

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 830 of 2014

**Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)**

Sudarsan Jena, aged about 36 years, S/o Dasaratha Jena, A/p –
Kanta pari, Via – Dasarathpur, Dist. – Jajpur, Orissa.

.....Applicant

VERSUS

1. Union of India represented through the Director General of Posts, Dak Bhawan, Sansad marg, New Delhi – 110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. – Khurda.
3. Superintendent of Post Offices, Cuttack (N) Division, Cuttack.
4. Asst. Superintendent of Post Offices, Jajpur Sub division, Jajpur.

.....Respondents.

For the applicant : Mr.B.B.Patnaik, counsel

For the respondents: Mr.P.R.J.Dash, counsel

Heard & reserved on : 19.2.2019

Order on : 11.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :

- “(a) To direct the respondents to give appointment to the applicant in the vacant post of EDDA at Taranga Sagar BO Khosalpur BO, both are under Dasrathpur SO considering his past service in the post of EDDA from 1998 to 2004 and GDSBPM in charge from 3.3.2006 to 10.5.2010 and EDDA.
- (b) The respondents may be directed to take immediate steps on the representation filed buy the applicant on 10.7.23010 & 2.5.2014 within a stipulated time.
- (c) To enhance the pay and allowance of the applicant in the post of GDSMD taking in account of his past service from 198 to 2004 in the post of EDDA Kantapari BO.
- (d) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

2. The brief facts in the OA are that the applicant was appointed as Gramin Dak Sevak (in short GDS) at Kantapari BO, Jajpur District on 24.10.1998 after being selected through an advertisement. Another candidate challenged the appointed in OA No. 585/1998 which was disposed of by the Tribunal vide order dated 2.1.2004 (Annexure A/1) in which the Tribunal directed the

respondents department to review the selection in the light of the discussion in the order and to provide an alternative appointment to the applicant in the present OA. Accordingly the applicant was appointed as GDS at Rahasoi BO on 9.8.2004. He was asked to remain in charge of GDSBPM from 3.3.2006 to 10.5.2010. His present grievance is to consider his case for appointment against a vacancy post at Taranga Sagar BO Khosalpur BO under Dasrathpur SO as GDS considering his past service and also to enhance his allowance.

3. The respondents have filed the counter without disputing the facts stating that the applicant was adjusted as GDSMC at Rahasoi by virtue of the order of the Tribunal and was allowed the maximum scale of TRC applicable to the GDSMC at Rahasoi BO which is less than the TRC meant for the post of GDSMD. It is further stated that the applicant was asked to manage the work of GDSMD and GDSBPM at short term temporary arrangement and there is no provision under the GDS (Conduct & Engagement) Rules, 201 to order a GDS to work against a vacant post permanently on the basis of his past experience. He can be transferred to another PO under the limited transfer facility under the rules as per the guidelines copy of which is at Annexure R/1 to the counter. The applicant has also filed MA 137/2016 in pursuance of the order dated 18.2.2016. However, this delay condonation application has not yet been considered.

4. Heard learned counsels for the applicant and the respondents who reiterated their respective stand taken in the pleadings.

5. Before proceeding further the delay condonation application MA No. 137/2016 is to be considered. It is mentioned in the MA that the request is for his transfer against a vacant post and the claim is mentioned to be continuous cause. It is seen from the relief prayed for in the OA that it is for transfer to a vacant post for which he has made representation on 10.7.2010 and 2.5.2014. Since the post against which the transfer request is made is vacant, it cannot be said that the prayer is deleted. Accordingly the reason in MA No. 137/2016 being found to be satisfactory, delay in filing the OA is condoned.

6. On merit the applicant's case is that by virtue of his past experience he wants to be transferred as GDS Taranga Sagar BO/Khosalpur BO under Dasrathpur SO. The respondents have objected to the request on the ground that as per the GDS (Conduct & Engagement) Rules, 2011, the applicant has no right to be posted against a vacant post. However, as stated in the counter a GDS can be transferred from one post to another vacant post under limited transfer facility as per Annexure R/1. Admittedly the applicant was given an alternative appointment as EDMC at Rahasoi BO vide order dated 9.8.2004 (Annexure A/2) in pursuance to the order dated 2.1.2004 of the Tribunal (Annexure A/1). Having been provided with alternative appointment as GDS

the applicant is entitled for limited transfer facility as per the guidelines of the respondents at Annexure R/1.

7. Regarding the claim of higher TRCA it is stated by the respondents that he has been given maximum TRCA applicable to GDSCMC of Rahasoi BO. In the rejoinder the applicant has stated that he direction of the Tribunal was not to appoint in the post of GDSCMC. The direction of the Tribunal was to consider for an alternative appointment for the applicant. Accordingly he had been adjusted against GDSCMC which has been accepted by the applicant and not disputed. Hence his contention that he should have been appointed in some other post with higher TRCA is not acceptable at this point of time. Hence, the applicant's claim for higher TRCA has no merit and is rejected.

8. In view of the above, the OA is disposed of with a direction to the respondents to consider the case of the applicant against the post of EDDA, Taranga Sagar BO or Khosalpur BO under limited transfer facility in accordance with the guidelines at Annexure R/1 to the counter, if the applicant is otherwise eligible for such transfer. The applicant will have the liberty to submit a fresh representation depending on the present vacancy position to the respondent No.4/competent authority for his limited transfer facility within 10 days from the date of receipt of the copy of this order and if such a representation is filed the same shall be considered as per rules/guidelines and appropriate decision in the matter shall be taken by the respondent No.4/competent authority under intimation to the applicant within three months from the date of receipt of the fresh representation as stated above.

9. The OA is accordingly disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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