

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 05th day of September 2018

Original Application No. 330/00441 of 2012

Hon'ble Mr. Gokul Chandra Pati, Member – A

Hon'ble Mr. Rakesh Sagar Jain, Member – J

Subhash Chandra Sharma, S/o Shri Sukhbir Sharma, R/o Village:
Shahjahanpur, Post Sarsawaan, District Shahjahanpur.

. . . Applicant

By Adv: Shri R.K. Dixit, Shri Manoj Dhruvansi, Shri Jaswant Singh and
Shri S.K. Kushwaha

V E R S U S

1. Union of India through Secretary, Ministry of Posts and Telecommunication, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Saharanpur Division, Saharanpur.
3. Sub-Divisional Inspector Posts, West Sub-Division, Saharanpur – 247001.
4. Shri Kuldeep Kumar, S/o Shri Isam Singh, R/o Village : Kalyanpur, P.O. Sarsawa, District: Saharanpur.

. . . Respondents

By Adv: Shri S. Srivastava

ORDER

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

Heard Shri S.K. Kushwaha, learned counsel for the applicant and Shri P.K. Dubey proxy counsel to Shri S. Srivastava, learned counsel for the respondents.

2. This Original Application (in short OA) has been filed with the following reliefs:-

“i. *The Hon'ble Tribunal may graciously be pleased to quash the impugned letter / Memo. Dated 29.8.2011 vide which respondent no. 4 was appointed illegally and arbitrarily and further may be pleased to direct the respondents to appoint the applicant on the aforesaid post on which respondent no. 4 is appointed and working.*

ii. Any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be issued.

iii. Award cost in favour of the applicant."

3. Learned counsel for the applicant submitted that the applicant was appointed on provisional basis as Gramin Dak Sevak (in short GDS) MD against a vacant post in Shahajahanpur Branch Office from the year 2001 to 2003 and he was discontinued due to want of sanction from the competent authority. It is stated that vide impugned order dated 29.08.2011 (Annexure A-1) another person namely Kuldeep Kumar has been subsequently appointed provisionally for 89 days.

4. The grievance of the applicant is that since he had worked on that post earlier provisionally, the post should have been filled up on regular basis as per rules. But if the department decides to continue engagement of GDS on provisional basis then the case of the applicant should have been considered fresh as he had worked there. He submitted that in a similar case, the Allahabad Bench of this Tribunal vide order dated 16.07.2008 passed in OA No. 194 of 2004 (Manoj Swaroop Sharma vs. Union of India and others) directed the respondents to allow the applicant to continue to work as GDS.

5. Learned counsel for the respondents on the other hand reiterated the plea in the counter affidavit (in short CA), stating that the applicant was engaged for a short period as stop gap arrangement and he was not given regular or provisional appointment. Hence, it is submitted that he not a provisionally appointee, hence has no claim for absorption. It is further stated that the detailed position has been explained in the CA filed by the respondents.

6. In the case of Manoj Swroop Sharma (supra), decided by this Tribunal, the applicant in that case had approached this Tribunal by filing OA No. 194 of 2004 since he was asked to relinquish the charge of the GDS verbally. Paragraph No. 3 of the said judgment reads as under:-

"3. The applicant is before us because it is alleged that the authorities have asked him to relinquish charge of GDS Gwaroli verbally. Our attention has not been drawn to any

document which might be taken written communication asking the applicant to hand over charge of the post. We, therefore, find that if the appointment of the applicant is provisional he could not be replaced by any provisional appointee. At the same time, Prem Pal Singh GDS Meerpur succeeds in the OA at Principal Bench he would not be come back to GDS Gwaroli. In any case for the present their does not appear to be any ground which we could appreciate from the submission made before us on the basis of which the applicant must relinquish of the charge of the post which he is holding at present.”

The facts in that OA were different from the facts of the present OA. However, the observation that provisional appointee should not be replaced by another provisional appointee is applicable.

7. From the facts on record, we are not able to accept the contention in the CA that the applicant earlier was not appointed on provisional basis and he was appointed as a stop gap arrangement which was not provisional appointment. The applicant's services were terminated due to want of sanction of the competent authority. However, when such sanction was obtained his case should also have been considered while considering other person for appointment on provisional / stop-gap basis which is not as per the rules.

8. In view of the above, the OA is disposed of, without expressing any opinion of the eligibility of the claim of the applicant, with a direction to the competent authority to consider the case of the applicant for appointment on provisional / stop-gap basis for the post of GDS in Shahjahanpur Branch Office, in which he had worked either on stop-gap basis, if the applicant is eligible for the same, in the light of the observation made in the order dated 16.07.2008 passed by this Tribunal in OA No. 194 of 2004. This order shall be complied within a period of four months from the date of receipt of a certified copy of this order.

9. The OA is disposed of accordingly. There will be no order as to costs.

(Rakesh Sagar Jain)
Member – J

(Gokul Chandra Pati)
Member – A

/pc/