

(Reserved on 30.07.18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/00716/2010

Allahabad this the 16th day of August, 2018

**Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member - J**

Ravindra Kumar Pandey, Son of Sri Shyam Sunder Pandey, Resident of Village and Post Pargaspur Nai Bajar, District Sant Ravi Das Nagar (Bhadohi).

Applicant

**By Advocates: Shri S.P. Mishra
Shri Dinesh Pathak**

Vs.

1. Union of India through its Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Director General of Indian Postal Services, New Delhi.
3. Post Master General, Allahabad Region, Allahabad.
4. Sri A.K. Srivastava, Superintendent of Post Offices, Varanasi Division (West Cantt.), District Varanasi.

Respondents

By Advocate: Shri N.P. Shukla

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, A.M.

This O.A. has been filed by the applicant seeking following relief(s): -

“(i) to allow the Original Application (O.A.) and to quash the impugned order dated 06.04.2010 of respondent No. 4 sent to the applicant by registered letter no. 1624 dated 1504.2010 (Contained in Annexure No. 1 to the Compilation No. 1 of this O.A.).

“(ii) to direct the respondent No. 4 to appoint the applicant as E.D./ G.D.S. Branch Post Master of Branch Pargaspur, Account Office, Nai Bajar, District Sant Ravi Das Nagar (Bhadohi).

(iii) to grant any other order or direction as this Learned Tribunal may deem fit and proper in the circumstances of the case beside costs and expenses of the Original Application (O.A.).

(iv) to award the costs of the O.A. in favour of applicant."

2. The facts, in brief, as per the OA are that the applicant was engaged as Substitute Branch Post Master (for short B.P.M.) [G.D.S.] in place of his father – Shri Shyam Sunder Pandey – regular B.P.M. [G.D.S.], Branch Pargaspu, District Sant Ravidas Nagar (Bhodohi) on different dates after getting written permission of competent authority i.e. respondent No. 4. Since the applicant's performance was satisfactory for the period from 12.09.1996 to 28.09.2009, he made an application dated 20.01.2010 (Annexure A-4) to respondent No. 4 for giving him opportunity to work on the aforesaid post after retirement of his father on 30.01.2010. However, no action was taken by the respondents on the application of applicant. Hence, he filed an O.A. No. 78 of 2010 before this Tribunal. The Tribunal vide its Judgment dated 28.01.2010 (Annexure A-5) directed the applicant to prefer a comprehensive representation before the respondents, who were also directed to decide the same by passing a reasoned and speaking order within six weeks from the date of receipt of the representation.

3. Accordingly, he submitted representation dated 23.02.2010 (Annexure A-6) which was rejected by the respondent No. 4 by passing the impugned order dated 06.04.2010, which is impugned in this OA. By the impugned order dated 06.04.2010, the respondents rejected the representation of applicant mainly

on two grounds that no appointment procedure was adopted while appointing the applicant as Substitute B.P.M. (GDS) and no application was invited to fill up the said post of GDS as per the instructions of DG, Postal Services. It was further mentioned in the impugned order that the applicant was engaged by his father during his leave period as substitute, as such, there is no justification to appoint the applicant.

4. Through this O.A., the applicant has challenged the impugned order dated 06.04.2010 on the following grounds: -

(i). personal grudge and malice of respondent No. 4 towards him and his father.

(ii). Since he was completed more than one year of service as GDS, as per order dated 06.06.1988, his case can be considered by the respondent No. 4.

(iii). There is a vacancy in the post of BPM (GDS) at Pargaspur after retirement of his father, the applicant can be appointed as per letter dated 11.11.1988 of respondent No. 2.

5. The respondents have filed the Counter Affidavit (in short CA) rebutting the contentions made in the O.A. It is submitted in the CA that the applicant was engaged by the father of applicant as substitute B.P.M. (GDS) on his risk and responsibility. There is no departmental rule to regularize the services of substitute personnel and without facing the recruitment process as prescribed for GDS under the rules. The respondents further submitted that the OA No. 60 of 2010 filed by the father of applicant with the prayer not to retire him from

service was also dismissed on 10.01.2010 at admission stage itself. The respondents also submitted that the applicant is not entitled for any appointment as B.P.M. (GDS) and the O.A. is liable to be dismissed.

6. The applicant has filed the Rejoinder Affidavit, reiterating the contentions made in the O.A.

7. This case was heard on 30.07.2018, under Rule 15 (1) of CAT (Procedure) Rules, 1987 in absence of any one on behalf of the applicant even on revised call and since the OA pertains to year 2010 and it is listed on Board. Previously on several dates also, there was no one present on behalf of the applicant. Shri Dharmendra Tiwari proxy counsel to Shri N.P. Shukla, learned counsel for the respondents was heard. He submitted that the advertisement dated 19.07.2011 to fill up the vacant post of GDS (BPM), Pargaspur, which has been cancelled by the respondents vide order dated 23.02.2012. No written argument was filed by the applicant's counsel by 09.08.2018, as directed vide the order dated 30.07.2018.

8. We have considered the materials available on record. It is seen that vide order dated 03.08.2011, the applicant's counsel was permitted to impugn the notification dated 19.07.2011. However, no action has been taken by the applicant in this regard. However, this issue has become irrelevant in view of the submission of the respondents' counsel that the said notification has been cancelled by the respondents.

9. The applicant's claim to be appointed against the vacant post of GDS (BPM), Pargaspur mainly on the strength of the letter dated 06.06.1988 and dated 11.11.1988 of the respondent No. 2, as mentioned in para 5 of the OA. But copy of the said letters of the respondent No. 2 has not been enclosed by the applicant. No other rule has been cited by the applicant in support of his claim to be appointed against the vacant post of GDS (BPM), Pargaspur on account of the fact that he had worked as substitute GDS (BPM) against leave vacancy from time to time.

10. A similar dispute regarding the right of substitute GDS was considered by Ernakulam Bench of this Tribunal in OA No. 554/2016 in the case of K.R. Rajesh Kumar vs. Inspector of Posts and others and vide order dated 23.01.2017 (<https://indiankanoon.org/doc/124210539>) and it was held in that case as under:-

“8. Annexure A-12 judgment produced by the applicant will not help the applicant at all. Even in that case the OP(CAT) filed by the applicant was dismissed. However, considering the fact that the petitioner therein had been working for more than four years the Hon'ble High Court directed the respondents to consider whether the applicant could be provided with alternative employment if there are vacancies and such a course is permissible in accordance with the rules. There is no positive direction to grant appointment. Not only that so far as the case on hand is concerned, the applicant did not work continuously for more than 4 years or even for 4 years. He had worked at different places during different spell of time, that too only on stop gap arrangement for nearly one year only. It can never be treated as regular or continuous service.

9. Though the applicant has been engaged in the post from 01.05.2016, it can be seen that from 12.07.2016 onwards his continuance in the office was based only on the interim order passed by this Tribunal and so the period subsequent to 12.07.2016 cannot be taken advantage of to contend that he had acquired any particular right.

10. As stated earlier, as per Annexure A-10 dated 23.06.2016 the entry age to GDS posts was raised up to 40 years with relaxation to 3 years to those belonging to OBC and 5 years in the case of candidates belonging to SC/ST. The relief sought for in this application is to quash Annexure A-1 dated 10.03.2016. Annexure A-10 was issued subsequent to Annexure A-3. The recruitment/selection process has not been completed. Hence, the benefit of Annexure A-10 may be available to the candidate to be selected for the said post. But his claim that his past experience as GDS MD should also be considered for appointment to the post of GDS Mail Deliverer at Poonjar Sub-Post Office cannot be accepted. However, if the applicant applies for the post, and if the respondents relax the age so as to allow the applicant to participate in the selection process, then he can be allowed to participate in the selection process. It is made clear that the selection shall be made purely on merit.”

11. In another case relating to the right of substitute GDS for appointment with similar facts as the instant OA, Madras Bench of this Tribunal in the case of P. Moorthy and ors vs. Union of India and Ors in OA No. 27/2005 reported in 2007 (2) SLJ 103 CAT, vide order dated 4.7.2006, it was held as under:-

“10. The submission that the Rules we are concerned with for recruitment are not statutory and are not framed under [Article 309](#) of the Constitution and, therefore, the Constitution Bench judgment will not apply, cannot be sustained. It is settled that EDAs are holders of civil post as held by the Hon'ble Supreme Court in the case of [Superintendent of Post Offices v. P.K. Rajamma](#) . Their Lordships in that case held as follows:

An extra department agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State...

What the applicants seek is a public employment. Their Lordships held that adherence to the rule of equality in public employment is a basic feature of our constitution. The executive instructions, the rules and the guidelines read with [Article 14](#) and [16](#) of the Constitution of India are required to be followed in the case of employment of the GDS. There cannot be any escape from the constitutional scheme of employment which shall have to be in accordance with the procedure or rules. Therefore,

we are of the view that the applicants who have entered the service and continued contrary to or not in accordance with the rules, guidelines or instructions, cannot be permitted to claim a right to be regularized. That would be perpetuating the illegality and would amount to encouraging back door entry into the service and employment. Their Lordships in [Secretary, State of Karnataka v. Uma Devi](#) approved the view that regularisation is not and cannot be a mode of recruitment by any State or authority governed by a [Statutory Act](#) or Rules.

11. For the above reasons, we hold that the applicants have not made out a case for grant of the reliefs as prayed for by them in these O.As., and consequently the same are liable to be dismissed and are accordingly dismissed with no order as to costs.”

12. In view of above, in this OA also the applicant is not entitled for any relief as prayed for in the OA. Accordingly, the OA is dismissed. No costs.

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

Anand...