

1
72

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 208/07
JODHPUR THIS Day THE FEBRUARY 27, 2009**

CORAM:

**HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER (A)**

Chandresh Kumar @ Chunni Lal S/o Shri Ratan Lal, aged 38 years,
Ex-Gramin Dak Sevak (ED) Mail Carrier, Post Office Kelwa., District
Rajsamand ; resident of village Kelwa, District Rajsamand.

.... Applicant.

For Applicant : Mr. Vijay Mehta, Advocate.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, (Department of Post), Sanchar Bhawan, New Delhi.
2. Assistant Superintendent of Post Offices, Sub Division Kankroli, District Rajsamand.

.... Respondents.

For Respondents : Mr. M. Godara, proxy counsel for Mr. Vinit Mathur, Advocate .

ORDER

[PER SHANKAR PRASAD, MEMBER (A)]

Aggrieved by the order dated 28.03.2007 terminating his service in accordance with proviso to Rule 6 of EDA's (Conduct & Service Rules) 1964, the applicant has preferred the present O.A. He seeks quashing of the aforesaid order.



2. Annexure A/3 to the O.A. is the appointment letter of the applicant, which reads as under :-

(2)

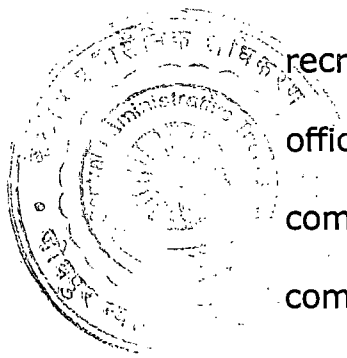
1
13

"Shri chandresh Kumra @ Chunni Lal Paliwal s/o late Shri Ratan lal Paliwal resident of Kelwa is hereby appointed as GDS mail carrier Kelwa PO under Kankroli HO w.e.f. dated 03/01/03 on completion of two years probation period. He is the son of late Shri Ratan Lal Paliwal ex-GDS mail carrier Kelwa who died on dated 25/10/2000 while in serviced. His date of birth is 20/11/1969 and he has passed VIIIth class. He should be paid such allowances as admissible from time to time.

Shri Chandresh Kumar @ Chunni Lal Paliwal should clearly understand that his employment as GDS mail carrier (Gram Dak Sevak mail carrier) shall be in a nature of a contract liable to be terminated by him or the undersigned by notifying the other in writing and that he shall be governed by the Department of Posts Gramin Dak sevak (Conduct & employment Rules 2001 as amended from time to time.

If the above conditions are acceptable to him, he should communicate in the Performa attached."

3. The respondents in their reply have stated that the father of the applicant was GDS MC of Kelwa SO who died while in service on 25.10.2000. The applicant was engaged as an outsider GDS MC on 27.10.2000 and discontinued on 21.12.2000. After his reengagement on 03.01.2001, his papers for compassionate appointment, under relaxation of recruitment rules, were submitted on 27.02.2001. The ASPOs Kankroli was not a competent authority to offer appointment to the applicant under relaxation of recruitment rules. The order of appointment issued by the said officer is *abinitio* null and void. The CRC rejected the case for compassionate appointment on 15.09.2005. The same was communicated to the applicant on 14.10.2005. The O.A. preferred



7/24

3

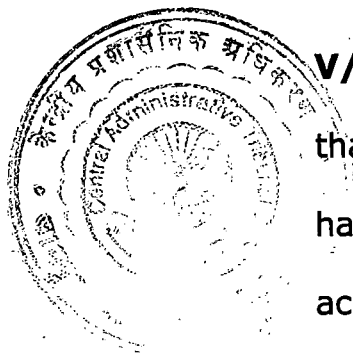
against the aforesaid order has been dismissed as premature. The mention of Rules 6 of earlier rules does not vitiate the order as the provisions of new Rule 8 are identical. They have requested that the O.A. be dismissed.

4. We have heard learned counsels.

5. The Swamy's compilation of GDS Rules shows that SDI In-charge of his Sub Division is competent to appoint GDS other than a GDS BPM. The appointment order produce at **Annexure A/3** does not refer to the fact that an application for compassionate appointment is pending. Even if the same was pending the services of the applicant have been discharged vide order dated 28.03.2007 that is after he has put in more than 3 years of service.

6. The GDS (Conduct and Service) rules confer powers on higher officials to terminate an improper appointment after putting the person concerned to notice thereof. The respondents for reasons best known ^{to them} have not invoked that clause.

7. Learned counsel for respondents has placed reliance on the decision of this Bench in **O.A. 16/2005 Shri Goverdhanlal Gayri V/s Union of India & Ors.** A perusal of the said judgment shows that the O.A. was held to be time barred and hence the Tribunal had not entered into the merits of the case. This decision is accordingly of no assistance. ^{to}

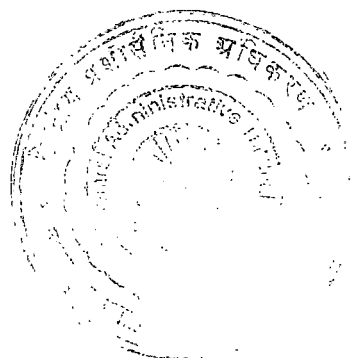


8. Learned counsel for the respondents has also placed reliance on the decisions of Hon'ble Delhi High Court in which a person appointed by way of stop-gap-arrangement was seeking regularization. Such is not the case here.

9. The learned counsel for the applicant has placed reliance on the decision in **Dinesh Chandra Vyas V/s Union of India**. The applicant therein had been engaged on 28th November, 2001 and his services were terminated by invoking the powers of Rule 6 (Rule 8 of new rules) in January 2006 i.e. after more than three years. The case of the respondents therein was that he has been appointed on a stop-gap-arrangement. The Tribunal held :-

"We are also supported by a decision of this very Bench of the Tribunal passed on 28th May, 2003 in O.A. No. 229 of 2002 - Ogar Mal Bhil Vs. Union of India and Others, cited on behalf of the applicant, wherein the services of the EDA was sought to be terminated under Rule 6 of the P&T EDA (Conduct & Service), Rules, 1964 which is pari materia with the aforesaid Rule 8 of the Rules. This bench of the Tribunal in Para 10.1 of aforesaid decision have held as under:-

"10.1 – It is admitted that the applicant had rendered more than three years continuous service. Therefore, the services of the applicant could not be terminated even under the provision of Rule 6. As a matter of fact, by rendering more than three years continuous service, the applicant had attained higher status than that of an employee whose services by following the procedure under Rule 7. It is relevant to point out that it is not the case for the respondents that the posts on which the applicant was working has been abolished."



5 16

(5)

Keeping in view the aforesaid legal position, the impugned order has to be held as without jurisdiction and an arbitrary exercise of power and, therefore, the same cannot be sustained in the eye of law and the O.A. deserves to be allowed on this count alone."

10. Coming to the facts of this case, we find that the services of the applicant has been terminated after more than 3 years. This could not have been done by invoking the powers mentioned in the termination order. The impugned order is therefore quashed and set aside. The applicant shall be reinstated in service and will be entitled to consequential benefits. This order shall not stand in the way of respondents taking action under other provisions of the Rules. The order regarding reinstatement shall be passed as expeditiously as possible and preferably within one month of the receipt of the order. No costs. *Thus, this O.A. is disposed off. See*

Shankar Prasad
[Shankar Prasad]
Member (Admn.)

N.D. Raghavan
[N.D. Raghavan]
Vice Chairman

Rss

Part II and III destroyed
in my presence on 8/27/85
under the supervision of
section officer (J) as per
order dated 8/27/2015

Section officer (Record)

R. Lynn
W. Lee
42

973