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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No. 231/2008
&
M.A. No. 126/2008**

Date of decision: 5th April, 2011.

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Gopa Ram son of Shri Laxmana Ram, Meghwal, Ex-Gramin Dak Sevak Branch Post Master, Post Office Safada, District Jalore, R/o Village Safada, District Jalore.

..... 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 Office, Sirohi.
3. Assistant Superintendent of Post Offices, Jalore.

..... Respondents

Mr. M. Godara, proxy for Mr. Vinit Mathur, counsel for the respondents

ORDER
Per Mr. Sudhir Kumar, Member (Administrative)

The applicant is before us with a prayer to be reinstated on the post of GDSBPM at Safada, with all consequential benefits, as the respondents have allegedly illegally deprived him of his appointment and have rendered him unemployed through impugned Annexure A/1 dated 18.7.2007. He has also prayed

for any other order giving relief apart from the costs being awarded to him.

2. The brief facts of the case are that a notification dated 17.8.2002 was issued for selection of a GDSBPM, and the applicant was appointed against the said post by Respondent no.2 vide order dated 24.12.2002, and he was handed over the charge of that post on 30.12.2002 (A/3). Thereafter, the respondent no. 2 himself issued an order on 14.7.2003, directing the Respondent no.3 to take back the charge from the applicant, and in compliance of those orders, through order dated 21.7.2003, Respondent no.3 directed the Mail Overseer to take over the charge from the applicant, which was done vide (Annexure A/4) dated 23.7.2003. After a break period of 2 days, the applicant was again handed over the charge on 23.7.2003 (through Annexure A/5). Second time, once again through instructions dated 22.9.2003, Respondent no.3 again directed the Mail Overseer to take over charge from the applicant for 3 days. The applicant submits that this was again repeated on 22.9.2003, but after 3 days he was again handed over the charge on 26.9.2003. Thereafter, Respondent no.3 again issued similar instructions on 16.12.2003, and the charge was again taken from the applicant on 19.12.2003, and again handed over to the applicant on 20.12.2003 (through Annexure A/8). The same process was again repeated on 11.3.2004 and 16.3.2004. The applicant was thereafter again relieved on 23.8.2004 (Annexure A/11) and claims to have been handed over charge

once again on 24.8.2004 (through Annexure A/12) even though it does not contain the signature of the relieved officer, and contains the signature only of the applicant as the relieving officer. Thereafter, similar instructions were issued on 6.12.2004 for again giving a 3 days' break in the service of the applicant, and the applicant claims that the charge was taken over from him on 7.12.2004 (F.N.) and handed over again the same date on 7.12.2004 (in the A.N.). Thereafter, as per his own petition dated 6.12.2006 produced by the applicant (at Annexure A /14), it transpired that through Annexure A/2 dated 29.12.2006, once again orders were issued by the Respondent no.3, in terms of the instructions dated 21.11.2006 of Respondent no.2, to take over the charge from the applicant, and it appears that he was relieved on the same date. The applicant thereafter prayed to the respondents for being appointed again, through his petition dated 6.12.2006 (Annexure A/14), referred to above, but the respondents did not heed his request, and the Respondent no.2 rejected his request through letter dated 18.7.2007 informing the applicant that his appointment was not legal and regular, and it is not possible to reinstate him on the post of GDSBPM.

3. The applicant has stated that he was working continuously on the post of GDSBPM for nearly 4 years from 30.12.2002 to 29.11.2006, and only artificial breaks were intentionally given so as to deprive him from earning higher status, and to deprive him of all the benefits envisaged in the

GDS Rules. He prayed that the artificial breaks deserve to be ignored, and the applicant ought to be treated as having continuously served the respondents. The applicant had therefore submitted that the impugned order at Annexure A/1 dated 18.7.2002 and Annexure A/2 dated 29.11.2006 were *prima facie* illegal and deserve to be quashed. He prayed that these orders are not speaking orders, and have not mentioned the reasons for termination of his services after his having completed 4 years of service. It was further submitted that when he had been appointed properly after scrutiny of applications received in response to the notification issued by Respondent no.2, it was only as an after thought that the respondents had held that his appointment was irregular and illegal, but that through such an after thought, his services could not have been terminated without giving him an opportunity of being heard. He submitted that the respondents have not disclosed as to how and when the illegality came to their notice, and what departmental action had been taken against the officer who had given him the illegal appointment. He submitted that the impugned orders are without jurisdiction, since the GDS Rules do not confer any powers upon the respondents to terminate the services of an employee who has served for more than 4 years, and therefore such orders are to be held to be without any authority and jurisdiction, and deserve to be quashed. He, therefore, prayed that the action of the respondents is arbitrary and discriminatory and in violation of his

rights under Articles 14 & 16 of the Constitution of India, and against the principles of natural justice, as no opportunity of personal hearing had been given to him before issuance of the impugned orders.

4. The applicant further submitted that if his appointment was of a provisional nature, even then also the termination of his services after completion of 4 years is a violation of GDS Rule 8, as the said Rule does not apply to any person who has been in continuous employment for more than 3 years. He submitted that in fact by virtue of his having rendered more than 3 years of service, he could have been removed only by following the procedure under Rule 9 of the GDS Rules, 2001, and in that sense also the order of termination of his services is violative of the service rules which govern the service conditions of GDS employees. He further submitted that the impugned order is further illegal because he has not been paid any allowance in lieu of notice, and ~~as~~ his termination has been ordered in violation of the various decisions rendered by this Tribunal, including the decisions rendered in O.A. NO. 229/2002 dated 28.5.2003 and in O.A. No. 23/2006 dated 11.12.2006. In these circumstances, the applicant prayed for the O.A. to be allowed.

5. The respondents filed their written statement on 28.4.2009, and admitted the fact that a notification for filling up the post of GDSBPM, Safada, which had fallen vacant w.e.f. 1.1.2002, had been issued through public advertisement through Employment Exchange, and it was mentioned that the post is

for the Scheduled Tribe category, and if a ST suitable candidate does not become available, then the appointment could be made from other categories. Five candidates had applied, out of which two applications were rejected as not being complete, and the remaining 3 applications were processed, and the income certificate of one of the 3 was found to be false, leaving only 2 candidates in the panel of selection. At that stage, in accordance with the instructions contained in the Directorate of Posts letter dated 7.11.1997, the post was proposed to be treated as unreserved, and a proposal was sent accordingly on 18.11.2002 to the Post Master General, Rajasthan Western Region, Jodhpur.

6. It was submitted that on 3.12.2002 the applicant submitted an application for appointment on temporary basis on the said post till the regular selection is made, and considering u. this prayer favorably, the applicant was engaged on provisional basis vide order dated 24.12.2002, w.e.f. 30.12.2002, as a stop gap arrangement, and his services were discontinued from time to time, since in his appointment letter itself it was clearly stipulated that the competent authority can terminate his appointment at any time without notice and without assigning any reasons. The respondents further submitted that later a person having secured higher marks than the applicant was issued a letter of appointment, but he also refused to join, and hence no selection on regular basis could be made to that post. Later on, when one surplus GDS namely Sh. Laxman was found available, the applicant was relieved on 29.11.2006, and the

charge of GDSBPM of Safada was handed over to the said Sh. Laxman on 4.12.2006. It is further averred that in view of the orders passed by a Bench of this Tribunal in O.A. No. 1/2003 titled **Manaram Vs. Union of India & Ors.** dated 3.12.2003, the applicant could have been relieved by appointing another person on provisional basis, as was done in this case. The respondents thereafter admitted the various facts stated by the applicant of his being given the charge and also relieved a number of times, at the intervals of 90 days at a time, but stated that such procedure was permitted under the Rules.

7. It was further stated that the respondents have acted in accordance with the Rules and Instructions of the Directorate, and the provisional engagement and his termination were as per the written consent given by the applicant as per his application dated 15.12.2002. It was denied that there has been any malafide exercise of powers, and it was submitted that the applicant is not entitled to get any relief from this Tribunal, and being devoid of merits and substance, the O.A. deserves to be dismissed.

8. The applicant then filed a rejoinder on 10.11.2009, denying that he had ever been given a copy of the order dated 24.12.2002 regarding his engagement being only provisional. It was reiterated that the respondents have no right and authority to give the artificial breaks in the manner they had done, and that the appointment of the applicant was not in any manner illegal and irregular. The remaining contentions of the applicant



were a repetition of his submissions in the O.A., and it was prayed that the O.A. may be allowed.

9. The respondents thereafter filed an additional affidavit on 12.5.2010, and submitted that the appointment of the applicant was made only as a stop gap arrangement, which had to be discontinued after the ~~the~~ expiry of the specified time. period as per Rule 16 (ii) of GDS (Employment and Conduct) Rules, 2001. It is further submitted that it was only due to the pendency of a Court case that the selection proceedings could not be finalized earlier.

10. The applicant has also filed an M.A. 126/2008, seeking condonation of delay and explained the circumstances under which he had given a Vakalatnama (Annexure A/15) in favour of the Advocates Sh. Vinod Rajori and Rajesh Kumar, but that they did not file an application, and handed over the papers including the Vakalatnama back to him only on 20.10.2008. On this ground the applicant had prayed for the O.A. to be entertained, and the delay, if any, to be condoned, so that he is not deprived of his rights due to the negligence of his earlier lawyers, since he had been himself pursuing the matter with his lawyers, and there had been no negligence on his part. This M.A. was objected to by the respondents.

11. We have heard the learned counsel for the parties and carefully gone through the material placed on record.

12. During the course of hearing the learned counsel for the applicant argued along his contentions already taken in the O.A. as well as in the rejoinder.

13. The learned counsel for the respondents, on the other hand, emphasized on the notification dated 14.8.2002 itself, which had stated that the post of GDSBPM Safada is reserved for ST category, and only if at least 3 candidates are not available for consideration, the post would be considered as unreserved, and therefore permission had been granted for other category candidates also to apply. This was stated once again in the covering letter dated 14.8.2002 also, through which the vacancy notification was sent to the Employment Exchange at Jalore.

14. To this the learned counsel for the applicant responded that once the requisite number of ST candidates had not been available, and only two candidates remained in the fray, as submitted by the respondents themselves, there was nothing which prevented the respondents from making regular appointment against that post. However, the learned counsel for the respondents filed a copy of the orders passed in **O.A. No.**

1/2003 Manaram Vs. Union of India and Ors. decided on 3.12.2003, which case had dealt with the earlier notification issued on 27.12.2001, inviting applications for the same post of EDBPM at village Safada. On perusal of that Judgment and order, it is seen that the said Manaram was appointed to the same post w.e.f. 1.2.2002, with a condition

that it was a provisional appointment and could be terminated when regular appointment is made, and the Bench had in paragraph 6 of the order noted as follows:-

" The further defence as set out in the reply is that the applicant was provisionally appointed and he had completed more than 90 days and as per the instructions contained in para 10 of the Directorate's letter dated 2.10.2002, provisional appointment was to be discontinued and one Shri Gopa Ram was engaged on a provisional basis. Shri Gopa Ram was also asked to hand- over the charge to the Mail Overseer till a regular selection is made to the post. It is further stated that in the appointment order, there is a clear mention that the competent authority can terminate his appointment at any time without any notice and without assigning any reason. It is also averred that when a person having secured higher marks than the applicant was issued offer he refused and hence no selection on regular basis was made to the said post. It is prayed that the O.A. may be dismissed."

15. Further, in paragraphs 9 & 10 the Bench had recorded its findings as below:-

"9. On the contrary, the learned counsel for the respondents has submitted that in the reply clean breast of facts has been made in regard to the procedure adopted by them. Our attention was also invited to the policy decision in para 10 of Annex. 4 (letter dated 21.10.2002) wherein it has been specifically indicated that under no circumstances should such local arrangement exceed 90 days. He has also submitted that the post in question has been presently manned by Mail Overseer and there is no question of replacing the applicant by another provisional appointee and the judgments relied on by the learned counsel for the applicants have no application to the instant case. It is also submitted by him that regular selection to the post is yet to take place. As regards the words used in the appointment order (Annexure A/3) of the applicant i.e. 'selected persons' "Stop Gap Order" and therefore there is no question of any annotation that the appointment of the applicant is being made on regular basis. The applicant was never appointed on regular basis. It is also contended that the services of the applicant have been terminated as per the conditions stipulated in the appointment letter and therefore there has been no infraction of any of the Articles of the Constitution of India. Otherwise also the applicant does not have any indefeasible right to hold the post in question and the policy laid down by the department has not been challenged. Therefore the grounds raised in the O.A. are groundless.

10. We have considered the rival contentions raised on behalf of the parties. At the very outset we have perused the appointment order of the applicant at Annex. A.3 and the perusal indicate that the applicant was appointed only on a provisional basis with no right whatsoever. It was only a stop gap arrangement. The applicant has no right for regular appointment which is based on the marks obtained in the matriculation examination. From a perusal of the comparative chart of the candidates, it is clear that the applicant has secured much less mark (except of one) and when the selection is to be made on the basis of marks obtained in the matriculation examination from amongst the candidates applied for the post, the applicant's name stood at Sl. No. 4: The factum regarding marks and other details brought out in the reply have not been controverted by the applicant by filing rejoinder. Thus we have no reason to disbelieve the version of the respondents. If that be so, the inescapable conclusion would be that the action of the respondents cannot be faulted and none of the right of the applicant has been infringed."

16. From this it is seen that the applicant of the present O.A., who was provisionally appointed by the respondents in place of the applicant in O.A. 1/2003 (Manaram) has benefitted from this order dated 3.12.2003.

17. During the course of the arguments the learned ^{for the applicant} counsel relied not only on the order cited by the respondents, but also on the order of the Tribunal dated 28.5.2003 passed in O.A. No. 229/2003 (**Ogal Mal Bhil Vs. Union of India & Ors.**) and orders dated 11.12.2006 (**Dinesh Chandra Vs. UOI & Ors.**) as well as the Judgment of the Hon'ble High Court of Rajasthan at Jodhpur dated 17.2.2010 in CWP No. 4380/2009 titled **Union of India & Another Vs. Chandresh Kumar & Chunni Lal.** On perusal of the order passed in the case of **Dinesh Chandra** (Supra) it is seen that the Bench had gone by Rule 6 of the Post and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964, wherein it had been

prescribed that when an employee has rendered more than 3 years' continuous service from the date of his appointment, his services could not be terminated even under the provisions of the said Rule 6 of 1964 Rules, and he could be removed from service only by following the procedure under Rule 7. The order in O.A. 23/2006 titled **Dinesh Chandra Vyas Vs. UOI & Ors.** dated 11.12.2006 had been passed in the context of the new GDS Rules, 2001, and it was held that when Rule 8 specifically provided for 3 years' continuous employment from the date of appointment as the cut off date for the employment being liable to be terminated at any time without notice, in case of a person who had worked continuously for 3 years, his services could not have been terminated without following the prescribed procedure. The Hon'ble High Court of Rajasthan at Jodhpur had also in its Judgment in the aforesaid CWP taken a similar view and had upheld the order of this Tribunal dated 20.3.2009 rendered in O.A. No. 208/2007 that after continuous employment of 3 years, the services of the petitioner could not have been terminated by the respondents without following the prescribed procedure.

18. In the light of the above cited submissions, the only point which is left to be examined by us now is as to whether the employment of the applicant was continuous for a period of more than 3 years or not. The applicant has produced copies of the successive orders issued after every 90 days' period by the Respondents 2 & 3 for directing the Mail Overseer to relieve the

applicant for a period of two to three days, and then to hand over the charge again to the applicant himself. The issue to be examined is as to whether such repeated handing over and taking over of the charge results in any discontinuation of the services or not.

19. From the Rule 6 of the 1964 Rules applicable to Extra Departmental Agents, and under the parallel Rule 8 of the new GDS Rules, 2001, it has been prescribed that up to the period of 3 years' employment, the services of the EDDA earlier (GDS now) could have been terminated by the respondent authorities without giving any reasons, by exercising their powers under the Rules. However, when this limitation of the period of 3 years' period of a sort of Probation comes to an end, and the incumbent acquires a kind of lien to hold the post, his services cannot then be terminated without following the proper prescribed procedure in this regard.

20. However, mere handing over and taking over of the charge with short gaps in between does not amount to a discontinuity in employment. Charge handing over takes place even when an official proceeds on Earned Leave or HPL, or any Leave of other kind other than C.L., and in the case of termination of the services of the government servant also. Therefore, the ploy adopted by the respondents in repeatedly resorting to enforced handing over of the charge by the applicant after almost every 90 days, and again being placed in ^{his} SL.

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charge after a gap of a couple of days cannot be held to amount to a discontinuance in the employment of the applicant.

21. Respondents have themselves accepted that at one point of time only 2 candidates had remained, and that they had removed Manaram and appointed the applicant in his place only because Manaram had filed a case, and the applicant had agreed to serve on provisional basis. The prayer of Manaram before this Tribunal was considered in the above cited O.A. No. 1/2003 and it was held that a provisional appointee could have been replaced by another provisional appointee. But, what was not mentioned by the concurrent Bench that day in so many words in its order was that this could have been done by the respondents only for a period of 3 years from the date of initial appointment of the concerned person, as had been done in the case of Manaram.

22. Therefore, in the case of the applicant, even though he was only a provisional appointee initially on 30.12.2002, since he continued to work, only with artificial breaks, even beyond the date of completion of 3 years from his initial appointment on the said post on 29.12.2005, the respondent authorities perhaps lost their powers, and ceased to be able to exercise their powers under Rule 8 of the GDS Rules, 2001 (parallel to Rule 6 of the EDA Rules, 1964) to terminate the services of such an appointee without following the due process as prescribed for such removal.



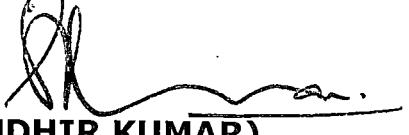
23. If the respondents had been able to appoint a permanent incumbent from within ST category for which this post was reserved initially, or from any other category, before or upto 29.12.2005, i.e. before the date the applicant completed 3 years of his nearly continuous provisional employment, the respondents may perhaps have had an excuse to use the powers given to them by the Rule 8/GDS/parallel Rule 6 of 1964 Rules.

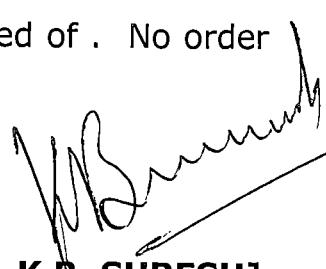
24. But, as admitted by the respondents themselves, the applicant continued to work even beyond that date 29.12.2005, and the applicant was working in the said post till November 2006, when he was summarily removed only to accommodate a person who had been declared surplus elsewhere, and who was appointed against that post from 3.12.2006.

25. It is therefore held that this cannot be a case of legitimate exercise of powers by the respondents to replace one provisional appointee by another provisional appointee, as laid down and upheld by the concurrent Bench in Manaram's case. Rather, in this case it appears that the applicant is correct in submitting that the ratio of the cases decided in O.A. No. 229/2002 (Ogar Mal Bhil), O.A. No. 23/2006 (Dinesh Chandra Vyas), and in O.A. No. 208/2007 (Chandresh Kumar), which order has been upheld by the Hon'ble High Court also in the D.B. CWP cited above, would be more applicable in his case, and the benefit of these Judgments would accrue to

the applicant, and it is therefore held that his removal by the respondents on 29.11.2006 was without jurisdiction and illegal.

26. In the result the O.A. is allowed, and the Annexure A/1 dated 18.7.2007, and Annexure A/2 dated 29.11.2006 are set aside, and M.A. No. 126/2008 stands disposed of. No order as to costs.


(SUDHIR KUMAR)
MEMBER(A)


[DR. K.B. SURESH]
MEMBER (J)

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