

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00066/2016

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Sri Binud Sonowal
Son of Sri Kamal Sonowal
Resident of Village – Mathawani
P.O. – Mathawani, Dist – Dibrugarh, Assam.

...Applicant

By Advocates: Mr. S. Dihingia, Mr. H.K. Das, Mrs. P. Dutta and
Mr. M.C. Bora

-VERSUS-

1. Union of India
Represented by the Secretary
To the Department of Posts
Government of India
Ministry of Communication
Information and Technology, New Delhi – 1.
2. The Chief Postmaster General
Assam Circle, Meghdoot Bhawan
Panbazar, Guwahati – 1.
3. The Postmaster General
Dibrugarh Division
Dibrugarh, Assam – 786001.
4. The Superintendent of Post Offices
Dibrugarh Division
Dibrugarh, Assam – 786001.

... Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

Date of hearing: 22.01.2019

Date of Order: 04.04.2019

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):

Being aggrieved with the impugned speaking order dated 15.05.2014, the applicant has preferred the instant O.A. seeking the following reliefs:

- 8.1 To set aside and quash the impugned order under No. VIG/5/XXXI/2008 dated 15.05.2014 and grant all consequential benefits.
- 8.2 To direct the respondents to reinstate the applicant with full back wages in the post of GDS BPM at Mathawani B.O via Naharkatia S.O. forthwith with all consequential benefits.
- 8.3 To treat the period from the date of initial appointment till the date of reinstatement as on duty for all practical purposes with all consequential benefits.
- 8.4 Cost of the application.
- 8.5 Pass any such order/orders as Your Lordships may deem fit and proper."

2. The applicant was appointed to the post of GDS BPM at Mathawani BO in account with Naharkatia SO vide order No. A-199/EDA/Mathawani dated 10.12.2007 after completion of all formalities, submission of necessary documents as required. Subsequently, his services were terminated vide termination order dated 19.08.2008. This termination order was challenged by the applicant in this Tribunal by filing O.A. No. 154/2008. This Tribunal disposed of the said O.A. directing the respondents to consider the

O.A. as representation and pass a reasoned and speaking order. On direction of this Tribunal, speaking order was issued by the competent authority vide order dated 16.10.2008 wherein apart from responding to some of the allegations in the O.A., his representation has been rejected on the ground of complaints being made regarding irregularity in making appointment of GDS in Dibrugarh Division. Among the alleged irregularities, it was also highlighted that the post to which the applicant was given appointment was earmarked for OBC candidate whereas the applicant belongs to ST Community. Accordingly, the Competent Authority refused to modify the order issued by the Superintendent of Post Offices, Dibrugarh Division vide his Memo No. A-199/EDA/Mathawani dated 21.07.2008 terminating his services. The appeal as contained in O.A. No. 154/2008 was rejected.

3. This Tribunal vide order dated 14.08.2009 passed another common order along with other O.A. No.s 171, 225, 226, 227, 228, 229 & 230 of 2008 directing the respondents as hereunder:-

"8. Having heard the rival contentions, we are of the opinion that ends of justice will meet adequately if a direction is issued to the Respondents to disclose clearly the reasons for termination (with all materials on the basis of which such decision was taken) to the Applicants and to provide adequate opportunity to them to make effective representations; which should receive consideration of the Respondent No. 2, if necessary, by giving personal hearing of the Applicants and on such consideration the Respondent No. 2 should pass a reasoned order. Till such orders are passed by the Respondent No. 2, status quo of the Applicants are to be maintained."

4. Thereafter, the petitioners (applicants) filed Execution Petition No. 35/2014 and this Tribunal vide order dated 07.04.2014 passed order as follows:-

"However, accepting the plea of Mrs. S. Bora, learned Addl. C.G.S.C. for the respondents, we grant two weeks time to pass a reasoned and speaking order giving reasons as to why their services were terminated within three years period and justifying the termination. It goes without saying that if they themselves feel the reasons are not sufficient to warrant termination, then consequence must necessarily follow. The effect of the order in para 8 of the order dated 14.08.2009, "Till such orders are passed by the Respondent No. 2, status quo of the Applicants are to be mentioned" is that if such sufficient reasons are not available, it would be construed that petitioners are continuing in service".

5. Accordingly, the respondent authority i.e. Chief Postmaster General, Assam Circle, Guwahati passed a Speaking Order No. VIG/5/IX/2008 dated 15.05.2014 rejecting the claim of the applicant which is assailed in this OA.

6. We have heard learned counsels for both the sides, carefully perused the pleadings and the documents annexed therein. Since this is the third round of litigation, this Tribunal considers it appropriate to go into the merit of the case.

7. From the perusal of records, it appears that vide letter No. A-93/EDA dated 10.10.2007, the Superintendent of Post Offices, Dibrugarh Division requested the Employment Exchange, Namrup to sponsor at least 3 or more candidates for the post of GDSBPM, Mathawani BO under Naharkatia SO. The request was also

accompanied by the requisition proforma for recruitment. On going through the proforma of requisition amongst others, it is observed at para 5 (a) & 6 (c) as follows:-

5.(a) Designation of the Post: **GDS, BPM, Mathawani BO, under Naharkatia SO.**

6(c) Whether unreserved: reserved for SC/ST/OBC **Reserved for OBC community**

8. Simultaneously, vide advertisement dated 10.10.2007, the said authority invited applications for the said post. Sl. Nos.4 & 6 of the advertisement dated 10.10.2007 are extracted below:-

(4) Residence: The candidate should be resident of Mathawani village otherwise he must have sufficient proof that he is residing in the village after taking up appointment and known to the locality.

(6) Caste: The post is reserved for OBC community.

9. In compliance of the order dated 14.08.2009 passed in OA.228/2008 and order dated 07.04.2014 in MA no.35 of 2014, the CPMG, Assam Circle had passed the speaking order dated 15.05.2014 rejecting the claim of the applicant on the following grounds, amongst others:-

- (i) As per the advertisement post was reserved for OBC. As per DG Posts letter no.17-132/94-ED & Trg. dated 05.10.1994, it was specifically stated to secure representation from candidates belonging to OBC

community in the matter of GDS appointment. In the instant case, the selection of the applicant who belongs to ST community is in violation of reservation for Backward classes.

- (ii) As per the Ministry of Personnel letter No.F.No.36033/2/2006-Estt.(Res.), dated 12.10.2007, special efforts should be taken to fill up the vacancies belonging to SC/ST/OBC. In case, sufficient number of candidate is not available in the first attempt a second attempt should be made to fill up the reserve category vacancy. According to respondents, as the exchange of reservation between SC and ST is not permissible vide Ministry of Personnel letter No.36012/17/2002-Estt.(Res) dated 06/11/2003, by the same logic exchange of reservation between ST and OBC is also not permissible.
- (iii) As the selection was in violation of terms and references made in the notification, the termination notice issued cancelling the candidature of applicant is fair and just.

10. Undisputedly, sole vacancy was earmarked for OBC category as per clause 6 of the notification. Therefore, the post has to be filled up by OBC candidate. If no OBC candidate is available a fresh attempt is required to be made to fill the reserve category

vacancy as mandated by Ministry of Personnel letter dated 12.10.2007, as mentioned above. As the present applicant is a ST candidate, he is not entitled against the said vacancy reserved for OBC. As such, the selection and appointment of the applicant who is ST candidate is in violation of the terms and references in the notification.

11. Regarding the termination of employment, Rule 8 of the GDS (Conduct and Employment) Rules, 2001 which is relevant is extracted as under:-

8. Termination of Engagement

(1) The engagement of a Sevak who has not already rendered more than three years' continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Appointing Authority or by the Appointing Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance *plus* Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or, as the case may be, for the period by which such notice falls short of one month.

In the present case, the applicant has rendered service for a period of seven months. The respondents had complied with the

requirement of Rule 8 (1) of the said Rules, as quoted above by giving the applicant one month's notice while terminating his engagement vide order dated 21.07.2008 (Annexure-A to the written statement).

12. In view of the above, it is crystal clear that post was reserved for OBC and the applicant was a ST candidate, therefore, his selection was made in violation of terms of advertisement, therefore, his engagement was rightly cancelled after adhering to Rule 8 of the GDS (Conduct and Employment) Rules, 2001 which was prevalent at that relevant time. Therefore, there is no infirmity in the termination of engagement of the applicant.

13. Accordingly, OA is liable to be dismissed and therefore, dismissed. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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