

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 1187/2012

Date of C.A.V. : 18.09.2017

Date of Order : 09. 11.2017

Between :

B.Narendranath Reddy, S/o B.Krishna Reddy,
Aged about 27 years,
R/o H.No.3-133, Bogalakatta Village,
a/w Rayala Cheruvu, Yadiki Mandal,
Ananthapur District – 515455. ... Applicant

And

1. The Superintendent of Post Offices,
Ananthapur Division,
Ananthapur District – 515001.
2. The Postmaster General,
Kurnool Region,
Kurnool District.
3. Union of India, Rep. by
The Chief Postmaster General,
A.P.Circle, Hyderabad – 500001.
4. S.Pushpalatha,
W/o Late Vijaya Bhoopal Reddy,
Age : 41 years, R/o Chandana Village & B.O.,
A/w Rayala Cheruvu S.O.,
Yadiki Mandal,
Ananthapur District. ... Respondents

Counsel for the Applicant ... Mr. M.Venkanna, Advocate
Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... ***Member (Judl.)***
Hon'ble Mrs.Minnie Mathew ... ***Member (Admn.)***

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

This OA is filed to quash and set aside the order vide memo No.B6/BPM/Chandana dated 29.08.2012 issued by the 1st respondent as illegal, arbitrary and contrary to the rules governing the field of selection of Branch Postmasters and consequently direct the respondents to restore the appointment of the applicant as GDSBPM, Chandana BO A/w Rayala Cheruvu S.O., Ananthapur Division.

2. The brief facts leading to filing of the OA are stated as follows :

In response to the notification dated 13.03.2012 issued by the 1st respondent, the applicant submitted his application for selection to the post of GDSBPM, Chandana Branch Office, A/w Rayalacheruvu S.O. Ananthapur Division. Among the candidates, one Sri K.L.Lakshmi Narayana Reddy who secured highest marks was offered the post of GDSBPM, Chandana B.O. The selected candidate expressed his unwillingness to take up the appointment and submitted his letter of withdrawal dated 18.04.2012. The applicant is the next meritorious candidate. The 1st respondent office vide letter dated 18.04.2012 directed the applicant to be present on 26.04.2012 with original certificates. The applicant attended the office of the 1st respondent and submitted the certificates and all the forms which were duly filled up. However, vide impugned memo dated 29.08.2012 the 1st respondent informed the applicant that the post of GDSBPM, Chandana B.O. for which the name of the applicant was under consideration was filled up by a GDS candidate on transfer from Rayalacheruvu S.O. as approved by

the Chief Postmaster General, A.P.Circle the 3rd respondent herein vide his letter 08.08.2012 as per the orders of the Tribunal dated 18.04.2012 in OA.273/2012. It is also mentioned in the memo that the selection of the applicant which was made to the post of GDSBPM, Chandana B.O. got annulled.

3. In this context it requires to be mentioned that the 4th respondent moved this Tribunal by filing OA.273/2012 challenging the notification issued by the 1st respondent inviting applications from the eligible candidates for selection to the post of GDSBPM, Chandana B.O. The OA was disposed of on 18.04.2012 directing the respondents to consider the case of the 4th respondent first, in case she fulfills the conditions prescribed in Department of Posts letter dated 10.04.2012 and in the event of non consideration of her case, the post can be filled up entertaining applications from the open market. The Tribunal specifically mentioned in the order that it is not inclined to quash the notification issued for filling up the post of GDSBPM since the 4th respondent cannot claim a right over the said post. Another important factor which requires to be noticed in this context is that in OA.273/2012 filed by the 4th respondent there was no interim order, the department proceeded with the selection process and the selection was completed on 16.04.2012 itself. The selected candidate did not join and the applicant herein was at the second place in the merit list. According to the applicant, the selection panel prepared by the Selection Committee will be in existence till it is exhausted till the last candidate in the panel for the purpose of the appointment to the post notified. The version of the applicant is that the Tribunal passed the order in OA.273/2012 on 18.04.2012 and even before the order was pronounced the

selection process was completed on 16.04.2012. The applicant, therefore, submits that the appointment of the 4th respondent is in blatant violation of the rules governing the post of GDSBPM, contrary to the law laid down by the Tribunal and beyond the scope of the orders passed by this Tribunal in OA.273/2012. It is under these circumstance, the applicant filed the present OA seeking the aforementioned relief.

4. The respondents in their reply statement admitted the factum of selecting the applicant for the post of GDSBPM on account of non-joining of the post by the selected candidate Sri K.L.Lakshminarayana Reddy. It is also admitted by them that the process of selection was completed on 16.04.2012 even before the receipt of the orders of this Tribunal in OA.273/2012. It is submitted that in view of the orders passed by the Tribunal, the transfer case of the 4th respondent was considered by Chief Postmaster General, A.P.Circle, Hyderabad in the light of the revised orders dated 10.04.2012 and approved vide CPMG letter dated 08.08.2012 communicated in R-2 letter dated 10.08.2012 by which time the verification of documents including verification of Character and antecedents of the selected candidate i.e. the applicant was completed. It is further submitted that the fact was informed to the 2nd respondent vide 1st respondent letter dated 14.08.2012. The 2nd respondent in reply has informed that the selection for the post of GDSBPM, Chandana B.O. A/w Rayalacheruvu S.O. was annulled consequent on approval of transfer case of the 4th respondent and further directed to give a suitable reply to the selected candidate vide letter dated 27.08.2012 and accordingly the applicant was informed vide the 1st respondent letter dated 29.08.2012.

5. Though the applicant contended in the OA that he was appointed for the post of GDSBPM, Chandana B.O., the respondents disputed the fact and specifically contended that no appointment order was issued to the applicant, but only the required documents were obtained from him for further processing the selection.

6. According to the respondents the date of receipt of the orders in this case is immaterial in as much as filling up the post depends upon the approval of transfer case of the 4th respondent by the competent authority as ordered by this Tribunal and therefore they stated that the contention of the applicant is not tenable. It is also contended by them that the version of the applicant that the select panel is valid for one year is not correct, in as much as the selection is annulled as the post for which the selection was made was filled up by transfer of regular GDS, as per the orders of this Tribunal dated 18.04.2012 in OA.273/2012 and also as per the orders of the competent authority.

7. The respondents admit the contention of the applicant that the next meritorious candidate in the select panel has to be considered as correct in the normal course. They however submit that in the instant case, the post for which the selection was made was filled up by transfer of the regular GDSBPM by the orders of the competent authority in compliance of the orders of this Tribunal in OA.273/2012 and consequently the selection has become annulled. They asserted

that the contention of the applicant that appointing the 4th respondent to the post would amount to cancellation of notification and selection there to resulting in depriving of the meritorious candidate is not tenable, as the post for which his name is under consideration was filled up by transfer of the 4th respondent.

8. It is further contended that the transfer is a privilege given to the regular GDS for one time during the entire service under Rule 3 of GDS (Conduct & Engagement) Rules 2011 and the same was utilized by the 4th respondent as she is a woman employee and she has to look after her dependents living in the village where the post for which she sought for transfer. Nextly it is contended that the competent authority has approved her transfer only after going through the circumstances under which she sought for transfer, finding her request feasible to the conditions laid down by the Directorate from time to time and therefore there is no force in the contention of the applicant that he was deprived of the opportunity of the employment on account of filling up the post of the 4th respondent by transfer. Contending as above the respondents sought to dismiss the OA.

9. Heard Mr.M.Venkanna, learned counsel for the applicant and Mrs.K.Rajitha, learned Senior Central Government Standing Counsel for the respondents.

10. The short question which falls for consideration in the present OA in the light of the rival contentions which have been mentioned above is whether the

appointment of the 4th respondent to the post in question can be quashed on the ground that it is illegal, arbitrary and contrary to the rules and whether the applicant can be appointed as GDSBPM, Chandana BO by setting aside the order dated 29.08.2012 issued by the 1st respondent.

11. In view of the admitted facts which are extracted herein before, the selection of the applicant for the post of GDSBPM, Chandana B.O. is perfectly legal. The respondents also admitted in their reply statement that in the event of non-joining of the selected candidate, the name of the next meritorious candidate would be considered. The version of the respondents is that the applicant was selected and he was asked to produce the necessary certificates and some forms which are duly filled up. According to them no appointment order was issued to the applicant. The applicant who contends that he was appointed for the post in question did not produce any appointment order. From the material available on record it would obviously appear that the applicant was selected for the post, but he was not appointed. The version of the respondents is that on account of the filling up of the post by the 4th respondent by transfer in compliance of the orders of this Tribunal in OA.273/2012 dated 18.04.2012, the selection of the applicant has become annulled.

12. This Tribunal in OA.1341/2010 following the order of the Full Bench of the Tribunal in OA.1315/2000 took the view that when the selected candidate fails to join the post, the post shall be filled up by the next meritorious candidate in

the panel and it is not permissible to cancel the notification and issue a fresh notification. In the instant case also the Tribunal in OA.273/2012 directed the 1st respondent to consider the case of the applicant i.e. R-4 herein first in case she fulfills the conditions prescribed in the Department of Posts letter dated 10.04.2012, and further stated that it is not inclined to quash the impugned notification issued for filling up the post of GDSBPM, since the R-4 cannot claim a right over the said post.

13. Filling up the post with the 4th respondent is not contrary to the rules and more over it is in compliance of the orders of this Tribunal passed in OA.273/2012. Therefore, filling up the post with the 4th respondent by transfer deprived the selected candidate i.e. the applicant herein of his opportunity to be appointed to the said post. At the same time it requires to be noticed that the applicant was selected for the post, but was not appointed till the post was filled up with the 4th respondent by transfer. At the hearing of this OA, on our instructions the learned standing counsel for the respondents produced the list of vacancies available in GDS cadre in Anantapur Division as on 14.09.2017. From the list it appears that the GDSBPM, Teliki B.O. a/w Peddavadugur S.O. and GDSMC/MD, Mallenipalli B.O. a/w Peddavaduguru S.O. are near by vacancy of Rayalacheruvu S.O. for which the applicant was selected.

14. Having regard to the facts and circumstances of the present case, we are of the considered view that it would be appropriate to appoint the applicant as

GDSBPM in one of the above mentioned two stations or in any other nearest station to Rayalacheruvu. The respondents are therefore directed to consider the case of the applicant for appointment to the post of GDSBPM, Teliki B.O. a/w Peddavaduguru S.O. or GDSMC/MD, Mallenipalli B.O. a/w Peddavaduguru S.O. or in any other station which is near to Rayalacheruvu and pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

15. Consequently the OA is allowed to the extent indicated above. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

sd