

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 7th day of November, 2006

ORIGINAL APPLICATION No. 171/2005
with Misc. Application No.157/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

Prahlad Ram Yogi,
s/o Bhonri Lal Yogi,
aged about 57 years,
r/o village and post Girudi,
Tehsil Bansoor,
District Alwar,
Presently working as
Gramin Dak Sevak Mail Carrier/
Delivery Agent, Branch Post Office,
Girudi, Tehsil Bansoor,
District Alwar.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India through its
Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication,
Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle, Jaipur
3. Senior Superintendent of Post Offices,
Alwar Postal Division,
Alwar.
4. Assistant Superintendent of Post Offices,
Behror Sub Division, Behror,

District Alwar.

5. Shri Prakash chand Sharma,
Gramin Dak Sevak,
Branch Post Office Girudi,
Tehsil Bansoor,
Distt. Alwar.

6. Shri Babu Singh,
Gramin Dak Sevak,
Branch Post Master,
Ratanpura Branch Post Office,
Tehsil Bansoor,
District Alwar.

.. Respondents

(By Advocate: Mr. N.C.Goyal)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying
for the following reliefs:-

- i) That the respondents may be directed not to disturb the applicant from the present post of GDSCM Girudi (Bansoor) and to allow to continue on the post by quashing letter dated 5/4/2005 (Annexure A/1) with all consequential benefits.
- ii) The respondents may be further directed not to abolish the post of applicant by quashing letter dated 26/3/2004 and 15/7/2004 (Annexure A/2 and Annexure A/3) respectively with all consequential benefits.
- iii) That respondent be further directed to allow pay allowances with effect from 18/3/2005 by quashing letter dated 5/2/2005 (Annexure A/1).
- iv) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- v) That the costs of this application may be awarded."

2. Brief facts of the case are that the applicant is working as Gramin Dak Sevak Mail Career/Delivery Agent (GDSCM/DA) at village and post Girudi, Tehsil Bansoor, District Alwar w.e.f. 26.6.1975. The respondents took

a decision thereby declaring one post of GDSMC, Girudi surplus and kept in abeyance for one year for deployment at needy office. It was made clear that if the same is not deployed within one year, it would be deemed to be abolished. Accordingly, respondent No.3, the Senior Superintendent of Post Office, Alwar Postal Division, Alwar called willingness of the applicant to work at other places. The respondent No.4 vide Ann.A5 directed the applicant to take charge of the post and the applicant joined at Ratanpura on 22.9.2004. It is further averred that the applicant was again relieved from Ratanpura, on joining of one Shri Babu Singh, for his parent office i.e. Girudi where he joined on 24.12.2004 but the said post was abolished vide letter dated 5.4.2004. It was also mentioned in the said letter that in case the applicant is willing to work, he may be posted at Maharajabas, Kanhabas or Giglani. It is this order which is under challenge in this OA.

3. The matter was listed for admission on 15.4.2005 on which date this Tribunal granted interim stay on the premise that the applicant is not juniormost person holding the post of GDSMC/DA and there is yet another person who has been impleaded as respondent No.5 in the OA, is in fact junior most and even if abolition of the post is justified, the position of junior most person has to go on the principle of last comes, first go and termination of the applicant is ex

facie illegal and arbitrary. Accordingly, the impugned order Ann.A1 was stayed till the next date which stay was continued from time to time.

4. The respondents have filed reply. In the reply, the respondents have not disputed the facts as stated above. However, it is stated that since the Branch Post Office, Girudi was suffering heavy losses, as such, the Principal Chief Post Master General, Rajasthan Circle, Jaipur vide letter dated 18.3.2004 issued sanction for declaring one post of GDSMC, Girudi GDS BO as surplus and kept in abeyance for one year for redeployment at needy office and if the same is not redeployed within one year, it would be deemed to have been abolished from the date of expiry of one year sanction dated 18.3.2004. The respondents have placed copy of this letter as Ann.R2. The respondents have also stated that the triennial review of the aforesaid branch office was carried out during the year 2003-2004 which results the income/cost of Girudi EDBO as under:

Annual Income	Annual Cost	Annual Loss	% of income
5580	96631.20	91051.20	5.77%

Thus, the respondents have stated that it was under these circumstances the post of GDSMC/DA was abolished. The respondents have justified abolition of

the post of GDSMC due to the reason that workload of GDSMC was less than the work of GDSDA. According to respondent, the workload of GDSMC, Girudi is 249.85 minutes whereas the workload of GDSDA, Girudi is 268.50 minutes. The respondents have also placed on record the workload of GDSMC and GDSDA as Ann.R3 and R4. The respondents have stated that in view of the letter of the Principal Chief Postmaster General, Jaipur letter dated 18.3.2004, the post of GDSMC of Girudi BO was to be abolished and official was to be relieved on 18.3.2005 i.e. after one year from the date of issue of order of the Principal Chief Postmaster General, Jaipur. The respondents have further stated that as per GDS (Conduct and Employment) Rules, 2001 of the Department of Posts the recruitment of GDS is being done against the post and the incumbent cannot be transferred to other post. It is further stated that however, there are provisions in the rules that after abolition of the particular post, the incumbent working on the post can be given opportunity to be employed on vacant post in another office. Accordingly, the applicant was given opportunity by the appointing authority i.e. Assistant Superintendent of Post Offices, Behror and the controlling authority i.e. Senior Superintendent of Post Office, Alwar but the official was not willing to work on the post offered to him vide letter dated 5.4.2005 (Ann.A1) and 15.7.2004 (Ann.A2) respectively.

The respondents have stated that the applicant was definitely having qualification for the post of GDSMC/DA Maharajawas (Jakhrana) which is lying vacant. As such, in view of the impugned order Ann.A1, if the applicant is willing to serve the Department, he was directed to join on the vacant post of GDSMC/DA at Maharajawas, Kanahawas and Giglana, but the applicant neither gave his willingness for the above posts nor reported for duty in any of the office. So far posting of the applicant as BPM, Ratanpura for a short period, it is stated that since the incumbent of the said post was to retire on 21.9.2004, as such, as a stop gap arrangement, the applicant was deputed to work from 22.9.2004 to 23.12.2004, though he was not having the requisite qualification for the post of BPM and thereafter he was repatriated. So far as appointment of respondent No.5 is concerned, the respondents have stated that respondent No.5 was appointed on the post of GDSDA and this post is not transferable and the appointee is recruited on particular post. It is further stated that both the posts of GDSMC and GDSDA are different in nature and the duties of both the incumbents are different. Thus, there is no question that respondent No.5 i.e Shri Prakash Chand Sharma is junior to the applicant. Since the post of the applicant was declared surplus as a result of review and was abolished as per rules vide order dated

18.3.2004, the incumbent working on the post is to be relieved from the particular post.

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

6. The learned counsel for the applicant has argued that the main reason for abolishing the post as given by the respondents is due to heavy losses in EDBO, Girudi. The learned counsel for the applicant has drawn our attention to Ann.R3 and R4. Ann.R3 pertains to the particulars regarding GDSMC which post is being held by the applicant whereby total working hours for the said post has been mentioned as four hours nine minutes and scale of the post has been mentioned as 1220-20-1600. Ann.R4 pertains to GDSDA, Girudi which post is being held by respondent No.5. In this document scale of pay has been mentioned as Rs. 1740-30-2640 and work load has been mentioned as 268 minutes = 4 hours 28 minutes. Based on these two documents, the learned counsel for the applicant argued that the post of the applicant could not have been abolished as the basis for abolishing the post as given by the respondents is financial loss and in that eventuality the post of GDSDA which carries a higher pay scale of Rs. 1740-30-2640 should have been abolished. We see no force in this submission raised by the learned counsel for the applicant. Admittedly, the cadre strength of EDBO, Girudi consist of 3

persons namely- Gramin Dak Sevak Branch Post Master, Gramin Dak Sevak Mail Carrier and Gramin Dak Sevak Delivery Agent. From the material placed on record, the respondents have taken workload as criteria for the purpose of abolishing the post. Accordingly, the competent authority vide order dated 18.3.2004 (Ann.R2) took a decision to declared the post of GDSMC, Girudi as surplus which shall be deemed to be abolished after period of one year. The validity of the order dated 18.3.2004 whereby the post held by the applicant was declared as abolished has not been challenged by the applicant in this OA. In this case, the applicant has challenged the subsequent order dated 5.4.2005 which is follow up action of the order dated 18.3.2004. As such, the contention of the applicant cannot be accepted. Even otherwise also, it is not open for this Tribunal to sit in appeal over the decision taken by the respondents regarding abolition of the post ^{and to} examine as to which post should be abolished, more particularly, when the applicant had not made challenge in the manner argued by the applicant in the present OA. Thus the contention of the applicant deserve out right rejection. Further contention raised by the learned counsel for the applicant is that the applicant was appointed as GDSMC on 26.6.1975 whereas respondent No.5 is holding the post of GDSDA since 1.7.1979. As such, in the eventuality of abolition of the post, it

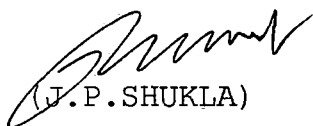
is respondent No.5 whose services should have been terminated is also without any substance. As per GDS (Conduct and Employment) Rules, 2001, GDS is appointed against a particular post in Branch Office and incumbent of the said post cannot be transferred to another post and on account of abolition/upgradation of the post, the next consequence is that the service has to be terminated and as per the aforesaid rules the person declared surplus cannot be accommodated in a suitable post.

7. In this case vide impugned order Ann.A1 as well as vide letter dated 15.7.2004 (Ann.A3) option has been given to the applicant and other persons to show their willingness to join other vacant posts as mentioned therein, but the applicant did not join on any post and as per the stand taken by the respondents, the applicant submitted a medical certificate for sickness. Under these circumstances, we are of the firm view that the applicant is not entitled to any relief. The grievance of the applicant that in the eventuality of abolition of the post, it is respondent No.5 whose service has to be terminated cannot be accepted as respondent No.5 is working on higher post of GDSDA in the pay scale of Rs. 1740-30-2640 whereas the applicant is working as GDSMC in the pay scale of Rs. 1220-20-1600.

8. For the foregoing reasons, we are of the view that the present OA is bereft of merit, which is accordingly dismissed. The interim direction granted on 15.4.2005 and continued from time to time is hereby vacated. However, it is made clear that dismissal of this OA will not come in the way of the respondents to adjust the applicant on an alternative post pursuant to offer as mentioned in letter dated 5.4.2005 (Ann.A1) and pursuant to the offer extended vide letter dated 15.7.2004 (Ann.A3) or on other suitable post as per their own policy.

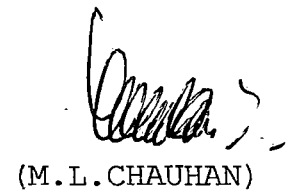
9. With these observations, the OA is dismissed with no order as to costs.

10. In view of the order passed in the OA, no order is required to be passed in the Misc. Application No. 157/2005, which stand disposed of accordingly.



(J.P. SHUKLA)

Administrative Member



(M.L. CHAUHAN)

Judicial Member

R/