

(Reserved on 12.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00553/2010

This the *30th* day of *July, 2018*

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Satyendra Kumar Pandey, Son of Ram Pyare Pandey, Resident of Village – Bhawanipur, Post Office – Bhawanipyur, District – Sant Ravidas Nagar.

.....**Applicant**

By Advocate: Shri A. Tripathi

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. Superintendent of Post Offices, West Division, Varanasi.
4. Sub Divisional Inspector of Post Offices, Gyanpur, District - Varanasi.

.....**Respondents**

By Advocate : Shri Ram Pal Singh

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for following main reliefs :-

“8.1. To issue an order, rule or direction in the nature of certiorari quashing and set aside the impugned order dated

07.08.2009 passed by respondent no. 2 by which the respondent no. 2 rejected the claim of the applicant for giving him alternative appointment on any vacant post of Gramin Dak Sewak cadre in Division / Sub Division (Annexure No. A-1...).

8.2. To issue a rule, order or direction in the nature of mandamus directing the respondent no. 3 to consider the claim of the applicant for giving him alternative appointment as admissible under the rules and to provide the alternative appointment to the applicant in Sub Division.”.

2. The applicant was appointed as EDDA/MC, Pakhvaiyan Branch Office provisionally by the respondent No. 3 vide order dated 15.06.1999 and the applicant took the charge of the post on 02.07.1999 (Annexure No. A-2). The respondent No. 3 discontinued the engagement of the applicant on 25.09.2001 and engaged one Shri Rameshwar Prasad Shukla, whose engagement was not approved by the respondent No. 2. Hence, the charge of the post was handed over to the applicant on 13.10.2001, which was subsequently approved by the Respondent No. 2 as per order dated 17.10.2001 of respondent No. 3 (Annexure No. A-3). The applicant after completing three years service submitted a representation before the respondents for giving him alternative appointment on the said post, but the respondents instead of considering the claim of the applicant, issued a notification for making regular appointment on the said post and appointed Shri Ved Prakash Pandey on regular basis on 12.03.2004.

3. Thereafter, the applicant filed OA No. 326/2004 which was dismissed vide order dated 02.04.2004 (Annexure No. A-6) with observation that the dismissal of the said OA would not prejudice the

right of the applicant for alternative appointment. Against the order of the Tribunal, the applicant filed writ petition No. 5784/2005 before Hon'ble High Court, Allahabad, which was also dismissed . The applicant submitted a representation dated 07.05.2004 (Annexure No. A-7) before respondent No. 3 for giving alternative appointment being a retrenched Gramin Dak Sewak on the basis of his working for more than three years followed by a reminder dated 16.05.2005 (Annexure No. A-7) before respondent No. 3. But no action was taken. The last representation submitted by the applicant is dated 24.07.2009 (Annexure No. A-8). Thereafter, the respondent No. 2 vide order dated 07.08.2009 (Annexure No. A-1) rejected the claim of the applicant. Aggrieved, the applicant has filed the instant OA on the ground that that action of the respondent No. 2 is illegal, arbitrary and against the rules. It is stated in the OA that as per the rule 15(2) of GDS (Conduct and Employment) Rules, 2001, the applicant is entitled to be considered for an alternative appointment to the ED Agent.

4. The respondents have filed Counter Affidavit. It is stated that the applicant was engaged as substitute on the risk and responsibility of a regular employee Shri Rameshwar Pandey, Branch Dak Pal. This engagement was a stop gap arrangement till the regular selection is made. It is further submitted that the applicant has no right to become a regular employee without facing the selection process as per guidelines. A selection procedure was initiated in accordance with Rule in which Shri Ved Prakash Pandey being most suitable candidate was appointed on the post of GDS MC/MD.

5. We have heard Shri A. Tripathi, learned counsel for the applicant and Shri Ram Pal Singh, learned counsel for the respondents and also considered the pleadings as well as the materials available on record. Admittedly, the applicant's case for appointment after quashing the regular appointee was dismissed by this Tribunal's order dated 02.04.2004 in OA No. 326/2004 with following observation: -

"In the circumstances, therefore, we find no ground made out for interference with the appointment. It is, however, observed that the dismissal of this OA will not prejudice the right, if any, of the applicant for alternative appointment if the same is permitted under rules."

Against above order, the applicant filed writ petition in Hon'ble High Court and the said writ petition was dismissed vide order dated 30.08.2005 (Annexure CA-5 to the Counter Affidavit).

6. Thereafter, the applicant submitted representation dated 24.07.2009 (Annexure A-8) requesting for alternative appointment which was rejected vide the impugned order dated 07.08.2009 (Annexure A-1) on the ground that his case in Tribunal was dismissed vide order dated 02.04.2004, which was upheld by order dated 30.08.2005 by Hon'ble High Court. The case of the applicant is that as per the order dated 02.04.2004 of this Tribunal, his application for alternative engagement should have been considered in the light of the rule 15(2) of the GDS (Conduct and Engagement) Rules, 2001.

7. We have heard learned counsels for both the parties and considered the pleadings. GDS (Conduct and Engagement) Rule, 2011 (Swami's Compilation of Service Rules for Postal Gramin Dak Sevak

page 128 -129) contains the following guidelines regarding provisional appointment of ED Agents, which is same as provided under rule 2001 rule: -

“.....

(i). As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.

.....

2. Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G.P, P&T, Letter No. 43-4/77-Pen., dated 23-2-1979.”

8. In this case, the applicant has not completed three years of continuous service in view of the break for the period from 25.09.2001 to 13.10.2001 as stated in para 4.3 of the OA. Hence, the applicant's case is strictly not covered under the guidelines cited above. Further, as per these guidelines, the provisional appointment of GDS is to be avoided. No other rules or guidelines have been cited by the applicant to prove his right to be considered for alternative engagement as a GDS.

9. In view of the above, we do not find any merit in the OA, which is accordingly, dismissed. No costs.

(RAKESH SAGAR JAIN) (GOKUL CHANDRA PATI)
MEMBER-J MEMBER-A

Anand...