

Reserved
(On 30.05.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **01st** day of **June** 2018

Hon'ble Dr. Murtaza Ali, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Original Application Number. 330/00564 of 2009

Shyam Bihari Dhuria, S/o Shiv Gulam Dhuria, R/o Village and P.O.
Jalalpur, District Banda.

.....Applicant.

By Adv: Shri B.N. Singh

VE R S U S

1. Union of India through its Secretary, Ministry of Communication (P&T) Sansad Marg, Dak Bhawan, New Delhi.
2. The Director, Postal Services, Kanpur Region, Kanpur.
3. The Superintendent of Post Offices, Banda Division, Banda.
4. The Sub-Divisional Inspector, Banda Division, Distt. Banda.
5. The Post Master Branch Post Office, Jalalpur, District Banda.

.....Respondents

By Adv: Shri R.K. Srivastava

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

By way of the instant OA, the applicant has prayed for following reliefs: -

- "i. to issue order or direction to set aside the order dated 01.05.2003 and 27.04.2005.*
- ii. to issue order or direction to the respondents to give the regular appointment to the applicant on the post of G.D.S. Mail Peon in the Branch Post Office, Jalalpur, District Banda as per recommendation of respondent no. 3 dated 15.01.1998.*
- iii. to issue order or direction to respondents to permit the applicant to work as G.D.S. Mail Peon in the Branch Post Office, Jalalpur, District Banda.*
- iv. pass any such other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*
- v. award the cost in favour of applicant."*

2. The facts of the case in brief are that the applicant was initially appointed on the post of GDS Mail Peon on 14.09.1996 (Annexure A-3). The applicant worked continuously in different spells. The applicant submitted a representation on 13.09.1998 for regular appointment in any Post Office. Respondent No. 3 issued order dated 15.01.1998 (Annexure A-4) and directed Respondent No. 4 to make regular appointment to the applicant. When no decision was taken by the Respondent No. 4 the applicant made several representations to the concern authorities to comply with the order of regular appointment but no action was taken on the representations of the applicant. It is claimed that the applicant fulfils all eligibility criteria for appointment on the post of GDS Mail Peon after regular employee Shri Ram Adhar GDS Mail Peon retired on 01.05.2003. But instead of appointing the applicant, his services were terminated vide order dated 01.05.2003 (Annexure A-1). Thereafter, the applicant filed OA No. 553/03 challenging the termination order dated 01.05.2003 in which an interim order dated 21.05.2003 was passed by this Tribunal staying the operation of the termination order (Annexure A-6). When the interim order dated 21.05.2003 was not complied with by the respondents the applicant made a representation dated 18.12.2003 before District Magistrate, Banda for compliance of interim order. Superintendent of Post Offices, Banda made an inquiry and submitted his report vide order dated 08.10.1999 and established that all documents are genuine and directed to comply with the interim order of this Tribunal dated 21.05.2003.

3. It was further submitted that the earlier OA No. 553/03 was finally decided by this Tribunal vide order dated 11.01.2005 with certain directions (Annexure A-12). When the order dated 11.01.2005

was not complied with by the respondents, the applicant filed Contempt Petition No. 106/05, in which the respondents annexed the order dated 24.04.2005 by which the claim of the applicant was rejected. The Contempt Petition No. 106/05 was decided by this Tribunal vide order dated 10.10.2005 on the ground that after passing order dated 27.04.2005 (Annexure A-2), the cause of action is subject matter of another OA. It is stated that the applicant is always ready to cooperate with the inquiry, but the respondents wrongly made allegation that he is not present nor submitted his documents, whereas, the applicant has already submitted all the documents and inquiry was made by the District Magistrate, Banda.

4. The respondents have filed their counter affidavit and the Supplementary counter affidavit in which it is submitted that the applicant had never worked in the department against any post and he has manipulated the documents to prove his engagement. The applicant had also filed the OA No. 553/03 on the ground of fabricated / false documents and obtained the interim order dated 21.05.2003. On receipt of this OA No. 553/03,, the case of the applicant was referred to Sub Divisional Inspector (Postal) Banda for necessary action. The annexures submitted by the applicant in support of his claim were examined, but not a single document was found to be genuine. It was also stated that the order dated 01.05.2003 was not found to be genuine and it was not found to have been issued by the Postmaster, Banda. The order on the said OA No. 553/02 passed by this Tribunal on 11.01.2005 was complied with by the Superintendent of Post Offices, Banda by passing letter dated 27.04.2005 (Annexure A-2) which was delivered on 05.05.2005. But the applicant had deliberately pretended that the letter dated 27.04.2005 was not

delivered to him and filed a Contempt Petition which was disposed of by this Tribunal vide order dated 10.10.2006 (Annexure A-13). It is further submitted that the applicant was never appointed by the Sub Divisional Inspector, Banda, South Division. He has never worked on the post as it is evident from the letter dated 02.06.2003. In the appointment letter dated 14.09.1996 the signature of Shri Ram Jas Prasad, Ex. BPM Jalapur was found different and it also does not bear memo number of appointment. It is further submitted that the order dated 15.01.1998 was never issued by the Superintendent of Post Offices, Banda Division. Neither the applicant was appointed on the post of GDS Mail Peon, Jalapur nor he worked on that post.

5. It is further submitted by the respondents that that District Magistrate, Banda has not conducted any inquiry for verification of genuineness of applicant's documents. As per the affidavit of Shri Ram Tirath Shukla, Branch Postmaster, Jalapur, the error book handed over to him was for the period from 24.11.1987 to 28.11.1999 but it was filled up on 28.01.1994. It is also submitted that receipts of payment of salary submitted by the applicant are not genuine because for all payments of pay and allowances only Postmaster, Banda, who was drawing and disbursing authority, is competent authority to order for payments of pay and allowances and such orders for payment of pay and allowances are passed by him under his seal and signature in prescribed form Acquaintance Roll or ACG-17. But the applicant failed to produce either Acquaintance Roll or ACG-17. It is submitted that the order passed by this Tribunal in OA No. 553/03 was received on 03.02.2005 and the applicant vide order dated 09.02.2005 was asked to submit the documents relied on by him for examination. The said letter dated 09.02.2005 was received back with remark "Addressee is

out of Village without any address. Hence it is returned undelivered to sender". The said letter was again sent to his address at Allahabad vide letters dated 18.03.2005 and 31.03.2005. The applicant neither turned up nor did given any documents in this regard.

6. The applicant has filed rejoinder affidavit in which he has reiterated his pleadings as stated in the OA. It was submitted that this Tribunal in the earlier OA No. 553/03 directed the respondents to take opinion of hand writing expert readings genuineness of documents and signature of officer concerned but the respondent authority has not taken any opinion of hand writing expert and arbitrarily rejected the claim of the applicant. It is further stated that the applicant has not received any letter from the respondents to produce the documents for inquiry.

7. Heard Shri B.N. Singh, learned counsel for the applicant and Shri R.K. Srivastava, learned counsel for the respondents and perused the entire pleadings on record.

8. Learned counsel for the applicants submitted that the applicant was working as a GDS Mail peon at Jalalpur in Banda district, being appointed by the respondent no. 4 since 14.09.1996, but the respondents are not recognizing the applicant's services nor are they extending the benefits to him as per the rules. He submitted that the applicant's services have been terminated on 01.05.2003 and that as per the rules, the relief being prayed for by him are permissible.

9. Learned counsel for the respondents contested the claims and reiterating the contentions of the respondents that the applicant had

never worked with the respondents as a GDS, submitted that the applicant has not produced any documents to prove his contentions that he was working with the respondents. He also submitted that the impugned order dated 01.05.2003 has never been issued by the Postmaster, Banda. He further pointed out the delay in filing the OA, for which it is not maintainable under law.

10. The applicant had filed the OA No. 553/2003 on similar grounds and for similar prayer for relief as in the present OA. The OA No. 553/2003 was disposed of by this Tribunal vide order dated 11.01.2005 (Annexure A-12), which stated as under:-

“3.The applicant is given liberty to produce all the documents he is relying on before the superintendent of Post Office, Banda who may take the opinion of handwriting expert of the documents relied on by the applicant to which purport to bear the signature of the competent authority. The applicant is directed to cooperate with the inquiry so as to enable the Superintendent of Post Office, Banda to take decision in the matter expeditiously as referred hereinabove. The interim order passed is vacated. It is however, provided that Superintendent of Post Office, Banda would make such arrangement as he may deem fit and proper in the circumstances.

11. The respondent No. 3 inquired into the matter and passed a detailed reasoned order dated 27.04.2005 (Annexure A-2), which is impugned in this OA. Regarding compliance of the order dated 11.01.2005 of this Tribunal, the respondents have stated the following in the counter affidavit filed by the respondents, which states as under:-

“5. That, Sri Ram Tirath Shukal has been working as GDS BPM since 17.03.1999 and Sri Ram Adhar working as GDS MP since 06.01.1961 has been retired on 12.05.2003 afternoon on attaining the age of 65 years by making over the charge to said Ram Tirath Shukla in addition to his (Sri Ram Tirath Shukla) own duty. Sri Ram Jas Prasad Shukla had worked on the post of GDS BPM Jalapur till 29.06.1998 i.e. til the date of his death. The applicant Shri Shyam Bihari Dhuriya never worked in the department against any post but his grand father Sri Ram Adhar has worked as GDS MP Jalapur since 06.01.1964 to 12.05.2003. Being the near relative of Sri Ram Adhar, Shri Shyam Bihari Dhuriya was in touch with the working of Jalapur Branch Post Office consequently he manipulated documents to prove his appointment on the post of GDS MP Jalapur.

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7. *That, on receipt of earlier O.A. No. 553 of 2003, the case was referred to Sub Divisional Inspector (Postal) Banda South for necessary action. The annexures submitted by the applicant in support of his claim were examined and quarried from the alleged authorities. But even a single document could not be found genuine. The annexures shows to e addressed to District Magistrate Banda were also found forged / fabricated / suspected.*
8. *That, the said O.A. No. 553 of 2003 was directed by Hon'ble C.A.T. on 11.01.2005 and it was complied with the Superintendent of Post Offices Banda by passing a letter dated 27.04.2005 was not delivered to him and filed contempt application No. 106 of 2005 which disposed of by the Hon'ble C.A.T. on 10.10.2006 by dropping the contempt proceedings and discharging the notices issued to the respondents.*

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13. *That, the contents of paragraph No. 4.1 of the original application is not admitted as stated hence denied. It is submitted that applicant was never appointed by the competent authority i.e. Sub Divisional Inspector Banda South Sub Division as is clear from letter dated 02.06.2003 issued by Sub Divisional Inspector (Post) Banda South, a true copy of which is being filed herewith and marked as Annexure No. CA-3 to this Affidavit. He has never worked on that post as is evident from the Post Master Banda letter dated 02.06.2003. A copy of Postmaster Banda letter dated 02.06.2003 is being filed herewith an marked as Annexure No. CA-4 to this affidavit. The applicant had submitted Photostat copy of letter dated 14.09.1996, which is being filed herewith and marked as Annexure No. CA-5 to this affidavit wherein signature of Sri Ram Jas Prasad Ex. B.P.M. Jalapur was found differed from the signature of Sri Ram Jas Prasad in Acquaintance Roll of March, 1997 a Photostat copy of which is being filed herewith and marked as Annexure No. CA-6 to this affidavit. Typed copy of letter dated 14.09.1996 shown as Annexure -3 to the O.A. do not bear memo number of the appointment letter, seal of competent authority issuing the memo. Copy of the letter has been shown at serial no. 2 to Sub Postmaster Jalapur while there is no post of Sub Postmaster in Jalapur Branch Post Office. The appointment letter is not in proper form. Competent issuing authority may not pass such type of blunder mistakes while passing an appointment letter. This shows that this is forged / fabricated letter and is not reliable at all.*
14. *That, the contents of paragraph no. 4.2 of the original application is not admitted as stated, hence denied. It is submitted that the representation dated 13.09.1998 (wrongly shown as 13.1.98 in Annexure No. 4 to the O.A.) was not received by this Office prior to filing of earlier O.A. No. 553 of 2003 and order dated 15.01.1998 has never been issued by the office of Superintendent of Post Offices Banda Division, Banda. The applicant had submitted Photostat copy of letter dated 15.01.1998, a copy of which is being filed herewith and marked as Annexure No. CA-7 to this affidavit and in the present O.A. he is submitting typed copy of letter dated 15.01.1998, which also does not bear memo number like the letter dated 14.09.1996 as detailed in preceding paragraph. This fabricated letter is shown to be addressed to Nirikshak Dakghar Tritiya Prakhanda Banda. It is to clarify here that there is no such post of Nirikshak Dakghar in Banda Division. This office can also never pass such typ of blunder mistake. Its copy is also not shown endorsed to some one so how it reached to applicant is not understood. This shows that this is a fabricated letter."*

12. In the Rejoinder filed by the applicant, the specific averments in the counter as stated in para 5,7,8,13 & 14 have not been contradicted with credible evidence to prove that the assertions in the counter are not correct. The applicant, in the Rejoinder, has reiterated the contention that the opinion of the hand writing expert was not taken, for which, the conclusion that the letters submitted are forged has not been accepted by the applicant.

13. We have considered the submissions as well as the pleadings of the parties. It is seen that that the applicant had filed a contempt against the respondents for non-compliance of the order dated 11.01.2005 of this Tribunal. The contempt petition was dismissed by this Tribunal vide order dated 10.10.2006 of this Tribunal, a copy of which has been enclosed by the respondents in Annexure CA-2 of the counter affidavit. This Tribunal in this order dated 10.10.2006 has held as under:-

“5. After hearing the respective arguments and perusing the material on record, we are of the view that no prima-facie case is made out, to proceed against the respondent No. 1, for committing Contempt of Court. The respondent No. 1 has passed one order and it may be that order may not be correct or proper one. In these contempt proceedings the correctness or otherwise of that order cannot be gone into. That may be subject matter of another action but not in proceedings under Section 17 of the A.T. Act, 1985. The Contempt Proceedings are dropped and notices issued to the respondents are discharged.”

In view of above findings of this Tribunal, the contention of the applicant that the inquiry was not conducted as per the order dated 11.01.2005 of this Tribunal because the opinion of the hand writing expert was not taken, cannot be accepted, since this inquiry has been accepted in the contempt case.

14. In view of above, we are unable to agree with the contentions of the applicant that the matter has not been inquired properly and that the applicant has a case to be considered for appointment as GDS. The respondents have asserted that the documents furnished by the applicants are forged letters which have never been issued by the respondents and the applicant had never worked as a GDS in Jalalpur of Banda district. Hence, we are of the considered view that the applicant has failed to substantiate his claims and that the respondents have been able to prove that the applicant was never appointed as a GDS by the competent authority as per the rules. The OA, therefore, lacks merit and is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(Gokul Chandra Pati)
Member (A)

(Dr. Murtaza Ali)
Member (J)

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