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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 308/2005

DATE OF ORDER: 28th November, 2006

Tara Devi : Applicant (s)

Mr. Vijay Mehta : Advocate for the Petitioner (s)

VERSUS

Union of India & Ors. : Respondent(s)

Mr. M. Godara &
Mr. Vinit Mathur : Counsel for the Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. R.R. Bhandari, Administrative Member.

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1. Whether Reporters of local papers may be allowed to see the Judgement ? *No*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

Bhandari
(R.R. Bhandari)
Administrative Member

JK Kaushik
(J K Kaushik)
Judicial Member

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

Original Application No. 308/2005
Date of order: 28th November 2006

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

Tara Devi wife of Shri Banshi Lal Jhanwar, aged 55 years, resident of village Sawa, District Chittorgarh. Ex-Gramin Dak Sevak Branch/Sub Post Master, Sub-Post Office Bijaypur, District Chittorgarh.

...Applicant.

Mr. Vijay Mehta, counsel for the applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, (Department of Post), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Chittorgarh.

...Respondents.

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

ORDER

(By Mr. J K Kaushik, Judicial Member)

Smt. Tara Devi has questioned the validity of Orders dated 18.7.2005, 23.9.2005 and 5.10.2005, Annexure A/1, A/2 and A/3 respectively. She has, inter alia, prayed for quashing of the same with a mandate to respondents to absorb (sic appoint) on the post of GDS BPM Ghatitawali with all consequential benefits, amongst other reliefs.

2. We have heard elaborate arguments advanced by both the learned counsel at the bar and have anxiously considered the pleadings as well records on this case. The material facts necessitating filing of this case are that the applicant possesses the educational qualification of eighth standard. She came to be appointed to the post of EDBPM, Seva in the year 1977. The PO Seva

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was upgraded to EDSPM Seva. However, the applicant continued to work against the said post, till she was relieved to join on the post of GDS SPM Boheda w.e.f. 4.3.2002. She was put on waiting list vide order-dated 19.9.2003 due to abolition of EDSPM post at Boheda. After obtaining her consent, she was posted as SPM Bijaypur where she joined on 1.8.2004. Due to reinstatement of regular incumbent, applicant's name was again put on the waiting list vide letter dated 21.9.2004.

3. The further facts of this case are that applicant was informed that she may join on the post of GDS MC Kannoj under BO Seva since she was only 8th class pass vide impugned order dated 5.10.2005. It has been averred that the applicant has been discharging her duties without complaint as EDBPM for about 25 years. At the time of her application the requisite qualification for the said post was VIII standard and even after amendment in RR in respect of minimum qualification as Matriculate for the post of EDBPM in the year 1992, the applicant was continued in employment on the post of EDBPM/SPM. By asking her to join on a lower post, the respondents wanted to obtain a refusal so that her name can be removed from the waiting list. The applicant submitted an application for her absorption on the vacant posts of GDS BPM at Ghatiyawali on dated 13.6.2005 but she was informed that the selection for the same was in final stage and she cannot be appointed on that post. Applicant was also informed that her candidature could not be considered since she did not possess the requisite educational qualification for the post of GDS BPM. Hence this OA has been filed on diverse grounds enumerated in para 5 and its sub-paras.

4. The respondents have contested the case and have filed a detailed counter reply. It has been averred that a notification was

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issued on dated 8.6.2005 for filling up the vacant post of GDS BPM at Ghatiyawali and last dated for submission of application was 11.7.2005. The applicant submitted her application for the same on dated 13.6.2005. She was suitably replied that since she did not possess the educational qualification i.e. Matriculation, she could not be absorbed on the said post of GDS BPM as an alternative measure. It has been further averred that if one who is offered an alternative post near to one's neighbourhood; refuses to accept the same, no further preference can be given against any other post. She has refused to accept the post of GDS MC and now one-year period of waiting list is also over; therefore, no interference is called for from this bench of Tribunal. The grounds raised in the OA have been generally denied. The same is followed by a rejoinder to reply wherein it has been stated that the applicant was given offer to join at a distant place Kannoj and her case was under consideration with PMG. The same could not be treated as refusal.

5. Both the learned counsel representing the contesting parties have reiterated the facts and grounds enunciated in the respective pleadings of the parties. The learned counsel for the applicant has cited a decision of coordinate bench of this Tribunal in case of **Shri Debendra Chandra Mudli Vs. Union of India & Ors** 2003 (3) ATJ page 105. As far as factual aspect of this case is concerned, it is true that the case of the applicant was considered for absorption on the alternative lower post of GDS MC at Kannoj for the reason that the applicant was only VIII pass, which is the requisite qualification for the said post. The applicant was initially appointed as ED BPM (known as GDS BPM) in the year 1977 and she possessed the requisite qualification meant for the same at the relevant time i.e. VIII pass. Her absorption on the

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vacant post of GDS BPM at Ghatiyawali was refused for the reason of her not possessing the educational qualification presently meant for said post. She was on waiting list from 21.9.2004 to 20.9.2005 (A/7). When the post of GDS BPM at Ghatiyawali fell vacant and was sought to be filled in, the applicant's name was on the waiting list and this position is explained in later part of this order.

6. Before advertizing to the crux of matter, we find it imperative to refer to the relevant instruction on the subject. Para 20 to the Chapter "Section IV Method of Requirement" of Department of Posts, GDS (Conduct and Employment) Rules, 2001, is relevant and contents of the same are reproduced as under:

"(20). Absorption of surplus ED Agent on waiting List- Clarifications have been sought on the following points:

- (i).whether such surplus/discharged ED Agents should be absorbed in incomparable ED posts or in any ED post;
- (ii).how long the name of such an ED Agent should be kept in the waiting list.
- (iii).whether the name of an ED Agent who refuses the ED post once offered to him should be removed from the waiting list;
- (iv).whether recruitment of ED Agents from outside candidates should be made or not when surplus ED Agents on the waiting list are available.

2. The above points have been carefully examined. Employment of ED Agents is mostly local in nature and is also on part-time basis. They can have other avocations also. Surplus ED Agents will, therefore, normally be interested in alternative employments only if it is offered near the place of their residence. Again, the EDBPMs/SPMs are required to reside in the post village, other categories of ED Agents are required to reside near the place of their work or the stage from where mails are exchanged. In view of those restrictions, a certain amount of flexibility in the appointment of these surplus ED Agents is necessary. It is, therefore, felt that it is not necessary to issue elaborate instructions on the subject, especially in regard to Item (i) above. It is for the appointing authority to ensure that displaced ED Agents are suitable for the alternative post.

3. As regards Item (ii) and (iii), the name of the surplus / displaced ED Agent should be kept on the waiting list for one year. If an ED Agent refuses to accept the offer of alternative employment which is at the same station or in the neighbourhood, his name should not be kept in the waiting list. If the post offered is at a place away from his place of residence, his name should be kept/continue to be kept in the waiting list. If a surplus ED Agent is not absorbed in another post within one year the name should be removed from the list.

The waiting lists should be prepared on sub-divisional basis for all ED Agents and on Divisional basis for EDBPMs/EDSPMs. The names in the waiting list should be arranged in order of total ED service rendered by the surplus/displaced ED Agent and alternative posts should be offered on the basis of seniority in the waiting list.

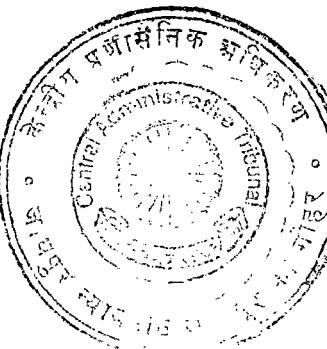
4. In regard to Item (iv), the recruitment of outsiders to the post of ED Agents, other than EDBPMs/EDSPMs should not be made until all the



surplus/ displaced ED Agents on the waiting list are re-employed or they refuse the offer of re-employment.

(D.G. P&T., Letter No.43-4/77-Pen., dated the 23rd February, 1979)."

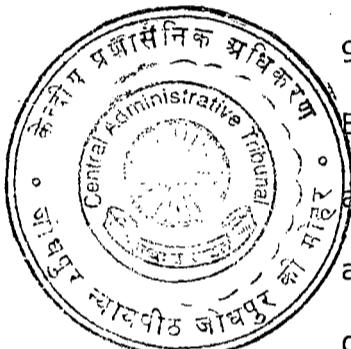
7. The first point to be considered is as to whether the name of the applicant was on the waiting list when the vacant post of GDS BPM at Ghatiyawali was sought to be filled in. There is no doubt that the applicant in the first instant was offered the post of GDS MC at Kannoj for absorption in accordance with rules in force. The offer for absorption was for a distant place and she did not submit any refusal. However, despite all this, her name was not deleted from the waiting list; rather it continued to be on waiting list. This position is evident from the subsequent communications 18.7.2005 and 23.9.2005; Annexure A/1, A/2, respectively. There could be contingencies for continuing the name on the waiting list despite refusal and even provision of relaxation of one year period is also there. The candidature of the applicant was not considered for want of required educational qualification of matriculation and not for the reason that her name was/stood deleted from the waiting list. An affidavit cannot be relied on to improve or supplement an order and this proposition of law has been held by a Constitution Bench judgement of Apex Court in case of **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi** (AIR 1978 SC 851), wherein their Lordships of Supreme Court have held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."



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8. The main question involved in this case is as to what significance is attached to the educational qualification for a GDS while considering his absorption on an alternative post? The bare perusal of the aforesaid instructions reveal that the only requirement for absorption is that the appointing authority should ensure that displaced EDA are suitable for the alternative employment. There is no mention of any minimum educational qualification for such EDAs. Thus no significance is attached to the educational qualification in such cases for obvious reasons that the EDA agents came to be appointed after due selection and possessed the requisite educational qualification at the time of their initial appointment.



9. In the instant case, rejection of the absorption on the post of GDS BPM on the ground of educational qualification is illogical and does not appeal to the reason. She was well qualified for the post of GDS BPM at the time of her initial appointment and has been discharging her duties satisfactorily even after 1991 when there was change of the educational qualification. So many other similar situated BPMs are being continued in service on the same post. One cannot become disqualified with subsequent change in educational qualification, otherwise her continuance on the post of BPM/SPM after 1991 in particular and other BPM/SPM appointee of pre-revised RR in general would not have been allowed. If such proposition of law as sought to be projected by learned counsel for respondents were allowed to prevail, the result would be absurd. Thus the action of the respondents in rejecting the case of applicant on the ground of change in educational qualification cannot be sustained.

Signature

10. Clarification No. 4 to para 20 supra gives a complete answer to the ancillary question that no recruitment outsider to the post of ED Agent, other than EDBPMs/EDSPMs could be made until all the surplus/displaced ED Agents on the waiting list are re-employed or they refuse the offer of re-employment. Thus the impugned order at Annexure A/1, cannot be sustained as the same is contrary to the said clarification. The judgement in case of **Shri Debendra Chandra Mudli** supra cited and relied upon on behalf of the applicant has no relevance to the issue involved in this case since the same was in different context. In that case, the matter was of a substitute who did not possess the requisite educational qualification but continued to work satisfactorily for a period of about five years. As noticed in the above paras, the facts of instant case are quite dissimilar.

11. In view of what has been said and discussed and the legal proposition crystallised above, we reach to an inescapable conclusion that there is ample force in this Original Application and the same stands allowed accordingly. The impugned orders dated 18.7.2005, 23.9.2005 and 5.10.2005; Annexure A/1, A/2 and A/3 respectively are hereby quashed. The respondents are directed to consider the absorption of the applicant on the post of GDS BPM at Ghatiyawali or nearby, as per the rules and our observations made above, forthwith and in any case not later than three months from the date of receipt of a copy of this order. The interim order granted earlier gets merged in this order. Costs made easy.

R.R.BHANDARI
(R.R.BHANDARI)
Administrative Member

J.K. KAUSHIK
(J.K. KAUSHIK)
Judicial Member

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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 31/10/14

~~Section officer (Record)~~