

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 27 of 2013
Cuttack this the 27th day of November, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

....

Banamali Jena, aged about 55 years, S/o. Nakulacharan Jena, At present working as In charge GDSBPM, Radhaballavpur Branch Post Offices in account with Sora MDG, Dist-Balasore

...Applicant

By the Advocate(s)-Mr.T.Rath

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Dak Vawan, New Delhi.
2. The Chief Post Master General, Orissa Circle, At-Bhubaneswar, PO-Bhubaneswar GPO, Bhubaneswar-1, PIN-751 001 Dist-Khurda.
3. Superintendent of Post Offices, Balasore Postal Division, At/PO/Dist-Balasore
4. Babulal Soren, S/o. Sunaram Soren, At-Sardarbandh, PO-Chudamanipur, Via-Hatigarh, Dist-Balasore

...Respondents

By the Advocate(s)-Mr.S.Behera(Res. 1 to 3)
Mr.D.K.Mohanty(Res.No.4)

....

ORDER

MR.S.K.PATTNAIK, MEMBER(J):

The applicant is presently working as In charge GDSBPM, Radhaballavpur Branch Post Offices in account with Sora MDG, Dist-Balasore. In this Original Application, he has assailed the legality and validity of Advertisement dated 10.10.2012(A/4) made by the Department of Posts inviting applications from the intending candidates for filling up the post of

*80/Cuttack
27/11/17*

Gramin Dak Sevak Branch postmaster, Radhaballavapur B.O. He has, therefore, sought for the following reliefs:

- i) Quash the advertisement dated 10.10.2012 under Annexure-A/4.
- ii) Direct the Respondents to appoint/confirm the applicant in the post of GDS BPM, Radhaballavpur Branch post Office; and
- iii) Pass any order/orders as deemed fit and proper for doing complete justice to the applicant.

2. The background leading to filing of this O.A. is that applicant on being selected through a regular process of selection was appointed as EDDA, Radhaballavpur Branch Post Office with effect from 20.01.1979. Consequent upon retirement of the regular incumbent GDSBPM, Radhaballavapur B.O. with effect from 11.03.2006, applicant was directed to manage the charge of the post of GDSBPM, in addition to his own duties as EDDA vide Inspector of Post Offices Memo dated 9.3.2006. On 3.4.2011, applicant submitted a representation (A/3) to the Superintendent of Post Offices, Balasore Postal Division (Respondent No.3) with a request to permit him to work permanently against the post of GDSBPM, Radhaballavapur B.O., *inter alia* on the ground that he had been looking after the post of GDS BPM, Radhaballavapur B.O. after retirement of the regular incumbent since 11.03.2006. While his representation was pending consideration, the official Respondents made an Advertisement dated 10.10.2012(A/4) for filling up the post of GDSBPM, Radhaballavpur Branch Post Office. Aggrieved by this, the applicant has moved this Tribunal in this O.A. praying for the reliefs as mentioned above.

3. The grounds on which applicant has based his claim are that Letter No.43-27/85-PEN (EDC and TRG) dated 12.09.1988 issued by the Department

*8/18/2012
2012-13*

of Posts prescribes that when an E.D. post falls vacant in the same office or in any office in the same place and one of the existing ED Agent is willing to work against that post, he may be allowed to be appointed without coming through the Employment Exchange if he fulfills all other conditions. Further, the Circular No.ST/10-1/65.Rig/COR hour/2001 dated 21.12.2001 issued by the Department of Posts lays down that in case only when there is no applicant from the existing GDS, it will be open for the appointing authority go for advertisement. Otherwise the vacancy should be filled up from among the EDS/GDS. Grievance of the applicant is that the official respondents without adhering the aforesaid instructions as issued by the Department of Posts went ahead with the selection process by issuing open advertisement which *per se* is illegal and arbitrary and liable to be struck down.

4. Per contra, the official respondents have filed a detailed counter. They have refuted the contention of the applicant that neither had he preferred any such representation dated 03.04.2011 or dated 8.4.2011, as the case may be, nor had it been received at their end. However, they have pleaded that by merely considering and disposing of the representation, the post of GDSBPM cannot be filled up as there is a separate set of prescribed procedure for filling up the post in question and that is why they have issued advertisement for filling up the post of GEDSBPM, Radhaballavapur BO which is in conformity with the Recruitment Rules. According to official respondents, as per circular dated 28.03.2012(R/1) by the Department of Posts, a GDSBPM cannot be transferred as GDS MC/MD/PKR and vice versa. Secondly, it has been contended by the official respondents that applicant is not a surplus ED Agent/GDS. He was recruited in the regular vacant post of GDSDA/EDDA and therefore, their action in so far as advertisement for filling up the post of

8/6/2012
29/1/12

GDSBPM, Radhaballavpur B.O. is concerned is in accordance with the rules and instructions in force. They have, therefore, submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has filed a rejoinder to the counter-reply filed by the official respondents. It has been pointed out by the applicant that the action of the official respondents is in clear violation of the provisions contained in Annexure-R/2. As a matter of fact, Radhaballavpur B.O. is running beyond the permissible limit of loss and therefore, the posts of GDSMD and GDSBPM ought to have been combined and the applicant having fulfilled the prescribed eligibility conditions should have been appointed as GDSBPM, Radhaballavpur B.O. Applicant has annexed a circular dated 17.07.2016(A/8) issued by the Ministry of Communications & I.T., Department of Posts to the rejoinder on the subject of limited transfer facility to Gramin Dak Sevaks. Applicant has relied on Clause-3(ii) of the Circular which states that "request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS". Stating so, the applicant has pleaded that the combination of duties of GDS in the same BO means - the post of GDSMD and GDSBPM can be combined or a GDSMD can be transferred as GDSBPM.

6. Private Respondent No.4 – intervener has also filed a counter opposing the prayer of the applicant in the O.A. He has pleaded that in pursuance of the advertisement dated 10.10.2012 (A/4) he was one of the aspiring candidates for the post of GDSBPM, Radhaballavpur B.O. and has provisionally been selected for the said post. Since he was not issued with the letter of appointment, he submitted a representation dated 4.4.2013 to the authorities. As it did not yield any result, he had moved this Tribunal in O.A.No.463 of

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27 p. 117

2013 and this Tribunal vide order dated 19.7.2013 disposed of the said O.A. with direction to respondent no.3 therein to consider the representation if it is pending, taking into account the selection of the applicant to the post of GDSBPM, Radhaballavpur B.O. and communicate the result thereon to the applicant by way of a reasoned and speaking order within a period of sixty days from the date of receipt of the order. In compliance with this direction, the Respondent No.3 vide order 08.09.2013 intimated him (the present intervener) that his representation dated 04.04.2013 would be considered only after the disposal of O.A.No.27 of 2013 which is *sub judice* before this Tribunal. It is submitted by the intervener that because of the interim order dated 24.01.2013 granted by this Tribunal for maintenance of status quo, his provisional selection is not being processed any further by the official respondents. To support his claim for appointment to the post of GDSBPM, Radhaballavpur B.O., the intervener has cited the judgment dated 25.04.2017 of the Hon'ble High Court of Orissa in W.P. (C) No.18498 of 2016 (Union of India & Ors. vs. Suryakanta Padhi).

7. We have heard the learned counsels for the respective parties and perused the materials on record. Admittedly, applicant has been discharging the duties of GDSBPM in addition to his own duties as GDSMD, Radhaballavpur B.O. since 2006 consequent upon the retirement of the regular incumbent GDSBPM, Radhaballavapur B.O. A similar matter had earlier come up before this Tribunal in O.A.No.354 of 2012 and this Tribunal, vide order dated 28.3.2016 quashed the notification dated 17.4.2012(A/9) and directed the respondents to consider appointment of the applicant therein to the post of GDSBPM, Panchurukhi B.O. against which he had been working being In-charge as per rules and instructions and subject to

8/26/2016
27/4/17

fulfillment of other eligibility conditions. Being aggrieved, the Respondents therein moved the Hon'ble High Court of Orissa in WPC No.18498 of 2016. The Hon'ble High Court of Orissa vide judgment dated 25.4.2017 quashed the order dated 28.3.2016 passed by this Tribunal in O.A.No.354 of 2012.

8. From the above judgment of the Hon'ble High Court, it is quite clear that the provision contained in letter dated 12.9.1988 with the coming into force the recruitment Rules, 2001 stood nullified. However, the official respondents in their counter have annexed a Circular dated 17.2.2011 (R/2) issued by the Government of India, Ministry of Communications & I.T., Department of Posts which reads as under:

- (i) By appointment of surplus identified GDS fulfilling the conditions; failing which
- (ii) By combination of the duties of GDS in the same B.O. provided the combined work load does not exceed five hours; failing which
- (iii) By recruitment of outsiders by observing the selection.

However, the approval of the Head of the Circle shall continue to be obtained for filling up of other categories of GDS which are not justified by workload/financial parameters, but the post is to be filled up for operational reasons.

4. These orders shall come into effect from the date of issue of the order. This issues with the approval of competent authority".

9. Learned counsel for the Private Respondent submitted that the recruitment of GDSBPM underwent a drastic change by coming into force GDS (Conduct & Employment) Rules, 2001 with effect from 24.4.2001. Further , it was amended by enacting GDS (Conduct & Engagement) Rules, 2011 which came into force with effect from 18.4.2011. According to learned counsel for the Private Respondent that after coming into force of the new legislation, the

8/1/2017
27/1/17

circular dated 12.9.1988 must be treated as an oblivion and non est in the eye of law. In support of his contentions, the learned counsel for the Private Respondent has placed reliance on a decision of the Hon'ble High Court of Orissa in the case of Union of India & Ors. vs. Suryakanta Padhi (WPC No.18498/2016) decided on 25.4.2017 wherein Their Lordships have taken exception to the conduct of the Tribunal in giving a direction to the Respondents to give appointment in the light of letter dated 12.9.1988. The relevant portion of Their Lordships imparted in para-9 is extracted below.

We have gone through the contents of the pleadings made in the original application as well as the contention raised by the opposite party – applicant before the Tribunal and the fact which was placed before the tribunal by him is for a direction to consider his case in the light of the letter dtd. 12.9.1988 and the tribunal has considered this aspect of the matter with a direction to appoint him in the light of the letter dtd. 12.9.1988.

According to our conscious view the tribunal has erred in passing the order placing reliance on the letter dtd. 12.9.1988 reason being that after coming into effect of the Rules, 2001 w.e.f. 24.4.2001, the opposite party – applicant will be deemed to have been appointed under the strength of Rules, 2001, hence the provision contained therein will be applicable and not the provision contained in letter dtd. 12.9.1988, hence the petitioner cannot be said to be entitled to get the benefit of his appointment on the basis of the condition laid down in the letter dtd. 12.9.1988, but the tribunal, without taking into consideration this aspect of the matter and completely ignoring the applicability of the Rules, 2001, has allowed the original application.

10. Their Lordships while concluding have further observed in para-11 that the Tribunal lost its sight regarding the settled proposition as also the applicability of the Rules 2001/2011 while allowing the O.A. and accordingly, set aside the same. So the whole argument of the learned counsel for the applicant to give relief to the applicant in the light of the circular of 1988 must be held as inapplicable in view of surfacing of a new enactment of GDS (Conduct & Engagement) Rules of 2011. Now, no appointment can be made

8/6/2017
27/11/17

43
 contrary to Recruitment Rules, 2011. To conclude, we do not notice anything illegal or arbitrary in the approach of the official respondents calling for our interference and it is held that the applicant is not entitled to any relief legally and cannot have any substantive right over and above the usual recruitment process. Hence ordered.

The O.A. being devoid of merit is dismissed. *No costs.*

[Signature]
 (DR.MRUTYUNJAY SARANGI)
 MEMBER(A)

[Signature]
 (S.K.PATTNAIK)
 MEMBER(J)

