

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.210/435/2015

Dated this *Friday* the *09th* day of *—*, 2019

Coram: R. Vijaykumar, Member (A).
R.N. Singh, Member (J).

Ajaybhai N. Patel
MMS Driver
Panaji Head Office Post Office
Panaji, Goa-403001
Residing at: H.No.899,
Opp Sanguem Civil Court,
Sanguem Goa-403 704.

...Applicant.

(By Advocate Ms. Priyanka Mehndiratta).

Versus

1. The Union of India
Through the Chief Post Master
General, Maharashtra Circle,
GPO, Mumbai-400 001.
2. The Senior Superintendent
of Post Office,
Goa Division,
Department of Posts,
Manpusa-403 507.

... Respondents.

(By Advocate Sh. R. R. Shetty).

Order reserved on: 24.06.2019

Order pronounced on: *09-08-2019*.

ORDER

Per : R. N. Singh, Member (Judicial)

1. We have heard Ms. Priyanka Mehndiratta,
learned counsel for the applicant and Sh. R. R.
Shetty, learned counsel for the respondents and

carefully considered the facts and circumstances, law points and rival contentions in the case.

2. The present original application, under Section 19 of the Administrative Tribunal's Act, 1985 has been filed by the applicant to challenge the order dated 21.11.2014 (Annexure A-1) passed by the respondents about the provisional appointment as temporary Mail Motor Service Drivers in Goa Postal Division of two persons namely Shri Ashish Anil Gaonkar and Shri Shivdip Chandrakant Naik and the offer letter dated 15.03.2013 (Annexure R-1) of this Tribunal in OA No.558 of 2008, filed by the present applicant only.

3. This is a third round of litigation by the present applicant. Earlier the present applicant had approached this Tribunal in OA No.558 of 2008. The undisputed facts are that the applicant was provisionally appointed as Mail Motor Service Cleaner (herein after referred to as MMS Cleaner) by the respondents vide Memorandum dated 27.02.2001 read with letter dated 08.03.2001 in Goa Division from 05.03.2001 to 04.06.2001 or till the regular appointment is made, whichever is earlier. The applicant was given further extension to continue as MMS Cleaner for a period of 120 days. Subsequently, while he was working as MMS Cleaner, he was appointed

as MMS Driver provisionally against the vacant post vide memorandum dated 23.10.2001 due to retirement of regular Driver. The applicant continued as MMS Driver till June, 2002. In the mean while the applicant's appointment as MMS Cleaner was terminated vide Memorandum dated 27.06.2002 since he was available for being deployed both as MMS Driver and MMS Cleaner and he continued to work as MMS Driver till 30.04.2008. Further the applicant made representation on 09.07.2002 and 05.08.2002 to the respondent no.2 for reconsideration of the termination order dated 27.06.2002 as MMS Cleaner under the apprehension that his service as MMS Driver might also be terminated. Thereafter, the applicant was engaged as outsider Gramin Dak Sevak Mail Delivery (GDS MC/MD) at Kakora BO from March, 2003 till 13.03.2004. Thereafter the applicant was rendering his services as an outsider MMS Driver till he preferred the OA No.137/2008 for consideration of his case for regular appointment which was disposed of with liberty to prefer the fresh OA against the abrupt termination of his services orally on 01.06.2008 in OA No.558 of 2008 the applicant has prayed for the following reliefs:

"a) This Hon'ble Court may graciously be pleased to call for the records of the case from Respondents and after examining the same, direct the Respondents to consider his case as

per the directions issued by this Hon'ble Tribunal vide its Judgment and Order dated 15.03.2013 in its rights spirit and perspective.

b) This Hon'ble Court may further be pleased to direct the Respondents to consider his case for regularization of his services of 14 years as MMS Driver with consequential benefits.

c) Cost of the Petition be provided for.

d) Any other and further relief as this Hon'ble Tribunal deems fit in the circumstances of the case be granted."

4. The said OA No.558 of 2008 was disposed of and para 12 and 13 thereof reads as under:

"12. In the present case it has not been disputed that the Applicant had not undergone regular selection after having been sponsored by the Employment Exchange. The details of period for which the Applicant was appointed as MMS Cleaner from 05.03.2001 to 30.04.2008 and thereafter as MMS Driver has been elaborated at Exhibit R-1.

13. In view of the fact that the Applicant has worked for a period of more than 10 years also the fact that the vacancies in the post of MMS Driver are available with the Respondents, we are convinced that there is merit in Applicant's case. In the interest of justice, therefore, the Respondents are directed to consider the Applicant's case in accordance with law after following the procedure and take a final decision within three months from the date of receipt of a copy of this order."

5. The respondents in such OA filed Review

Petition against the order/judgment dated 15.03.2013 in OA No.558 of 2008 and the said Review Petition was dismissed vide order dated 28.02.2018. The applicant herein has filed the Contempt Petition No.111/2014 which was dismissed vide order dated 23.06.2014 with liberty to challenge the respondent's letter dated 04.06.2014 which has been impugned by the applicant in the present OA.

6. In the aforesaid OA the applicant has prayed for the following reliefs in the present OA:

"a) This Hon'ble Court may graciously be pleased to call for the records of the case from Respondents and after examining the same, direct the Respondents to consider his case as per the directions issued by this Hon'ble Tribunal vide its Judgment and Order dated 15.03.2013 in its right spirit and perspective.

b) This Hon'ble Court may further be pleased to direct the Respondents to consider his case for regularization of his services of 14 years as MMS Driver with consequential benefits.

c) Cost of the Petition be provided for.

d) Any other and further relief as this Hon'ble Tribunal deems fit in the circumstances of the case be granted."

7. The learned counsel for the applicant argues that the impugned orders are illegal and just unfair and void ab-initio. She further submits that the

respondents have deliberately, willfully and intentionally faulted the order dated 15.03.2013 in as much as the directions of this Tribunal in order dated 15.03.2013 has not been implemented in true letter and spirit and the applicant was allured into believing that the impugned order dated 04.06.2014 is issued in compliance of the order of this Tribunal, however in place of complying the directions the respondents have made a mockery of not only the case of the applicant's career but also the order passed by this Tribunal by appointing two other candidates vide their impugned order dated 21.11.2014. The learned counsel for the applicant further argues that the conduct of the respondents contumacious and reveals no respect by them to this Tribunal and its order. She further argues that the language of the order dated 15.03.2013 of this Tribunal is unambiguous, clear and comprehensive to consider the claim of the applicant for his service of 12 years and not to put him to trouble by requiring him competing again for the said post along with many others and that too for the vacancy of the year 2014. Precisely, the entire argument on behalf of the applicant is that in view of the directions of this Tribunal the respondents were duty bound to regularize the services of the applicant as MMS

Driver and not to require him to participate in any selection process for such post by giving age relaxation keeping in view his previous services in casual and temporary capacity under the respondents.

8. The respondents have filed their reply and they submit that the applicant had earlier approached this Tribunal in OA No.558 of 2008 praying therein for directions to respondents to reinstate him as MMS Driver and regularize his service as MMS Cleaner or MMS Driver under them. This Tribunal vide order dated 15.03.2013 directed the respondents to consider the applicant's case in accordance with law after following due procedure and take a final decision within three months and after dismissal on Review Petition filed by them, the respondents have taken a decision to comply with directions of this Tribunal. The applicant's case was considered by the Departmental Selection Committee of which meeting was held on 08.08.2014 and the applicant was given age relaxation equal to service rendered by him. However, in spite of giving age relaxation the applicant was found to be age barred. They have taken objection that though the applicant has challenged the order dated 21.11.2014 vide which two persons named therein have been appointed as Mail Motor Service Driver. However, none of them has been impleaded in the

present OA and therefore the OA is barred by non-joinder of necessary parties. It is contended by the respondents that in the concerned department there are two types of recruitment for the post of drivers as per Recruitment Rules i.e. (1) against departmental quota and another by direct recruitment. The departmental quota vacancy can be filled up from the eligible officials from the MTS category of the department and in case no such candidates from the MTS category is eligible for promotion in the respective unit for promotion, unfilled vacancy and the departmental quota can be re-allotted to direct recruitment on getting approval from the Competent Authority. One post of MMS Driver notified vide letter dated 12.08.2011 (Annexure R-5) under the departmental quota could not be filled up as no MTS staff was found eligible and on getting the approval of Competent Authority vide letter dated 20.09.2011, the said post was re-allotted to direct recruitment quota. The two persons were appointed from direct recruitment quota. It is further contended by the respondents that though the applicant was not within age limit for appointment as MMS Driver. However, in view of the directions of this Tribunal in order dated 15.03.2013 he was considered by granting age relaxation and in spite of grant of such age

relaxation he could not come within the permissible age limit for the post of MMS Driver.

9. We have heard the learned counsel for the parties. We have taken into consideration the submissions made by them as well as the pleadings on record. The precise arguments on behalf of the applicant is that the directions of this Tribunal in order dated 15.03.2013 in OA No.558/2008 was unambiguous, specific and clear and the respondents have willfully, intentionally, deliberately and conterminously violated the same. Other arguments on behalf of the applicant is that once the respondents were directed to consider the applicant for regularization by this Tribunal in order dated 15.03.2013, the respondents were not required to call upon the applicant to compete with others.

10. On behalf of the respondents, the learned counsel for the respondents argues that the challenge to the impugned order dated 21.11.2014 is bad for non-joinder of parties and also for the reasons that the persons who named therein such impugned order have been selected for the appointment by the Competent Authority after testing their eligibility and suitability in the post. He further argues that keeping in view the order dated 04.06.2014 (Annexure A-2, impugned) this Tribunal has dismissed the CP

No.111/2014 vide order dated 23.06.2014 and therefore it is mis-conceived at the end of the applicant to allege that the directions of this Tribunal in order dated 15.03.2013 had been violated willingly, deliberately or otherwise. It is also argued by the learned counsel for the respondents that the applicant had himself approached this Tribunal in OA No.558/2008 for reinstatement as MMS Driver and for regularizing his service as 'MMS Cleaner' or 'MMS Driver' and the respondents have not required him to compete with others about his technical skill etc but the respondents are duty-bound to give effect to the Recruitment Rules and in this process the applicant was not found within the prescribed age limit in spite of grant of relaxation of age keeping in view his relevant service under respondents. We find merit in the submissions on behalf of the learned counsel for the respondents that in absence of any of the persons who has been appointed vide impugned order dated 21.11.2014, impleaded in the present OA the challenge to the order dated 21.11.2014 is not maintainable. Moreover, keeping in view the fact that this Tribunal has given directions to the respondents in order dated 15.03.2013 to consider the applicant's case in accordance with law after following due process and the same clearly indicates that the

respondents were required to consider the applicants claim keeping in view the relevant Recruitment Rules which then has been done in the present case and therefore challenge to the impugned order dated 04.06.2014 is also without any basis. We find that once the Contempt Petition No.111/2014 has been dismissed by this Tribunal's order dated 23.06.2014, it is mis-conceived at the end of the applicant to argue that the directions of this Tribunal in order dated 15.03.2013 have been violated willfully and intentionally. It is brought on record that the applicant has been declared successful in postman exam for the vacancies of 2015-16 held on 25.10.2015 and he has been appointed as such and allotted Margao, Headquarters.

11. In view of the aforesaid facts and discussion, we are of the considered view that the OA is devoid of merits. Accordingly, the OA is dismissed. However, in the facts and circumstances, no order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

