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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 321/2004

Date of order: 20 November, 2006

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

Narayan Kumar Ojha S/o Shri Shyam Sunder Ojha, aged about 23 years, resident of – Rathori Kuwa, in front of Gurdawara, Nagaur (Raj.), at present employed on the post of G.D.S. B.P.M. Phirod, District – Nagaur (Raj.).

...Applicant.

Mr. B. Khan, counsel for the applicant.

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Post & Communication, Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Western Region, Jodhpur (Raj.).
3. Superintendent, Post Office – Nagaur, District – Nagaur (Raj.).

...Respondents.

Mr. M. Godara, Advocate & Mr. Vinit Mathur, counsel for respondents.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Narayan Kumar Ojha has questioned the validity of order dated 14.12.2004 at annexure A/1 and has sought for quashing of the same in addition to a direction to the respondents to allow him to continue on the post of GDS BPM, Phirod, amongst other reliefs.

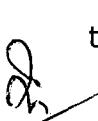
2. We have heard learned counsel for both the parties at a considerable length and have carefully perused the pleadings as well as the records of this case.



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3. The brief facts of the case are that the applicant possesses the qualification of 12th class passed from the Board of Secondary Education, Rajasthan at Ajmer. He was provisionally appointed to the post of GDS BPM, Phirod vide letter-dated 09.09.2002. The appointment was made against the post on which one Shri Rishi Kumar was employed but was facing a disciplinary case and the applicant's appointment was made conditional. He proceeded on leave from 07.12.2004 to 16.12.2004 after giving the charge to one Shri Manoj Kumar Ojah as "alternative" BPM as per rules. Said Shri Manoj Kumar Ojha performed the duties till 10.12.2004 and thereafter he was not allowed to perform the duties. The applicant reported on 17.12.2004 to Branch Office Tausar for taking the Dak but he was informed that no Dak was to be given to him. He made a representation dated 18.12.2004 requesting for taking him on duty. An order dated 14.12.2004 (Annex. A/1) came to be issued vide which a direction was given to assign the job of the post of GDS BPM Phirod to GDS MC Tausar and the duty was to be performed by GDS MC. The GDS MC Tausar i.e. Shri Manohar Lal Bhargava is only 8th class passed and not qualified to hold the post of GDS BPM. The Original Application has been filed on numerous grounds enumerated in para 5 and its sub-paras.

4. The respondents have contested the case and have filed a detailed reply to the Original Application. It has been averred that the applicant was provisionally engaged on the post of GDS BPM, Phirod since a regular incumbent was under put off duty and facing the disciplinary proceedings. The requisite condition was mentioned in his appointment letter. The disciplinary proceedings were finalised and the same culminated into imposition of penalty of removal from



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service vide letter dated 26th February 2004. The applicant was continued to work on the said post since no regular selection was made. From 7th December 2004, the applicant absented himself from duty unauthorisedly and his services were discontinued vide order dated 14th December 2004. The charge of the post was directed to be handed over to Shri Manohar Lal Bhargava, a regular GDS MC, Tausar Branch Post Office. This was done by clubbing the duties of both the Branch Post Offices as per the instructions contained in the DG (P) New Delhi letter dated 17th Feb., 2004 and the Principal Chief Post Master General Rajasthan Circle, Jaipur vide letter dated 1st April, 2004. The further defence of the respondents as set out in the reply is that Phirod and Tausar both the Branch Post Offices were running in the annual loss of Rs. 24,035/- and Rs. 55,061/-, respectively, which is beyond the permissible limits, therefore, by clubbing the duties of both the Branch Post Offices together the charge was handed over to a regularly selected GDS MC, Tausar, Shri Manohar Lal Bhargava. The Competent Authority approved no substitute of the applicant. The regular appointment could not be made since certain restrictions have been imposed on filling up the vacant GDS post. The grounds raised in the Original Application have been generally denied. The same is followed by a short rejoinder to the reply. It has been averred that the order-dated 14.12.2004 was not communicated to the applicant. As per the rules in force, the applicant is entitled for the leave. The charge of the post office was with his brother and there was no question of giving the charge to Shri Manohar Lal Bhargava on 15.12.2004.

5. Both the learned counsel for the parties have reiterated the facts and grounds mentioned in their respective pleadings. Learned

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counsel for the applicant has submitted that there has not been any change in the circumstances from what were there under which the applicant came to be provisionally appointed. He has further submitted that the post on which the applicant has been continuously employed has not been abolished. He next contended that giving of the charge of the post to GDS MC who is only 8th class passed and a lower post to the BPM, causes anxiety and doubt as to the fairness and necessity of such arrangement. He has also submitted that on the strength of the interim order passed by this Bench of the Tribunal, the applicant has been continuing on the post of GDS BPM, Phirod. On the other hand, learned counsel for the respondents has submitted that the post office in which the applicant has been working is running in loss and therefore as an economic measure, the charge has been sought to be given to the other employee who is working on regular basis. This has been considered expedient so as to curtail the expenditure. He has further submitted that the applicant has not faced any selection and he was appointed only on provisional basis. He has, therefore, no vested right to hold the post and at the most he can claim the salary for a month in lieu of notice as per para 8 of the GDS (Conduct and Service) Rules 2001. Thus, no interference is warranted in the instant case.

6. We have considered the rival submissions put forth on behalf of both the parties. We find that there are lots of contradictions in the stands of the respondents. The impugned order contains the reason that the charge of the post is being given in pursuance with some order order-dated 14.12.2004. No such later communication is placed on records of this case. In the pleadings, it has come to notice that the service of the applicant were discontinued vide order dated 14.12.2004



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since the applicant absented himself from duty unauthorisedly. The other reason, which is contained in the reply, is that the post office of Phirod and Tausar were running in loss that was beyond the permissible limit, and therefore in the interest of department, by clubbing the duty of both the BPOs together, the charge was handed over to a regular GDS MC. In para 4.6 of the reply, it has been mentioned that the restriction has been imposed on filling up the vacant GDS posts even in cases of single-handed branch post offices and that is the precise reason that the regular appointment on the post in question has not been done. But the impugned order at annexure A/1 does not make the mention of any such reason. We also notice that it is not for the Court to interfere in the matter as to whether the Branch Post Offices should be discontinued or abolished. But it causes an anxiety and doubt that the regular post of EDBPM exists and without any cogent reason, it is being discontinued. The absence has been held to be misconduct and the action can very well be taken for the absence but the theory of discontinuance on the ground of absence seems to be not in consonance with the rules, may be an afterthought exercise. A conjoint reading of the defence version of the respondents, clearly discerns that there are lots of contradictions amongst them. Nothing prevented the respondents to abolish the uneconomical post (s) or to pass a specific order for clubbing the two posts. The fairness would have been that some eligible person should have been ordered to be given the charge. In such circumstances, we are not fully equipped with full details required to decide this case on merits and are left with no option except to remand the case to the competent authority for taking a decision in accordance with the rules in force.

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7. In view of what has been said and discussed above, we dispose of this Original Application with a direction to the respondent No. 2 to examine the case of the applicant keeping in view of our aforesaid observations as well as the rules in force and pass an appropriate order as expeditiously as possible. Consequences would follow. The interim relief already granted shall continue till such order is passed. No order as to costs.


(R R BHANDARI)
ADMINISTRATIVE MEMBER
(J K KAUSHIK)
JUDICIAL MEMBERKumawat

R/Copy
3/12/06
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Part II and III destroyed
in my presence on 11/4/14
under the supervision of
section officer () as per
order dated 31/01/14

Section officer (Record)

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S/ce