

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/686/2012

Date of Reserve:26.02.2019

Date of Order: 29.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Niladri Chandra Patra, aged about 49 years, S/o. Gopinath Patra, At/PO-Sirijholi, PS-Gunupur, Dist-Rayagada – presently working as GDSMD, Sirijholi BO, Bikrampur SO, Dist-Rayagada.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda.
3. Post Master General, Berhampur Region, At/PO-Berhampur Dist-Ganjam.
4. Senior Superintendent of Post Offices, Koraput Division, At/PO/Dist-Koraput.
5. Inspector of Posts, Gunupur Sub Division, Gunupur, Dist-Rayagada.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

The applicant is presently working as presently working as GDSMD, Sirijholi BO under the Department of Posts. In this Original Application under Section 19 of the A.T.Act, 1985, he has approaching this Tribunal for direction to respondents to regularize/absorb him in the post of Postman cadre by quashing orders dated 9.7.2012(A/2) and dated 10.7.2012(A/3).

2. Facts of the matter in a nutshell are that the applicant was initially appointed as EDDA (now re-designated as GDSMD) at Sirijholi BO in account with Bikrampur SO and joined as such on 15.11.1983 under the Respondent No.5. While working as such, Respondent No.5 issued an order dated 4.9.2004 attaching the applicant to the post of Postman, Bikrampur SO and accordingly, the applicant joined as Postman at Bikrampur SO on 07.09.2004, without receiving any remuneration of the post of Postman. After about four years and nine months, i.e., on 27.06.2009, Respondent No.5 directed the applicant to work as GDSMC at Pansguda BO in account with Kujendra S.O. While the matter stood as such, the applicant was again directed to join in his own post at Sirijholi BO vide order dated 16.07.2009 of Respondent No.5 until further orders. The applicant joined in his own place as per the order of Respondent. In the meantime, Respondent No.5 issued a letter dated 25.8.2009 dated 16.7.2009 in partial modification of office letter dated 16.7.2009 in which it was directed that the applicant would work at Gunupur SO for NREGS work until further orders and the order will be effective immediately for NREGS work. Respondent No.5 in his letter dated 19.4.2010 addressed to Postman, Bikrampur SO stated that the applicant has been directed to work as Postman, Gunupur LSG SO and the work of delivery at Bikrampur SO will be managed by the applicant without any extra remuneration. Consequently, the applicant joined at Birampur SO on 22.4.2010 and has been managing the work of Postman till date without taking any extra remuneration. On 12.11.2010, applicant submitted a representation to Respondent No.5 venting his grievance for grant of remuneration of the post of Postman for the period that he had worked and since no action was taken, he approached this Tribunal in O.A.No.341 of 2012 praying for direction to respondents to pay the

differential amount with other benefits for the period the applicant had worked as Postman, i.e., from 7.9.2004 to 26.6.2009 and from 22.04.2010 till the date he was holding the post of Postman.. On receipt of notice as directed by this Tribunal, the respondent no.4 vide his memo dated 4.6.2012 ordered the Postmaster, Rayagada HO to draw and disburse the differential pay and wages in the Postman cadre in favour of the applicant. However, the facts remains the applicant was paid the differential amount upto the month of May, 2012 vide A/1 dated 4.6.2012.

3. It is the case of the applicant that while working as Postman, Bikrampur SO, with a mala fide intention, Respondent No.5 vide memo dated 9.7.2012 (A/2) directed him to work as GDSMD/MC of Gadiakhola B.O. in account with Gunupur SO against the vacant post of that BO with a further direction to the SPM, Bikrampur SO to relieve the applicant immediately and report compliance, without posting/appointing a regular Postman at Bikrampur S.O. According to applicant, on the next day, i.e., 10.07.2012, Respondent No.5 modified the order dated 09.07.2012 vide memo dated 10.08.2012(A/3) in which he was directed to join his own place of posting at Sirijhola BO by terminating all present arrangements and directed the SPM to relieve the applicant immediately. Resultantly, the applicant was relieved on 11.07.2012 and joined at Sirijhola BO on 12.07.2012. It has been pointed out by the applicant that one Jual Korad BPM of Tolana BO in account with Gunupur SO has been ordered to work as Postman in place of the applicant at Bikrampur SO with effect from 12.07.2012, which according to him, is because of the fact that he had approached this Tribunal in O.A.No.341/2012.

4. Grievance of the applicant is that this action of the respondents is not sustainable in the eye of law in view of the fact that instead of absorbing the

applicant in the post of Postman having regard to his long standing service, the respondents ought not to have replaced him by a GDS employee. In view of settled principle of law, one substitute cannot be replaced by another substitute and similar analogy, one GDS employee allowed to work in the post of Postman should not be replaced by another GDS employee without considering the case of the former GDS who had worked in the post of Postman for a period of about six years and particularly, more than 240 days in a calendar year without any break. Therefore, relieving the applicant from Bikrampur SO by engaging another GDS employee to work as Postman is bad in law.

5. Contesting the claim of the applicant, respondents have filed their counter. According to respondents, the applicant had been directed to manage the work of Postman at Bikrampur due to exigency of service. However, he was ordered to join his original post as GDSMD, Sirijholi BO vide memo dated 16.07.2009. Subsequently, the same was modified by the Inspector of Post Offices, Gunupur Sub Division attaching the applicant to Gunupur Sub Post Office to assist in the NREGS work for the working hours meant for GDS officials. During his visit to Bikrampur Sub Post Office on 17.04.2010, the Senior Superintendent of Post Offices, Koraput Division, Jeypore found that the work load of the office do not justify the post of Postman at Birampur Sub Post Office and in pursuance of the order of the Sr. Superintendent of Post Offices, the Inspector of Post Offices, Gunupur Sub Division issued orders diverting the post of Postman, Bikrampur Sub Post Office to Gunupur Sub Post Office and the post of Postman Biakrampur Sub Post Office was temporarily converted to GDSBPM Post(R/3). According to respondents, the Inspector of Post Offices issued orders attaching the applicant to Bikrampur SO as GDSMD

changing the mail delivery working hours of Bikrampur. The delivery working hours reduced to 5 hours from 10.30 hrs. to 15.30 hours as per the norms of GDSMD post. The applicant joined as GDSMD, Bikrampur on 22.04.2010 and is working as such. The applicant is in receipt of a Memo regarding change of working hours of the office and is well conversant of his engagement as GDSMD, Bikrampur SO. Respondents have pointed out that as per standing instructions of the Department of Posts, a vacant departmental post is to be managed by the willing GDS employees on rotational basis. As such another willing GDS official was engaged to manage the mail delivery work of Bikrampur SO against the vacant post. The applicant is not posted as Postman/GDSMD of Bikrampur SO and as such his claim for absorption in the post of Postman is irrational and unreasonable.

6. Applicant has not filed any rejoinder.
7. We have heard the learned counsels for both the sides and perused the records. Annexure-1 dated 04.06.2012 issued by the respondents themselves goes to show that the applicant was working as Postman, Bikrampur SO and in the above background, they have paid the differential salary of the post of Postman for the period from 07.09.2004 to 26.06.2009 and from 22.04.2010 till date, i.e., 04.06.2012 in favour of the applicant. As would be evident from the counter, the respondents have also disbursed the differential amount to the tune of Rs.5115/- to the applicant of the post of Postman for the period from 1.6.2012 to 11.7.2012. Therefore, the plea taken by the respondents that the applicant was working as GDSMD, Bikrampur on 22.04.2010 stands unsubstantiated.
8. Further, the submission of the respondents that as per standing instructions of the Department of Posts, a vacant departmental post is to be

managed by the willing GDS employees on rotational basis appears to be a passive one inasmuch as, had there been any such provision, the applicant would not have been allowed to work in the post of Postman for such a long time nor had he paid the differential amount of the post of Postman. Be that as it may, the applicant has only laid claim for regular absorption against the post of Postman on the basis of his service rendered for about six years. But such a claim has to be established on the basis of the recruitment rules governing the field. Working of the applicant against the post of Postman was by way of attachment and/or assignment of duties which of course is an incidental to his service. However, for the period the applicant had worked, admittedly, he has been paid the differential salary. This being the position, the applicant cannot claim to be regularly absorbed against the post of Postman, particularly when, his claim is not supported by any such statutory rules. The claim of the applicant being not founded on the rules or instructions issued by the Department of Posts from time to time, his submission that one GDS employee cannot be replaced by another GDS employee does not have any leg to stand, more particularly, when the context in which such a judicial enunciation is applicable is not the one of the facts in the instant O.A. However, it is to be noted that during the course of hearing, learned counsel for the respondents by producing a letter dated 13.02.2019 addressed to him by the Senior Superintendent of Post Offices, Koraput Division, Jeypore (K) brought to the notice of this Tribunal that in pursuance of order of CPMG, Odisha Circle dated 25.11.2016, the post of Postman, Bikrampur Sub Post Office has been abolished by the consequential order dated 08/09.12.2016 issued by the Senior Superintendent of Post Offices, Koraput Division.

9. For the reasons discussed in the preceding paragraphs, this Tribunal is of the opinion that the present O.A. filed by the applicant lacks any merit and accordingly, the same is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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