

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 403 of 2014

Cuttack this the 10th day of January, 2018

CORAM:

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

Umakanta Swain, aged about 45 years, S/o. Rama Chandra Swain
of Village-Nagpur, PO-Balikuda, Dist-Jagatsinghpur, presently
working as GDS MC, Galadari BO, Via-Debidol, Dist-
Jagatsinghpur

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001.
3. Superintendent of Post Offices, Cuttack South Division, At/PO/Dist-Cuttack-753 001.
4. Asst. Superintendent of Post Offices, Jagatsinghpur Sub division, At/PO/Dist-Jagatsinghpur-754 103.
5. Prasanjit Sahoo, aged about 20 years, S/o. Sri Udhab Sahoo, At-Kumbhari, PO-Lalio, Via/PS-Balikuda, Dist-Jagatsinghpur

...Respondents

By the Advocate(s)-Mr.D.K.Mallick
M/s.P.K.Ray
A.R.Sethy

ORDERDR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant had joined as GDSMC, Galadhari Branch Office in Jagatsinghpur district on 27.1.2006. He had submitted a representation for being posted as GDSBPM, Kalio Branch Office since his present place of posting is more than 20 kms. away from his native place. However, the third Respondent had issued a notification on 30.12.2013 inviting applications for filling up the post of GDSBPM, Kalio BO. (A/4). The applicant had filed O.A.No.48 of 2014 aggrieved by the said notification and this Tribunal disposed of the said O.A. on 7.2.2014 with a direction to Respondent No.2 to consider the applicant's representation dated 13.6.2013 and communicate the decision in a well-reasoned order to the applicant on or before 3.3.2014. Further, the Tribunal directed the respondents not to proceed with the selection pursuance of the notification dated 30.12.2013. The CPMG, Orissa Circle (Respondent No.2) rejected the representation of the applicant in his order dated 15.5.2014(A/6). Aggrieved by this, the applicant has filed the present O.A. praying for the following reliefs:

- i) That the notification dated 30.12.2013 under Annexure-A/4 and the rejection order dated 15.05.2014 under Annexure-A/6 be quashed.
- ii) That the respondents be directed to allow the applicant to be posted/appointed as GDSBPM, Kalio B.O.

And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

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2. The applicant has based his prayer mainly on the ground that the rejection of his representation and the notification inviting applications to fill the post of GDSBPM, Kalio BO under A/4 is also bad in law. As per the GDS Rules, the applicant can be transferred from one post to another post, but his representation for transfer to the post of GDSBPM, Kalio B.O. has not been agreed to by the Respondents. Moreover, as per Directorate's letter no.43/27/85-Pen/(EDC & Trg.), dated 12.09.1988, the ED Agents, now called GDS are allowed to avail limited transfer facilities from one post to another when an ED post falls vacant in the same office or in any office in the same place and he/she is offered alternative appointment in a place other than the place where he/she was holding the post. But the applicant has not been allowed such a transfer although he fulfills all the required conditions for the same. Similarly placed candidates working as GDS have been transferred whereas it has been denied to the applicant. As per the Department of Posts, GDS(Conduct & Engagement) Rules, 2011, a GDS can be transferred from one post/unit to another post/unit in public interest. Therefore, the rejection order dated 15.5.2014 is bad in law and is liable to be quashed.

3. The Respondents in their counter reply filed on 20.8.2014 have submitted that the applicant is not entitled to reliefs prayed for. A GDS is allowed limited transfer facility from a post/unit to another post/unit under the existing provision of

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amended Rule-3 of GDS (Conduct & Employment) Rules, 2001, as per Postal Directorate, New Delhi letter No.19-10/2004-GDS dated 17.07.2006. The applicant is not eligible for transfer since he does not satisfy any of the norms as laid down in the Directorate's letter dated 17.7.2006.

4. One Shri Prasanjit Sahoo had filed M.A.No.40 of 2016 (arising out of this O.A.) as an intervener stating that he had been provisionally selected for the post of GDSBPM, Kalio B.O., but has not been issued any appointment letter due to the interim order of this Tribunal directing the official respondents not to fill up the above post without obtaining the leave of the Tribunal. An objection was filed by the applicant by way of reply to proposed intervener on 26.2.2016 in which the applicant submitted that he has a better claim for the post of GDSBPM, Malio B.O. since he has already applied for the same. The records show that the prayer for intervention was allowed on 26.2.2016 and M.A.No.40/16 was disposed of.

5. M.A. No.89 of 2015 was also filed by the official respondents for vacation of interim order dated 28.05.2014 and to allow them to finalize the selection/recruitment process in accordance with the Departmental terms and conditions. An objection was also filed by the applicant on 26.2.2016 in which the applicant had submitted that his representation has been illegally rejected which he has challenged in the present O.A.

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and therefore pending disposal of the O.A. the post of GDSBPM, Kalio BO should not be filled up.

6. We have heard the learned counsels from both the sides. The limited question involved in the present O.A. is whether the applicant has a legal right to be transferred as GDSBPM, Kalio BO as claimed by him. Rule-3 of GDS (Conduct & Employment) Rules, 2001 stipulates that the limited transfer facility to GDS from post/unit to another will be subject to fulfillment of the following conditions.

- i) A GDS will normally be eligible for only one transfer during the entire career.
- ii) 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.
- iii) TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to the cycle beat in respect of GDS MD/MC/Packer/Mail Messenger in terms of Directorate letter No.14-11/97-PAP dated 1.10.1987.
- iv) Past Service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. GDS will not have any claim to go back to the previous recruitment unit/division. When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.
- v) Transfer will be at the cost and expenditure of GDS. No expenditure whatsoever on this

account will be borne by the Department under any circumstances.

- vi) Request for transfer of the GDS will be confined to transfer within the same Circle.
- vii) No transfer request will be entertained within 3 years of initial recruitment.

7. Clause - (e) of a clarification dated 10.4.2012 issued by the Department of Posts on the subject of limited transfer facility to Gramin Dak Sevaks reads as under.

"the existing provisions governing Limited Transfer Facility do not prescribe any restriction for allowing transfer from one category to another and amongst the various categories of posts irrespective of TRCA slabs prescribed for these categories and even from one wing to another i.e., RMS to Postal or vice versa. The only requirement is fulfillment of required educational qualification and other conditions for limited transfer facility".

8. In the present O.A., the intervener has submitted that he has been duly selected in a proper selection process and has submitted all the required documents. The applicant has already been selected and posted as GDSMC at Goladhari B.O. since 2006. Both in the O.A. and in his reply to M.A. filed by the intervener, the applicant simply states that his native place is 20 kms. away from his present place of posting and he has to look after his widower father who is about 80 years old.

9. We have considered the submissions made by the parties. The distance of 20 kms. from the applicant's native place to his present place of posting is not a sufficient ground for seeking transfer from Galadhari BO to Kalio BO. In a catena of

judgments the Hon'ble Supreme Court has held that who should be transferred where, is a matter for the appropriate authority to decide. "If a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration". [Union of India vs. S.L.Abas (1993) 4 SCC 357]. In Rajendra Singh vs. State of U.P. (2009) 15 SCC 178, it has been held by the Hon'ble Supreme Court that "a Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other". We have also taken note of the decisions of the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SCC 299, Abani Kanta Ray vs. State of Orissa 1995 Suppl. (4) SCC 169, Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532 and N.K. Singh vs. Union of India & Ors. (1994) 6 SCC 1998 laying down the limited scope of interference by the Courts/Tribunals in the matter of transfer.

10. Considering the facts of the case and the judicial pronouncements as stated above, we find no illegality committed by the official respondents. In view of this, the O.A. being devoid of merit is dismissed, with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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