

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.354 of 2012

Cuttack this the 28th day of March, 2016

Suryakanta Padhi...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CORAM:

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

Suryakanta Padhi
Aged about 37 years
S/o.Narottam Padhi
Presently working as I/c. GDS BPM
Pancharmukhi BO in account with Baliapal SO
Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.Rath
B.K.Nayak-3
D.K.Mohanty

-VERSUS-

Union of India represented through :

1. Chief Post Master General
Orissa Circle
Bhubanewar
Dist-Khurda-751 001
2. Director of Postal Services
Office of the Chief Post Master General
Orissa Circle
Bhubanewar
3. Superintendent of Post Offices
Balasore Division
Balasore-756 001
4. Inspector of Posts
Jaleswar Est Sub Division
Jaleswar
Dist-Balasore-756 032

...Respondents

By the Advocate(s)-Mr.S.K.Patra



ORDER**R.C.MISRA, MEMBER(A):**

Applicant is presently working as I/c. GDS BPM, Panchurukhi BO in account with Baliapal SO, Balasore, under the Department of Posts. He has, in this Original Application under Section 19 of the A.T. Act, sought for the following relief.

- i) To quash the advertisement under Annexure-A/9.
- ii) To direct the Respondents, especially Respondent No.3 to permanently absorb/allow to continue as GDSBPM, Panchurukhi BO in account with Baliapal SO.
- iii) To pass any other order/orders as deemed fit and proper in this case.

2. Facts of the matter in brief are that on being selected through a regular process of selection, applicant had joined the post of GDS Packer in Baliapal S.O. with effect from 26.3.2001. One B.D. Parmanik, regular incumbent of GDSBPM, Panchurukhi B.O. in account with Baliapal S.O. was promoted to a higher grade and in order to ^{facilitate} joining the said post, he was relieved from the post of GDSBPM, Panchurukhi B.O. with effect from 16.10.2004. In the above background, Inspector of Posts, Jaleswar West Sub Division, Balasore (res.no.4) vide his order dated 15.10.2004 directed the applicant to remain in charge of GDSBPM, Panchurukhi B.O. and consequently, applicant took charge of the said post with effect from 16.10.2004. Since the post of GDSBPM, Panchurukhi B.O. against which applicant had



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been asked to remain in charge was a regular vacancy caused due to the regular incumbent being relieved of the post on promotion, applicant submitted a representation dated 28.4.2011 to the Chief Post Master General, Orissa Circle (res.no.1) making a request for his permanent absorption.

Based on this representation, res.no.3 sent a letter dated 28.5.2011 addressed to the applicant requiring him to submit his willingness for consideration of his appointment against the said post, on the conditions as under.

- i) You will be rank junior in the seniority list of GDSs of this Division.
- ii) You will have not any claim for protection of your TRCA drawn now in the post of GDS Pkr.Baliapal S.O.
- iii) Your TRCA will be fixed at the minimum of TRCA slab of the post to which you will be transferred, depending upon work load of the new post.

And all other conditions for the post of BPM, such as :

- (a) You will take residence in the post village
- (b) You will provide a suitable house for functioning of the B.O. etc.

3. Subsequently, res.no.3 sent another letter dated 16.5.2011(A/7) addressed to the applicant, the relevant part of which is quoted hereunder.

Sub: Regularisation in the post of GDS BPM, Panchurukhi B.O. in account with Baliapal S.O.



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Ref: Your representation dated 28.4.2011
addressed to the CPMG, Orissa Circle,
Bhubaneswar

Refer to this office letter of even no. dated 03.5.2011 on the subject and intimate your willingness or otherwise by next post direct to this office immediately (within one day of receipt of this letter positively). If any response is not received from you by 20.5.2011 in this regard it will be presumed that you are not agreeable to the conditions intimated vide above said letter dated 03.5.2011 and your request for transfer to the Post of GDSBPM, Panchurkhi B.O. will be rejected.

4. In response to this, vide letter dated 19.5.2011(A/8) applicant submitted his willingness to res.no.3 as per the terms and conditions of letter dated 3.5.2011. While the matter stood thus, res.no.3 issued a notification dated 17.4.2012 inviting applications from the open market for filling up the vacancy of GDSMPM, Panchurukhi B.O. against which he has been contusing as in-charge.

5. Aggrieved with this, applicant has moved this Tribunal seeking relief as mentioned above.

6. Respondents have filed their counter opposing the prayer of the applicant, without, however, disputing the facts as stated above. It is the case of the respondents that applicant cannot claim permanent absorption because of fulfilling the eligibility criteria for the post in question. According to them, selection has to be made in accordance with the prevailing rules and regulations of the department published from time to time, keeping in view the merit amongst the eligible candidates and

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applicant's case will be taken into consideration only when he is in order of merit from amongst the eligible candidates. The post sought to be filled up is in accordance with rules and to satisfy the urge of the applicant, appointing authority cannot go beyond the rules. Although willingness of the applicant had been sought, but, in the meantime ruling ^{was} received from Res.no.2 vide letter no. DO No.ST/10-1/65/Rlg.corr dated 28.3.2012 to the effect that a GDSBPM cannot be transferred as GDS MC/MD/Pkr. and vice versa. This ruling is annexed to the counter at R/1. In view of the above position, willingness of the applicant could not be acted upon, respondents have added.

7. With the above submissions, respondents have prayed for dismissal of this O.A. being devoid of merit.

8. Applicant has filed a rejoinder to the counter. In the rejoinder, it has been brought to the notice of the Tribunal that in view of DG Posts letter dated 12.9.1988, applicant made a representation for his permanent absorption, in response to which, res.no.3 sought for his willingness, which he did submit. Therefore, there was no reason to deviate from any of the instructions. As regards letter dated 28.3.2012 wherein it has been laid down that GDSBPM cannot be transferred as GDS MC/MD/Pkr. and vice versa, applicant has replied that the same having been issued on 28.2.2012 can only ^{have} take a prospective application.

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9. We have heard the learned counsel for both the sides and perused the materials. We have also gone through the written notes of submission filed by both the sides. In the written notes of submission, applicant has submitted that the instant O.A. is governed by the decision of this Tribunal in O.A.Nos.636 & 647 of 2010 - disposed of vide common order dated 18.7.2013, dealing with similar points and we have taken note of the same.

10. The short facts that revolves round for consideration is whether there is any prohibition or deterrence for absorption and/or appointment of the applicant to the post of GDSBPM, Panchurukha B.O. under the rules.

11. In this connection, applicant has produced [D.G.Posts, Letter No.43-27/85.Pen.EDC & Trg.] Dated the 12th September, 1988, in which Clause(i) under the caption Method of Recruitment, reads as under.

“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 that 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 the required conditions”.

12. On the other hand, the main thrust of the counter is that due to ruling issued vide communication dated 28.03.2012(R/1), applicant's case could not be considered for transfer.



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13. R/1 is a DO letter issued by the postal authorities at Bhubaneswar addressed to Shri C.Mohapatra, SSPOs/SPOs, Balasore Division containing the instructions on limited transfer facility to Gramin Dak Sevaks. These conditions are replica of [D.G.Posts, Letter No.43-27/85.Pen.EDC & Trg.] Dated the 12th September, 1988, wherein provisions have been outlined regarding transfer in exceptional cases. But here is a case, where there is a special provision under the method of recruitment for appointment of an existing ED to another ED cadre. Therefore, the ground urged by the respondents that applicant being an ED cannot be transferred and only in exceptional circumstances, such transfer could be considered, has nothing to in the face of special provisions under the method recruitment, as quoted above. However, respondents, referring to D.G. Posts instructions dated 12.9.1988 cited supra, have made a point that applicant's initial appointment was against GDS Packer/GDS Mail Carrier against permanent establishment(post) of Baliapal S.O. whereas, presently, he is working as In-charge EDBPM, Panchurmukhi B.O. Therefore, Baliapal SO and Panchurmukhi B.O. are two different offices. Further, they have added that Panchurmukhi B.O. being situated 4 kms. away from Baliapal S.O., it cannot be said that both these offices are located in the same place.

14. We have considered these submissions carefully. Prima facie, we are of the opinion that these submissions are after



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thought inasmuch as, it is not a fact that the respondents were not aware of these provisions when applicant had submitted his representation for his absorption as GDSMPM, Panchurmukhi B.O. Even, considering his grievance, he was asked to offer his willingness of the applicant vide letter dated 3.5.2011 and being agreed to the conditions, applicant submitted his option. Therefore, these arguments, appear to have been advanced by the respondents in order to cover up their failure to take action as they were expected to take. Be that as it may, it was incumbent on the part of the respondents to at first consider his grievance having regard to the rules on the subject vis-à-vis his willingness, before proceeding any further for issuance of public notification inviting applications for filling up the post from open market, against which claim of the applicant was under their active consideration. Considering the correspondence exchanged between applicant and respondents, we infer that applicant had a legitimate expectation. But the respondents did not even bother to give a reply to the applicant, either in the positive or in the negative and in fact made a jump from one course of action to the other.

15. Coming to the point that Baliapal S.O. and Panchurmukhi BO are neither in the same office nor in the same place, it is pertinent to mention that no doubt vacancy of EDBPM against which applicant seeks his absorption and/or appointment does not fall in the same office. But, it is a fact that Panchurmukhi

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B.O. where applicant is presently working as In charge BPM is in account with Baliapal S.O., where the applicant had initially been working. It is an admitted fact that Panchurmukhi B.O. is accountable to Baliapal S.O. In this connection, it is to be noted that there might be offices where a large number of ED officials are working and to this extent, application of the introductory condition that "**when an ED post falls vacant in the same office**", is quite obvious to be satisfied. But, as regards the other part of provision, "when an ED post falls vacant **in any office in the same place**", hardly, there are instances where BOs operate side by side in the same place. Therefore, the language used **in any office in the same place** has to be meant and interpreted with reference to SO accountable to the Branch Offices, and in the instant case, Baliapal S.O., even though the distant^{ce} between Baliapal SO and Panchurmukhi B.O. is stated to be about 4 kms.

16. Incidentally, it may be mentioned that applicant in support of his case has relied on common orders of this Tribunal dated 15.7.2013 in O.A.Nos.636 & 637 of 2010. It reveals therefrom one Achyuta Pradhan had moved this Tribunal in O.A.No.202 of 1999 which was disposed of on 2.7.1999 against him. Aggrieved with the same, he approached the Hon'ble High Court of Orissa in OJC No.835 of 1999 and the Hon'ble High Court vide order dated 17.4.2001, quashed the



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orders of this Tribunal and directed the Department of Posts to consider the case of the applicant therein.

17. It is seen that the Hon'ble High Court, while taking note of the provision of D.G.P&T circular dated 12.9.1988, had taken into account a clarificatory note issued by the D.G.Posts in letter No.19-21/94-DD & Training dated 11.8.1994, wherein the expression 'place' occurring in the circular of 1988, had 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" .

18. There is no dispute that both Baliapal SO and Panchurmukhi BO come within one recruiting unit. The method of recruitment as well as the clarificatory note dated 11.8.1994 are very clear and unambiguous and instructs that if one of the existing EDAs prefers to work against that post in any office in the same recruitment unit, 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 the required conditions. As in the present case the facts are similar and we do not find anything contrary

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or contradictory, in our opinion, similar consideration appears to be justified.

19. For the reasons mentioned above, notification dated 17.4.2012(A/9) is quashed. Respondents are directed to consider appointment of applicant to the post of GDSBPM, Panchurukhi B.O. against which he has been working being in-charge as per rules and instructions, as referred to above, and subject to fulfillment of other eligibility conditions, he be appointed to the said post.

With the above observation and direction, the O.A. is allowed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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