

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00108/2017**
MA No. 060/00134/2018**Pronounced on : 13.02.2018**
Reserved on : 05.02.2018**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)**
HON'BLE MRS. P. GOPINATH, MEMBER(A)

Mangtu Ram, Ex-GDS BPM, Mirzapur aged about 59 years S/o Sh. Duni Chand, R/o Mirzapur Tehsil and District Hisar. (Group D)

.....Applicant

BY ADVOCATE: Sh. Rajesh Khandelwal**VERSUS**

1. Union of India through its Secretary, Ministry of Communications, Department of Information and Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. Chief Post Master General, Haryana Circle, Ambala.
3. Director Postal Services, Haryana Circle, Ambala.
4. Superintendent of Posts, Hisar Division, Hissar.

.....Respondents

BY ADVOCATE: Sh. Ram Lal Gupta**ORDER****MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant has filed the present OA seeking setting aside the impugned orders dated 28.11.2014 (Annexure A-4), 31.03.2015 (Annexure

A-6) and 21.12.2016 (Annexure A-8) with a further prayer to reinstate him on the post of GDSBPM, Mirzapur with all consequential benefits.

2. The applicant was working as a Gramin Dak Sewak Branch Postmaster (GDS BPM), Mirzapur since 21.01.1986. That the applicant was working as a Gramin Dak Sewak and also as a Clerk at Government Girls Middle School, Mirzapur, came to notice when one Darshan Kumar sought information under RTI on the matter. Applicant submits that he is now retired from the school on attaining the age of 58 years on 29.02.2016. On account of the information revealed in the RTI that the applicant was holding two posts, an inquiry was initiated. Applicant made his submission on the inquiry report. Applicant's argument is that without considering his submission, the impugned order of dismissal was passed by respondent No.

4. Respondent No. 3 in his role as appellate authority dismissed the appeal of the applicant on 31.03.2015. The revision petition submitted was also dismissed.

3. The applicant submits that one of the requirements for appointment to the post of GDS is that he should have a second vocation or source of income. It was under this provision that he was holding a civil post under the State Government. The only debatable issue is that both the jobs that he held had identical working hours and hence, it would not have been possible for him to work in both posts simultaneously at the same time. In view of the clashing working hours of the two posts, applicant worked in the school from 0800 to 1430 Hrs. and in the Post office from 0600 to 0730 Hrs. before school and 1500 to 1630 Hrs. after school job. For receiving and despatching the mail, the applicant made arrangements to complete the tasks

in the school. The applicant submits that he circumvented this problem also by delegating the receipt and despatching of mails to his son Sarwan Kumar.

4. Respondents submit that the applicant was GDSBPM, Mirzapur with working hours from 1000 to 1300 Hrs with timings of despatch of mails at 1040 Hrs and receipt of mails as 1230 Hrs. That the applicant was not performing his duties as prescribed above was brought to notice by a complaint made by one Darshan Kumar, who had obtained evidence of the applicant working as a Clerk in a school from 0800 Hrs. to 1430 Hrs. on the basis of an RTI reply. The applicant was proceeded against under Rule 10 of GDS (Conduct and Engagement) Rules, 2011. Full opportunity was afforded to the applicant to defend himself and the inquiry report was also sent to him for submitting his defence statement. On the basis of the findings in the inquiry report, applicant was removed from service and the appeal and revision petition preferred by him was rejected.

5. The respondents' argument that the applicant cheated by working on two posts is challenged on the ground that as per Rules, a GDS is allowed to have a second vocation, as the job of GDS is only a part-time job. However, that applicant had a job which conflicts directly with the working hours of the Post Office, is what goes against the applicant. Having been given the responsibility of a public service delivery, the applicant could have approached the respondents for adjusting his working hours in the Post Office so that he could have performed his job both at the Post Office and at school. It is also surprising to note that the school did not have objection to the applicant having a second vocation. If he had approached the appropriate authority for change of working hours of the Post Office, the

issue of having his second vocation would not have become an issue. But the applicant did not take this course of action and compromised on the public service delivery by not keeping the post office open during the prescribed working hours. That the applicant was not observing the working hours, would have come to notice of the respondents during the inspection of the Post Office over the 28 years he served as Postmaster. But apparently, respondents or the Inspecting Authority turned a closed eye to the non-observance of the working hours of the Post Office. Generally, the inspection of the Post Office should have been done during the working hours i.e. during 1000-1300 Hrs when the aberration of non-observance of prescribed working hours would have been noticed. Since the applicant was working in the school at that time, he would not be available in the Post Office. Had the inspection been done in the correct manner, the suo moto revised working hours of the Post Office would have been noticed. The respondents are equally to blame for not having noticed this aberration early in the applicant's career, when a correction could have been effected.

6. The applicant was engaged in 1986 and he was removed from service in 2014. That in 28 years of the applicant providing service, it had not come to the notice of any official of the respondent department that he was not observing the working hours, leaves much to be said. As argued by the applicant, no complaint about the working of the Post Office was received and the applicant was providing postal service to the public by maintaining his own working hours. The applicant who working as a GDS was allowed under the GDS (Conduct and Engagement) Rules to work for a maximum of five hours only and also gives an undertaking at the time of his

engagement that he has other sources of income besides the GDS allowances. Respondent does not have an argument that applicant GDS was not allowed under the rules to have another source of income or another vocation while holding the post of GDSBPM. Whereas there is no doubt that the applicant did provide the Post Office services though not during the prescribed hours, this should have been noticed by the respondents much earlier and corrective action taken to give the applicant the option of holding one of the two jobs as the working hours of the two jobs clashed. The respondents not having taken this remedial action or not having noted that the applicant was not maintaining the working hours, waited for a complaint to bring this fact of clashing working hours to notice and removed applicant from service. This act appears to be an after-thought to cover their lack of supervisory ability in not having noticed the changed working hours maintained by the applicant.

7. The applicant, also noticing the clashing working hours should have resigned from one of the posts or made a request for change in working hours. It could be said that the applicant exercised better judgement than his supervisory officers by providing services to the public by altering Post Office timings, which apparently suited the public as respondent has also not referred to any complaints about the service provided by the applicant or the working of the Post Office. We draw this conclusion as no complaint against the applicant had been received in 28 years except the RTI query following which an inquiry was conducted.

8. As per principles of natural justice, it cannot be said that the applicant did not operate the Post Office. He operated the Post Office and

provided postal services as per his own prescribed hours and respondent also has no doubt that he provided service to the public. Whereas it is true that he tweaked the working hours of the Post Office, to suit his services in his second vocation in the school, the respondents who had several opportunities to correct this aberration in the form of an annual inspection or visits did not do so, which reflects adversely on the supervision over the applicant or his work.

9. In view of the fact that the applicant had rendered service as Postmaster for a long time of 28 years, we feel that the punishment given to the applicant is quite disproportionate considering the fact that applicant had provided postal services. Respondent expresses no doubt that applicant was not providing postal services. Hence, Appexnures A-4, A-6 and A-8 punishment, appellate and revision orders are quashed in the interest of justice. It is directed that instead of removal from service, applicant be retired from service with all consequential benefits. OA is disposed of accordingly. Pending MA, if any, shall also be disposed of accordingly. No costs. No order as to costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:
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