

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.643 of 2013
Cuttack this the 16th day of February, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(A)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Minaketan Sahu, aged about 52 years, S/o. late Bauribandhu Sahu, At./PO-Kamarda, PS-Kamakhyanagar, Dist-Dhenkanal, now working as GDSBPM, Mamarda BO.O., Kamarda

...Applicant

By the Advocate(s)-M/s.Dr.C.R.Misra
G.Misra
H.K.Mallick

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Dak Bhawan, New Delhi
2. Senior Superintendent of Post Offices, Puri Division, At/PO/Dist-Dhenkanal
3. Inspector of Post, Kamakhyanagar Sub Division, At/PO-Kamakhyanagar, Dist-Dhenkanal
4. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as GDSBPM, Kamarda Branch Office under the Inspector of Posts, Kamakhyanagar Sub Division (Respondent No.3) at the time of filing of the O.A. He had joined as EDDA-cum-MC on 24.12.1979 and while working in that capacity, he was directed to take charge of the post of GDSBPM, Kamarda Branch office with effect from 07.04.2010 in

addition to his own duties as GDSMD. The Senior Superintendent of Post Offices, Dhenkanal Division (Res.No.2) issued a notification dated 14.03.2012 inviting applications from the intending candidates for filling up the post of GDSBPM, Kamarda Branch Office. The applicant has challenged this notification in the present O.A. and has prayed for the following reliefs:

- i) To set aside the advertisement in Notification for the post of GDSBPM, Kamarda B.O. in account with Kamakhyanagar S.O. vide Annexure-A/3.
- ii) To direct the Respondent No.2 to consider the case of the applicant for regular appointment in the post of GDSBPM, Kamarda B.O. in account with Kamakhyanagar S.O. taking into account his experience in the said post.
- iii) To direct the Respondent No.2 to allow and disburse the combined duty pay allowance of GDSBPM, house rent and all other allowances as admissible for the post in favour of the applicant within a specific period.
- iv) To allow the Original Application with costs.

2. Records show that on 30.01.2014, this Tribunal had directed to maintain status quo on the continuance of the applicant in the post until further orders and this interim order was continued from time to time.

3. The applicant has based his prayer on the ground that the notification for filling up the post of GDSBPM, Karmada B.O. is illegal and runs contrary to Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 wherein GDS can be transferred from

one post to another post and since the applicant has been working as GDSBPM for a long period, he having the requisite experience, should have been regularized and/or absorbed in the post of GDSBPM, Kamarda B.O.

4. The Respondents in their counter reply filed on 28.05.2014 have contested the claim of the applicant on the ground that the applicant could have been absorbed in the post of GDSBPM had his original post been abolished or the applicant fallen within the purview of Limited Transfer Facility from one post to another in public interest as per the limited transfer guidelines. The experience gained by the applicant in the post of GDSBPM and the requisite qualification are not the sole criterion for absorbing the applicant against the post of GDSBPM.

5. We have heard the learned counsels from both the sides and perused the documents submitted by them.

6. The applicant has stated that although 1985 rules did not permit transfer of a GDS from one unit to another, on 1.9.2004, GDS Rules were amended by incorporating Note-II(IV) of Rule 3 which provides that a Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest. On 17.6.2006, Limited Transfer Facilities to GDS with certain conditions have been added to Rule-3 of Service Rules for Postal GDS. On 18.4.2011, the Department of Posts GDS(C&E) Rules, 2011 came into force by replacing GDS (C&E)

Rules, 2001. Rule-3(A)(IV) provides that a Sevak can be transferred to one post/unit to another post/unit in public interest.

7. A modification was issued to the Rules regarding transfer through the circular dated 17.2.2011 by the Government of India, Ministry of Communications & IT, Department of Posts, which reads as under:

“Sub: Filling up of GDS posts in Branch post Offices – review of guidelines regarding:

I am directed to invite attention to Directorate Letters No. even dated 14th July, 2009 and 29th Dec. 2010 on the subject cited above.

2. Para 2(ii) of this Directorate letter dated 14th Jul. 2009 provided that the vacant post of GDS in branch offices with two or more hands may be filled up on the basis of triennial review already carried out and in case the prescribed workload and financial parameters as prescribed for opening of a branch office are not fulfilled but the posts are required to be filled up for operational reasons then the approval of the Chief PMG will be required with concurrence of Circle IFA. It was also provided in para 2(i) of the said communication that GDS vacant posts in BOs with a single establishment be filled up straight away and the permission was granted to the concerned Divisional head.
3. The above provisions were further reviewed and modified. It was prescribed vide this Directorate letter dated 29 Dec. 2010 that the vacant posts of GDS BPM may be filled up by adjusting the surplus GDS fulfilling the prescribed qualification and other prescribed conditions failing which action may be taken in advance to fill the vacant post of GDS BPM on a regular basis following the prescribed procedure and following other conditions prescribed under letter dated 14 July 2009.

3. Despite issue of above instructions, it has been brought to the notice of this office that the Posts of Branch Postmasters are not being filled up immediately, and they are allowed to be managed by additional charge or kept under combined duties, affecting the quality of service. The issue has been considered and Competent Authority has decided that the vacant post of GDSBPMs in Branch offices (irrespective of the number borne on establishment) be filled up Head of the Division without reference to HOC immediately after its falling vacant initiating action in advance by adopting the following methods:

- (i) By appointment of surplus identified GDS fulfilling the conditions; failing which
- (ii) By combination of the duties of GDS in the same B.O. provided the combined work load does not exceed five hours; failing which
- (iii) By recruitment of outsiders by observing the selection.

However, the approval of the Head of the Circle shall continue to be obtained for filling up of other categories of GDS which are not justified by workload/financial parameters, but the post is to be filled up for operational reasons.

4. These orders shall come into effect from the date of issue of the order. This issues with the approval of competent authority".

8. On 10.4.2012, a clarification was issued in Para-2 (e) of the Rules stating that there is no restriction for allowing transfer from one category to another. Relevant portion of the said clarification contained in the letter dated 10.04.2012 issued by the Government of India, Ministry of Communications

& IT, Department of Posts (GDS Section) to the CPMG, Kerla Circle, Thiruvananthapuram regarding Limited Transfer Facility to Gramin Dak Sevaks reads as follows:

“This has a reference to your office letter No. CO/21/0A/12 dated 27th Mar 2012 received only on 29.03.2012 seeking advice if the various categories of the GDS Posts as prescribed in Rule 3(d) of GDS (Conduct &Engagement) Rules, 2011 could be classified based on the skills or hierarchy or TRC slabs within these categories.

2. The issue has been examined in this Directorate and I am directed to clarify the position as under:

- (a) Rule 3(d) of the Department of Posts, Gramin Dak Sevaks(Conduct and Engagement) Rules, 2011 currently recognizes only the five categories of Gramin Dak Sevaks i.e., GDSBPM, GDS MD, GDS MC, GDS Mail Packer and GDS Stamp Vendor.
- (b) With the issue and implementation of orders relating to downgrading the EDSO's to EDBO's the category of GDS SPM is not vogue. For the purposes of TRCA, Gramin Dak Sevaks are closed as three categories i.e., GDS BPM, GDSMD/SV & GDS MC/Packer, their TRCA has been fixed on pre-revised scales of pay of the corresponding categories of regular Government employees on pro-rata bases. Their TRCA is further based on workload assessed as per laid down norms and slabs.
- © There is no concept of higher or lower post or skilled within a category and/or amongst various approved categories as recognized from time to time. For the purpose of direct recruitment to MTS Group C post, with reference to date of entry in any GDS post based on seniority in the concerned division as a whole. There is no categorization of various GDS posts into 'White Collar' or 'Blue Collar' and such a classification is not also defined anywhere.

- (d) The ‘Recruiting Authority’ mentioned in Rule 4 and further defined in the Schedule annexed to the Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 is based on working arrangement and for administrative convenience only. As the Gramin Dak Sevaks are entitled to protection under Article 311(2) of the Constitution as held by Apex Court, the concerned authority will exercise his disciplinary jurisdiction as per the categories fo GDS for which one is designated as recruiting authority.
- (e) The existing provisions governing Limited Transfer Facility do not prescribe any restriction for allowing transfer from one category to another and amongst the various categories of Posts irrespective of TRCA slabs prescribed for these categories and even from one wing to another i.e., RMS to Postal or vice versa. The requirement is fulfilled of required qualification and other conditions for limited transfer facility”.

9. A summary of the above instructions issued from time to time shows that Limited Transfer Facility has been made available to the GDS on his/her request if he/she satisfies the conditions laid down from time to time. We find that in the case of one Ratikanta Sahoo, a transfer has been made from the post of GDSMD, Sridharpur BO in account with Chitalo SO under Cuttack North Division to the post of GDS BPM, Rahasol BO in account with Chitalo SO under Cuttack North Division. The order is quite relevant to quote hereunder for the purpose of illustration.

“The Chief Post Master General, Odisha Circle, Bhubaneswar is pleased to approve the transfer of Shri Ratikanta Sahoo, GDS MD, Sridharpur SBO i/a/w Chitalo SO under Cuttack North Division to the post of GDS BPM, Rahasol BO i/a/w Chtalo SO under Cuttack North Division with the following conditions under the existing provisions of amended Rule-3 of GDS (Conduct & Engagement) Rules 2011 as communicated vide Directorate letter No.19-10/2004-GDS dated 17.7.2006.

The above transfer is subject to the following terms and conditions:

1. The GDS will normally be eligible for only one transfer during the entire career.
2. TRCA of the new post to which the GDS is transferred shall be fixed as per the instructions contained in Directorate letter No.19-10/2004-GDS (Part0 dated 21/22.07.2010 under para-3(iii). The TRC of the GDS official will be fixed at the minimum of the TRCA slab of the transferred post depending upon the workload of the said post.
3. The GDS will not have any claim to go back to the previous recruitment unit/division.
4. As the transfer is at his own request, he will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he accepts the seniority on transfer in accordance with this, should be obtained before he is transferred. However the past service of the GDS will be counted for assessing the eligibility for appearing the departmental examination.
5. The transfer will be at the cost and expenditure of the GDS. No expenditure whatsoever on this account will be

borne by the Department under any circumstances.

6. All other terms and conditions stipulated in Directorate letter No.19-10/2004 dated 17.07.2006 will also be applicable to this transfer".

10. Inasmuch as a Limited Transfer Facility is available as an one time measure in the service career of a GDS, requests of the applicants in the present group of OAs have to be examined in the context of the conditions laid down from time to time and if they satisfy the conditions, they will be eligible for one time transfer to different posts/different units as per the existing rules. The Transfer Order quoted at Para-9 above serves as a good guiding point for consideration of the cases of the applicants.

11. Respondents are therefore directed to examine the case of the applicant and take a decision on his requests for transfer on the basis of rules and instructions issued from time to time. Needless to say wherever the GDS is being transferred to a new post/unit, any advertisement issued for filling up that post will stand annulled. The respondents are directed to pass orders on the representation of the applicant within a period of two months from the date of receipt of this order. The O.A. is accordingly disposed off with the above directions. No order as to costs

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

