

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**MA No.290/00300/2017 in
OA No.290/00353/2016**

Date of decision- 30.08.2018

...

**CORAM: HON'BLE SH. A.K. BISHNOI, MEMBER (A)
HON'BLE SMT. HINA P. SHAH, MEMBER (J)**

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Raju Ram son of Shri Talsa Ram, aged 27 years, Gramin Dak Sevak Mail Carrier, Post Office Kagmala, Tehsil Bhinmal, District Jalore; resident of Jag Jiwan Ram Colony, Daspa Road, Bhinmal District Jalore.

...APPLICANT

BY ADVOCATE : Mr. Vijay Mehta.

VERSUS

1. Union of India, through the Secretary, Ministry of Communication, (Department of Post), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Sirohi.
3. Inspector Post Offices Bhinmal, District Jalore.
4. Sub Postmaster, Kagmala, Tehsil Bhinmal, District Jalore.

...RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav for R1 to R4.

ORDER (Oral)

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

MA No.290/00300/2017

1. Heard learned counsels for both the parties on MA. The applicant has filed the present Original Application (O.A.) seeking a direction from the Tribunal that the respondents be restrained from terminating his services and that he be directed to be reinstated forthwith on the said post of GDS Mail Carrier at Kagmala with all consequential benefits.

2. This Tribunal vide its order dated 12.08.2016 on the apprehension of the applicant that his services are likely to be terminated by the respondents, by way of an interim relief, restrained the respondents from terminating the services of the applicant till the next posting date and the said order continued till date.

3. It is the contention of the applicant that he was working in the post of GDS which was vacant post and therefore his services do not deserve to be terminated. It is his contention that the substitute can be engaged subject to the approval of the appointing authority. It is his submission that the respondents have not submitted any document to show that Shri Chagna Ram remained on leave and that in his place the applicant was engaged as substitute as they failed to submit any document in this regard. The applicant has further stated that he was given charge of vacant post of GDS MC on 02.02.2009 by the Postmaster Bhinmal and as per the same, he continued to discharge his duty continuously thereafter. Thus, he was not engaged as substitute in place of Chagna Ram, but was engaged as GDS MC.

4. The sum and substance of the arguments of the applicant is that since he is serving as GDS MC in the Department and has been engaged for more than 3 years, therefore, the question of termination of his services does not arise under Rule 8 of GDS Rules 2001 as the same are applicable to him since he has worked for more than 3 years.

5. The respondents have filed an MA No.290/00300/2017 for vacating the interim order dated 12.08.2016. It is the contention of the respondents that the applicant was engaged purely on temporary basis as substitute in place of the regularly selected candidate on the post of GDS who was on leave for a particular period. The applicant

has worked as a substitute in place of Shri Chagna Ram, GDS MC, Bhinmal LSG who had proceeded on leave, without allowance for working on the post of Gr. D in Bhinmal LSG for the period between 02.02.2009 to 29.04.2009 and 01.05.2009 to 04.08.2009. The order of engagement of the applicant as substitute was clear enough that his services are liable to be discharged by the appointing authority at any time without assigning any reason. Therefore, it is clear that the engagement of the applicant as substitute does not create any lien on the post of GDS MC in the absence of any regular selection carried out as per rules. It is clear that the applicant has worked as substitute on several occasions in place of regular selected candidate whenever the said person was on leave and since the applicant is neither appointed as per rules after undergoing selection procedure nor appointed as a regularly selected candidate, therefore, he is not entitled for reinstatement on the post of GDS MC at Kagmala.

6. It is clear that only because of the stay granted by this Tribunal as interim relief, the applicant has continued to work as GDS MC at Kagmala since 12.08.2016. The applicant has never taken part in the selection process and was also not selected as per rules. Therefore, his claim for regularization as per GDS rules cannot be accepted and that his services cannot be terminated do not hold good as per law.

7. The claim of the applicant is that he is continuously working from August, 2009 to June, 2013 is not correct as he was engaged as substitute in intervals during the intermittent period from 19.07.2012 to 16.09.2014. For the period worked by the applicant, in 2016, the payment has been made to him for the said period, vide letter dated 22.09.2016 (Annexure R1).

8. As the post of GDS BPM has been filled up by recruitment by selecting regular GDS BPM, therefore, there is no lien of the applicant on the said post since the applicant was neither selected as per rules nor has taken part in the recruitment process. The applicant was engaged due to shortage of staff and also he has been paid payment for the said period. Therefore, the claim of the applicant that he has put in 7 years of regular service is baseless and false. The applicant was not continuously working for more than three years but only as per the interim orders of this Tribunal, he is in service. Therefore, he cannot claim any benefit under Rule 8 of GDS Rules, 2001 as the same is not applicable to him. Also, while appointing him as substitute he was given a clear understanding that his services may be discharged by the appointing authority at any time without assigning any reason.

9. As held by the Hon'ble Apex Court, Hon'ble High Courts and Tribunals in catena of judgments that no back door entries should be allowed in public employments by way of interim measure, therefore, the claim of the applicant to be reinstated, even though he was working as a substitute does not deserve any further continuance. As held by the Hon'ble Apex Court in State of UP Vs. Sandeep Kumar Balmiki, AIR 2009 SC, interim order should not be passed in the cases of termination as the same would amount to giving final relief.

10. Therefore, if such interim order is allowed to continue, the respondents will have to suffer irreparable loss and injury which cannot be compensated in terms of money, therefore, the applicant has no claim on the said post in view of the submissions made above. The interim relief granted to the applicant by this Tribunal dated 12.08.2016 is hereby vacated.

11. Accordingly, MA No.290/00300/2017 for vacating the interim order dated 12.08.2016 granted by this Tribunal is allowed.

OA No.290/00353/2016

List on 03.10.2018 for final hearing.

(HINA P. SHAH)
MEMBER (J)

(A.K. BISHNOI)
MEMBER (A)

Dated: 30.08.2018.

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