

(12)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

11.07.2008

OA No.192/2007 with MA No.195/2008

Mr. C.B.Sharma, counsel for applicant
Mr. Gaurav Jain, counsel for respondents

Misc. Application No.195/2008 has been moved by the respondents for bringing the additional affidavit on record. In view of the averments made in the MA, the MA is allowed. The additional affidavit alongwith annexures shall form part of the pleadings. MA stands disposed of accordingly.

OA be listed on 14.8.2008.

IR to continue till the next date.

(B.L.Khatri)
Admv. Member

(M.L.Chauhan)
Judl.Member

R/

14-8-2008
Mr. C.B.Sharma, Counsel for applicant
Mr. Gaurav Jain, Counsel for respondent
Heard learned Counsel for the parties.

Order Reserved.

(M.L.Chauhan)
M(J)

(B.L.Khatri)
M(A)

21-8-08
order pronounced today
in the open court by
the above said Bench
3
21/8/08
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the ²¹ August, 2008

ORIGINATION APPLICATION NO. 192/2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Prahlad Ram Yogi son of Shri Bhonri Lal Yogi, aged about 59 years, resident of Village and Post Girudi, Tehsil Bansoor District Alwar. Presently working as Gramin Dak Sevak Mail Carrier/ Delivery Agent, Branch Post Office Girudi, Tehsil Bansur 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.

.....RESPONDENTS

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

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

"(i) that the respondents may be directed to allow the applicant to join his duties at Mehanpur (Bansur) as per

llc

offer extended vide letter dated 2.4.2007 (Annexure A/1) and not to the post any other official against the post offered to the applicant with all consequential benefits.

- (ii) The respondents may be further directed to allow pay & allowances to the applicant from the date he submitted his willingness to work as Gramin Dak Sevak Mail Carrier Mehanpur (Bansur).
- (iii) 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
- (iv) That the cost of this application may be awarded."

2. The applicant was initially appointed as Extra Departmental Mail Carrier now designated as Gramin Dak Sevak Mail Carrier (GDSMC) on 26.09.1975 at Girudi Extra Departmental Branch Post Office. Due to abolition of the post of GDSMC Girudi, the applicant was declared surplus and offered alternative appointment but the applicant neither offered his willingness nor joined on the offered post. The order whereby the applicant was offered alternative job was challenged by the applicant by filing OA No. 171/2005. The said OA was decided vide judgement dated 07.11.2006. This Tribunal held that the applicant is not entitled for any relief. The contention of the applicant that in the eventuality of abolition of the post, it was respondent no. 5 whose service has to be terminated was rejected. However, while dismissing the OA, it was also observed that in case the respondents wants to adjust the applicant on any other alternative post pursuant to offer as mentioned in letter dated 05.04.2005 and pursuant to the offer extended vide letter dated 15.07.2004 or any other suitable post as per their own policy, this order will not come in the way of the respondents. The order passed by this Tribunal was challenged by filing DB Civil Writ Petition before the Hon'ble High Court. However, the said Writ Petition filed against the judgement of this Tribunal was also rejected in liminie and the direction issued by this Tribunal that respondents may adjust the applicant on alternative post as mentioned

in letter dated 04.04.2005 was re-affirmed. Pursuant to such direction of this Tribunal, as affirmed by the Hon'ble High Court, respondent no. 4 offered the post of Gramin Dak Sevak to the applicant vide order dated 25.01.2007 followed by reminder dated 02.04.2007 (Annexure A/1) but the applicant did not submit his willingness till the approval of Shri Jammurruddin Khan against the said post. However, the applicant submitted his conditional application dated 24.04.2007 (Annexure A/2). Since the offer of appointment was conditional, the respondents gave appointment to one Shri Jammurruddin Khan. It is on the basis of these facts; the applicant has filed this OA.

3. Notice of this application was given to the respondents. The facts, as stated above, are not disputed. In the reply, the respondents have categorically stated that pursuant to the decision rendered by this Tribunal, Assistant Superintendent of Post Office, Behror vide letter dated 15.11.2006 extended the offer of appointment to the applicant on the alternative post of GDSMC Maharajwas or else where vacant post exists but the applicant neither joined on the offered post nor submitted his willingness for any post. Copy of the letter dated 15.11.2006 is placed on record as annexure R/2. It is further stated that one more opportunity was given to the applicant by the Assistant Superintendent Post Office Behror vide letter dated 02.04.2007 (Annexure A/1) for the post of GDSMC Mehanpur EDBO instructing him to submit his willingness for the same within three days, failing which it will be presumed that he is not in need of employment but the applicant willfully delayed and submitted his conditional application dated 24.04.2007 (Annexure A/2). According to the respondents, meanwhile Shri Jammurudin Khan, Ex-GDSMC under relaxation of normal recruitment rules vide Chief PMG Rajasthan Circle, Jaipur letter dated 11.04.2007 followed by Assistant Superintendent Post Behror letter dated 13.04.2007 was approved for appointment and after

completion of necessary pre recruitment formalities, the said Shri Jammurrudin Khan was posted on vacant post w.e.f. 10.05.2007 vide letter dated 04.07.2007. Thus according to the respondents, the applicant is not entitled for any relief.

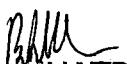
4. At this stage, it may be stated that this Tribunal while issuing notices on 25.07.2007 has also granted ex-parte stay in favour of the applicant. But since Shri Jammurrudin Khan has already joined the post prior to granting of the stay by this Tribunal, he is continuing to hold the said post.

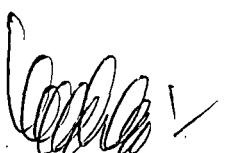
5. The applicant has also filed rejoinder thereby reiterating the facts stated in the OA. According to the learned counsel for the applicant, the applicant has never declined to join the post of GDSMC Mehanpur and as such it was not permissible for the respondents to give appointment to Shri Jammurrudin Khan.

6. We have given due consideration to the submission made by the learned counsel for the parties. From the material placed on record, it is evident that being a surplus employee, the applicant was required to join the alternative appointment but the applicant declined to accept the same. Even this Tribunal vide its judgement dated 07.11.2006, which judgement has been affirmed by the Hon'ble High court vide order dated 11.04.2007, had made observation that respondents can adjust the applicant on an alternative post pursuant to offer in letter dated 05.04.2005 and pursuant to the offer extended vide letter dated 15.07.2004 or any other suitable post as per their own policy, the dismissal of this OA will not come in the way of the respondents to adjust the applicant on an alternative post. Indeed the department in the light of the observations made by this Tribunal and as affirmed by the Hon'ble High Court, which in fact was not mandatory in nature.

Vide letter dated 15.11.2006 gave offer to the applicant regarding alternative appointment on the post of GDSMC Maharajwas or where vacant post exists. (Annexure R/2) followed by another reminder dated 02.04.2007 whereby the applicant was specifically asked to give offer for the post of GDSMC Mehanpur within three days failing which it will be presumed that he is not in need of appointment. The applicant has not given his willingness within the stipulated period. It is only on 24.04.2007 when the applicant has given his conditional willingness (Annexue A/2). If one has regard to Annexure A/2, it is clear that applicant has shown his inability to join the post as he was ill and he will join the duty when he is fit to join the said post. According to us, the respondents have not committed any infirmity in passing the impugned order. It may be stated that right, if any, for alternative post for the applicant was created in view of the observations made by this Tribunal, as affirmed by the Hon'ble High Court, whereas as per the instructions prevailing with the Department, the applicant was not entitled for such offer as alternative post was not accepted by the applicant. The applicant has failed to avail such opportunity extended to the applicant by virtue of the order passed by this Tribunal as well as Hon'ble High Court. Thus, we are of the view that it is not a case where further concession can be granted in favour of the applicant.

7. For the foregoing reasons, the OA is dismissed.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ