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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 390/Jodhpur/2011.

Date of decision: 19.09.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Chandra Prakash Parashar S/o Shri Ram Niwas Parashar, aged 40
years, GDS BPM, Dhanop, District Bhilwara, resident of Village
Dhanop District Bhilwara.

..... Applicant

[By Mr. Vijay Mehta, Advocate]

Versus

1. Union of India through the Secretary Ministry of Communication
(Department of Posts), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Bhilwara.
3. Post Master, Head Post Office, Bhilwara.
4. Director, Postal Services, Rajasthan Southern Circle, Ajmer.

..... Respondents

[By Mr. Vinit Mathur along with Mr. Ankur Mathur, Advocates]

ORDER

[PER HON'BLE MR. G. GEORGE PARACKEN]

The applicant in this OA is seeking a direction to the
respondents to modify his date of appointment as 20.02.1994 instead
of 24.05.2011 as stated in the impugned Annex.A/1 order dated
07.06.2011. He has also sought a direction to them to grant him
TRCA in the scale of 4115-75-6365 or in the scale of 3660-70-5760

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instead of in the scale of 2745-50-4225 given to him by the said order.

2. The brief facts necessary for adjudication of this case are delineated as under. The applicant was originally appointed as a EDBPM, Dhanop on 22.11.1994 on provisional basis. Later on, his name was sponsored by the Employment Exchange, Bhilwara, for regular appointment as GDS BPM, there. However, his case was rejected on the ground that the property certificate submitted by him was issued by a Medical Officer and not by the Revenue Authorities. However, he continued as EDBPM on provisional basis. He has also approached this Tribunal vide OA No. 68/1995 seeking a direction to the respondents to consider his case for regular appointment as GDS BPM, Dhanop on production of necessary property certificate from the Revenue Department. However, this Tribunal has dismissed the said OA vide order dated 2.12.1999. The applicant challenged the aforesaid order before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur vide Writ Petition No. 7/2000 – **Chandra Prakash Vs. Union of India and Ors.** The said Writ Petition was allowed vide Annex.A/2 judgment dated 14.02.2001 and set aside the aforesaid order of this Tribunal. The High Court has also directed the respondents to consider his case for appointment on regular basis,

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on production of necessary property certificate from the Revenue Department within two months from the date of receipt of that order. Accordingly, the applicant submitted the required certificate to the respondent No. 2 along with his Annex. A/3 representation dated 15.03.2001. Finally, the respondents have issued the impugned appointment letter dated 07.06.2011. The applicant made the Annex.A/4 representation dated 21.06.2011 against the said order stating that he has been forced to work as EDBPM since 22.11.1994 and it was only due to delay in issuing the impugned order he could not work as GDSBPM on regular basis thereby suffering loss of increments, bonus, seniority, promotion chances etc. He has also stated that the respondents themselves had treated him as a regular employee by permitting him to appear in the departmental examination which is not permissible in the case of provisional employees. His further grievance is that in spite of the aforesaid order of the High Court on 14.02.2001, the respondents took more than 10 years to consider his case and grant him appointment on regular basis by issuing Annex.A/1 impugned order dated 7.6.2011. He has also stated that he has already been working as EDBPM on provisional basis in the scale of Rs. 3660-70-5760 as clear from the Annex.A/5 Pay Slip for the month of April, 2011, according to which his basic pay was Rs.4080/- and his total emoluments was Rs. 6536/-

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However, on his promotion as GDS BPM on regular basis vide impugned letter dated 07.06.2011, his pay has been reduced and as per the pay slip of July 2011, his basic pay was only Rs.2775/-, and his total emoluments was only Rs.4520/-. His TRCA itself was reduced to the scale of Rs. 2745-30-4245. His contention is that the work-load of the GDS Dhanop has already been assessed and verified by the respondents at 100.02 points since it's work involved more than 4.30 hours every day. The TRCA slab prescribed for this said work-load is 4115-75-6335. Therefore, his contention is that he could not have been given TRCA less than the said scale. However, the respondents have arbitrarily fixed his TRCA in the scale of 2745-50-4245 which is applicable in the case of work-load of 75 points.

4. The respondents in their reply have admitted the facts regarding the date of appointment of the applicant as GDS BPM, Dhanop on provisional basis i.e. 22.11.1994 and other facts stated by him. However, they justified the impugned Annex.A/1 letter regarding his appointment as GDS BPM EDBO w.e.f. 24.05.2011 stating that in terms of the directions of the Hon'ble High Court in its judgment dated 14.02.2011, they started the process of regularizing his service and appointing him as GDS BPM on regular basis. However, as pre-requisites, his character and antecedents were to be

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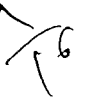
verified before giving him the actual appointment. Therefore, his attestation form was sent to the District Magistrate, Bhilwara, for verification, vide letter dated 14.6.2001. However, the District Magistrate, Bhilwara, vide his letter dated 08.08.2001 informed them that three cases had been registered against the applicant at Police Station Phulian Kalan vide Nos.28/88, 67/97 and 90/02 but all cases have been disposed in his favour. In case Nos.28/88 and 67/97, he was exonerated fully on 12.09.1994 and 22.03.2006 respectively. In case No.90/02, the FIR itself was quashed.

5. According to the respondents, the applicant suppressed those facts in his attestation form. They have also stated that the applicant was a person of criminal character and therefore, he could not be given appointment for the aforesaid act of misconduct for which he was also been charge sheeted vide Rule 10 of GDS (Conduct & Employment) Rules, 2001 vide memo dated 03.04.2002 and punished by imposing upon him the penalty of debarring him from appearing in the departmental examination for the posts of Postman and Postal Assistant for three years, vide memo dated 09.07.2004. Hence, his case was not processed further. However, the process in his case was re-started with the report of the District Magistrate dated 20.08.2008. Meanwhile, he has filed OA No.21/2009 before this

Tribunal and it was disposed of only on 14.02.2011 with the direction to the respondents to consider his case for appointment on regular basis. Thereafter, in compliance of the aforesaid order of this Tribunal dated 14.02.2011, the impugned order has been issued on 07.06.2011.

6. We have heard the learned counsel Shri Vijay Mehta, for the applicant and Shri Vinit Mathur, learned counsel for the respondents. It is seen that there was valid justification on the part of the respondents not to offer the appointment to the applicant as GDS BPM, Dhanop, w.e.f. 22.11.1994, as prayed for by him. The respondents have stated that three cases were registered against him at Police Station Phulian Kalan. The first case was registered against him vide case No. 28/88 under section 452, 336, 341 and 323/34 of CrPC. The second case No. 90/02 was registered against him under Section 341 and 323 of CrPC and Section 3 (1) (x) of SC/ST Act. The third case No. 67/97 was registered against him under Section 341 and 323 of CrPC. While in the first case he was exonerated on 12.09.1994 and in the second case the FIR was quashed, in the 3rd case he was exonerated only on 22.03.2006. It was only on 20.02.2008, the respondents received the final report from the District Magistrate Bhilwara. From the afore facts it is seen that even

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when the Hon'ble High Court of Rajasthan has ordered for consideration of his case for appointment on regular basis on 15.03.2001 at least one of the aforesaid cases was going on against him. He did not disclose the above facts to the respondents. Rather, in the relevant column in the attestation form, he suppressed those facts. It is only after the applicant has acquitted in the aforesaid cases, the respondents have again started the processing afresh for appointment on regular basis. Meanwhile the applicant filed OA No.21/09 before this Tribunal for his regular appointment and it was disposed of only on 14.02.2011. Therefore, the respondents have issued the Annex.A/1 order dated 7.6.2011 appointing him as a GDSBPM, Dhanop w.e.f. 24.05.2011. We, therefore, do not agree with the contention of the applicant that he should have been appointed under regular basis w.e.f. 22.11.1994. Accordingly, we reject the said prayer of the applicant.

7. However, respondents have not refuted the submission of the applicant that the work-load of EDBO in Dhanop has already been assessed as 100.02 points for which the prescribed TRCA is 4115-75-6335 and the GDSBPM has been working there for more than 4.30 hours every day. Moreover, the applicant himself while working as EDBPM has been drawing the TRCA of Rs.3660-70-5760. In such a



situation, fixing his TRCA as regular GDS BPM at 2745-30-4245 appears to be arbitrary. We, therefore, direct the respondents to conduct a study on the work-load of the GDSBPM Dhanop and determine the same within a period of three months. Thereafter, the respondents shall fix the TRCA of the applicant accordingly but in case not less than the TRCA of Rs.3660-70-5760 which he has already been getting as EDBPM on provisional basis. In case, it is found that the applicant is having higher work-load justifying the TRCA of 4115-75-6335 or any other TRCA he shall be given the same, with the arrears from the date of his regular appointment as EDBO w.e.f. 24.5.2011.

8. With the aforesaid directions, this OA is disposed of. There shall be no order as to costs


(B.K. Sinha)
Admv. Member


(G. George Parackal)
Judl. Member

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