

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 577 of 2016

Date of order : 29.07.2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member(J)**

Kunjan Kumar Singh, aged about 38 years, Son of Sri Raghunath Singh of Vill-Postal, PO/PS/Dist-Jagatsinghpur, no residing At/PO/PS-Chowdwar, Dist-Cuttack, at present working as GDSMD/MC, Dedhasurdeuli BO.

.....Applicant

-Versus-

1. Secretary-cum-Director General(Posts), Dak Bhawan, New Delhi-110001.
2. Chief PMG, Odisha Circle, At-Bhubaneswar, PO-Bhubaneswar GPO-751001, Dist-Khurda.
3. Superintendent of Post Offices, Cuttack South Division, At-Cantonment Road, PO/PS/Dist-Cuttack-753001.
4. Inspector of Posts, Kujang Sub Division, At/PO/PS-Kujang, Dist-Jagatsinghpur.
5. Dibyasingh Tripathy, Inspector of Posts, Kujang Sub Division, At/PO/PS-Kujang, Dist-Jagatsinghpur.
6. GDSBPM Dedhasurdeuli BO, At/PO-Dedhasurdeuli BO, Via-Nalibar, Dist-Jagatsinghpur.

.....Respondents

For the Applicant : Mr. T. Rath

For the Respondents: Mr. C. M. Singh

O R D E R (ORAL)

Per Mr. Gokul Chandra Pati, Member(A):

The O.A. No.577/16 has been filed by the applicant for quashing the order dated 15.07.2016(Annexure-A/13), by which the representation of the applicant dated 05.04.2016 for being relieved from his present posts as GDSMD/MC, Dedhasurdeuli BO to join at this place of transfer as GDSBPM Bhairpur, BO under Bahugram SO under the provision of Rule-3 GDS(Conduct and Engagement) Rules, 2011 read with the Directorate letter dated 17.07.2006. The copy of transfer order dated 09.03.2016 of the applicant is at Annexure-A/8) of the O.A. After issue of the transfer order dated 09.03.2016, the applicant submitted a representation dated 16.04.2016 to the respondent no. 4 for reliving him. When no decision was taken by the respondent No.4, the applicant submitted a reminder on 05.04.2016. Since no action on the representation dated 05.04.2016 was taken by respondents no. 4, the applicant filed an OA No. 420/16 which was disposed of by this Tribunal with a direction to Respondent No. 4 to consider the applicant's representation dated 05.04.2016 to relieve him so that he can join in new place of posting as

per the order dated 09.03.2016. In compliance of the order of this Tribunal, the Respondent No. 4 has passed the order dated 15.07.2016 (Annexure-A/13) rejecting the representation filed by the applicant. The present OA challenges the order dated 15.07.2016 passed by the respondent No.4.

2. It is seen from the impugned order dated 15.07.2016 that the Respondent No. 4 took note of the unauthorized absence of the applicant from his duty from 18.12.2015 to 04.07.2016 since during this period the applicant did not attend the duty, which was stated to be a serious violation of departmental guidelines.

3. In the counter, the respondents have mentioned in Para 7.4 that although there was complaint that the applicant remained absent unauthorizedly from his duty, but in absence of sufficient proof, the TRCA of the applicant was released by the competent authority. It also stated that the respondent No. 4 called for explanation from the applicant and thereafter, the charge sheet has been issued to the applicant. It is mentioned in the counter that respondent No. 4 has correctly rejected the representation of the applicant, since the charge-sheet is pending.

4. Learned Counsel for the respondents was directed to submit a copy of the instructions or rules under which the applicant could not be relieved by the Respondent No. 4 on account of pending charge sheet. Ld. Counsel for the respondents submitted that the brief note on the case enclosing certain rules of the GDS (Conduct and Engagement) Rules, 2011 regarding the provision of unauthorized absence and a copy of the circular dated 04.01.2019 of the Ministry of Communication. The said circular states as under:

“Transfer request of GDS who are under put off duty or against whom any disciplinary action, Police case or Court is pending will not be entertained.”

5. It is seen from the above that as per the instruction of Ministry, the transfer request of GDS under the limited transfer facility, will not be entertained if there is any disciplinary or police/court case is pending against the applicant. It is seen that there is nothing on record to show that any disciplinary proceeding or police/court case was pending against the applicant when the transfer order dated 09.03.2016(Annexure-A/8) was issued to the applicant transferring him as GDSBPM, Bhairpur, BO. The disciplinary proceeding was initiated by the respondent No. 4 after issue of the order of transfer dated 09.03.2016. The applicant was issued a charge memorandum dated 13.07.2016 Annexure-A/12 after issue of order dated 09.03.2016. It clearly shows that charge sheet was issued subsequent to the issue of this order for limited transfer. Hence, the circular of the Ministry of Communications dated 04.01.2019, which was cited by the respondents is not

at all applicable to this case, since disciplinary proceeding has been initiated after transfer order dated 09.03.2016.

6. Learned Counsel for the applicant has submitted that the rejection of the representation of the applicant vide order dated 15.07.2016(Annexure-A/13) on the ground of pendency of the proceeding is contrary to the terms and conditions stipulated in the transfer order issued by the higher authority vide order dated 09.03.2016(Annexure-A/8) which is based on the order dated 19.02.2016 of the respondents (Annexure-A/7). He further pointed out that this transfer order is in force as on date and that the respondent No. 4 by not relieving the applicant is disobeying the order of his higher authority.

7. In view of the facts and circumstances as mentioned above, we are of the view that the action of the Respondent No. 4 in not relieving the applicant in pursuance to the order dated 19.02.2016(Annexure-A/7) of the Respondent No. 2 and dated 09.03.2016 of Respondent No.3(Annexure-A/8) is not sustainable under law since the rules or the circulars of the respondent no. 1, placed before us, do not have any provision to support the decision of the respondents No. 4 not to relieve the applicant in pursuance to a valid transfer order at Annexure-A/7 and A/8 of the OA. Hence, the impugned order dated 15.07.2016 (Annexure-A/13) is quashed and the respondent No. 4 is directed to relieve the applicant forth with in pursuance of the order at Annexure-A/7 and Annexure-A/8.

8. While parting with the case, we observe the manner in which the respondent no.4 has acted in this case in violation of the orders of the superior authorities at Annexure A/7 and A/8, without bringing it to the notice of the competent authority. We are of the view that such action of the respondent no. 4 is beyond his authority for which the respondent no. 2 may consider taking suitable disciplinary action as would be deemed appropriate.

9. The O.A is allowed in terms of the direction in para 7 above, with a cost of Rs. 3000/-(Rupees three thousand only), payable to CAT Bar Association by the Respondents within two months. The Respondents will be at liberty to recover this cost from the officer who is responsible for delay in taking appropriate action as per the orders at Annexure-A/7 and Annexure-A/8, for which the OA had to be filed by the applicant.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

