

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.470 of 2013

Cuttack this the 24<sup>th</sup> day of August, 2018

CORAM:

THE HON'BLE SHRI A.K.PATNAIK, MEMBER(J)  
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Kirti Kanta Kar, aged about 35 years, S/o. Sri Udaya Kant Kar,  
At/PO-Manapur, Via-Bantala, Dist-Angul-759 129 now working  
as GDS MD/MC now I/C BPM/MD, Manapur B.O.

...Applicant

By the Advocate(s)-M/s.N.R.Routray  
T.K.Choudhury

-VERSUS-

Union of India represented through :

1. The Secretary-cum-Director General of Posts,  
DakBhawan, SansadMarg, New Delhi-110 116
2. Chief Post Master General, Odisha Circle, At/PO-  
Bhubaneswar, Dist-Khurda-751 001
3. Superintendent of Post Offices, Dhenkanal Division,  
At/PO/Dist-Dhenkanal-759 001

...Respondents

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

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was appointed as GDSMD-MC, Manapur BO  
with effect from 31.7.1998 and was continuing in the same post  
at the time of filing of the O.A. When the post of GDSBPM at  
Manapur fell vacant, the applicant was directed to manage the  
duties of GDSBPM in addition to his own duty as GDSMD as per  
order dated 13.5.2010. He made repeated representations to  
the Superintendent of Post Offices, Dhenkanal Division  
(Res.No.3) to give him the regular posting as GDSBPM-cum-  
MD/MC of Manapur Branch Office by combining the post of

GDSBPM with GDSMD. His prayer for the same was not granted although he claims that he is eligible for the post of GDSBPM. The Respondents issued a publicnotification dated 27.2.2013(A/4) inviting applications for filling up the post of GDSBPM, Manapur Branch Office from UR community. The applicant approached this Tribunal through O.A.No.262 of 2013 which was disposed of vide order dated 3.5.2013 directing Respondent No.3 to consider the applicant's representation and pass a reasoned and speaking order within a period of eight weeks from the date of receipt of the Tribunal's order (A/5). Respondent No.3 rejected the prayer of the applicant vide order dated 4.7.2013 on the ground that there is no provision in the Department to post an existing GDSMD/MCstraightway to the vacant post of GDSBPM(A/6). The applicant has challenged this impugned order in the present O.A. and has prayed for the following reliefs:

"In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure-A/4 & A/6 and direct the respondents to regularize the applicant as GDSBPM/MD of Manapur BO in account with Bantala SO".

2. The applicant has based his prayer mainly on the ground that he has already worked for three years as GDSBPM-cum-MD. Therefore, his service should be regularized as GDSBPM. He claims that rejection of his prayer by the Respondents

is arbitrary, whimsical and violative of justice and equity as well as of Articles 14 & 21 of the Constitution.

3. The Respondents in their reply filed on 29.10.2013 have contested the claim of the applicant. It is their contention that as per the Ministry of Communications, Department of Posts Letter No.19-10/2004-GDS dated 1.9.2004 a Sevak shall not be eligible for appointment from one post/unit to another post/unit except in public interest (R/1). Therefore, the Inspector of Posts, Angul (East Subdivision) was informed vide letter No.B-ED-71 dated 3.01.2011 that there is no rule for appointment to the post of GDSBPM without going through a recruitment process(R/2). Therefore, the post of GDSBPM, Manapur was advertised through a public notification vide Annexure-4 dated 27.2.2013. The applicant is not eligible for appointment as GDSBPM as per the existing rules and therefore, the O.A. should be dismissed as devoid of merit.

4. The applicant filed a rejoinder on 10.2.2014 in which he has pleaded that combining two posts of GDSBPM and MD will result in saving for the Department and since the applicant has been carrying out the duties of both the posts for more than three years, he deserves to be considered for appointment as GDSBPM. The applicant has also submitted that the respondents have earlier given appointment to one SujitKumar Dehury, GDS MD of Pokatunga BO as GDS BPM of Rantalei BO in a different unit whereas the applicant's prayer for posting as

BPM in the same office after merging and combining both GDSBPM and MD is not being considered.

5. We have heard the learned counsels from both the sides on 10.7.2018 and perused the documents submitted by them. During the course of arguments, learned counsel for the applicant brought to our notice a common order dated 5.2.2018 passed by this Tribunal in similar matters in O.A.Nos.786/12, 787/12, 1010/12, 318/13, 319/13, 16/14, 24/14,34/14,156/14,276/14, 277/14,326/14,414/14,4/15, 98/15,287/15,45/16,363/16,545/16,112/17 & 266/17. The issue has been discussed in detail in the said common order. The relevant portions are quoted herein below:

“5. Although there was no provision for transfer of GraminDakSevaks from one post to another in the 1985 rules, but, subsequently in the clarification issued vide GDP&T Letter No.19-10/2004 - GDS dated 1.9.2004, it was stipulated that “a Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest”. When the GDS(C&E) Rules, 2001 were replaced by the GDS(C&E) Rules, 2011, it was also stipulated that a Sevak can be transferred to one post/unit in public interest. By 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 GraminDakSevaks, certain clarifications were issued. The relevant portions of this letter read as follows:

“This has a reference to your office letter No. CO/21/OA/12 dated 27<sup>th</sup> 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, GraminDakSevaks(Conduct and Engagement) Rules, 2011 currently recognizes only the five categories of GraminDakSevaks 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, GraminDakSevaks 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, GraminDakSevaks (Conduct and Engagement) Rules, 2011 is based on working arrangement and for administrative convenience only. As the GraminDakSevaks 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”.

6. A modification to the Rules regarding transfer by the circular dated 17.2.2011 issued 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 14<sup>th</sup> July, 2009 and 29<sup>th</sup> Dec. 2010 on the subject cited above.

2. Para 2(ii) of this Directorate letter dated 14<sup>th</sup> 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".

7. A summary of the above instructions issued from time to time shows that limited Transfer Facility is available to the GDS on his/her request if he/she satisfies the conditions laid down in circular issued on 17.06.2006. We find that in the case of one RatikantaSahoo, 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 ShriRatikantaSahoo, GDS MD, Sridharpur SBO i/a/wChitalo SO under Cuttack North Division to the post of GDS BPM, Rahasol BO i/a/wChitalo 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 (Part 0 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”.

8. Inasmuch as a limited Transfer Facility is available as 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 in 2006 circular and if they satisfy the conditions, they will be eligible for one time transfer to different posts/different units as per the existing rules. A perusal of all the O.As shows that the applicants are similarly situated as the applicant in O.A.No.786 of 2012.

9. Respondents are therefore directed to examine their cases individually and take a decision on their 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 applications of the applicants within a period of two months from the date of receipt of this order. All the 21 OAs are disposed with the above order. All Misc. Applications in individual OAs stand disposed off. No costs.

6. It is our considered view that the applicant is entitled to the same reliefs as granted to the group of applicants in the above mentioned OAs. We therefore direct the Respondents to examine the case of the applicant and take a decision on his request for transfer to the post of GDSBPM, Manapur in the light of the judgment of this Tribunal dated 5.2.2018 and decide whether both the posts should be handled by the applicant in the interest of the Department. Necessary orders to this effect

may be passed within eight weeks from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

(A.K.PATNAIK)  
MEMBER(J)

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