

11-15

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

O.A.No.274 of 2003 &
M.A.No.111 of 2004.

November 7, 2006

CORAM:-

**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER &
HON'BLE MR. R R BHANDARI, ADMINISTRATIVE MEMBER**

Dungar Lal S/o Shri Bhanwarji, aged 38 years, r/o village - Awarda,
Post Goddana, Tehsil - Jhadol, District - Udaipur (Raj.).

... Applicant

By : Mr. B.L.Swami, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. The Senior Superintendent Post Offices, Udaipur Division, Udaipur (Raj.).
3. Harish S/o Shri Khumaji, R/o Village-Awarda, Post Goddana, Tehsil - Jhadol, District - Udaipur (Raj.)

... Respondents

By: Mr. M. Godara, Advocate and Mr. Vinod Mathur, Advocate, for respondents' No. 1 and 2
None for respondent No. 3.

ORDER

(HON'BLE MR. J.K.KAUSHIK, JM)

Shri Dungar Lal has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, wherein he has prayed for all possible reliefs numbering to 8. The main reliefs in short are : -

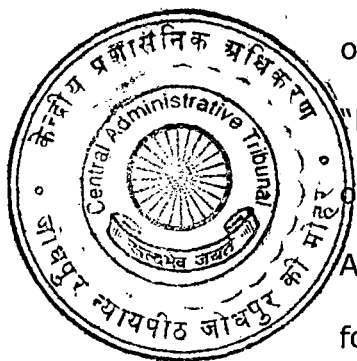
- (1) Issue direction to prove appointment to the petitioner on the post of Rural Postal Servant from the date respondent No.3 was appointed.
- (2) Quash appointment order of respondent No.3. (3) Provide appointment to the applicant priority basis in view of the provisions of Section 25-H of the I.D. Act. (4). Make payment of the salary on the

T-4
17

basis of equal pay for equal work, in minimum pay scale of the pay of Group IV. (5). Termination of the applicant be declared null and void. And (6). Consider the case of the applicant for regularisation etc. etc.

2. We have heard the learned counsel for both the parties at great length and have anxiously considered the pleadings as well as the records of this case. The abridged facts as averred in the pleadings of the applicant are that the applicant was appointed to the post of Rural Postal Servant-cum-In charge of the Panchayat Sanchar Sewa Kendra, Godana, vide order dated 13.4.1998 (Annexure A-3). He worked on the said post till 11.2.2002, when his service came to be terminated on account of closure of Panchayat Sanchar Sewa Kendra (for short "Kendra"). He was not given any prior notice or afforded reasonable opportunity of hearing as per the provisions under Industrial Disputes Act. A notification came to be issued on 3.7.2003 inviting applications for the post of Rural Postal Servant, Kendra. The applicant also submitted his application but the respondent No.3 who is relative of the Postmaster has been accorded the appointment and the candidature of the applicant was neglected despite the fact that he has got four years' experience in the respondent department. The applicant was paid consolidated salary of Rs. 300/- per month and discharged the duties meant for Class IV employee. He was not paid regular salary as admissible to regular class IV employees. The Original Application has been filed on numerous grounds mentioned in Para 5 and its sub paras.

3. The respondents have contested the O.A. by filing a detailed and exhaustive reply. It has been averred that on 30.9.1996, the



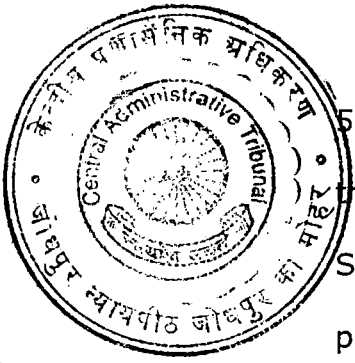
respondent No. 2 issued an order to open a Panchayat Sanchar Seva Kendra at Village Godana with the terms and conditions as mentioned in Annexure A-2. The applicant was nominated by the Sarpanch and was ordered to work as Temporary In charge of Kendra on 13.5.1998 (Annexure A-3), which was a stopgap arrangement, purely on temporary basis. On 4.2.2002, The Kendra became a branch post office w.e.f. 11.2.2002. A Gramin Dak Sewak (for short GDS) of Neighbouring B.O.Gogla was given the charge of the B.O. till the appointment of regularly selected candidate is made by terminating the engagement of the applicant. The further defence of the respondents is that the respondent No. 3 has been assessed as most suitable candidate and thus given the appointment on the post. There is no provision to give any preference to a person who has worked in Kendra. The applications were invited for the post of GDS, Godana. No application was submitted by the applicant in response to the said advertisement. The selection was held in accordance with the rules. It is the Panchayat who employed the applicant as in charge of the Kendra. The applicant has never served as Rural Postal Servant. There is no question of issuing show cause notice to the applicant and none of the provisions of Industrial Disputes Act, have been violated. The applicant was also paid a commission of 5% of the sale of stamp and stationary and 50 paise per registered article booking was also payable to the applicant, in addition to the fixed allowance of Rs. 300/- . The grounds raised in the O.A. have generally been denied. It is followed by rejoinder to the reply. It has been averred that the applicant was kept in dark with assurance that his case would be considered sympathetically but he was not appointed. His application



2

was not accepted on the pretext that the post advertised was for S.C. category whereas the applicant belongs to OBC category.

4. The learned counsel for both the contesting parties have reiterated the facts and grounds raised in their respective pleadings as noticed above. The learned counsel for the applicant has vociferously argued and submitted that a grave injustice has been caused to the applicant. His services have been terminated in an unceremonious way without following the principles of natural justice. When the post was sought to be filled in on regular basis, his candidature has not been considered and he was not placed in the minimum of the pay scale as applicable to the Group 'D' employees.



5. Per Contra learned counsel for the respondents has submitted that the applicant was engaged as In charge of Kendra on the proposal of Sarpanch and his appointment was made without following the due procedure or recruitment rules. A regular appointment was made on the post of Gramin Dak Sewak - Branch Post Master (GDS-BPM) therefore, the temporary arrangement had to be dispensed with. The applicant has absolutely no vested right to hold any post. He was engaged to work for a fixed salary of Rs. 300/- P.M. and question of his being employed in regular pay scale does not arise.

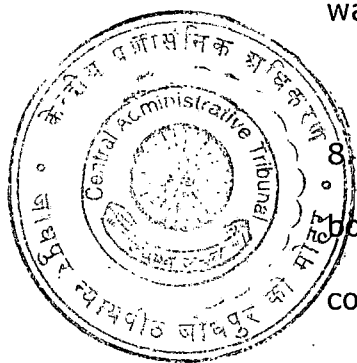
6. The post of temporary in charge of the Kendra came to be impliedly abolished since a full-fledged post of GDS BPM was created. He has also contended that the post of GDS BPM was reserved for SC category and question of considering the case of the applicant against the reserved point meant for SC category does not arise since the

2/

10

applicant belongs to OBC category. In this view of the matter, the applicant has no case for interference by this Bench of the Tribunal.

7. A Miscellaneous Application has also been filed for condonation of delay. The cause of action has arisen to the applicant on 11.2.2002, therefore, this Original Application ought to have been filed by 10.2.2003 but the same has been filed on 15.9.2004. Thus, there is a delay of about 1 year and 7 months in filing of this Original Application. The grounds for condonation of delay as narrated in the Miscellaneous Application are that the applicant made a representation on 20.3.2003 but no response was given and nothing was done to redress the grievance of the applicant.



8. We have considered the rival submissions put forth on behalf of both the parties. We would like to first advert to the application for condonation of delay. The respondents have not filed any reply to the same and the delay is about one year and 7 months. The applicant has admittedly filed a representation in the matter to the respondents but no response was given. In this view of the matter, we are inclined to use our discretion in favour of applicant and condone the delay in filing of the O.A. since there are good and sufficient reasons for same and the M.A. is hereby accepted and stands disposed of accordingly.

9. Now adverting to the crux of the matter involved in this case. We find that that there are lots of factual discrepancies in the pleadings of the applicant. It has been averred by the applicant that he was appointed to the post of Rural Postal Servant. This is not borne out from any of the records. Even the so-called appointment letter does

2

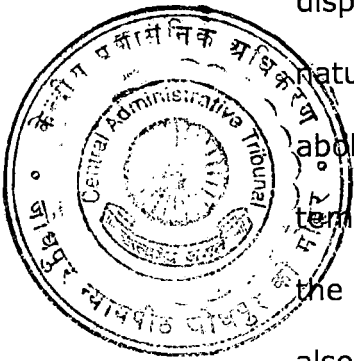
7-10
21

not show this. The Annexure A-1 is a notification for filling up the post of GDS-BPM and the post is reserved for SC category. The post of Rural Postal Servant is quite distinct from the post of that of GDS-BPM; the later being a post regulated by GDS (Service & Conduct) Rules 2001. On the other the engagement as Rural Postal Servant is regulated by separate instructions, said to be annexure to Annex A/2 but not made available to us. In any we are persuaded that the respondents contravened any of the provisions of law in not considering the candidature of the applicant on the post of GDSBPM.

10. The arrangement on the temporary in charge of the Kendra was dispensed with since a regular post was created. The rule principles of natural justice are not required to be followed when a post is abolished. The plea that for the his experience on the post of temporary in charge of the Kendra, he should be given preference on the post of GDS BPM, a different post, is not sustainable. Otherwise also it is fairly well settled by a constitution bench of this Tribunal at Bangalore Bench in case of **D M Nagesh and ors V. The Asst SPO, Bangalore South**, 2000 (2) ATJ CAT 259, wherein it has been held that no weightage is to be given for past experience gained as a substitute GDS, while making selection on the GDS posts.

11. Now we advert to the regularization of the applicant- Firstly, the applicant has not specified the post on which regularization us sought. Admittedly, the post of GDS BPM he has neither eligible nor worked so question of regularization does not arise. As regards other post is concerned, the same has been abolished and one cannot be regularized against non-existent post. This is besides the fact that

2




applicant never faced any selection nor his appointment was done under any recruitment rules and his engagement itself was de hors of rules. The identical issue has already been settled and we would refer to one of the recent judgment of the Apex Court in the case of **Secy. State of Karnataka v. Umadevi** (2006) 4 SCC 1. Para 6 of the same being relevant is reproduced as under:



"6. The High Court did not have the benefit of considering the recent decisions of this Court including the Constitution Bench judgment in Secy., State of Karnataka v. Umadevi. In the said decision it has categorically been held that the appointments made on a contract basis or on daily wages and in violation of the statutory rules or the Rules framed under the proviso appended to Article 309 of the Constitution of India, being void ab initio and thus nullities and hence the question of regularizing their services would not arise".

Applying the aforesaid proposition of law to the instant case, the prayer relating to the regularization is totally misconceived and is rejected. The plea relating to making of payment in the regular pay scale is equally unsustainable for obvious reasons that the applicant was not employed against any group D post.

12. In view of what has been discussed above, this Original Application sans merit and is dismissed accordingly. However, there shall be order as to costs.


(R.R. BHANDARI)
Administrative Member

HC*


(J.K. KAUSHIK)
Judicial Member

Set to R-3 w/207W 114 at 27.11.06

Tru
24/11/06

Set to Allent
G10 127/119 12.06