

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 2nd day of April, 2014

Original Application No. 95/2010

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Sohan Singh s/o Shri Jugat Singh, aged 36 years r/o Gram and post
Chandrakh via Ossian, Distt. Jodhpur, official address – GDS BPM
Chandrakh via Ossian, Distt. Jodhpur

.....Applicant

By Advocate: Mr. Kamal Dave

Versus

1. Union of India through the Secretary, Ministry of Communication,
Department of Post, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Jodhpur Division, Jodhpur.
3. Sub Divisional Inspector, Post Offices, North Sub Division, Jodhpur.

.....Respondents

By Advocate : Mr. Aditya Singhi on behalf of Ms. K. Parveen

ORDER (ORAL)

Per Justice K.C. Joshi, M(J)

The present OA has been filed by the applicant challenging the order dated 16.3.2010 (Ann.A/1) whereby the respondents have invited applications for filling the post of Gramin Dak Sevak Branch Post Master, Chandrakh and therefore, has sought the following reliefs:-

- a) That the order impugned dated 16.03.2010 may kindly be quashed and set aside.

~
ds

- b) That the applicant may be regularized inconsonance with mandatory instruction dated 21st October, 2002 being regularly selected provisional appointee, with all consequential benefits.
- c) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- d) Costs of the application may kindly be awarded in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that the applicant is holding the post of Gramin Dak Sevak Branch Post Master (GDSBPM), Chandrakh on temporary basis and pursuant to the notice inviting applications to fill up the post of GDSBPM, Chandrakh against temporary arrangement, he was selected amongst number of applicants. Thereafter the respondent department issued notification dated 24.6.2004 to fill the vacancy on provisional basis and the same was challenged by the applicant in OA no.172/2004, which was allowed by this Tribunal vide order dated 8th May, 2007 while quashing the notification dated 24.6.2004. The applicant has averred that the guidelines circulated vide communication dated 21st October, 2002 provides that where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selection provisional appointee against the said post without resorting to fresh recruitment. The applicant has been serving in the department for the last more than 7 years after undergoing the process of selection as provided for regular appointment after competing with other candidates but the department has issued notification for regular appointment which is in clear violation of condition No. 12 of circular dated 21st October, 2002 which provides that in the eventuality the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh

recruitment. Therefore, the applicant has filed this OA praying for the reliefs as extracted in para-1 above.

3. The respondents by filing reply to the OA have denied right of the applicant and submitted that for the purpose of conducting regular selection, applications were invited, but none could be selected because of non fulfillment of selection criteria. The applicant was one of the candidate and since the selection could not be pursued in these circumstances, the applicant was provisionally appointed and after appointment of the applicant, the services of regular incumbent i.e. GDSBPM Shri Panna Lal were dismissed vide order dated 18.3.2003 for conducting disciplinary proceedings. The OA No.172/2004 filed by the applicant was decided vide order dated 8.5.2007 restraining the respondents from replacing the applicant from the same kind of employee on the same kind of appointment/engagement without conducting/replacing the applicant from the regularly selected candidate, thus the respondents again initiated the proceedings for conducting regular selection for the post of GDS vide notification dated 16.3.2010. The applicant was also informed by the respondents to participate in the selection if he was willing to do so but instead of participating in the selection, he approached this Tribunal challenging the notification dated 16.3.2010 on the ground that instead of conducting regular selection his services should be regularized, but the same is not permissible in the eyes of law.

4. Heard both the parties.

5. Counsel for the applicant contended that the applicant was selected by due process on temporary basis pursuant to notice inviting applications

5

for filling up the post of GDSBPM, Chandrakh (Ossian) against temporary arrangement and the applicant was selected amongst number of applicants whose candidature were considered. The post fell vacant due to the reason that the incumbent holding the post Shri Panna Lal, GDSBPM was put off duty and, therefore, the applicant is entitled for regularization as per Para 12 of the guidelines circulated vide communication dated 21st October, 2002, which thus reads:-

"The extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of next higher 180 (sic authority) and where the period exceeds one year, express approval of the Head of the Region/Circle, as the case may be, would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment."

The counsel for the applicant further contended that earlier the applicant's services were being substituted by another temporary employee then he filed OA no. 172/2004 which was allowed by this Tribunal vide order dated 8.5.2007. Now the respondent department has issued a notification for recruitment of regular employee, which is bad in the eyes of law.

6. Per contra, counsel for the respondents contended that the post of GDSBPM, Chandrakh fell vacant on account of putting off duty of Shri Panna Lal, a regular employee of the post. Shri Panna Lal was put off duty w.e.f. 14.5.2002 and after that the work of BPO could not be managed by GDSMC, therefore, the applicant was engaged on the post of GDSBPM vide order dated 18.2.2003 after obtaining a declaration from the applicant that his engagement is purely temporary and provisional. Counsel for the respondents further contended that the instructions as referred by the applicant apply only to the persons who are regularly selected provisional appointees. The applicant is not regularly selected provisional appointee

because no application was called for selection and the applicant has failed to produce any document which shows that the applications were invited for the regular appointment on the post, therefore, the appointment of the applicant was purely ad hoc and temporary.

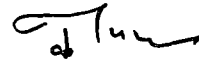
7. We have considered rival contentions of both the parties and also considered the documents submitted by the counsel for the applicant. In our considered view, Para-12 as referred by the applicant in this OA at page 6 does not help the applicant because the applicant is not a regularly selected provisional appointee and he failed to produce any document in support of his contention that the applications were invited for regular selection and in the absence of any such evidence, we are not inclined to grant any relief to the applicant. The competent authority is free to recruit the persons by way of regular process of selection and pure ad hoc, provisional or temporary appointment does not create any right in favour of the applicant.

8. The judgment dated 12.12.2011 passed in OA No.304/2010 by this Bench of the Tribunal and relied upon by the applicant does not help the case of the applicant as the facts of the said case were different from the present case.

9. Accordingly, the OA being devoid of merit is dismissed with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

R/

Copy Received
by
Rabin
For
KAMAL AARZ
4/4/14

Copy Received

W. F. Fawcett

7/14