

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.210/00790/2016

Dated this Thursday, the 30th day of November, 2017.

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (JUDICIAL)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (ADMINISTRATIVE)**

Shri Ganesh Chandrakant Dalvi,
GDS BPM, Wakas,
Residing at: At Post Wakas,
Tal. Karjat,
Raigad-410101.

.. Applicant.

Versus

1. Union of India, through
Chief Postmaster General,
Maharashtra Circle,
GPO, Mumbai - 400 001.

2. The Postmaster General,
(Mumbai Region),
Headquarters in Chief PMG
Maharashtra Circle 2nd Floor,
Old GPO Bldg.,
Mumbai-400001.

3. The Superintendent of Post Office,
Panvel Division,
Navi Mumbai-410206.

.. Respondents.

Appearances:

**Shri Vicky Nagrani, learned Advocate for the
applicant.**

**Shri R.R.Shetty, learned Advocate for the
respondents.**

OA filed on 23.11.2016

Order reserved on 14.11.2017

Order delivered on 30.11.2017

O R D E R

PER : SHRI ARVIND J. ROHEE, MEMBER (JUDICIAL)

The applicant who is presently working as G.D.S.(Gramin Dak Sevak) B.P.M. (Branch Post Master) at village Wakas in Karjat Taluka of Raigad District, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in third round of litigation, seeking the following reliefs:-

“a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same direct the Respondents to allow the Applicant to continue as GDS, BPM Wakas till the regular selected candidate is not appointed purely on provisional basis in the light of order passed by this Hon'ble Tribunal in Original Application No.588 of 2009.

b. Cost of the application be provided for.

c. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

2. The applicant belongs to Other Backward Community (OBC). It is stated that in the year 2006, he was appointed on the post of GDS BPM, Wakas as a stop gap arrangement, which continued till the year 2009. Thereafter the applicant was selected and appointed on the same post after he has

successfully undergone the selection process as per Recruitment Rules and he accepted the offer of appointment dated 22.05.2009 (Annexure A-2). However, it was provisional engagement. After completion of 3 months service, the applicant's appointment was cancelled vide order dated 16.09.2009 on the ground that the said post was earmarked for Scheduled Caste category candidate and the applicant being OBC he could not be continued on the said post. Aggrieved by the said decision the applicant approached this Tribunal in O.A.588/2009. Vide order dated 17.08.2012 (Annexure A-3) the said O.A. was disposed off with a direction to the respondents that the applicant will be entitled to continue to hold the post a stop gap arrangement strictly on provisional basis and till the said post is regularly filled up within three months.

3. Since respondents could not observe time limit, the applicant continued on said post and completed more than 7 years in pursuance of the aforesaid directions issued

by this Tribunal, it is stated that as per the extent policy dated 21.10.2002 (Annexure A-4) regulating substitute / provisional arrangement made in place of regular GDS, which provides that such provisional appointees should be placed on waiting list for being considered for regular appointment after he/she has completed 3 years of continuous employment.

4. In view of the said policy decision the applicant legitimately expected that he will be considered for regular appointment since he has already completed more than 3 years of service as provisional appointee. However, on 04.04.2016 it is stated that without any written order of termination the respondents have orally asked the applicant to handover the charge of his present post. Aggrieved by the same the applicant submitted a representation dated 06.10.2016 (Annexure A-5) to the respondents seeking necessary redress. However, since nothing was heard from the other end, he filed another OA No.698/2016. Vide order dated 13.10.2016 the

said O.A. was disposed off with a direction to the respondents to consider the representation submitted by the applicant in the light of the order passed by this Tribunal. However, instead of doing so the respondents in violation of the order passed by this Tribunal rejected the representation vide impugned order dated 16.11.2016 (Annexure A-1) and directed him to handover the charge to nominated official instead of handing over the charge to the regularly selected candidate.

5. The present O.A. is, therefore, filed seeking the reliefs mentioned above, which are based on the following grounds as mentioned in Para 5 of the O.A. The same are reproduced here for ready reference:-

“a) There is gross violation of principles of natural justice and the Applicant is denied reasonable opportunity to defend himself.

b) The impugned order of the Respondents of asking the Applicant to hand over the charge despite knowing the fact that the Applicant had completed more than 7 years is absolutely illegal and void. All other colleagues of the Applicant who have been working as provisional appointee in various post have been continued and further regularized also.

c) The Applicant submits that he has rendered service of 7 long years as on provisional

Appointment w.e.f. 21.05.2009. The Applicant holds the eligibility criteria for regular appointment of GDS BPM. The post on which the Applicant is working as provisional is regular. Thus the Applicant has been working on provisional basis against the regular post for the last 7 long years and total 10 years including stop gap service. The Applicant is thus in fact entitled for regularization of his service and hence he cannot be discontinued in this manner.

d) The Applicant further submits that the action of the Respondents in terminating the services of the Applicant is discriminatory and violative of Article 14 & 16 of the Constitution of India. The Applicant understands that there are several other candidates who were initially working on provisional basis in various post office, and once they completed three years of service they are automatically considered for regular appointment.

e) The Applicant further submits that the Guidelines for regulating substitute / provisional arrangements made in place of regular Gramin Dak Sevaks dated 21.10.2002 wherein, the extent 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 and when 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. Thus the action of the Respondent No.3 asking the Applicant to hand over the charge despite being aware of the fact that the Applicant has completed more than 4 years of service is absolutely illegal and void.

f) The Applicant further submits that the Applicant though the Applicant is entitled for regularization in the present Original Application he is not claiming any regularization and he has filled the present Original Application to the limited extent that until and unless the Respondents does not get regular selected SC candidate for the post of GDS BPM the Applicant may be continued on provisional basis in the light of order dated 17.08.2012 passed by this Hon'ble Tribunal. However in violation of the said order the Respondents are asking the Applicant to hand over the charge to the nominated official

instead of selected candidate. Thus the action of the Respondents, asking the Applicant is in violation of the order passed by this Hon'ble Tribunal and therefore deserves to be set aside. The Applicant is not claiming any regularization though he is entitled for the same in the present Original Application but the limited prayer that until and unless the regular SC selected candidate is made available the Applicant may be allowed to continue as GDS, BPM, Wakas on provisional basis.

g) The identical issue is already decided by Hon'ble High Court, Kerala in the case of V R Varaja Vs. Union of India wherein the Hon'ble High Court had also held that GDS BPM working for more than three years shall be considered for regular appointment. The applicant craves leave of this Hon'ble Tribunal produce the copy of the same at the time of hearing."

6. The applicant in this OA has sought the following interim reliefs :-

"9(a) Pending the hearing and final disposal of this Original Application, the Respondent No.3 be directed to maintain status Quo in respect of service of the Applicant as GDS BPM, Wakas B.O.

(b) Ad-interim orders in terms of prayer clause (a) and (b) above may be granted."

7. After hearing the learned Advocate for the applicant and considering the material on record, this Tribunal vide order dated 24.11.2016 granted the said prayer. The relevant portion of the said order reads as under :-

"We find that the impugned order dated 16.11.2016 runs contrary to the order passed by this Tribunal on 17.08.2012. Therefore, there shall be interim order

directing the respondents not to give any effect to the order dated 16.11.2016. The respondents shall maintain status quo with regard to the service of the applicant."

8. The above interim order was continued from time to time, which is still in force and that is how the applicant continued to work on the said post although on provisional basis.

9. On notice, the respondents appeared and by a common reply dated 27.04.2017 resisted the OA by denying all the adverse averments, contentions and grounds raised therein. It is stated that in the previous O.A.588/2009 decided on 17.08.2012 this Tribunal directed the respondents to notify the vacancy earmarked for SC candidate and to complete the selection process within a period of 3 months. The applicant was permitted to continue till such time as a stop gap arrangement and strictly on provisional basis. In pursuance of the aforesaid direction, the respondents took steps to fill up the post of GDS Wakas for appointment of SC candidate. It is stated that the procedure however could not be completed on account of undue interference

by the applicant as reported by the Assistant Superintendent of Post Offices Sub-Division vide Annexure R-2. The applicant was however, continued as GDS as stop gap arrangement and strictly on provisional basis as per order passed by this Tribunal.

10. A notification was then issued on 11.09.2012 and after following due process one Shri N.G. Kamble was selected for the post of GDS BPM. However, he could not be appointed since he did not happen to be resident of village Wakas and belongs of village Kashele, although under same Karjat Taluka. He was, therefore, asked to make suitable arrangement for space to accommodate Branch office. However, the said candidate failed to get / provide required accommodation in the village. Hence the respondents offered appointment to the next selected candidate Shri Sumit Yashwant Jadhav, who did not respond to the office letter, whereas Smt. Rani Barku Jadhav informed that she is willing to work as BPM, but was not able to get accommodation in Wakas to run Branch Office. Shri M.B. Jadhav also

communicated that he is searching for a place at Wakas to run BPO, but he also could not get any accommodation.

11. Thus out of four selected candidates no one was able to provide accommodation within a period of one year as required. The respondents, therefore, approached the Block Development Officer for B.P.O. accommodation at Grampanchayat Office Wakas as per Directorate guidelines dated 28.09.2011 (Annexure R-3). Thereupon the Block Development Officers directed the Sarpanch Grampanchayat, Wakas to take action on the Departmental letter as per rules. The respondents also took up the issue with the Sarpanch Wakas Grampanchayat to provide space for Branch Post Office at Grampanchayat office. However, the latter also failed to provide any space.

12. The applicant then filed previous OA No.698/2016, which was disposed off by this Tribunal vide order dated 13.10.2016 holding that since no order has been passed to

terminate the services of the applicant no cause of action had arisen to approach this Tribunal. A direction was further issued to the applicant to submit a detailed representation within a week and to the respondents to consider the same in the light of the already passed by this Tribunal. The applicant then submitted a representation on 18.10.2016 (Annexure R-5) (Annexure A-5 is the legal notice dated 06.10.2016). The said representation was considered and rejected vide impugned order dated 16.11.2016, since no relief can be granted to the applicant.

13. It is stated that the services of GDS BPM was virtually terminated on 23.11.2016 and charge was handed over to Shri Sachin R. Dalvi, GDS MDA, Wakas BPO in addition to his own work. However, the applicant approached this Tribunal once again in the present OA in which this Tribunal has passed the interim order directing the respondents not to give any effect to the termination order dated 16.11.2016. The respondents have accordingly maintained status-quo in respect of services

of the applicant. It is stated that Shri Sachin R. Dalvi who has been given additional charge of the post of GDS BPM is also regularly appointed as Mail Delivery Agent. As such the question of continuing the applicant on adhoc basis after 16.11.2016 does not arise. The present O.A., therefore, does not warrant any interference with the impugned order which is perfectly correct and legal. The O.A. is, therefore, liable to be dismissed.

14. It is stated that with effect from 01.01.2009 the applicant was kept incharge of BPM, Wakas as temporary stop gap arrangement, on termination of appointment of Shri Mangesh Mangal Mali on 31.12.2008. The applicant was made to understand that his appointment for the post of BPM Wakas is on temporary basis as a stop gap arrangement. Thereafter in order to fill up the backlog of reserved category, a Notification for the post of BPM Wakas was issued on 06.11.2009. In response to said Notification, the applicant submitted his candidature and in response to Employment

Exchange Notification four candidates offered application for appointment. On scrutiny of all the five applications it was revealed that none of the candidates were eligible for the post of BPM since four candidates once served by the Employment Exchange were not permanent resident of village Wakas and the applicant was not belonging to SC category although he was resident of village Wakas. However, in order to run the BPO smoothly till regular engagement is made by way of stop gap arrangement the applicant was selected on provisional basis to hold the said post, he being resident of village wakas.

15. It is stated that as per rules, pre-appointment formalities like verification of character is essential even for provisional appointment. The said procedure was accordingly carried out. The applicant was thus provisionally engaged till completion of regular selection process. This fact is made clear in the appointment order (Annexure A-2) of the applicant.

16. It is stated that since the post of GDS BPM was earmarked for SC category and no candidate belonging to said category was found eligible for the said post, the selection process was cancelled. This Tribunal also accepted this fact in OA No.588/2009, which was disposed off with a direction to notify the vacancy for SC category and complete the process within three months and in the meantime to continue the applicant to hold the said post of GDS BPM Wakas as a stop gap arrangement and strictly on provisional basis.

17. It is stated that post of GDS BPM Wakas is earmarked for SC category and applicant belongs to OBC. Hence, he cannot claim regularization on the said post, although the Department has earlier completed the procedure for selection of the candidate. However, on account of undue interference by the applicant actual handing over the charge of BPO Wakas could not take place till date, since charge of GDS BPM was handed over to Shri Sachin R. Dalvi who was regularly appointed as Mail Delivery Agent and hence,

the applicant's services were rightly terminated. However, by virtue of order of status-quo passed by this Tribunal in this OA, he is still continuing on the said post.

18. It is stated that this Tribunal vide order dated 17.08.2012 in OA No.588/2009 has already rejected the applicant's claim and directed the respondents to make regular engagement as per procedure laid down to fill up the post of GDS BPM Wakas from SC category. The applicant was however, continued strictly on provisional basis still the process is completed. In pursuance of the aforesaid directions steps were taken to fill up the vacant post. It is also stated that the applicant being appointed as a Stopgap arrangement on provisional basis, he is not covered under Rule 8 of the GDS (Conduct & Engagement) Rules, 2011. He has no vested right of regularization. The applicant has therefore, no case.

19. The Applicant being substitute / appointed as Stopgap arrangement has no right

of regularization in view of the decision rendered by the Hon'ble Supreme Court in ***Devika Guha Vs. Union of India***, in which it has been held that substitute has no legal claim on the basis of having worked for a longer period. It is for the department to consider the same as to whether there was a proper case for absorption or not and pass appropriate orders. After following due process, Shri M.G. Kamble was selected for the post of GDS BPM since he belongs to reserved category although he is not resident of wakas. Since the applicant belongs to OBC category, he was not eligible for being considered for the post of GDS BPM since it was allocated to SC category. Since selection process is complete and on account of the fact that the applicant created hurdles in getting the rented premises to the select candidates and created obstacles in handing over charge, the impugned order was passed terminating his services since charge is already handed over to the regularly appointed Mail Delivery Agent pending joining of the regularly selected SC candidate, the OA is therefore liable to be dismissed.

20. On 14.11.2017, when the matter was called out, we have heard Shri Vicky Nagrani, learned Advocate for the Applicant and the reply arguments of Shri R.R. Shetty, learned Advocate for the Respondents.

21. We have carefully gone through the pleadings of the parties and documents relied upon by them in support of their rival contentions.

FINDINGS

22. The only controversy involved for resolution of this Tribunal in the present OA is whether the applicant is entitled to the relief sought pending finalization of the newly started selection process to fill up the vacant post of GDS BPM Wakas (SO), on the grounds raised by the applicant.

23. It is not disputed that vide appointment order dated 22.05.2009 (Annexure A-2), the applicant was selected for the post of GDS BPM Wakas, Annexure A-1 to the said order contains terms and conditions of the

said appointment. It clearly states that the appointment was made purely on provisional basis for a period from 27.05.2009 to 26.11.2009 i.e. for a period of six months only or till the regular appointment is made, whichever period is shorter. It is also stated therein that the said post was earmarked for SC category, however, since it was not possible to make regular appointment immediately as no suitable SC candidate is found eligible as per the notification issued on 06.11.2008 and since Wakas BO under Neral SO has become vacant and it was necessary to make some alternate arrangement to run the BO, the above interim arrangement was made as mentioned in the terms and conditions. It is also specifically stated that the applicant was made aware of the fact that the said provisional appointment will be terminated when regular appointment is made for regular incumbent or reinstated and he shall have no claim for appointment to any post. It is also made clear that the Appointing Authority (respondent No.3) also reserves right to terminate the provisional appointment at any

time before the period of six months mentioned therein, above without notice and without assigning any reason.

24. The record, however, shows that although attempts were made to fill up the said post by SC candidates and although one person was selected, he could not get accommodation in the Village Wakas to run the BO. It appears that as per the extent rules, the Branch Office is to be run in the premises owned by the candidates selected or taken by him on rent. For this reason, normally the candidate, who is resident of the said village is preferred for the post of GDS so that there is no difficulty to run the BO in his accommodation.

25. In the present case, the record shows that the SC candidates selected tried to get the accommodation on rental basis. However, they could not get it perhaps for the reason that they were not residents of village wakes and the applicant was already working there. Being resident of same village and continued

on provisional basis by virtue of interim order passed by this Tribunal in previous OAs, he might have created some obstacles in finding way and since he was very much interested in getting regular appointment on said post.

26. It is obvious from record that before expiry of the term of provisional appointment, the respondents issued the order dated 16.09.2009 regarding cancellation of applicant's appointment on the ground that the SC candidate was then selected. However, as stated earlier, he could not get rental accommodation to run the BO. The applicant has challenged the said order of cancellation in OA No.588/2009 in which it has been specifically held that the provisional appointment of the applicant was made only by way of stop gap arrangement and it was ordered to be canceled when steps were taken to make regular appointment.

27. In the background of the above aforesaid scenario, the OA No. 588/2009 stands

disposed of with the following order :-

“6. In the above facts and circumstances, the Original Application is disposed of with liberty to the respondents to re-notify the above vacancy earmarked for the SC candidate. However, it shall be ensured that the entire selection process is completed within 3 months, as undertaken. Till such time, the applicant will be entitled to continue to hold the post as a stop gap arrangement, strictly on provisional basis.”

28. It is obvious that by virtue of the above order passed by this Tribunal, the applicant continue to hold the post as a stop gap arrangement strictly on provisional basis as directed by this Tribunal. It, however, appears that the respondents failed comply with the direction to fill up the said post within the prescribed period of three months by making appointment of SC candidates and the applicant continued on the said post by virtue of the order passed by this Tribunal in aforesaid OA No.588/2009.

29. The applicant again approached this Tribunal in previous OA No.698/2016 with a grievance that in spite of the order of this Tribunal in the previous OA directing the respondents to re-notify the vacancies in the

post of GDS BPM earmarked for SC candidate and to ensure that the entire selection process is completed within the three months as undertaken, nothing has been done by the respondents. It is also stated that the applicant has been continued on the said post for more than three years, since the applicant wanted to take advantage of the Government of India, Ministry of Communication and IT, Department of Posts letter dated 21.10.2002 (Annexure A-4) under the caption "*guidelines for regulating substitute / provisional appointment made and steps to regulate Gramin Dak Sewak*". The learned Advocate for the applicant during the course of arguments referred provisions of clause 10 and 12 thereof and submitted that the applicant is entitled to be considered for regular appointment since he has completed more than three years of continuous employment. However, it is obvious that the initial appointment of the applicant was provisional for a period of six months only. However, through intervention of this Tribunal, he continued to work on the same post on provisional basis since SC candidate was not

eligible. As such, it cannot be said that the applicant is entitled to get any benefit of the said letter dated 21.10.2002. The previous OA No.698/2016 was disposed of with the following order :-

“4. Since no order has been passed to terminate the service of the applicant, we are of the view that no cause of action has arisen to entertain the OA, at this stage. However, it would be open to the applicant to submit a detailed representation within one week. If such representation is made within one week, the respondents shall consider the same in the light of the order within three weeks, from the date of receipt of copy of this order.”

30. In pursuance of the aforesaid order, the applicant submitted a representation for regularization, which was rejected by the reasoned and speaking order dated 16.11.2016 (Annexure A-1). The applicant's service are now terminated by the order dated 23.11.2016, which is not challenged in this OA and hence, it has attained finality. Thus, in this OA, the applicant has not specifically challenged the impugned order and simply claims directions to the respondents to allow him to continue on the present post of GDS BPM Wakas till regular selected candidate is appointed. He has also not claimed regularization in

service by virtue of notification dated 21.10.2002 and even if it is so claimed, he is not entitled to the same since he is not governed by said notification and also for the reasons recorded earlier. In view of this fact, it is not necessary to consider the applicant's claim for regularization. It cannot be said that the order dated 16.11.2016 is in any manner illegal, improper or incorrect.

31. During the course of the arguments and in the pleadings, the respondents have specifically stated that a fresh process has been initiated to fill up the said vacant post of GDS BPM Wakas along with other vacant posts at various BOs in Maharashtra Circle by a notification dated 07.04.2017 (Annexure R-6). The long list is annexed with the said notification mentioning the vacant posts under Head Office, Sub Office and Branch Office. It is obvious that previously GDS BPM Wakas was allocated to SC category. However, as per the aforesaid notification vide entry at Serial No.1367 in the annexure, it is specifically

mentions that the said post is now allocated to unreserved category. In any case, the applicant neither belongs to Scheduled Caste nor unreserved category since he belong to OBC category. It appears that the said selection process is yet to be completed, since during the course of arguments, the learned Advocate for the respondents did not make any comments on it.

32. It is, thus, obvious from the above discussion that on two occasions, the respondents have made legitimate efforts to fill up the post of GDS BPM from reserved category candidate belonging to Scheduled Caste. However, their attempt failed for the reasons stated earlier thereafter, a policy decision was taken to fill up the said post from General category candidate and accordingly selection process is already initiated on 07.04.2017.

33. This being so, the order passed by this Tribunal in previous OA to continue the applicant's provisional appointment as a time

gap arrangement till the said post is filled up by a candidate belonging to Scheduled Caste category is now no longer binding, since a decision is taken by the respondents to fill up the said post from the candidate belonging to general category. In pursuance of the said decision, the impugned order dated 16.11.2016 (Annexure A-1) is passed declining the claim of regularization, which order is challenged by the applicant in this OA as stated earlier.

34. It is also stated in the impugned order that a decision was taken to hand over the charge of the post of GDS BPM to other staff on combine duty basis and consequently the applicant was directed to hand over the charge of the said post to the nominated official. This impliedly means that it virtually terminated the initial appointment of the applicant which was admittedly purely provisional and as a time gap arrangement, which was subsequently continued thereby granting protection to the applicant. In such peculiar facts and circumstances of the case, it is not now necessary to extent the said

protection again to the applicant and to continue him on provisional basis till general category candidate is appointed on completion of selection process. It is not made clear by the learned Advocate for the respondents that selection process is completed.

35. From the above discussion, we do not find any merit in the present OA and relief sought cannot be granted to the applicant. As such, OA stands dismissed.

36. In view of dismissal of this OA, the applicant is directed to hand over the charge of the present post to the nominated regular employee immediately.

37. It is further directed that in case the applicant exhibits any reluctance in handing over the charge, the respondents shall take appropriate steps in the matter.

38. The respondents are directed to complete the selection process initiated under notification dated 07.04.2017 so far as it

relates to filling up the vacant post of GDS BPM Wakas BO for appointment of general category candidate, within a period of four months from the date of receipt of certified copy of this order, if not completed so far.

39. In the facts and circumstances of the case, the parties are directed to bear their respective cost of this OA.

(R. Vijaykumar)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

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