

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 674 of 2012

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

Gadadhar Sahoo, aged about 40 years, S/o Kulamani Sahoo, At/PO-Biribolei, Via-Parjang, Dist-Dhenkanal, now working as GDSBPM, Biribolei BO, At/PO-Biribolei, Dist.- Dhenkanal.

.....Applicant

VERSUS

1. Union of India, represented through Director General of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Dhenkanal Division, At/PO/Dist-Dhenkanal.
3. Inspector of Post Kamakhyanagar, Sub-division, At/Po/Dist-Kamakhyanagar, Dist-Dhenkanal.
4. Chief Post Master General, Odisha, Bhubaneswar, Dist-Khurda.

.....Respondents.

For the applicant : Dr.C.R.Mishra, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 26.8.2019 Order on : 6.9.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- "(i) to set aside the advertisement in Notification for the post of GDSBPM, Biribolei BO in account with Parjang SO vide Annexure A/5.
- (ii) to direct the Respondents No. 1 to 3 to consider the case of the applicant for regular appointment in the post of GDSBPM, Biribolei BO in account with Parjang SO taking into account his experience in the said post.
- (iii) to direct the Respondent No.2 to allow and disburse the combined duty pay allowance of GDSBPM, house rent and all other allowances as admissible for the post in favour of the applicant within a specific period.
- (iv) to allow the original application with cost."

2. The case of the applicant is that he was appointed as EDDA, Biribolei B.O. on 13.5.1992 and subsequently the post was redesignated as Gramin Dak Sevak (in short GDS) Mail Deliverer (in short MD). He was also given the charge of GDSMC in the same office w.e.f. 1.1.2003. After retirement of the existing incumbent, the applicant was asked to discharge the duty of the GDS Branch Postmaster (in short GDSBPM) at Biribolei B.O. w.e.f. 9.10.2010 in pursuance to the order dated 4.10.2010 (Annexure-A/3). While working temporarily as

GDSBPM, he submitted a representation dated 17.2.2011 (Annexure-A/4) to the respondent no.2 claiming combined allowances as he was working against both the posts of GDSBPM and GDSMD/GDSMC. The respondent no.2 issued a notification dated 14.3.2012 (Annexure-A/5) for filling up the post of the GDSBPM Biribolei.

3. The applicant submitted a representation date 13.3.2012 addressed to the respondent no.2 for his continuance as GDSBPM, Biribolei and this representation of the applicant has been rejected by the respondent no.2 vide order dated 23.3.2012 (Annexure-A/6). As per the advice of the respondent no.2, the applicant applied for the post vide application dated 10.4.2012 (Annexure-A/7). It is stated by the applicant that by not considering his representation to post him as GDSBPM, he has been highly prejudiced. It is also mentioned in the OA that the applicant was discharging the function of the GDSBPM very satisfactorily.

4. The respondent shave filed their Counter stating that the applicant was asked to temporarily look after the work of the GDSBPM. The respondents issued the notification for regular filling up of the post which was allocated for SC community. It is stated that the combined duty allowance has been already sanctioned by the respondent no.2 vide order dated 7.12.2012 (Annexure-R/1). After the issue of notification, the applicant submitted a representation dated 13.3.2012 for his regular posting as GDSBPM, but he was advised to apply for the same as the notification was already issued by the time he submitted the representation dated 14.3.2012 (Annexure-A/5). It is further stated that there is no provision to consider for regular engagement of the person who was engaged temporarily to look after the post till selection of a regular incumbent. It is seen from the check list at Annexure-R/2 that one Sri Soumyaranjan Das was found to be the most meritorious candidate for being engaged as the GDSBPM, Biribolei. It is stated that after selection of Sri Das, the applicant filed this OA. It is stated in the Counter that his request for the post of GDSBPM was not considered to give opportunity to more meritorious candidate to be selected for the post. It is sated that the applicant has never applied for the post of GDSBPM vide his application at Annexure-A/7 as claimed in the OA. It is also stated that the prayer fo the applicant is not supported by the departmental rules. As per the instructions at Annexure-R/3, the sole criteria for selection of GDs will be merit.

5. No Rejoinder has been filed by the applicant. When the OA was considered on 7.9.2012 for admission, this Tribunal, while admitting the OA, directed that any selection/appointment to the post of GDSBPM, Biribolei in

pursuant to the notification at Annexure-A/5 will be subject to the final outcome of this OA.

6. Learned counsel for the applicant and the respondents were heard. The applicant's counsel filed copy of order dated 25.5.2018 of this Tribunal passed in OA No. 969/2013 and the order date d10.4.2019 in OA No. 772/2012 and argued that the applicant's case is covered by above orders of the Tribunal and hence, he was entitled for similar relief. Learned counsel for the respondents opposed the submissions of the applicant's counsel.

7. Perusal of the orders of the Tribunal cited by the learned counsel for the applicant, it is seen that in the OA No. 969/13, the applicant had worked temporarily from 7.8.2003 till the notification to fill up the post was issued on 30.4.2013. The applicant in OA No. 969/13 represented for his permanent posting against the post of GDSBPM on 13.5.2013, which was not considered by the authorities. It was held by the Tribunal as under:-

"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. We therefore 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. From above, it is clear that the applicant was found to be eligible for the post in question for which his representation was considered to be a request for limited transfer facility as per the instructions of the DG, Posts. Another fact in that OA was that the applicant had worked as GDSBPM for more than 10 years. In the present OA, the applicant has worked for about one and half years before the notification to fill up the post was issued and it is admitted in the OA that he had applied in pursuance to the said notification. The post was earmarked for the SC community as stated in the Counter. The applicant has not enclosed the copy of his representation dated 13.3.2012 which was rejected by the respondent no.2 vide order dated 23.3.2012 (A/6). As stated in the Counter, another candidate has been selected as per the check list at Annexure-R/2 and the selected candidate has not been included as a party in this OA. Hence, the present OA is factually different from the OA No. 969/13, for which the order dated 25.5.2018 of this Tribunal will have no application to this OA.

9. In the cited OA No. 772/2012, the applicant was working as GDSBPM since 26.9.2006 and he had submitted a representation on 7.8.2008 for his permanent posting against the said post. No decision was taken by the respondents on the representation dated 7.8.2008 till the notification dated 18.9.2012 to fill up the post on regular basis. The facts of this OA were found to be similar to the OA No. 969/13, for which the cited order was passed following the order dated 25.5.2018. As discussed earlier, the facts of the present OA are different from the facts of the OA No. 969/13 and the OA No. 772/2012. Hence, the cited judgments will not be of any help to the applicant.

10. It is not the case of the applicant that he was more meritorious than the candidate who was selected by the respondents in pursuance to the notification dated 14.3.2012 (A/5). Further the selected candidate was not included as a party in this OA. In the facts and circumstances, we are not able to consider the reliefs prayed for by the applicant in this OA, after taking note of the averment of the respondents that the applicant has already been allowed the combined allowance as per the rules.

11. In the circumstances, the OA is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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