

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/260/2017 & O.A.No.260/30/2018

Date of Reserve: 09.04.2019

Date of Order: 28.06.2019

CORAM:

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

IN O.A.No.260/260/2017:

Swagatika Biswal, aged about 26 years, D/o.Nimai Charan Biswal & W/o.Bibhuti Sahoo, resident of Vill-Kumusi, PO-Kumusi, Via-Hindol Road, PS-Parjang, Dist-Dhenkanal, Odisha, PIN-759 019, presently working as GDSBPM, Pitiri BO in account with Parjang SO under Dhenkanal HO.

...Applicant

By the Advocate(s)-Mr.C.P.Sahani

-VERSUS-

Union of India represented through:

1. The Secretary of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751 001.
3. The Superintendent of Post Offices, Dhenkanal Division, Dhenkanal-759 001.
4. Inspector of Post, Kamakhyanagar Sub Division, Kamakhyanagar-759 018.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

IN O.A.No.260/30/2018:

Smt.Rosalini Sahu, aged about 26 years, W/o. Sri Nirmal Chandra Sahoo, permanent resident of Vill/PO-Kumusi, PS-Hindol, Dist-Dhenkanal – presently working as GDSBPM, Patamandir BO, Parjang, Dhenkanal.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha  
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751 001.

3. Post Master General, Sambalpur Region, Sambalpur-1.
4. Inspector of Post, Kamakhyanagar Sub Division, Kamakhyanagar, Dist-Dhenkanal-759 018.
5. The Superintendent of Post Offices, Dhenkanal Division, At/PO/Dist-Dhenkanal.
6. Smt.Swagatika Biswal, wife of Sri Bibhuti Bhusan Sahoo, permanent resident of Vill/PO-Kumusi PS-Hindo, Dist-Dhenkanal – presently working as GDS Mail Deliver, Mundeilo BO, Parjang, Dhenkanal.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, Smt.Swagatika Biswal in O.A.No.260/260/2017 is presently working as GDSBPM I/c., Pitiri BO in account with Parjang SO under Dhenkanal HO. Her grievance is directed against Notification No.ST/1-3/19/GDS/2017 dated 27.03.2017 (A/13) whereby and whereunder the post of GDSBPM, Pitiri BO in account with Parjang SO is sought to be filled by the Respondent-Department. Hence, in this Original Application under Section 19 of the A.T.Act, 1985, she has sought for the following reliefs:

- i) Admit the Original Application.
- ii) After hearing the counsels for the parties be further pleased to quash the Notification No.ST/1-3/19/GDS/2017 dated 27.03.2017 so far as the post of GDSBPM, Pitiri BO is concerned. And consequently, orders may be pleased passed directing the Respondents to absorb/appoint the applicant permanently as GDSBPM cum MD, Pitiri BO in account with Parjang SO.
- iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow the O.A. with costs.

2. The entire gamut of the case is that initially the applicant was selected and appointed to the post of Gramin Dak Sevak Mail Deliverer (GDSMD),

Mundeilo BO in account with Parjang SO in the year 2011 and she joined the said post on 9.3.2011. While working as such, she was directed to work as GDSBPM, Mundelio BO and accordingly, the applicant joined as GDSBPM, Mundeilo BO on 7.5.2011. On 20.01.2015, the applicant was relieved from the post of GDSBPM, Mundeiloa BO. On 24.09.2015 Pitiri BO in account with Parjang SO under Dhenkanal Division was newly opened. The applicant was redeployed as GDSBPM cum MD and GDSMC, Pitiri BO with effect from 28.09.2015. Thereafter, she submitted a representation dated 8.10.2015 to Respondent No.3 for permanent absorption as GDSBPM cum MD, Pitiri BO as she is having the requisite educational qualification. Since there was no response, the applicant submitted another representation dated 7.4.2016 followed by another representation dated 18.01.2017. Grievance of the applicant is that without considering her representation, the Respondent-Department issued notification for filling up the post of GDSBPM, Pitiri BO. Hence, this application with the aforesaid prayer.

The grounds on which the applicant has based her claim are as follows:

- i) Applicant belongs to OBC category and has passed 1<sup>st</sup> Division in HSCE by securing 72% marks. Besides she has acquired PGDCA qualification in computer and therefore, she is very much eligible for the post in question.
- ii) As per Rule-3A of GDS(Conduct & Engagement) Rules, 2011, the applicant could be transferred from one post to another. Further as per letter No.43-27/85-Pen.(EDC & Trg.) dated 12.09.1988, the ED Agents, now called GDS can be given alternative appointment in a place other than the place where they are originally holding the post under the Limited Transfer Facilities for GDS.
- iii) As per Rule-3A of GDS(Conduct & Engagement) Rules, 2011, accommodation for the post of Office has been provided by the applicant for Pitiri BO in which she has been working as GDSBPM cum MD.

- iv) As per GD Posts Letter No.17-103/2007-GDS dated 17.02.2011 circulated by the CPMG, Odisha Circle, Bhubaneswar Letter No. EST/1-3/GDS/2010 dated 24.02.2011, the vacant post of GDSBPM in Branch Post Offices are to be filled up by Head of the Division without referring to Head of Circle immediately after it fell vacant by adopting the following methods:
  - a) By appointment of surplus identified GDS fulfilling the conditions; failing which
  - b) By combination of duties of GDS in the same BO, provided the combined work load does not exceed five hours: failing which
  - c) By recruitment of outsiders by observing the selection process.
- v) For filling up the vacant GDSBPM preference should be given to those GDS who are identified as surplus and according to applicant, Vide A/7 she has been identified as surplus GDS.
- vi) In a similar matter in Suryakanta Padhi vs. Union of India & Ors. (O.A.No.354 of 2012 decided on 28.03.2016) this Tribunal has allowed the claim of the applicant therein.
- vii) Without considering the representation, notification for filling up the post is bad in law.

3. Respondents by filing a detailed counter have opposed the prayer of the applicant. It has been submitted that while working as GDSMD, Mundeilo BO the applicant was ordered to manage the vacant post of GDSBPM, Mundeilo BO in addition to her own duty as GDSMD as a temporary measure vide Respondent No.4's order dated 1.4.2011. Thereafter, one regular GDSBPM having been engaged against the vacant post of GDSBPM, Mundeilo BO, the applicant handed over the charge to the said GDSBPM on 20.01.2015 and performed her duties as GDSMD, Mundeilo BO.

4. With the approval of CPMG, Odisha Circle one new GDS Branch Post Office, namely Pitiri BO was opened with effect from 28.09.2015. The sanctioned strength of Pitiri BO is one GDSBPM and one GDSMD. The post of

GDSBPM, Pitiri BO was created on redeployment of surplus post of GDSMC post of Bhusal BO in account with Bhuban SO in the Time Related Continuity Allowance (TRCA) with Delivery Allowance as admissible from time to time and the post of GDSMC, Pitiri BO was created by redeployment of surplus post of GDSMD, Mundeilo BO in account with Parjang SO. Accordingly, the applicant was ordered to be relieved from the post of GDSMD, Mundelio BO in order to join as GDSMC, Pitiri BO on 28.09.2015. The applicant was ordered to manage the work of vacant post of GDSBPM, Pirtiri BO in addition to her own duty as GDMC as a temporary measure and thus, she has been managing the duty of GDSBPM, Pitiri BO since 28.09.2015. Thereafter, the applicant submitted a representation dated 8.10.2015 to Respondent No.4 requesting to modify the order of posting and to post her as GDSBPM, Pitiri BO. While the matter was under consideration, a notification dated 27.03.2017 was issued to fill up the vacant post of GDSBPM, Pitiri BO. It is submitted that the selection process has been completed and one Piyush Prasad Sahoo has been selected for the vacant post of GDSBPM, Pitiri BO on merit, which has been kept on hold. According to respondents, in compliance with the direction of this Tribunal dated 25.04.2017, the representation of the applicant has been disposed of vide communication dated 6.7.2017 (R/2). The Respondents have pointed out that merely by managing the work of GDSBPM, Pitiri BO temporarily does not confer any right on the applicant to be absorbed against the said post.

5. Applicant has filed a rejoinder to the counter which is more or less reiteration of facts as averred in the O.A.

6. This matter came up for admission on 25.04.2017. This Tribunal while directing notice to the respondents, as an interim measure directed that no

further steps shall be taken by the Respondent-Authorities for fresh selection and engagement against the post of GDSBPM, Pitiri BO in account with Parjang SO under Dhenkanal Division vide notification dated 27.03.2017. It was further directed that pendency of this O.A. shall not prevent the Respondent No.3 to dispose of the pending representation dated 18.02.2017.

7. As noted above, the Respondents have disposed of the representation of the applicant vide R/2 dated 6.7.2017 which reads as follows:

“Sub: Request to post as GDSBPM, Pitiri BO in account with Parjang SO

Ref: Your representation dated 18.01.2017:

Please refer to your representation dated 18.01.2017 wherein you have requested to post as GDSBPM, Pitiri BO in account with Parjang SO under Dhenkanal Division.

On examining the facts, it has been clarified vide DG Posts letter No.21-12/2001-GDS dated 17.09.2003 that “In view of the above decisions of the Postal Services Board, the sole criteria for selection to the posts of all categories of GDSs will henceforth be the merit, subject to orders on reservation and fulfilling other eligibility conditions like providing of space for BO, taking up residence in the BO village before appointment etc”. Hence there is not any provision that an existing Gramin Dak Sevak will be straightway selected to the post of GDSBPM falling vacant in the same office or in any other office without going through the normal recruitment process.

Hence, your representation dated 18.01.2017 is considered after proper application of mind and vividly going through the facts and circumstances and related Departmental rulings and rejected accordingly”.

8. In O.A.No.260/30/2018, the applicant, Smt.Rasalini Sahu, while working as GDSBPM Patamandir BO in account with Parjang SO since 6.4.2011 submitted an application dated 14.08.2017 (A/5) to the CPMG, Odisha Circle for her transfer to the post of GDSBPM, Kumsi BO in account with Hindol Road R.S. SO which was likely to fall vacant with effect from 12.01.2018 due

to retirement of the regular incumbent of that post, inter alia, on the ground as under:

"That on 26.01.2014 I got married to Sri Nirmal Chandra Sahoo of Kumsi village under Dhenkanal District and blessed with a daughter on 27.03.2015 who is now 2(two) years old.

That after birth of my child I am suffering from Rheumatic arthritis and under regular medical treatment. The copies of medical treatment sent herewith for kind examination.

That my father in law and mother in law both are at 75 years and 70 years old respectively and they are suffering from old age diseases.

That the distance between my duty place to my father in law's house i.e., Kumsi village is 16 KMs and being a married women I am facing much difficulties to manage both my office duties as well as my family remaining outside, i.e., at Patamandir".

9. Grievance of the applicant herein is that whereas her case was recommended for transfer, the case of Private Respondent No.6 ( applicant in O.A.No.260/260/2017) was rejected. In this connection, attention of the Tribunal was drawn to No.B/ED-336 at Dhenkanal, the 05.01.1028 (Annexure-8) which reads as follows:

"Sub: Transfer case of Smt.Rasalin Sahu, W/o. Nirmal Chandra Sahoo, GDSBPM, Patamandir BO, Via-Parjang SO

This is to intimate that Smt.Rasalin Sahu had submitted her representation dated 14.08.17 to the CPMG, Odisha Circle, Bhubaneswar for transfer to Kumsi Branch Office (BO) under Hindol Road RS Sub-Post Office (SO). In this regard one directive was received from Circle Office, Bhubaneswar for submitting her details in prescribed Proforma with recommendations or otherwise vide Circle Office letter ST/10-4/33/2017 dated 31.08.2017. In this connection a letter was submitted in prescribed Proforma with a remarks as "recommended" to Regional Office Sambalpur/Circle Office Bhubaneswar vide this office letter no.B/ED-336 dated 24.10.2017.

2. Prior to that Smt.Swagatika Biswal, GDSMD Mundeilo BO presently working as GDSMC cum GDSBPM (I/c) Pitiri BO has submitted a representation dated 27.07.17 to the CPMG, Odisha Circle, Bhubaneswar for transfer to Kumsi BO i/a/w Hindol Road RS SO. In this connection one directive was received from Circle Office, Bhubaneswar

for submitting her details in prescribed Proforma with recommendations or otherwise vide CO letter ST/10-4/29/2017 dated 14.08.2017. In this regard a letter was submitted to Regional Office Sambalpur/Circle Office, Bhubaneswar in prescribed Proforma with a remark as "not recommended" due to Smt.Biswal has filed OA No.260/260/2017 in the Hon'ble CAT, Cuttack Bench, Cuttack for absorbing GDSBPM post of Pitiri Bo i/a/w Parjang SO and the case is sub-judice vide this office letter no.B/ED-310 dated 16.10.2017.

3. Once again Smt.Biswal submitted one representation dated 26.12.2017 mentioning that if she will be transferred to Kumsi BO, she can withdraw the CAT CASE (O.A.No.260/260/2017). As such Smt.Biswal's case is submitted to Regional Office, Sambalpur/Circle Office, Bhubaneswar with a remark that the case may be treated as recommended"

4. It is pertinent to mention that Smt.Swagatika Biswal was joined as GDSMD, Mundeilo BO on 09.03.2011 & applied for transfer to Kumsi BO on 27.07.2017. Smt.Rasalin Sahu, joined as GDSBPM, Patamandir BO on 06.04.2011 & applied for transfer to Kumsi BO on 14.08.2017. As such both the cases have been recommended and submitted to Circle Office, Bhubaneswar/Regional Office, Sambalpur".

10. While the matter stood as such, Respondent No.6 vide Memo No.B/ED-410 at Dhenkanal the 15.01.2018 (A/9) in pursuance of Circle Office, Bhubaneswar Memo dated 12.01.2016, transferred and posted Smt.Swagatika Biswal (applicant in O.A.No.260/260/2017) as GDSBPM, Kumsi BO in account with Hindol Road SO. Aggrieved with this, the applicant, Smt.Rosalin Sahu, has approached this Tribunal in this O.A.No.260/30/2018 praying for the following reliefs:

- i) To admit the Original Application.
- ii) To quash the office order dated 15.01.2018(Annex.A/9).
- iii) To direct the Respondent No.3 to take further decision recommending case of the applicant for her transfer to Kumsi SBO as GDSBPM.
- iv) To pass any other order/orders as deemed fit and proper for ends of justice.



11. Opposing the prayer of the applicant, official respondents and the private Respondent No.6 have filed their respective counter, to which applicant has also filed rejoinder.

12. This matter came up on admission on 19.01.2019. This Tribunal while admitting the O.A., as an interim measure, stayed the operation of the impugned order dated 15.01.2018 under Annexure-A/9 with direction to official respondents to maintain status quo in the meantime.

13. We have heard the learned counsels for the respective parties and perused the records as well as the written notes of submission. Since both the matters are intertwined, the same are being disposed of through this common order.

14. Before considering O.A.No.260/30/2018, it would be proper to at first consider and decide O.A.No.260/260/2017. It is to be noted that this Tribunal vide interim order dated 25.04.2017 directed the official respondents that pendency of this O.A. shall not prevent the Respondent No.3 to dispose of the pending representation dated 18.01.2017. This representation of the applicant was for her posting as GDSBPM cum DA Pitiri BO. As already mentioned above, this representation has been rejected vide communication dated 10.7.2017 (R/2 to the counter). Although it was incumbent on the part of the applicant to bring this communication within the ambit of the O.A. and challenge its legality, for the reasons best known, no amendment to the O.A. was carried out although the main relief sought for by the applicant is to quash the notification dated 27.02.2017 and to direct the Respondents to absorb/appointment her permanently as GDSBPM cum MD, Pitiri BO. In view of this, the Tribunal has to consider this matter on merit.

15. At the outset it is to be mentioned that it is the categorical submission of the official respondents that the post of GDSBPM, Pitiri BO was created on redeployment of surplus post of GDSMC post of Bhusal BO in account with Bhuban SO in the Time Related Continuity Allowance (TRCA) with Delivery Allowance as admissible from time to time. Secondly, when the Tribunal is considering the matter and admittedly, on the interim direction issued, the respondents considered and rejected the representation dated 18.01.2017 of the applicant Smt.Swagatika Biswal for her transfer/redeployment to Pitiri BO vide communication dated 10.7.2017 (R/2), it is not understood how could they again consider and transfer her to Kumsi BO as GDSBPM against the post which fell vacant on 20.01.2018 (A/9 to O.A.No.260/30/2018). This clearly articulates approbation and reprobation of their own statement. In other words, while the official respondents are rejecting the claim of Smt.Swagatika Biswal for her posting as GDSBPM, Kumsi BO on the plea that there is no provision that an existing Gramin Dak Sevak would be straightway selected for another post of GDSBPM falling vacant in the same office or in any other office without going through the normal recruitment process, they are acceding to the same request in respect of other Branch Post Office, i.e., Kumsi. Further, it is to be noted that if at all the Circle Office had vide Memo No.ST/10/-4/29/2017 dated 10.01.2016 approved transfer of Smt.Swagatika Biswal as GDSBPM, Kumsi BO there was no scope to consider the representation dated 14.08.2017 submitted by Smt.Rosalin Sahoo and to recommend her case to Regional Office/Circle Office vide letter No.B/ED-336 dated 24.10.2017 and similar is the case with Smt.Swagatika Biswal to recommend her case in consideration of representation dated 26.12.2017. Since the interim direction of this Tribunal dated 25.4.2017 was to consider

the representation dated 18.01.2017 of the applicant Smt.Swagatika Biswal which admittedly was for considering her posting as GDSBPM, Pitiri BO and this representation has already been turned down, the relief sought in the O.A. to quash the notification dated 27.03.2017 for filling up the post of GDSBPM, Pitiri BO has to be considered accordingly.

16. In the written notes of submission, the applicant has relied upon a decision of this Bench in O.A.No.969 of 2013 (Sitansu Sekhar Rath vs. Union of India & Ors) decided on 25.05.2019 to fortify his stand point. According to applicant, the point to be decided in the instant O.A. has been set at rest by this Tribunal in O.A.No.969 of 2013 and therefore, the Tribunal should pass a similar order in this matter.

17. On a perusal of the said order, it appears that the applicant (Sitansu Sekhar Rath) was initially appointed as E.D.D.A. – cum – M.C. of Barapalli B.O. in account with Nayagarh Bazar S.O. since 22.06.1995 and while working as such, he was directed by the Inspector of Posts, Nayagarh East Sub Division to take charge as GDSBPM, Barapali B.O. in addition to his own duty due to promotion of the existing GDSBPM and the applicant worked in that capacity from 7.8.2003 onwards. 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, Barapali B.O. despite the fact that the applicant was continuing in that post. The applicant submitted a representation dated 13.05.2013 to the competent authorities to consider his case for permanent posting as GDSBPM, Barapali B.O., but the same was rejected vide order dated 20.11.2013. Aggrieved by this, the applicant had approached this Tribunal.

18. This Tribunal after considering the matter on merit and relying on an earlier order dated 5.2.2018 passed 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

held and decided as follows:

- "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.Wetherefore 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".

19. From the above recital of facts there is no iota of doubt that the facts of the present O.A. are identical and similar to the facts in O.A.No.969 of 2013. In this view of the matter, we cannot deviate from the view already taken by this Tribunal under similar facts and circumstances. Therefore, we quash and set aside the notification no. ST/1-3/19/GDS/2017 dated 27.03.2017 (A/13) in so far as it relates to filling up the post of GDSBPM, Pitiri BO and consequently, the impugned communication dated 10.7.2017 (R/2 to the counter) whereby the request of the applicant for redeployment in the post of GDSBPM, Pitiri BO has been rejected is also quashed. The official respondents are therefore,

directed to consider posting of the applicant as GDSBPM, Pitiri BO, provided that she fulfils all the eligibility conditions for the post in question.

20. In so far as O.A.No.260/30/2018, we quash the impugned Memo dated 15.01.2018 (A/9) and direct the official respondents to consider transfer of the applicant Smt.Rosalin Sahu for the post of GDSBPM, Kumsi BO.

21. The official respondents shall carryout the aforesaid directions in the both the OAs within a period of 90 (ninety) days from the date of receipt of this order.

22. In the result, both the OAs are allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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