

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1009/2016

Dated Wednesday, the 6th day of February, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

G. Tamilmani, S/o.K.Govindan

Mesthree Valvoo, Thumbipadi BO

Omalur Taluk, Salem District.

... Applicant

By Advocate M/s S. Sairaman

Vs

1. Union of India represented by

The Chief Postmaster General

Anna Salai, Chennai – 600 002.

2. The Postmaster General

Western Region, Coimbatore – 641 002.

3. The Superintendent of Post Office

Salem West Division, Salem – 636 005.

4. The Manager

Mail Motor Service

Coimbatore – 641 001.

... Respondents

By Advocate Mr. M. Kishore Kumar

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the proceedings of the 4th respondent Memo No. DMMs/E-162/04 dated 08.06.2012 and quash the same as illegal and consequently direct the respondents to regularise the service of the applicant with effect from 22.01.2001 with consequential benefits and pass such further or other orders”.

2. The grievance of the applicant is that the applicant had been confirmed in the cadre of MTS in the scale of Rs.5200-20200 with GP Rs.1800 w.e.f 12.05.2010 by impugned order dated 08.06.2012. The applicant was appointed as GDS BPM in the year 1989 and subsequently was selected as District Motor Mail Service (DMMS) Cleaner on 22.01.2001. While working as such the third respondent terminated the applicant's services on 26.04.2003.

3. Aggrieved by the order of the third respondent the applicant filed OA 456/2003 before this Tribunal which was allowed by an order dated 25.08.2003 with a direction to the respondents to restore the applicant to the post within a period of eight weeks from the date of receipt of a copy of the order. A Writ Petition No.33651/2003 filed by the respondents thereagainst failed and was dismissed by an order of the Hon'ble Madras High Court dated 03.01.2008. SLP No.17602/2008 filed by the respondents before the Hon'ble Supreme Court also failed and the same was dismissed on 18.12.2009. Thereafter, a temporary appointment

order was issued on 19.04.2010 by the 4th respondent wherein it was stated that the applicant was provisionally appointed as Group D Cleaner (Test Category) in the MMS Coimbatore purely on temporary basis w.e.f. 23.07.2009.

4. The respondents did not regularize the applicant's service from the date of appointment on the post of Cleaner in DMMS w.e.f 22.01.2001. The impugned order has been passed allegedly without application of mind to the background and facts of the case thereby granting the benefit of regularization w.e.f 12.05.2012 only. Aggrieved by the said order the applicant is before this Tribunal.

5. The respondents have filed a reply in which it is stated that the post of Cleaner (Group D) DMMS Salem West Division fell vacant w.e.f 11.02.1998. Since there was a ban on filling up of posts by a communication of the Director General Posts dated 07.04.2000, the post could not be filled up on regular basis. In order to manage the work of Cleaner DMMS, the third respondent and Superintendent of Post Offices, Salem West Division decided to engage an outsider from among the GDS employees to officiate/act in the vacant Cleaner post purely on temporary basis. Willingness was called from the GDS officials of the Division by letter dated 12.10.2000. In response, the applicant who was then a GDS, Thumbipadi BO, gave willingness to officiate on the Cleaner post on temporary basis with a clear declaration that he would not be conferred any right to claim regular appointment to the post on a later date.

6. The applicant was engaged to officiate as Cleaner Group B from 22.01.2001 to 25.04.2003 by incurring extra expenditure through paid substitute bill as he was engaged as an unapproved substitute purely on temporary officiating arrangement. The post of Cleaner Group D DMMS was abolished w.e.f. 25.04.2003 and the officiating arrangement of the applicant was terminated and he was reverted to his parent post of GDS on 26.04.2003.

7. Following litigation by the applicant, he was appointed as Time scale Cleaner, MMS Coimbatore on 12.05.2010. The order of the Tribunal in OA 456/2003 had already been implemented and nothing survived in the matter. Contempt proceedings initiated by the applicant had also been dismissed by this Tribunal with the observations that the respondents had already complied with the order of the Tribunal and, therefore, there was no willful disobedience. Accordingly the OA is liable to be dismissed, it is contended.

8. On perusal, it is seen that this Tribunal in its order dated 25.08.2003 in OA 456/2003 had held that the abolition of the post on which the applicant was working was contrary to the instructions issued by the DG, Posts, and hence the applicant required to be restored. In view of the fact that the respondents were obliged to restore the post, the consequential action of the respondents in terminating the services of the applicant as Cleaner would have to be set aside.

9. The respondents were directed to restore the applicant on the post of Cleaner DMMS within a period of eight weeks from the date of receipt of a copy of the order. The respondents filed WP No.33651/2003 thereagainst before the Hon'ble Madras High Court which was dismissed by order dated 03.01.2008. SLP No.17602/2008 filed in the Hon'ble Supreme Court thereagainst was dismissed by an order dated 18.12.2009.

10. In the light of the above outcome of the litigation, the applicant is seeking regularization with retrospective effect. Evidently, the applicant in his previous OA had only sought restoration/reinstatement and not regularization. It also appears that the applicant had not been appointed to the post of Cleaner DMMS in the year 2001 in accordance with the procedure laid down in the relevant rules but on a purely temporary adhoc basis as there was a ban on recruitment at the relevant time. Although the applicant was successful in the OA filed by him seeking reinstatement in service following termination, the issue of regularization never figured then. It is a moot point whether the applicant would have been selected on a regular basis in the year 2001, had there not been a ban on recruitment and the post was filled up in accordance with the relevant rules in terms of merit/seniority.

11. On further perusal it is seen that the applicant had made Annexure R-19 representation dated 23.01.2017 wherein he had referred to his previous representations dated 21.05.2011, 28.12.2011, 31.01.2012 &

01.04.2012. It appears that no reasoned and speaking order had been passed by the respondents on the representation. It is not clear whether any similarly placed persons were appointed otherwise than through the regular process on a date subsequent to the date of temporary appointment of the applicant in the year 2001 and had been regularized and if so, the background in which and the rules/orders by which such action had been found permissible. The claim of the applicant would arise only if any junior person had been appointed on regular basis though appointed initially otherwise than on merit.

12. In the light of the above, this OA is disposed of with a direction to the respondents to consider the matter comprehensively and take a decision on Annexure R-19 representation of the applicant dated 23.01.2017 in accordance with law and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

13. OA is disposed of with the above directions. No costs.

(P.MADHAVAN)
MEMBER(J)

(R.RAMANUJAM)
MEMBER (A)

06.02.2019

M.T.