Dist:Sambalpur,
Odisha-768001.
3. Superintendent of Post Offices,
Dhenkanal,
Odisha-759001.

...Respondents

(Advocate: Mr. S. Barik)

...



ORDER

A. K.PATNAIK, MEMBER (J):

The facts of the matter are that the applicant while working as EDDA/GDSMD of Kankili Branch Post Office in account with Talcher Sub Post Office, due to retirement of the permanent incumbent of the post of GDSBPM of Dharampur Branch Post Office, the said post fell vacant and consequently, vide Memo dated 14.12.2004 (Annexure-A/1) the applicant was directed to work in the said post w.e.f. 01.04.2005. Thereafter, by submitting representations dated 14.02.2011 & 15.02.2011, the applicant requested for his absorption in the said post. While the matter stood thus, Respondent No.3 issued notification dated 11.03.2011 inviting applications from the general public for filling up the post in question. However, in response to his representation, the applicant was informed that if he wishes, he may submit his application in pursuance of the notification dated 11.03.2011 which would be considered along with others in normal course. Being aggrieved, the applicant had approached this Tribunal in O.A. No.380/11. This Tribunal, vide order dated 17.06.11 disposed of the said O.A. by directing the Respondent No.1 to consider the pending representation and deal with the question of absorption of the applicant as per the extant rules within a period of 60 days from the date of receipt of the copy of the order. Thereafter, Respondent No.1 considered and rejected the case of the applicant. Being aggrieved by such action, the applicant has approached this Tribunal in the instant Original Application seeking the following relief:-

“To direct the Respondents to consider the case of the applicant for his absorption in the post of GDSBPM of Dharmpur B.O. in account with Talcher MDG in which he has been working since 6 & ½ years.”



2. Respondents-Department have filed their counter. The Respondents' stand is that consequent upon the availability of GDS BPM vacancy on regular basis, the existing incumbent was kept in charge of the post. Thereafter, the applicant requested for his permanent appointment in the said vacant post. His request was considered, but was rejected on the ground that there is no such provision laid down by the Department. The applicant was also informed that in case he applies in pursuance of the notification, then his case would be considered, as per rules, along with others. It has further been 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, the post was notified. Thereafter, the applicant represented the Director of Postal Services, Sambalpur Region (Respondent No.2) and Superintendent of Post Offices, Dhenkanal Division (Respondent No.3) vide representation dated 14.02.2011 and 15.02.2011 respectively followed by another representation dated 18.05.2011 to the Chief Post Master General, Orissa Circle, Bhubaneswar to consider his case for appointment to the post in question without going ahead with the selection from the open market. According to Respondents, as there is no provision, the said request of the applicant was rejected vide letter dated 28.10.2011 (Annexure-A/8).

3. We have heard Shri P.K. Padhi, learned counsel for the applicant and Shri S. Barik, learned ACGSC appearing for the Respondents and perused the materials placed on record.

4. Shri Padhi, learned counsel for the applicant has contended that the applicant having possessed the requisite qualification was asked to manage the work of the EDBPM post and was managing the work smoothly for a long period.



Therefore, the appointment of fresh face would tantamount to removing him from the post, besides, hiring and firing which is not sustainable in the litmus test of judicial scrutiny. It has been stated that the applicant has gained sufficient experience and therefore, the Respondents, prior to issuing notification calling for applications from the open market ought to have considered the case of the applicant for appointment to the post in question having regard to his long standing service in that post. According to Mr. Padhi, the action of the Respondents in this score does not base on sound principles of law.

5. During the course of hearing, Mr. Padhi placed reliance on the common orders of this Tribunal dated 15.07.2013 in O.A. Nos.636 & 637 of 2010 and submitted that the applicant herein being similarly circumstanced as that of the above cited OAs, the Tribunal should give a verdict in his favour.

6. Accordingly, we have gone through the decision of this Tribunal in the above O.As. In O.A No.636/10, applicant Dilip Kumar Mohanty while working as GDSDA/EDDA, Gondiapatna Sub Post Office, consequent upon a vacancy in the post of GDSBPM/EDBPM, Kabera Madhpur Branch Post Office, caused due to retirement of the regular incumbent was directed to work against that post. Thereafter, by submitting representation, he requested for his absorption in the said post. In the meantime, the Respondent-Department issued notification inviting applications from the general public for filling up the post in question and simultaneously, applicant was informed that if he so wished, he might make an application in pursuance the notification in which event his case would be considered along with others. Aggrieved with the above applicant moved this Tribunal in O.A. No.636/10 as referred to above.

Verma

It is to be noted that the Hon'ble High Court of Orissa in OJC No.835/99 disposed of on 17.04.2001 (in similar issue arising out of O.A. No.202/99 disposed of by this Tribunal on 02.07.99), held 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 12.09.1998 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 through the Employment Exchange, provided he is suitable for the other post and fulfills all required conditions.”

From the aforesaid circular⁷ 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 11.08.1994 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 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 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.

Wiles

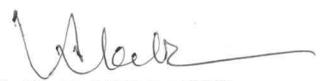
As regards the first ground given by the Tribunal, it may be stated that as a matter of fact the petitioner did apply for the post much prior to the notification inviting applications. He was advised to make fresh application after publication of the notification. Since the application was kept pending for consideration the same is now available to be considered in view of the circular dated 12.09.1988 and the clarificatory note dated 11.08.1994 of the Director General of Posts.

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."

7. From the above recital of facts, we have no doubt that the facts set out in OA Nos.636 & 637 of 2010 are exactly similar to the facts of the case in hand. Since the dispute raised in this O.A. is no more res integra, we would direct the respondents to consider the case of the applicant in the light of what has been observed by the Hon'ble High Court as quoted and pass appropriate orders and communicate the decision to the applicant within a period of 90 days from the date of receipt of this order. In the circumstances, order dated 28.10.2011 (Annexure-A/8) is quashed. Ordered accordingly.

8. In the result, the O.A is allowed as above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)