

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/17/2014

Date of Reserve:12.09.2019

Date of Order:18.09.2019

CORAM:

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

Amarendra Nayak, aged about 43 years, S/o. Late Gouranga Nayak, At/PO-Dhanipur, PS-Mangalpur, Dist-Jajpur, presently working as GDSBPM, Paripada Nijampur B.O., Via-Mangalpur S.O., Dist-Jajpur.

...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-751 001.
3. Superintendent of Post Offices, Cuttack North Division, At/PO/Dist-Cuttack-753 001.
4. Assistant Superintendent of Post Offices, Jajpur Sub-Division, At/PO/Dist-Jajpur-755 001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, presently working as GDSBPM, Paripada Nijampur (n short P.Nijampur)

B.O. under the Department of Posts has approached this Tribunal in this O.A. being aggrieved by the Notification dated 30.12.2013 (A/4) whereby, the Superintendent of Post Offices, Cuttack(N) Division (Res.No.3) has invited applications for filling up the post of GDSBPM, P.Nijampur Branch Office in account with Mangalpur S.O. under Jajpur H.O.

Hence, he has sought for the following reliefs:

- i) That the notification dated 30.12.2013 under Annexure-A/4 be quashed.
- ii) That the respondents be directed to allow the applicant to be posted/appointed as GDSBPM at P.Nijampur BO.

- iii) And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

2. Sum and substance of the facts are that the applicant joined as EDDA/MC at Dhanipur Branch Office on 9.1.1990 through a regular process of selection. While working as such, vide communication dated 25.11.2011 (A/2), the applicant was directed to join and act as GDSBPM/MD of P.Nijampur B.O. in addition to his own duties with immediate effect. On 21.12.2012, the applicant submitted a representation to the Superintendent of Post Offices, Cuttack (N) Division requesting for his regular appointment as GDSBPM, P.Nijampur B.O. While his representation was pending consideration, Respondent No.3 issued Notification dated 30.12.2013 (A/4) as mentioned above. Aggrieved with this, the applicant submitted a further representation dated 04.01.2014 to Respondent No.3 for considering his appointment as GDSBPM, P.Nijampur B.O. Since it did not evoke any fruitful result, the applicant has approached this Tribunal in the instant O.A. calling in question the legality and validity of the impugned Notification at A/4.

3. Opposing the prayer of the applicant, Respondents have filed a detailed counter. While not disputing the factual aspects of the matter, the Respondents have pointed out that as per DGP&T Letter No.43/27-85-Pen. Dated 6.5.1985, GDSs are not eligible or entitled to transfer from one post to another. Since the applicant does not satisfy/fulfil the conditions as stipulated in DGP&T letter dated 6.5.1985, the O.A. deserves to be dismissed.

4. Applicant has filed rejoinder to the counter in which it has been submitted that the applicant had been appointed as EDDA/MC in the year 1990 under P&T Agents (Conduct & Service) Rules, 1964. This Rule stood revised by the introduction of Gramin Dak Sevaks (Conduct & Employment) Rules, 2001, in which it was stipulated that "A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest". Subsequent, this Rule stood amended and called as "Department of Posts, Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011. In this Rule, it is provided that "A sevak can be transferred from one post/unit to another post/unit in public interest". It has

been stipulated in the said Rule that the Post Office shall be located in the accommodation to be provided by GDS BPM for the use as Post Office Premises. According to applicant, he satisfies the condition as laid down in Department of Posts Lr.No.19-10/2004-GDS dated 17.07.2006. The applicant has pointed out that similarly situated employee has been posted/appointed as GDSBPM by the Superintendent of Post Offices, Cuttack(N) Division vide Memo No.F/C-Case-06/2014 dated 25.04.2014 and therefore, non-consideration of his case amounts to discrimination.

5. In the reply to rejoinder filed by the respondents, it has been submitted that by virtue of interim direction of this Tribunal they are unable to finalize the selection process. Respondents have submitted that the applicant does not satisfy the conditions as laid down under Limited Transfer Facility to GDS as per Government of India, Ministry of Communication & IT, Department of Posts letter No.19-10/20040GDS dated 17.07.2006 (R/1). The applicant has already been transferred once in his career, i.e., from Dhanipur BO to Iswarpur BO. It has been pointed out that the case cited by the applicant is totally different from the facts of the present O.A. and therefore, the applicant has not been discriminated against.

6. We have heard the learned counsels for both the sides and perused the records. During the course of hearing, learned counsel for the applicant brought to the notice of this Tribunal order dated 5.7.2019 passed in O.A.No.260/450/2015 and submitted that the case of the present applicant is squarely covered by the said order and therefore, similar order may be passed in this case. We have gone through the orders passed by this Tribunal. It reveals from the said order that the applicant therein while working as EDDA Alabol BO was directed to work as BPM of the same BO in addition to his own duties for certain period. Thereafter, the applicant was directed to work as BPM, Goda BO including the delivery work of that BO until further orders vide Memo dated 19.06.2010. While working as such, there being a vacancy in the post of GDSBPM/MD, Ichhapur BO, the applicant submitted a representation for his posting as GDSBPM, Ichhapur BO permanently. In consideration of

his representation, the applicant was ordered to be attached at Ichhapur BO against the vacant post of GDSBPM. While the matter stood thus, the respondents issued a notification dated 16.4.2015 inviting application for filling up the post of GDSBPM, Ichhapur BO. Hence, the applicant therein being aggrieved had approached this Tribunal. This Tribunal relying on an earlier decision in O.A.No.260/772 of 2012 dated 10.04.2019 passed under similar facts and circumstances, quashed the notification and directed the respondents to issue posting order as GDSBPM, Ichhapur BO in favour of the applicant in O.A.No.260/450/2015. We have also gone through a batch of matter decided by this Tribunal on the similar point. Since in the case of this type, the consistent view of the Tribunal is very clear and luculent, and particularly, the facts and circumstances of the present being the same and identical as that of O.A.No.260/450/2015, O.A.No.260/772 of 2012 and batch of matters (O.A.Nos.786/12,787/12,1010/12,318/13,319/13,16/14,24/14,34/14,156/14,276/12,277/14,326/14,313/14, 4/15,98/15,287/15,45/16,363/16,454/16,112/17 & 266/17) dealing with the Limited Transfer Facilities, we are of the view that to maintain uniformity and consistency in the administration of justice, similar order should be passed in the instant O.A. In view of this, we quash and set aside the impugned notification dated 31.12.2013 (A/4) and direct the Respondents to issue posting order posting the applicant as GDSBPM, P.Nijampur B.O. within a period of eight weeks from the date of receipt of this order.

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

(SWARUP KUMAR MISHRA)
'MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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