

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No. 060/00002/2017

Date of decision- 14.11.2017

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

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Manjit Singh S/o Sh. Kuldeep Singh, aged 21 years, R/o Khidowali P.O
Mattewal, District Amritsar-143119. (Group C).

...APPLICANT

BY ADVOCATE : Mr. V.K. Sharma, Advocate.

VERSUS

1. Union of India through the Secretary, Ministry of Communications & Information Technology through Secretary-cum-Director General, Department of Posts, Dak Bhawan, New Delhi-110001.
2. Chief Postmaster General, Punjab Circle, Sandesh Bhawan, Sector 17E, Chandigarh-160017.
3. Director, Postal Services, Punjab Circle, Sector 17, Chandigarh.
4. Senior Superintendent of Post Offices, Amritsar.

...RESPONDENTS

BY ADVOCATE: Sh. Ram Lal Gupta, Advocate.

ORDER

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SANJEEV KAUSHIK, MEMBER(J):-

The applicant challenged the correctness of order dated 24.06.2016 (Annexure A-1) issued by respondent no. 4 vide which appointment of applicant as GDSBPM Dehriwal Branch Office in account with Tarsika Sub Post Office under Amritsar Head Office made

vide order dated 13.06.2014 (Annexure A-5), has been terminated despite the fact that the vacancy provisional in nature has become a clear cut due to death of regular incumbent who was facing disciplinary proceedings and the orders dated 27.12.2016 (Annexure A-13), 17.01.2017 (Annexure A-14) whereby the respondents have rejected his representations. He further sought issuance of direction to the respondents to take the applicant back in service from September, 2016 with all consequential benefits with arrears of pay and allowances and seniority with interest @ 18%.

2. The facts which led to filing of the present O.A are that one Sh. Satnam Singh, GDSBPM Dehriwal Branch Office (in account with Tarsika Sub Post Office under Amritsar Head Office) was put-off duty w.e.f. 12.11.2012 as disciplinary proceedings were pending against him. The Senior Superintendent of Post Offices issued a notification dated 21.01.2014 inviting applications for one post of GDSBPM Dehriwal under OBC in account with Tarsika Sub Office with last date of submission of application as 20.02.2014. The applicant who fulfills the eligibility condition as notified in advertisement applied. There were five applications which the respondents received. The applicant being meritorious out of 5, was issued provisional engagement letter dated 26.05.2014 to complete the pre-engagement formalities. He was issued another letter dated 04.06.2014 to get himself medically examined. The applicant was found medically fit by the doctor and they issued certificate dated 05.06.2014. It is, thereafter, the applicant was offered appointment vide letter dated 13.06.2014. He joined his duties on 09.07.2014. It is the case of the applicant that Sh. Satnam Singh, regular incumbent who was put off duty due to disciplinary proceedings unfortunately expired on 21.01.2015. Thus, the applicant

staked his claim for allowing him to continue on the post in terms of condition laid down in the appointment letter and instructions issued in this behalf by the postal department. Ignoring the fact that the applicant was regular selected and appointed as GDSBPM, the respondents vide impugned order dated 24.06.2016 terminated his service and he was relieved from his duties in September, 2016. Aggrieved against that order, the applicant submitted representation to the Post Master General 03.08.2016 followed by another representation dated 23.08.2016 and then on 15.09.2016, but the same were never replied by them. Then the applicant approached this Tribunal by filing O.A No. 060/01008/2016 which was disposed of vide order dated 08.11.2016 with a direction to the respondents to consider and decide the pending representation by passing a reasoned and speaking order. In furtherance thereto, the respondents have passed the impugned order vide order dated 27.12.2016 rejecting his claim. Hence the present O.A.

3. The respondents while resisting the claim of the applicant admitted this fact that the applicant was appointed against the vacancy which fell vacant when Sh. Satnam Singh, was put-off duty pending disciplinary proceedings. They have also not disputed this fact that before offering him appointment, they have adopted fair procedure for appointment as established by law but they submitted that said Satnam Singh has expired, therefore, the respondents have decided to terminate the service of the applicant and accordingly passed the impugned order. It has also been submitted that the applicant was appointed purely on temporary basis, therefore, he cannot stake his claim for regular appointment.

4. We have heard learned counsel for the respective parties at considerable length.

5. Mr. Sharma, learned counsel for the applicant vehemently argued that in terms of condition in appointment letter and instructions in this behalf, even a person who is temporary employee and was engaged against the vacancy where regular incumbent was put-off duty contemplated disciplinary proceeding, unfortunately died or leave vacancy and there is clear vacancy, he has a right to seek regularization of his provisional engagement. He therefore, submitted that view taken by the respondents in terminating the services of the applicant and rejecting his claim to convert his temporary engagement as permanent is totally illegal, arbitrary and against the instruction.

6. Mr. Gupta, learned counsel for the respondents vehemently opposed the prayer of the applicant and reiterated what has been stated in the written statement.

7. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

8. Conjunctive perusal of the pleadings makes it clear that late Satnam Singh was put off duty in contemplation of departmental proceedings, the respondents by issuing notification invited applications for provisionally engagement on the said post, have adopted fair procedure inconsonance with law and approved for regular appointment. The applicant was offered appointment vide letter dated 13.06.2014 where the respondents reserved their right to terminate his services on joining Mr. Satnam Singh without giving any notice and even before expiry of period. It has also been submitted therein that his appointment will be covered by the GDS (Conduct and Engagement) Rules, 2011 and all other rules and orders applicable to

Gramin Dak Sevaks. Unfortunately, Satnam Singh died resultantly said vacancy become available upon which the applicant was provisionally engaged. The applicant stake his claim for regularization of his services in terms of para 12 of the GDS (Conduct and Engagement) Rules relating to provisional engagement made in place of regular incumbent. Para 12 of the same reads as under:-

"12. The extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of the next higher authority should be taken in respect of all provisional appointments exceeding 180 and where the period exceeds one year, express approval of the Head of the Regional/Circle, as the case may be, would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment."

Perusal of above relevant extract makes it clear that the respondents have visualized the problem faced by them, therefore, have given solution to a problem where the competent authority laid down the procedure and take decision in those situation to meet out the situation. The above extract makes it clear that where regular incumbent is not reinstated, immediate action be taken to regularize the provisionally engaged appointee. Meaning thereby that if the respondents have appointed a person after following proper procedure to fill up the post which fall vacant for a,b,c, d reasons and regular incumbent did not join, then, right has been credited in favour of the provisionally engaged appointee to regularize his service without referring the case for fresh recruitment. In the case in hand, said Satnam Singh, who was put-off duty against which the applicant was appointed after following proper procedure, died unfortunately, therefore, we are of the view that claim of the applicant is to be

considered for regular appointment against said post as the respondents did not dispute that the applicant was not appointed after following regular process. Accordingly, impugned orders are quashed and matter is remitted back to the respondents to reconsider the case of the applicant in the light of the above observation which are in favour of the applicant and offer him appointment on regular post. Let the above exercise be carried out within a period of one month from the date of receipt of a certified copy of the order.

9. The O.A is allowed in above terms. No order as to costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 14.11.2017

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