

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of April, 2011

Original Application No.526/2009

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Pinku Rawal
s/o Shri Ram Bharos Rawal,
r/o Village and Post Sogaria,
Tehsil Ladpura, Distt. Kota and
Presently working as Gramin Dak Sevak
Branch Post Master,
Branch Post Office, Songaria,
Vis Kota Junction, Kota.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through Secretary to the Govt. of India
Department of Posts,,
Ministry of Communication &
Information Technology,
Dak Bhawan, New Delhi.
2. Post Master General,
Rajasthan Southern Region,
Ajmer.
3. Senior Superintendent of Post Offices,
Kota Postal Division,
Kota.

.. Respondents

(By Advocate: Shri B.N.Sandu)

ORDER (ORAL)

The present OA is preferred by the applicant against the alleged arbitrary, illegal and unjustified action of the respondents in connection with disturbing the applicant from the present position of GDS BPM, Sogaria by way of adjustment instead of by way of regular incumbent in spite of the fact that the applicant is holding the post since 9.4.2004, thus, the applicant has asked for the relief that respondents be directed not to disturb the applicant from the present post of GDS BPM, Sogaria Branch Post Office and to release due pay and allowances from February, 2009.

2. The matter was examined on 28.5.2010 on the Misc. Application moved by the applicant praying that direction may be given to the respondents to release pay and allowances from February, 2009 till the date so that the applicant is in a position to maintain himself and his family.

3. The respondents have filed reply. In the reply, it has been stated that the applicant was handed over charge of the post of GDSBPM, Sogaria purely on temporary basis as a stop gap arrangement on the post of Shri Radhey Shyam Deoliya, who was placed under put off duty on account of his remaining absent. In the reply, it has been specifically stated that charge was handed over to the applicant on 9.4.2007 but he was not appointed on regular basis and his engagement was purely on temporary basis as stop gap arrangement till regular and alternative arrange was made by the department. It is also specifically stated that this



temporary arrangement was to be discontinued and for that purpose ASP (W) Kota was directed vide respondent No.3 letter dated 13.10.2008 but instead of handing over the charge of GDSBPM, Sogaria, the applicant is making pressure of political leaders on the department as is evident from letter dated 26.8.2009 (Ann.R/3) and he is also pressing hard to get the publicity to the news regarding payment of wages and regular appointment in the newspaper (Ann.R/4) and is working unauthorisedly on the post of GDSBPM, Sogaria till date. It is further stated that TRCA has been withheld due to holding the charge of GDSBPM, Sogaria (Kota Junction), unauthorisedly which is correct. The applicant is adamant and he does not want ~~to~~ hand over the charge of the B.O.

4. On 28.5.2010 also while considering Misc. Application filed by the applicant seeking same relief and this Tribunal observed as under:-

"Be that as it may, it appears that the applicant is still working on the aforesaid post and has not relinquished the charge of the post till date. Even the respondents have shown their helplessness to execute their orders. As can be seen from the stand taken by the respondents in the reply, the applicant is also exercising political pressure and is still performing current/additional duty of the post. What matters in the facts and circumstances of this case is that how the Government and its authorities have responded to this complex issue of quality of governance. Such helplessness on the part of the state authorities can not be condoned. Law has to take its own course and it cannot be assumed that state authorities are so powerless that they can not execute their order thus leading to anarchy. Stopping of salary is not sufficient to get its order executed. In case the applicant has refused to hand over the charge, some cohesive steps should have been taken in that regard. It is also not clear why another person has not been deputed to lookafter the work of the post of GDSBPM, Sogaria and why the applicant is allowed to



perform the duties of the said post after discontinuance of temporary arrangement by respondent No.3 vide letter dated 13.10.2008. It is also not understood when the temporary arrangement has been discontinued vide letter dated 13.10.2008 why salary of the applicant has been paid upto January, 2009. Simply because the applicant has manipulated to continue to work on the post by exercising political pressure, such a practice has to be discontinued and this court cannot condone such practice in order to maintain rule of law. Under these circumstances before any final order is passed on the application of the applicant, the respondents are directed to file reply to this Misc. Application within four weeks and this Tribunal is not inclined to grant equitable relief of payment of salary to the applicant for the discharge of his duties at this stage, who is also guilty of not obeying the orders issued by the authorities, though disputed by the learned counsel for the applicant."

5. This Tribunal by observing as reproduced hereinabove, virtually disposed of the OA observing that this Tribunal is not inclined to grant equitable relief of payment of salary to the applicant for the discharge of his duties at this stage, who is also guilty of not obeying the orders issued by the authorities, though disputed by the learned counsel for the applicant.

6. Now we have examined the matter on merit. After going through the entire material available on record and as observed by this Tribunal vide order dated 28.5.2010 and upon perusal of the guidelines for regulating substitute/provisional arrangements made in place of regular GDS, wherein it is made clear that "it is necessary for the appointing authority to ensure that such a substitute is not allowed to work indefinitely. If the absence from duty of the regular GDS is likely to last indefinitely, the appointing authority should take immediate steps to make a regular appointment and the person so appointed need not necessarily be the substitute."

A handwritten signature in black ink, appearing to read 'B/2'.

7. The Central Administrative Tribunal, Principal Bench vide its order dated 6th October, 2005 passed in OA No.3080/2004 considered the similar controversy and after considering the judgment rendered by the Delhi High Court and judgment of the Hon'ble Apex Court in the case of Dr. Chanchal Goel vs. State of Rajasthan wherein the Supreme Court held that there was no scope of regularization unless the appointment was made on regular basis. The Hon'ble Supreme Court did not approve regularization despite the fact that the official therein had rendered almost two decades of service. Thus the applicant has not been able to establish that he has legal and undefeasible right of regularization when he was not appointed by following the procedure laid down under the rules/instructions on the subject.

8. Applying the ratio as discussed hereinabove in the instant case, the applicant has worked for a period of three years where the Hon'ble Apex Court has not even approved the case of a person who had rendered service of almost two decades. The CAT-Jodhpur Bench also vide order dated 24.11.2006 passed in OA No.214/03, the same analogy has been drawn.

9. In view of the settled principle of law, we are not inclined to interfere in the matter and no order or direction, as prayed, is required to be issued. Consequently, the OA being bereft of merit is disposed of as observed hereinabove. No costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

R/

12. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member