

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA/050/00377/2016**

Reserved on : 02/01/2018

Date of Order: 28/03/2018

**C O R A M**

**HON'BLE MRS. BIDISHA BANERJEE, JUDICIAL MEMBER**  
**HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER**

Manish Kumar, S/o Shri Viveka Nand Das, resident of Ward No. 12,  
Western Kyastha Tola, Gudari Bazar, Supaul, District- Supaul.

..... Applicant

- By Advocate:- Mr. J.K. Karn

- Vrs.-

1. The Union of India, through the DG-Cum Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Director of Postal Services, Northern Region, Muzaffarpur.
5. The Superintendent, RMS 'U' Division, Muzaffarpur.
6. The Inspector (Post), U-2<sup>nd</sup> Sub-Division, Hajipur RMS.
7. The H.R.O., U-Division, Muzaffarpur.
8. The Sub Record Officer, RMS 'U' Division, Hajipur.

..... Respondents

- By Advocate:- Mr. M.D. Dwivedi

**O R D E R**

**Per Mr. A.K. Upadhyay, A.M.:-** This matter has its origin dating back to about 10 years when Superintendent, RMS 'U' Division, Muzaffarpur issued a letter dated 23.06.2008 confining the selection of 4 vacant posts of GDS only to the casual labours of the department. The applicant, who was an outsider, challenged the decision of the authorities in OA 300/2008. Two other persons,

namely, Shri Ravi Shankar and Shri Navin Kumar also challenged the said order in OA No. 301/2008 and OA No. 302/2008 on identical ground that they are being denied the opportunity to participate in the selection process in an arbitrary manner contrary to recruitment rules. The three OAs were heard together as these involved same questions of fact and law and they were disposed of by order dated 21.10.2008 as follows:-

“7. For all the reasons stated above, the OA is allowed. The order dated 23.06.2008 (Annexure R/1) is hereby set aside. The respondents are directed to proceed with the selection in accordance with the GDS Rules, 2001.”

2.           Thereafter, it appears that of the above three persons, Shri Ravi Shankar and Shri Navin Kumar were appointed purportedly ‘in compliance of’ the Tribunal’s above order. Since the only direction was to initiate the recruitment process and there was no observation with regard to the applicants, the authorities terminated the appointment order vide letter dated 20.09.2010. This was challenged by them in OA No. 630/2010 and OA No. 631/2010. The Tribunal expressed serious displeasure at the respondents’ filing misleading and contradictory written statements. The Tribunal also noted that Shri Ravi Shankar and Shri Navin Kumar have been working in the department since 2001. The Tribunal allowed the OA with liberty to the authorities to take action for termination by following the procedures laid down in the GDS Rules. The operative part of the judgment is as follows:-

“ The OA is allowed. The termination order dated 20.09.2010 issued by Inspector Post, RMS ‘U’ 2<sup>nd</sup> Sub Division and letter dated 09.09.2010 of PMG, NR, Muzaffarpur and letter dated 16.09.2009 conveyed by SRM ‘U’ Division, Muzaffarpur are hereby quashed. The applicant is to continue in his post as per appointment given to him vide letter dated 21.01.2010 (Annexure A/1). The respondents shall, however, have liberty to take action for termination of the applicant after following procedure laid down in the GDS Rules and giving opportunity to the applicant to put forth his case, if there has been any gross illegality in the appointment. Such liberty can be exercised by the respondents within a period of six months from the date of receipt/production of a copy of this order. No cost.”

3. The respondents thereafter utilized this liberty to go through convoluted procedures of disciplinary proceeding, appeal and revision and finally the PMG (North), Muzaffarpur Shri Ashok Kumar by his order dated 28.07.2017 set aside the disciplinary order of removal from engagement and appellate order which confirmed the order, and in his wisdom ordered to reinstate these two persons, namely, Shri Ravi Shankar and Shri Navin Kumar. The order of the PMG (North) makes a strange reading. The direction in OA 301/2008 and OA 302/2008- order dated 23.10.2008 was to initiate the selection process in accordance with the GDS Rules, 2001. He makes no observation whether such selection process was initiated or not. Rather he chooses to go through a complex legalistic reasoning to give ‘finality’ to the appointment of Shri Ravi Shankar and Shri Navin Kumar. Though the PMG North’s order relates to two other persons, it is important to refer to this because the applicant in his supplementary application dated 04.12.2017 has brought this on

record and he seeks to draw strength in his case also on the basis of this order.

4. The present applicant Shri Manish Kumar in the meanwhile approached the authorities for similar treatment to the other two persons. The respondents issued an appointment order dated 30.07.2014 which reads as follows:-

“DEPARTMENT OF POSTS INDIA  
O/O THE INSPECTOR POSTS, RMS ‘U’ 2<sup>ND</sup> SUB-DIVISION, HAJIPUR  
**Memo No:- IRM/U2nd/CAT Case/Manish Kumar/14-15 Dated at Hajipur, the 30-07-14**

In pursuance of CAT Patna Bench OA No.-300/2008 with 302/2008 filed by Sri Manish Kumar Vs. Union of India and Others communicated by the PMG North Region, Muzaffarpur vide his office letter no.: Staff/cc/Muz/76/08 dated 04-06-2014 and conveyed by the SRM ‘U’ Division vide his office letter No:B-111/2008 DATED 19-06-2014 regarding implementation of Hon’ble CAT Patna Bench judgment dated 21-10-2008.

Now, therefore, the undersigned being the competent authority in exercise of power conferred upon me as laid down in Rule 5 of GDS (Conduct and Engagement) Rules, 2011 engaged Sri Manish Kumar S/o Sri Viveka Nand Das, resident of Ward No. 12 Western Kayasth tola Gudari Bazar, Dist- Supaul to work as GDS Mailman in the office of the SRO, RMS ‘U’ Division, Hajipur against vacant post of GDS Mailman. He shall be paid such allowance as are admissible from time to time.

Shri Manish Kumar should clearly understand that his engagement as GDS Mailman shall be in the nature of contract liable to be terminated by him or by the undersigned by notifying the order in writing and that his conduct and engagement shall be Governed by the Postal GDS(Conduct and Engagement) Rules, 2011 as amended from time to time.

If these conditions are acceptable to him he should communicate his acceptance in the enclosed proforma.

(BHASKAR KUMAR)  
Inspector Posts  
RMS ‘U’ 2<sup>ND</sup> Sub-Division, Hajipur.

To

Sri Manish Kumar  
S/o Sri Viveka Nand Das  
Ward No. 12, Western Kayasth tola,  
Gudari Bazar Supaul, Dist- Supaul”

5. It is apparent from the above order itself that there was some direction from PMG (North), Muzaffarpur regarding implementation of CAT, Patna Bench's judgment 21.10.2008, in pursuance of which Shri Manish Kumar was appointed.

6. As observed earlier there was no such direction by this Tribunal in the aforesaid order. As a matter of fact, there was not even any observation regarding consideration of the applicant's case. Therefore, this exercise by the respondents was a complete distortion of the Tribunal's order.

7. It appears that the authorities must have realized that no direction to appoint or consider the appointment of the applicant was given by the Tribunal, and they issue an order of termination of service dated 17.05.2016 (Annexure A/11) under Rule 8(2) and Note below Rule 8(2) of GDS (Conduct & Engagement), Rules, 2011.

8. This order was challenged by the applicant in the present OA on the ground that he was appointed as per the direction of the PMG, and therefore, he could not be terminated by Inspector, Posts invoking the powers under Rule 8(2). The respondents were directed to bring the selection file on record and file a reply. They brought the letter dated 11.06.2014 (*wrongly mentioned as 04.06.2014 in the appointment order*) of PMG (N), but no selection file was brought and termination order was stayed by order dated 23.05.2016. This interim order is still continuing.

9. The respondent authorities have filed a written statement and additional written statement in which they have stated the obvious that the Tribunal had not ordered to appoint/engage any of the three applicants and the direction was to follow the procedure of selection in accordance with GDS Rules, 2011. The department's file was also produced by the authorities at the time of hearing which was also seen by the learned counsel for the applicant. It is an admitted position that no selection process was followed.

10. Shri J.K. Karn's main line of argument was twofold. One was the procedural, i.e. whether the Inspector of Posts can invoke power under Section 8(2) or whether it has to be some higher authorities under a different rule such as Rule 4(3) etc. His second line of argument is similar treatment to two other applicants who had together approached the Tribunal in 2008.

11. Heard the parties and perused the documents.

12. The matter is very simple. There was a direction to the authorities to start the proper selection process in accordance with GDS Rules, 2011, i.e. to notify the vacancy and invite applications, and not confine it to insiders. It is admitted position and also obvious from the records that no selection process was held. The mystery how the applicant managed to enter the department becomes clear if we peruse the PMG (North)'s letter dated 11.06.2014 addressed to

the Superintendent of RMS 'U' Division, Muzaffarpur which reads as follows:-

" To,

The Supdt. Of RMS,  
'U' Dn., Muzaffarpur,

No: Staff/CC/Muz/16/08 dated at Muzaffarpur, the 11/06/2014

Sub: Regarding implementation of Hon'ble CAT, Patna Bench judgment dated 21.10.2008 passed in OA No. 300/2008 filed by Shri Manish Kumar Vs. UOI & Others.

Ref:- Your Letter No. B-11/ED/OA No. 300/2008 dated 30/05/2014

On the letter dated 20/5/2014 of Shri J.K. Karn, Advocate, along with enclosures, entire case of Shri Manish Kumar has been gone through by the PMG(N), Muzaffarpur and it has been observed **that there appears miscarriage of justice as the Hon'ble CAT, Patna Bench ordered for consideration of all the three cases, but only two cases were considered.** (*Emphasis added*)

The ban came into effect later on, but the process for recruitment/appointment in the case was started much earlier and hence, **the ban order should not have come in the way of implementation of orders of the Hon'ble CAT, Patna Bench.** (*Emphasis added*)

**Now, to meet the ends of natural justice, the orders of the Hon'ble CAT may be implemented in words and spirit.** (*Emphasis added*)

The undersigned has been directed to ask you to **implement the orders of Hon'ble CAT order in proper perspective and report compliance so that there is no discrimination against the applicant and to avoid contempt of Court in this case.** (*Emphasis added*)

Asstt. Director-I  
O/o the Postmaster General,  
Northern Region, Muzaffarpur."

13. In the very first paragraph there is a complete distortion of the Tribunal's order when the PMG(N) says that CAT, Patna Bench's ordered 'for consideration of all the three cases, but only two cases were considered'. The same distortion/misrepresentation is carried throughout the letter, making it clear to the subordinate

authority that the applicant has to be appointed and creating a scare of contempt of court in his mind.

14. This letter has been signed by Assistant Director-I who must be a very senior officer and it is presumed that this letter has also been seen by the PMG (North). Therefore, it is difficult to accept that it was a bonafide mistake on the part of the authorities in understanding the judgment. There was no word, sentence or observation in the Tribunal's order dated 21.10.2008 which could lend itself to any kind of misunderstanding. We have no option but to hold that this was not an innocuous mistake but that this letter was issued with a malafide intent to enable the applicant to get a job under the garb of the Tribunal's order without following any procedure.

15. The unscrupulous petitioners and officials deliberately misinterpreting a court's direction is not an unknown phenomenon in service matters. The Hon'ble Supreme Court judgment 24.02.2016 in the matter of **A.P. SRTC & Ors. Vs. G. Srinivas Reddy & Ors.** [(2006) 3 SCC 674] has also taken note of the malaise of misusing the 'direction to consider'. The present matter obviously takes the cake in gaming the system so brazenly, because there was not even a 'direction to consider' the applicant's case which could give the authorities a pretext to 'misunderstand'.



16. In view of such entry into the job by distortion of the court's order, no argument as to which rule and procedure has to be invoked has any relevance. It is now the Tribunal's duty to come down very heavily on this appointment through devious means.

17. Fortunately, wisdom seems to have dawned on the authorities at some level and they have issued the termination notice under Rule 8(2) of the GDS (Conduct & Engagement) Rules, 2011. The Rule 8 permits the authorities to issue such notice without a detailed enquiry if the GDS has not completed three years of engagement, which is the case here.

18. In conclusion, the appointment was without foundation and without following the procedure in the rules. Therefore, the applicant has no right to continue on the post. The authorities have rightly terminated the applicant's services. Accordingly, the OA is dismissed and the interim order dated 23.05.2016 is thus vacated. A copy of this order be sent to Chief PMG, Bihar Circle, Patna to ensure that in future the Tribunal's order are not distorted in such a brazen manner as the PMG (N) has done in his letter dated 11.06.2014. No order as to costs.

[A.K. Upadhyay]  
Administrative Member

[Bidisha Banerjee]  
Judicial Member

srk.