

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 3rd day of April, 2014

Original Application No. 144/2013

CORAM

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

Pukhraj s/o Shri Padma Ram, aged about 49 years, b/c Meghwal (SC), r/o Vill-Meghawalo Ka Bas, Via-Khewara, District-Pali (Office Address:- worked as GDSBPM at Post Office Pilowani).

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Director O/o the Post Master General, Wester Region, Jodhpur
4. Superintendent of Post Offices, Pali Division, Pali Marwar.

.....Respondents

By Advocate : Mr. Vijay Rajpurohit on behalf of Ms. K.Parveen

ORDER (ORAL)

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

The present OA is filed against the action of the respondents whereby the applicant has not been considered for appointment on the post of Gramin Dak Sevak Branch Post Master (GDSBPM), therefore, the applicant has prayed for the following reliefs:-

(a) That by writ order or direction the respondents may kindly be directed to consider the case of applicant for appointment to the post of GDSBPM in accordance with rule.

- (b) That by writ order or direction the respondents may kindly be directed to consider the case of applicant for appointment to the post of GDS in accordance with rule.
- (c) That by writ order or direction the respondents may kindly be directed to reinstate into service as GDSBPM with all consequential benefits.
- (d) That by writ order or direction the respondents may kindly be directed to consider the rendered service as criteria for appointment on the post of GDSBPM or GDS and consequential benefits may kindly be granted.
- (e) Any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (f) That the costs of this application may be awarded to the applicant.

2. Brief facts of the case, as stated by the applicant, are that he was appointed as GDSBPM on 26.7.1999 and posted at Pilowani Post Office and after rendering 3 years' service, the applicant was terminated by a verbal order. It is stated by the applicant that he has been terminated due to being surplus even though there is a rule under the Employment and Conduct Rules 2001 to accommodate the surplus employees on his request. Rule 4 and Rule 8 deals with matter pertaining to recruitment and termination of service of GDS. The Head of Division is recruiting authority and he can be terminated by giving one month's notice. It is further stated that the competent authority has invited application for selection to the post of GDSBPM for the same place vide letter dated 12.3.2013 but the case of the applicant has not been considered though he is eligible and fit to be appointed as GDSBPM. Therefore, aggrieved with the inaction on the part of the respondents, the applicant has filed this OA.

3. The respondents have controverted the averments made by the applicant in the OA and by way of filing reply submitted that the applicant

was engaged as GDSBPM, Pilowani on purely temporary and provisional as a stop-gap arrangement vide OM dated 6.2.2001 as per the instructions and rules contained in DG, Posts, New Delhi letter dated 28.5.1997 and he has worked for 2 years 10 months and 27 days. The said arrangement was made as the incumbent of the posts was placed under put off duty due to inquiry. The inquiry culminated into removal of services of Sh. Mahendra Singh and after finalization of the inquiry and to discontinue the provisional arrangement, as per order contained in PMG, Jodhpur letter dated 24.6.2002, the charge of GDSBPM, Pilowani was handed over to Sh. Hem Raj Parihar, MO Marwar Junction w.e.f. 29.6.2002. Therefore, the action taken by the respondents is just and proper and in accordance with the rules. The respondents have submitted that the applicant has also filed OA No.123/2003 which was dismissed by this Tribunal on 16.7.2003 thereafter he has also filed OA No.195/2003 and the same was withdrawn vide order dated 4.3.2005 and after a lapse of about 11 years, the applicant again filed the present OA, which is not sustainable and liable to be dismissed.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

5. Heard both the parties. Counsel for the applicant contended that the applicant has rendered continuous service of three years and having requisite qualification for the post of EDBPM, but the respondents department has terminated the services of the applicant even when there is a provision under the rules to accommodate such staff. He also contended that the respondents have not complied Rule-8 of the GDS (Employment and Conduct) Rules, 2001, therefore, the respondents may be directed to appoint the applicant to the post of GDSBPM.

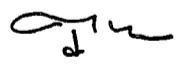
6. On the contrary, the counsel for the respondents contended that the applicant was engaged provisionally on purely temporary basis, as the regular EDBPM, Pilowani was placed under put off duty. This arrangement was made without following due selection process. It is clarified in the OM dated 6.2.2001 that his provisional appointment can be terminated at any time without notice and without assigning any reason. Therefore, the applicant has no legal right to claim regular appointment.

7. Considered the rival contention of both the parties. Since the appointment of the applicant was purely temporary and he has worked as substitute against the post that fell vacant due to put off duty of the regular incumbent, which was without following due process of selection, therefore, the applicant cannot claim regular appointment on the post. So far as the averment regarding termination without notice is concerned, in the OM dated 6.2.2001 itself it was made clear that the provisional appointment can be terminated at any time without notice and without assigning any reason.

8. Therefore, in our view there is no merit in this OA and the same is dismissed. However, since the vacancy of the post of EDBPM, Pilowani (Khinwara) has been advertised and the applicant has experience on the post for more than 2 years, therefore, the respondents are expected to consider the candidature of the applicant as per law.

9. There shall be no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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