

Reserved
(On 07.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the **10th** day of **September** 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/00691 of 2014

Smt. Poonam Singh, W/o Havaldar Singh, R/o 123 Sangam Park, Khora Colony, Sector 62, NOIDA.

.....Applicant

By Adv: Shri Anil Kumar Singh & Shri A. Srivastava

VE R S U S

1. Union of India through Secretary, Ministry of Post and Telecommunication, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, UP Circle, Lucknow.
3. Senior Superintendent of Post Offices, Ghaziabad Division, Ghaziabad.
4. Assistant Superintendent of Post Offices, NOIDA.
5. Sri Govind Singh, Senior Superintendent of Post Offices, Ghaziabad Division, Ghaziabad.
6. Sri Rajiv Srivastava, Assistant Superintendent of Post Offices, NOIDA.
7. Sri Kamlesh Chandra, Member of Posts, Director General Posts, Dak Bhawan, New Delhi.

.....Respondents

By Adv: Shri Neeraj Mishra

O R D E R

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

The applicant has filed this OA with the following reliefs:-

- i. That this Hon'ble Court may be graciously be pleased to direct the respondents to permit the applicant to resume her duty in Sub Post Office Sector 34 NOIDA where she was performing her duty and may also pleased to direct to pay the salary month to month.*
- ii. The Hon'ble Court may graciously be pleased to quash the order dated 12.6.2013 passed by Senior Superintendent of Post Office, Ghaziabad vide which her candidature to the post of LDCE – Postman Exam – 2012 with Roll No. GZB – 40 / 2012 has been cancelled.*

- iii. *This Hon'ble Court may graciously be pleased to pass order or direction in nature of mandamus directing to the respondents to declare the result and promote to the post of LDCE – Postman Exam – 2012 with Roll No. GZB – 40 / 2012 with all consequential benefits which has been conferred to other candidates who has qualified the aforesaid examination along with her.*
- iv. *Any other direction as may deem fit and proper in the circumstances of the case.*
- v. *Award cost of the original application.”*

2. The facts as per the OA, in brief, are that the applicant claims to be working as GDS from year 2000 as ED BPM Khora. She had applied for the post of ED SPM, Bhoor Bharat Nagar (in short EDBBN) as per the advertisement dated 22.12.2005 by respondent no.3 (Annexure A-2 to the OA). It is stated in OA that she was selected and appointed by respondent no.3 vide order dated 26.9.2007 (Annexure A-4) with seniority from 1.1.2006 since she was working since 2000. He had also sent a report to the CPMG, Lucknow vide letter dated 16.3.2007 (Annexure A-3). Thereafter, respondent no.3 invited application for the post of postman and the applicant applied. She was issued admit card (Annexure A-6) and she appeared in the examination. But her result was withheld. She represented to the authorities to declare her result. She was asked to submit original high school mark sheet and certificate, caste certificate and papers relating to initial appointment, which were supplied by the applicant. In the meantime the applicant was deployed in Noida sector 34 Branch post office. Due to delay in publication of her result, she complained to higher authorities. Then she was relieved from Noida sector 34 and was asked to report at her original post as EDBBN. It is stated in the OA that she could not join since another person was already working there. The OA has also mentioned some complaints against the respondent no 3. It is farther alleged that her pay has been stopped by the respondents without her fault and without observing the principles of natural justice. The applicant alleges harassment against her.

3. Finally, the respondents have issued the order dated 12.6.2013 (Annexure A-1) cancelling her candidature for appearing in the limited departmental competitive examination (in short LDCE) for postman in 2012 on the ground that she has not completed 5 years of service, which was the eligibility condition for the LDCE. The OA challenges the order dated 12.6.2013.

4. Main grounds taken by the applicant in the OA are:-

- (i) Her salary has been stopped without following the principles of natural justice or taking disciplinary action as per the rules.
- (ii) The applicant was initially appointed in 2000 as GDS and she was selected as EDBBN with seniority from 1.1.2006 vide order dated 26.9.2007 (Annexure A-4) and this selection was done through the selection process as per the rules.
- (iii) At the time of submission of her application for LDCE for postman, required documents were submitted and she was allowed to appear in the examination.

5. The respondents have filed their Counter Affidavit (in short CA), opposing the OA, stating the following points against the averments of the applicant:-

- (i) The applicant was allowed to work as substitute against the post of Group D/MTS in Noida sector 34 Post Office for 89 days only as a stop-gap arrangement vide order dated 1.11.2012. The arrangement was cancelled on 5.2.2013 and she was asked to go back to her initial post of EDBBN, but she did not join.
- (ii) Denying the contention that the applicant was appointed as EDBBN vide order 26.9.2007 with seniority w.e.f. 1.1.2006, it is stated that the said recruitment process for the post of EDBBN was cancelled and fresh notification for the same was issued on 29.2.2008, since inquiry found that the process was vitiated due to non-sponsoring of candidates by employment exchange and close relative of one of the senior officer was a candidate and based on the inquiry report, the competent authority cancelled the process of appointment vide order dated 18.2.2008 (copy of note sheet at Annexure CA-1). Fresh advertisement dated 28.2.2008 was issued to fill up the post of EDBBN, which was challenged by the applicant in

OA No. 328/2008 in which no plea was taken by the applicant that she was already appointed against the post of EDBBN (para 10 of the CA). The order dated 26.9.2007 referred by the applicant was 'counterfeited by Shri R.K. Dubey the then Superintendent of Post Offices, Ghaziabad Division and it is a fake one as the appointment letter is not in the prescribed format by the department' as stated in para 9 of the CA.

- (iii) The applicant filed OA No. 328/2008 which was disposed of vide order dated 20.7.2009 directing the applicant to submit a representation to be disposed of by the respondents. She filed the representation dated 31.7.2009 (Annexure CA-4), which was rejected vide order dated 1.9.2009 (Annexure CA-5). Being aggrieved, the applicant filed OA No. 20/2010 which was disposed of vide order dated 8.1.2010 (Annexure CA-6) with direction to dispose of the representation dated 31.7.2009 by a speaking order, which was done vide order dated 23.2.2010 (Annexure CA-7) rejecting the request to be appointed as EDBBN. By that time the applicant had been selected and appointed as GDS BPM Kachera Varsabad vide order dated 31.3.2009 (Annexure CA-10). Then vide order dated 19.5.2013 (Annexure CA-13) issued with approval of the respondent no. 2, she was transferred as EDBBN, which was vacant since 2002. Further, the applicant (para 10-12 of the CA). Hence, the applicant cannot get any benefit of the order dated 26.9.2007 which was a fake order issued by Shri R.K. Dubey.
- (iv) In view of the fact that the applicant was first appointed to the post of GDS w.e.f. 31.3.2009 as stated above, she had not completed 5 year period to appear in the LDCE for postman in 2012 for which her candidature was cancelled vide the impugned order.

6. The applicant has filed a bulky Rejoinder in reply to the CA of the respondents in which a number of allegations have been mentioned, which, in our opinion are not relevant for the purpose of the

present dispute. The averment regarding appointment as EDBBN as per the order dated 26.9.2007 was reiterated. In reply to the contention in para 9 of the CA that the order dated 26.9.2007 relied upon by the applicant, was a fake order counterfeited by Sri R.K. Dubey, the applicant in para 149 of the Rejoinder has referred to a letter dated 13.8.2013 (Annexure RR-23 to the Rejoinder) of Sri R.K. Dubey, retired which stated that the said order dated 26.9.2007 was issued by him after completing the formalities. In reply to the averment in para 10 of the CA that the applicant failed to disclose that she was issued the appointment order dated 26.9.2007 for the post of EDBBN in OA No. 328/2008 filed by her in this Tribunal, para 154 of the Rejoinder has simply denied the averment and stated that the applicant submitted a representation dated 31.7.2009 for her posting as EDBBN, in pursuance to the order dated 20.7.2009 of this Tribunal in OA No. 328/2008. The applicant claimed that she was working as GDS prior to her appointment in Kachera Versabad vide order dated 31.3.2009 and her service prior to 31.3.2009 was not being counted, where as in case of another candidate Sri Bhim Singh, his service period from date of first appointment was counted for LDCE. In support of the fact that the applicant was working as GDS from year 2000, copy of some pay slips have been enclosed in Annexure RR-1 to the Rejoinder. It is also stated that the original service records of the applicant were manipulated by Sh. Prakash Chand and Sh. Govind Singh for which the applicant has drawn attention of higher officers.

7. We heard learned counsels for both the parties. Written submissions were filed by both the sides earlier. Opportunity was given to the learned counsel for the respondents to file additional written submissions within 10 days on the point made by the learned counsel for the applicant in his written argument about the compliance affidavit filed in the Contempt Application No. 120/2010 in the OA No. 20/2010 where a letter was enclosed from the respondents that the seniority of the applicant has been accepted from 1.1.2006. However, no such additional written submission was received from the respondents' counsel within time.

8. Learned counsel for the applicant has filed additional written argument on 4.9.2018, stating that the respondents had enclosed a copy of the order dated 23.9.2010 with their compliance affidavit in the

contempt case, in which the seniority of the applicant as GDS w.e.f. 1.1.2006 was accepted. It is further argued that the said order is intact and was never reviewed by the respondents, who have filed a misleading counter in the present OA by raising the issue about her seniority, which was accepted by them on 23.9.2010. Taking into consideration the fact that the order dated 23.9.2010 was not attached to the present OA, this Tribunal vide order dated 21.8.2018 directed the applicant to furnish some clarifications as to whether order dated 26.9.2007 was included in her pleading in earlier OA No. 503/2007. In reply, the applicant's counsel in the written argument raises the issue that the Tribunal vide the order dated 21.8.2018 has raised a matter which has been settled in previous OA. We are unable to agree with the contentions of the applicant's counsel since an important issue in this OA is whether the claim of the applicant regarding her appointment as ED BPM Bhoor Bharat Nagar w.e.f. 1.1.2006 by virtue of the order dated 26.9.2007, is correct or not in view of the facts that the respondents have disputed about the letter dated 26.9.2007. The applicant did not enclose the order dated 23.9.2010 as a document in this OA. No clarification as sought for in order dated 21.8.2018 is furnished in the written argument filed on 4.2.2018 by the applicant's counsel.

9. We take note of the fact that the order dated 23.9.2010 was mentioned by the applicant for the first time when learned applicant's counsel had filed first written arguments in the case on 01.11.2017. Since it was an important document on which the applicant is relying now, it should have been included as a part of the OA as required under the rule 9(1) of the CAT (Procedure) Rules, 1987, which states as under:-

“9. Documents to accompany the application.—

(1) Every application shall be accompanied by the following documents:

(i) an attested true copy of the order against which the application is filed.

(ii) copies of the documents relied upon by the applicant and referred to in the application;

(iii) an index of the documents.”

From above, the applicant is required under the rule 9(1) to enclose copy of the documents relied upon by the applicant with the OA. In case some relevant documents came to the applicant's notice subsequent to filing of the OA, there was no bar to apply for suitable amendment of the OA as per the law. In that case, the respondents would get an opportunity to reply or object to such document on record. We find that no such effort was made by the applicant in this case.

10. In view of the above, we are not able to take cognizance of the order dated 23.9.2010 for deciding this OA.

11. Vide order dated 16.9.2014, this Tribunal in this OA, directed the respondents to allow the applicant to join duty at any place in Noida. In compliance, the respondents have filed a Supplementary Counter Affidavit on 21.1.2015, stating that the applicant was posted as GDS BPM Parthla Khanjarpur, but the applicant refused to accept the order which was sent by post to the applicant.

12. It is seen from the order dated 22.11.2016, the respondents' counsel, on his request was allowed to file Supplementary Counter Affidavit to reply some of the facts mentioned in the Rejoinder within four weeks, but it was not filed.

13. We have carefully gone through the pleadings on record and also considered the submissions of learned counsels, both oral as well as written submissions filed. From the copy of the pay slips enclosed with the Rejoinder and the averments in para 4.1 of the OA, which have not been specifically denied in the Counter Affidavit, it is clear that the applicant was working as GDS in the department from time to time, if not continuously. About authenticity of the appointment order dated 26.9.2007 appointing the applicant in the post of EDBBN with seniority from 1.1.2006, the applicant did not bring this order on record when she had filed the ON No. 328/2008, challenging the issue of fresh notification dated 28.2.2008 to fill up the post of EDBBN. Contention in para 10 of the CA has not been countered convincingly in the Rejoinder. The order dated 20.7.2009 of this Tribunal in OA No. 328/2008 (Annexure CA-3) stated as under:-

"The applicant in the aforesaid two Original Applications is one and the same. Through O.A. No. 328 of 2008 she has

challenged the Requisition / Notification dated 28.02.2008, issued by respondent No. 5, by which he has cancelled the candidature of five candidates sponsored from the District Employment Officer, Ghaziabad / Noida for being appointed on the post of Extra Departmental Branch Post Master at Branch Post Office Bhoor Bharat Nigam, District Ghaziabad. In the O.A. No. 503 of 2007, connected with O.A. No. 328 of 2008 by the Order dated 23.03.2009 in this Tribunal, the applicant has challenged the action of respondent No. 4 in not declaring the result of the selection made for the post of Extra Departmental Branch Post Master at Branch Post Office Bhoor / Bharat Nagar, District Ghaziabad.”

14. The main dispute in this case relates to the authenticity of the order dated 26.9.2007 issued by then Superintendent of Post Offices, Ghaziabad Shri R.K. Dubey as the applicant claims that by this order, she was working as EDBBN after that order with seniority from 1.1.2006. In that case, the reason for filing the OA No. 503/2007 for declaration of the result of selection made for EDBBN by the respondent no. 4 (as stated in the order dated 20.7.2009 as extracted above), is not clear. It is not known whether the applicant had taken the plea that she was working as EDBBN in the OA No. 503/2007. Further, the letter dated 23.9.2010, which was stated in written arguments filed by applicant's counsel to have been filed by the respondents alongwith the compliance affidavit in the Contempt Application no. 120/2010 is found to have been addressed to the applicant. But such a letter was included as a ground in the OA or in the Rejoinder Affidavit filed by the applicant. If such a letter accepting the applicant's claim was issued by the respondents, the reasons for not including in the pleadings of the applicant have not been explained. We verified the said contempt record form the Registry. Since the papers were weeded out, the said compliance affidavit was not in the record of the contempt application No. 120/2010.

15. On the other hand, the respondents have vehemently opposed the order dated 26.9.2007, terming it as 'counterfeited' by Shri R.K. Dubey. But the details of action taken as per law against the persons responsible for such counterfeited or fake document have not been mentioned by the respondents in their pleadings. The order dated 23.2.2010, by which the representation dated 31.7.2009 of the applicant was disposed of by a speaking order, stated that the selection process for the post of EDBBN initiated in 2005 was cancelled by the competent authority and since the applicant has been selected as BPM Kachera Vaserabad on merit vide order dated

31.3.2009, her posting as EDBBN was not possible. However, vide order dated 19.5.2010, the applicant was posted as EDBBN by the respondents.

16. In view of the above discussions, we note the following facts relevant for dispute before this OA:-

- (i) Regarding the relief relating to the salary, in compliance of the interim order dated 26.5.2014 and 16.9.2014, the respondents were directed to post the applicant against a vacancy in Noida. The respondents have posted her as GDS BPM Parthla Khanjarpur, but the applicant refused to accept the order, as stated in the Supplementary Counter Affidavit filed by the respondents on 21.1.2015 which has not been contradicted by the applicant.
- (ii) The applicant did not point out about the order dated 26.9.2007, on which she is relying in this OA, while filing OA No. 328/2008 and OA No. 503/2007. It is also noted that there was no mention about the said order in the representation dated 31.7.2009, which was filed by her after passing of the order dated 20.7.2009 by this Tribunal in above two OAs.
- (iii) The applicant has not attached any letter or representation submitted to the respondents, if any, claiming that she was working as EDBBN by virtue of the order dated 26.9.2007.
- (iv) The compliance affidavit, referred in the written argument of the applicant's counsel, claiming that the respondents have issued a letter dated 23.9.2010, by which, the order dated 26.9.2007 with applicant's seniority w.e.f. 1.1.2006 was accepted by the authorities as stated in the order dated 23.9.2010. However, existence of this order dated 23.9.2010 was not included in the pleadings in the OA. It should have been included in the OA by the applicant, as it is important to decide the dispute.

- (v) No relief pertaining to the seniority of the applicant w.e.f. 1.1.2006 has been mentioned in para 8 of the OA. The relief regarding the applicant's eligibility for LDCE in 2012, cannot be decided without deciding her seniority issue with reference to her service record, which has not been produced by both the parties in the pleadings. The applicant has not furnished copy of pay slips or any other document to show that she was working as BPM Bhoor Bharat Nagar after 26.9.2007 till her selection as GDS BPM Kachera Versabad, vide order dated 31.3.2009, which is undisputed.
- (vi) Admittedly, the applicant was appointed as GDS BPM Kachera Versabad vide order dated 31.3.2009 and was transferred as GDS BPM Bhoor Bharat Nagar vide order dated 19.5.2010 and the process for recruitment for EDBBN initiated in 2005 was cancelled by the respondents.
- (vii) From the copy of the pay slips enclosed by the applicant with the Rejoinder, it is clear that the applicant was working as GDS from the year 2000 at least from time to time since the copy by the pay slips enclosed do not pertain to continuous period, and the applicant's contention to that effect in the OA have not been specifically denied by the respondents.
- (viii) It is also a fact that the applicant's participation in the LDCE for the Postman held in 2012 by the respondents was accepted initially by the respondents, but later on, her candidature was rejected. It shows that at least at the initial stages of the LDCE, the applicant was considered the applicant to be eligible for the LDCE.

17. In view of above discussions, we, remit the case to the respondent No. 2 to examine if the claim that the applicant's seniority w.e.f. 01.01.2006 has been accepted by the respondents by passing any earlier order passed by the respondents and if the applicant's seniority w.e.f. 1.1.2006 has been accepted by the respondents earlier, then the candidature of the applicant for the LDCE for the Postman in

2012 should be restored and subsequent steps like declaration of her result etc. as per the rules applicable for the LDCE-2012 for the Postman shall be taken for the selection of the applicant on merit. The respondent No. 2 shall pass appropriate speaking and reasoned order in this regard within three months from the date of receipt of a certified copy of this order and a copy of such speaking order shall be communicated to the applicant.

18. The applicant is also given liberty to file a representation addressed to the respondent No. 2 through proper channel with advance copy to the respondent No. 2, enclosing a certified copy of this order and documents relied upon by the applicant in support of her claim of seniority w.e.f. 01.01.2006 and for eligibility for LDCE – 2012 for the Postman within 15 days from the date of receipt of a copy of this order.

19. The OA is disposed of in terms of the directions in paragraphs 17 and 18 above. It is clarified that we have not expressed any opinion about merits of the applicant's claims through this order. There is no order as to costs.

(Rakesh Sagar Jain)
Member (J)

/pc/

(Gokul Chandra Pati)
Member (A)