

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/772/2012

Date of Reserve:06.03.2019

Date of Order: 10.04.2019

CORAM:

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

Umakanta Das, aged about 57 years, S/o.late Gananatha Das, At/PO-Barikula, PS-Binjharpur, Dist-Jajpur, presently working as GDSBPM, Chasakhanda BO.O, Via-Pritipur, Dist-Jajpur.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.N.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-751 001.
3. Director of Postal Services (HQ), O/o. the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda-751 001.
4. Superintendent of Post Offices, Cuttack North Division, At/PO/Dist-Cuttack-753 001.

...Respondents

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

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Gramin Dask Seveak Branch Post Master (in short GDSBPM), Chasakhanda BO in account with Pritipur S.O. under the Department of Posts. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- i) That the notification dated 18.09.2012 under Annexure-A/4 and order dated 05.12.2012 under Annexure-A/5 be quashed.
- ii) That the respondents be directed to allow the applicant to be posted/appointed as GDSBPM at Chasakhanda B.O.

2. Briefly stated, facts of the matter are that the applicant has passed H.S.C. Examination in the year 1977 and belongs to UR category. He was selected and appointed to the post of Extra Departmental Delivery Agent (now Gramin Dak Sevak Mail Deliverer), Barikula BO in account with Rambag SO through a regular process of selection in which post he joined on 25.02.1980. Consequent upon passing away of the regular GDSBPM, Chasakhanda BO in account with Pritipur SO, the applicant was directed to work In-Charge of Branch Post Master of the said Branch Office vide letter dated 22.09.2006 issued by the Respondent No.5 in pursuance of letter dated 30.08.2006 of Respondent No.4 and accordingly, the applicant took over the charge of the post of GDSBPM, Chasakhanda BO on 26.09.2006. After joining as such, the applicant provided rent free accommodation for the use of the Post Office by taking a house on rent at Chasakhanda village. While working as such, he submitted a representation dated 07.08.2008 to the Superintendent of Post Offices, Cuttack North Division (Res.No.4) through the Respondent No.5 requesting for permanent posting against the said post of GDSBPM, Chasakhanda BO since he fulfils all the required conditions for the post in question. While the matter stood thus, Respondent No.4 issued a notification dated 18.09.2012(A/4) which is stated to have been received by the applicant on 21.10.2010, inviting applications from the intending candidates for filling up the post of GDSBPM, Chasakhanda BO, keeping the said vacancy reserved for ST category in the absence of which SC category or OBC and UR in descending order on the similar analogy. The applicant therefore, submitted a further representation dated 20.09.2012 to the Respondent No.4 reiterating his earlier request and simultaneously approached this Tribunal in the instant O.A. praying for the reliefs as quoted above.

3. This matter came up for admission on 16.10.2012. While admitting the O.A. and directing notice, this Tribunal, as an interim measure, passed the following orders.

"Pendency of this OA shall not stand as a bar to consider the pending representation of the applicant.

Status quo as of the date in so far as continuance of the applicant in the post of GDSBPM shall be maintained till next date".

4. Since the respondents in their counter filed, brought out an order dated 05.12.2012 passed by the Respondent No.4 rejecting the prayer of the applicant for regularization in the post of GDSBPM, Chasakhanda in pursuance of the interim order dated 16.10.2012 of this Tribunal, as quoted above, the applicant prayed for an amendment to the O.A. in order to bring within the scope and ambit of the O.A. the said rejection order dated 16.10.2012. This Tribunal vide order dated 06.02.2019 allowed the prayer for amendment with direction to file consolidated O.A. incorporating the proposed amendment. Accordingly, the applicant has filed the consolidated O.A.

5. In support of his claim, the applicant has urged that the action of the respondents in issuing notification for filling up the post in question without considering his pending representation for his posting and/or appointment against the post of GDSBPM, Chasakhanda, particularly, when he fulfils all the eligibility criteria, is arbitrary and unreasonable. According to him, as per GDS (Conduct & Engagement) Rules, 2011, the applicant could be transferred from one post to another whereas the respondents without considering the same and the fact that he has been working against the post of GDSBPM, Chasakhanda for about six years by providing a rent free accommodation for the use of the Post Offices, went ahead in issuing public notification for filling up the said post of GDSBPM, Chasakhanda keeping the same reserved for ST

category. Therefore, this action of the respondents is not only against the rule of law, but the same does not stand the judicial scrutiny, being unjust and improper.

6. It has been pointed out by the applicant that as per the Directorate Letter No.43/27/85-Pen/(EDC & Trg.) dated 12.09.1998, the ED Agents now called GDSs are permitted to avail of Limited Transfer Facilities from one post to another when an ED post falls vacant in the same office or in any office in the same place and he/she is offered alternative appointment in a place other than the place where he/she was holding the post. By this, he has tried to impress upon the Tribunal that when he has been working against a vacant post and has offered his willingness to work in the same post having fulfilled all the eligibility conditions, he ought to have been appointed against that vacant post under the provisions of Limited Transfer facility from one post to another. Applicant has also assailed the legality of order dated 5.12.2012 (A/4) as bad in law since it does not consider his representation within the meaning of the relevant rules and instructions on the subject.

7. On the other hand, opposing the prayer of the applicant, respondents have filed a detailed counter. It is the case of the respondents that consequent upon retirement of the regular incumbent, the post of GDSBPM, Chasakhanda BO fell vacant and in order to manage the works, the applicant was ordered to work as GDSBPM, Chasakhanda BO on 26.09.2006 and he has been managing the works of the said post till date. Meanwhile, it was decided by the competent authority to fill up the said vacant post as a result of which, the District Employment Officer, Jajpur was requested to sponsor the names of eligible candidates. Simultaneously, a public notification was issued on

18.09.2012 inviting applications from the open pool reserving the post for ST community. The process of selection, as submitted by the respondents, has already been completed and it will be finalized shortly. The applicant's request could not be considered at this stage since a public notification has already been issued calling for applications from the open market. It is stated that since the applicant has represented, his case will be duly considered along with other candidates strictly in accordance with the rules. They have pointed out that as per the DGP&T instructions contained in letter No.43-27/85-Pen. (EDC and TRG) dated 12.09.1988, ED Agents now called GDS were allowed limited transfer facility from one post to another without coming through the agency of employment exchange in exceptional circumstances, viz., when an ED post falls vacant in the same office or in any office in the same place or offered alternate appointment in a place other than the place where he/she was holding the post in terms of amendment to Rule-3 of GDS(Conduct & Employment) Rules, 2001 on the certain grounds and fulfilment of certain conditions vide R/2. According to respondents, the applicant does not fulfil the grounds and conditions as envisaged in R/3. They have, therefore, prayed that the O.A. being devoid of merit is liable to be dismissed.

8. We have heard the learned counsels for both the sides and perused the materials on record. During the course of hearing, learned counsel for the applicant brought to our notice an order dated 25.05.2018 of this Tribunal in O.A.No.260/969/2013 to fortify his claim and submitted that the facts of the present O.A. being identical to the facts in O.A.No.260/969/2013, this Tribunal should pass a similar order.

9. We have gone through the orders of this Tribunal dated 25.05.2018 in O.A.No.260/969/2013. It reveals that one Sitansu Sekhar Rath, applicant

therein, had initially been appointed as EDDA – cum – MC of Barapalli BO since 22.06.1995 and while working as such, he was directed to take charge as GDSBPM, Barpali BO in addition to his own duty vide Memo dated 06.08.2003 due to promotion of the existing GDSBPM. However, the Senior Superintendent of Post Offices, Puri Division issued a notification dated 30.04.2013 inviting applications for filling up the post of GDSBPM, Barpali BO notwithstanding the fact that the applicant was continuing in that post. The applicant submitted a representation dated 13.05.2013 to consider his case for permanent posting as GDSBPM, Barpali BO which same was rejected vide order dated 20.11.2013. In the fitness of things, the relevant Paragraphs of the order of this Tribunal in 260/969/2013 are reproduced hereunder:

"6. Our attention has been drawn to the common order passed by this Tribunal in O.A.Nos. 786/12, 787/12, 1010/12, 318/13, 319/13, 16/14, 24/14, 34/14, 156/14, 276/14, 277/14326/14, 313/14, 4/15, 98/15, 287/15, 45/16, 363/16, 545/16, 112/17 & 266/17 disposed of on 5.2.2018 in which the option of transfer from one post to another or from one zone to another zone was considered. The relevant extract from the said order is as follows:

"6. On 10.4.2012, a clarification was issued in Para-2 (e) of the Rules stating that there is no restriction for allowing transfer from one category to another. Relevant portion of the said clarification contained in the letter dated 10.04.2012 issued by the Government of India, Ministry of Communications & IT, Department of Posts (GDS Section) to the CPMG, Kerla Circle, Thiruvananthapuram regarding Limited Transfer Facility to GraminDakSevaks reads as follows:

"This has a reference to your office letter No. CO/21/0A/12 dated 27th Mar 2012 received only on 29.03.2012 seeking advice if the various categories of the GDS Posts as prescribed in Rule 3(d) of GDS (Conduct & Engagement) Rules, 2011 could be classified based on the skills or hierarchy or TRC slabs within these categories.

2. The issue has been examined in this Directorate and I am directed to clarify the position as under:

(a) *Rule 3(d) of the Department of Posts, Gramin Dak Sevaks(Conduct and Engagement) Rules, 2011 currently recognizes only the five categories of GraminDakSevaks i.e., GDSBPM, GDS MD, GDS MC, GDS Mail Packer and GDS Stamp Vendor.*

(b) *With the issue and implementation of orders relating to downgrading the EDSO's to EDBO's the category of GDS SPM is not vogue. For the purposes of TRCA, GraminDakSevaks are closed as three categories i.e., GDS BPM, GDSMD/SV & GDS MC/Packer, their TRCA has been fixed on pre-revised scales of pay of the corresponding categories of regular Government employees on pro-rata bases. Their TRCA is further based on workload assessed as per laid down norms and slabs.*

© *There is no concept of higher or lower post or skilled within a category and/or amongst various approved categories as recognized from time to time. For the purpose of direct recruitment to MTS Group C post, with reference to date of entry in any GDS post based on seniority in the concerned division as a whole. There is no categorization of various GDS posts into 'White Collar' or 'Blue Collar' and such a classification is not also defined anywhere.*

(d) *The 'Recruiting Authority' mentioned in Rule 4 and further defined in the Schedule annexed to the Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 is based on working arrangement and for administrative convenience only. As the GraminDakSevaks are entitled to protection under Article 311(2) of the Constitution as held by Apex Court, the concerned authority will exercise his disciplinary jurisdiction as per the categories fo GDS for which one is designated as recruiting authority.*

(e) *The existing provisions governing Limited Transfer Facility do not prescribe any restriction for allowing transfer from one category to another and amongst the various categories of Posts irrespective of TRCA slabs prescribed for these categories and even from one wing to another i.e., RMS to Postal or vice versa. The requirement is fulfilled of required qualification and other conditions for limited transfer facility".*

7. *A summary of the above instructions issued from time to time shows that Limited Transfer Facility has been made available to the GDS on his/her request if he/she satisfies the*

conditions laid down from time to time. We find that in the case of one Ratikanta Sahoo, a transfer has been made from the post of GDSMD, Sridharpur BO in account with Chitalo SO under Cuttack North Division to the post of GDS BPM, Rahasol BO in account with Chitalo SO under Cuttack North Division. The order is quite relevant to quote hereunder for the purpose of illustration.

"The Chief Post Master General, Odisha Circle, Bhubaneswar is pleased to approve the transfer of Shri Ratikanta Sahoo, GDS MD, Sridharpur SBO i/a/w Chitalo SO under Cuttack North Division to the post of GDS BPM, Rahasol BO i/a/w Chitalo SO under Cuttack North Division with the following conditions under the existing provisions of amended Rule-3 of GDS (Conduct & Engagement) Rules 2011 as communicated vide Directorate letter No.19-10/2004-GDS dated 17.7.2006.

The above transfer is subject to the following terms and conditions:

1. *The GDS will normally be eligible for only one transfer during the entire career.*
2. *TRCA of the new post to which the GDS is transferred shall be fixed as per the instructions contained in Directorate letter No.19-10/2004-GDS (Part 0 dated 21/22.07.2010 under para-3(iii)). The TRC of the GDS official will be fixed at the minimum of the TRCA slab of the transferred post depending upon the workload of the said post.*
3. *The GDS will not have any claim to go back to the previous recruitment unit/division.*
4. *As the transfer is at his own request, he will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he accepts the seniority on transfer in accordance with this, should be obtained before he is transferred. However the past service of the GDS will be counted for assessing the eligibility for appearing the departmental examination.*
5. *The transfer will be at the cost and expenditure of the GDS. No expenditure whatsoever on this account will be borne by the Department under any circumstances.*
6. *All other terms and conditions stipulated in Directorate letter No.19-10/2004 dated 17.07.2006 will also be applicable to this transfer".*

8. *Inasmuch as a Limited Transfer Facility is available as an one time measure in the service career of a GDS, requests of the applicants in the present group of OAs have to be examined in the context of the conditions laid down from time to time and if they satisfy the conditions, they will be eligible for one time transfer to different posts/different units as per the existing rules. The Transfer Order quoted at Para-6 above serves as a good guiding point for consideration of the cases of the applicants".*

7. In the present O.A., the order of the Senior Superintendent of Post Offices, Puri Division (Res.No.3) while rejecting the representation of the applicant is quite clear that the applicant has the eligibility for holding the post of GDSBPM on a permanent basis. He is entitled to be regularly posted in the same post by virtue of his holding the additional charge for more than 10 years at the time of filing the O.A. He is also eligible for a transfer as one time measure due to the Limited Transfer Facilities available to him as per the common orders passed by this Tribunal in O.A.Nos.786/12, 787/12, 1010/12, 318/13, 319/13, 16/14, 24/14, 34/14, 156/14, 276/14, 277/14, 326/14, 313/14, 4/15, 98/15, 287/15, 45/16, 363/16, 545/16, 112/17 & 266/17. We, therefore, hold that applicant's prayer for regular posting the post of GDSBPM, Barpali BO is legally valid and cannot be arbitrarily denied. It is for the authorities to decide whether to continue him discharging the duties of GDSMC in addition to his own duties as GDSBPM. His claim to the post of GDSBPM is unassailable and cannot be illegally denied.

8. In view of the above, the notification dated 30.04.2013(A/3) and the impugned order of rejection dated 20.11.2013 (A/6) are quashed and set aside. The Respondents are directed to issue posting order to the applicant in the post of GDSBPM, Barpali BO. within a period of eight weeks from the date of receipt of this order.

9. In the result, the O.A. is allowed, with no order as to costs".

10. We have examined the facts of the present O.A. vis-a-vis the facts in O.A.No.260/969/2013 as quoted above and we are of the view that both the facts being similar, in order to maintain consistency in the administration of justice, we are to follow the same ratio as decided in that O.A. In view of this, the Notification No.B/ED-129(II) dated 18.09.2012 (A/4) and the impugned order dated 05.12.2012(A/5) rejecting the applicant's representation are

quashed and set aside. The Respondents are directed to issue posting order to the applicant in the post of GDSBPM, Chasakhand B.O. within a period of eight weeks from the date of receipt of this order.

11. In the result, the O.A. is allowed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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