

(2023) 09 CAT CK 0023
In the Central Administrative Tribunal
Case No : Original Application No. 253 Of 2013

Raghuvendra Dutt Pandey

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 22-09-2023

Acts Referred:

Postal Gramin Dak Sevan Rules, 2001 — Rule 8

Citation : (2023) 09 CAT CK 0023

Hon'ble Judges : Om Prakash, VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Avnish Tripathi, N.P. Shukla

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Avnish Tripathi, learned counsel for the applicant and Shri Dharmendra Tiwari, holding brief of Shri N.P. Shukla, learned counsel for the respondents, were present at the time of hearing.

2. The instant original application has been filed seeking following relief:

"(i) to issue an order or direction, of quashing setting aside the impugned order dated 14.11.2012 issued by the respondent no. 3 (Annexure No. A-1 in Compilation No. Part-I)

(ii) to issue an order or direction in the nature of mandamus directing the respondent no. 2/3 to consider / appoint the claim of the applicant for giving him alternative appointment on any vacant post of G.D.S. in the Division / Sub-Division by providing him alternative appointment.

(iii) to award the cost of litigation of the Original Application in favour of the applicant against the respondents."

3. The compendium of the facts narrated in the instant original application is that

the applicant is aggrieved from the impugned order dated 14.11.2012 by way of which his claim for alternative appointment on any vacant post available in the office of the respondents has been rejected. Applicant has alleged that the impugned order was passed in complete violation of the department's own rules and regulations and also in the course of passing the said order, respondents have overlooked the rulings recorded by the Tribunal in OA No. 926 of 2007 filed by the applicant earlier. By way of the instant original application, the applicant seeks a direction to the competent authority amongst the respondents to grant him alternative appointment or appointment on any vacant post of G.D.S. in the Division / Sub-Division.

4. We have heard the rival contentions advanced by the learned counsel appearing for the parties.

5. Disclosing a brief history of the case, learned counsel for the applicant submits that the applicant was initially engaged Gramin Dak Sewak Stamp Vender, Sagra on provisional basis vide order dated 07.09.2002. He was again appointed on that post vide order dated 12.06.2003 pursuant to a notification called for recruitment of prospective candidates from open market. However, he was appointed with the condition that his provisional appointment will continue till one Ratneesh Kumar Mishra is recruited by the competent authority on permanent basis as the case of Ratneesh Kumar Mishra was already referred to the circle relaxation committee for appointment on the said post on compassionate grounds. The applicant started working on the above post on provision basis. In the meantime, the case of Ratneesh Kumar Mishra got rejected by the committee but subsequently his mother namely Smt. Maya Devi submitted her application for appointment on the said post on compassionate grounds. Her case was considered and allowed by the committee and respondent no. 2 appointed her on the above said post thereby terminating the services of the applicant vide order dated 26.10.2006. Learned counsel for the applicant draws attention of the Tribunal to the fact that at the time when the applicant got relieved, he had already put in a continuous service of more than four years on the above said post. Subsequent to his termination, the applicant submitted a representation dated 28.10.2006 stating therein that since he had put in more than four years of service, he is liable to be granted alternative appointment on any G.D.S. Post on regular basis as per department's own instructions dated 23.02.1979.

6. Learned counsel for the applicant goes on to further submit that the case of the applicant is absolutely bona fide and the respondents have taken this fact into consideration as well and that's why respondent no. 2 had directed the respondent no. 3 to consider the claim of the applicant by giving him alternative appointment in light of the fact that applicant had put in more than 4 years of service on provisional basis. The said direction was communicated to the respondent no. 3 to respondent no. 2 by way of letter dated 04.11.2006 and 11.07.2007. Learned counsel further submits that seeking redressal of his

grievance, applicant has submitted multiple representations dated 28.10.2006, 20.11.2006, 07.06.2007 and 21.07.2007. In its letter dated 11.07.2007, respondent no. 2 had specifically asked respondent no. 3 to consider the claim of the applicant strictly in light of the rules quoted at page no. 101, 106 and 107 of G.D.S. (Conduct and Employment) Rules, 2001.

7. Learned counsel for the applicant goes on to further submit that as per the provision of the method of recruitment rule in G.D.S. (Conduct and Employment) Rules 2001, the case of the applicant is liable to be acceded to. Learned counsel submits that the above rule was also upheld by this Bench of the Tribunal while passing the judgment in OA No. 926 of 2007 which was filed earlier by the applicant. The said OA was disposed of with a direction to the respondents to decide the pending representation of the applicant in light of the above said rule. In compliance of the above order of the Tribunal, the respondents passed a cryptic and arbitrary order thereby rejecting the case of the applicant.

8. To substantiate his arguments further, learned counsel for the applicant places reliance upon the order dated 19.01.2018 passed by the Office of Supdt. Of Post Offices, Mirzapur submitting that the said order was passed in compliance of the directions of the Tribunal. By way of the said order, respondents therein had re-appointed the candidate therein strictly in accordance with the guidelines and rules contained in D.G. P&T letter No. – 43-4/77-Pen dated 23.02.1979 of the respondents. Learned counsel submits that the case of the applicant in the instant OA is also liable to be considered in the light of the above Circular.

9. Learned counsel for the respondents vehemently opposes the claim of the learned counsel for the applicant and by way of his counter affidavit, he submits that when appointment order dated 12.06.2003 was issued to the applicant, it was clearly mentioned therein that appointment of the applicant is on provisional basis with clear understanding that the said appointment shall be terminated when permanent recruitment takes place subsequent to which the applicant would have no claim on the above post. As the applicant's appointment was irregular and provisional, his request for regularization of services by giving alternate appointment could not be acceded to and was accordingly rejected by the competent authority amongst the respondents. The applicant's case was considered even further in compliance of the order of the Tribunal passed in OA No. 926 of 2007 and the same was rejected vide order dated 14.11.2012 by way of a reasoned and speaking order and as such, no illegality or arbitrariness can be assigned to it. Hence, prayer was made on the part of the respondents' counsel to dismissed the instant original application being devoid of merits.

10. We have considered the rival contentions advanced by the learned counsel for the parties and also gone through the documents on record.

11. As the facts of the case have already been recorded above in detail, the same are not reiterated for the sake of brevity. There remain two issues which are required to be decided. Firstly, whether the order of termination was passed

in accordance with the provisions prescribed under GDS (Conduct and Employment) Rules or not. Secondly, even if the termination was enforced in accordance with the statutory rules, then whether the applicant is entitled for alternative appointment or not in light of the same rules.

12. It is evident from the record and also from the submissions advanced across the bar that the applicant had put in a service of more than three years on provisional basis till the date he got terminated due to the fact that regular incumbent took over the said post upon which the applicant was working on provisional basis.

13. Further, it is pertinent to note that this is the second round of litigation as the applicant had earlier approached this Tribunal by way of Original Application No. 926 of 2007 which was disposed of on 18.09.2012 directing the respondents to decide the pending representation of the applicant strictly in light of Postal Gramin Dak Sevak Rules, 2001. For the sake of clarity, the operative portion of the above judgment is reproduced herein below:

"5. The respondents did not dispute that under the Postal Gramin Dak Sevan Rules, 2001 (hereinafter referred as 2001 Rule), the applicant has right to consider for alternative appointment. The only submission made by the learned counsel for the respondents is that since the representation of the applicant is pending, the respondents be directed to consider the same in accordance with law.

6. We have considered the rival submission of the learned counsel for the parties. The service of GDS are governed by the rule known as Postal Gramin Dak Sevak Rules 2001. Rule 8 of 2001 Rules mandates that those GDS who have put in 03 years service, their service cannot be terminated without one month notice. In the method of recruitment, , under Clause 15 (ii) it is stated that efforts should be made to give alternative appointment to EDA who were provisionally and subsequently discharged from service due to administrative reasons. It is at the time of discharge they had put in not less than three years approved service.

7. Keeping in view the above coupled with the fact that the applicant worked with the respondents, we are of the considered view that the OA deserves to be allowed and direction be given to the respondents to consider the case of the applicant in terms of Postal Gramin Dak Sevak Rules 2001 for alternative appointment within a period of two months from the date of receipt of a certified copy of this order."

14. It is also evident from the records that by respondents' own submission which can be illustrated from respondent no. 2's letter dated 11.07.2007, the applicant's case was liable to have been considered strictly in light of GDS Service Rules regarding method of recruitment. Even the above quoted order of the Tribunal speaks for the fact that the case of the applicant was liable to have been considered in light of the rules prescribed in GDS Rules. In this regard, it would be in the fitness of things to reproduced the rule concerned i.e., Rule 8

from Gramin Dak Sevak (Conduct and Employment) Rules, 2001 now read as Gramin Dak Sewaks (Conduct and Employment) Rules, 2011:

"8. Termination of Engagement

(1) The engagement of a Sevak who has not already rendered more than three years' continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak:

2) The period of such notice shall be one month:

Provided that the service of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim, a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

NOTE: Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance plus Dearness Allowance as admissible is being remitted to be Sevak in lieu of notice of one month through money order."

15. Thus, the above quotation evidently reveals that since the applicant had already put in more than three years of service, he could not have been removed by simply issuance of notice. And blatantly, in the instant case, the applicant was not even served with a formal notice or show-cause before his services were to be terminated. This act of the respondents is not only against their own statutory provisions as have been prescribed in GDS (Conduct and Employment) Rules but also against the principle of natural justice. As regards to the issue of alternative appointment, it would be in the fitness of things to quote the operative portion of the order dated 19.01.2018 passed by the Supdt. Of Post Offices, Mirzapur Division, which has been referred to by the applicant's counsel. The operative portion quotes:

"Keeping in view the above judgment dated 15.11.2017 in O.A. No. 330/001128/2017 Kanti Kumar Kashyap V/s U.O.I and others, legal opinion of both above mentioned Additional Central Government Counsel of Hon'ble High Court of Allahabad and CAT Allahabad and representation of the applicant dated 20.12.2014, and keeping in view of guidelines and Rules contained in D.G.P&T letter No. – 43-4/77-Pen dated 23.02.1979, the undersigned hereby provisionally engages, Sri Kanti Kumar Kashyap S/O Sri Ram Lakhan, Resident of Village and Post – Kamasin (Chilh) Mirzapur on the post of GDSMC Kholua (Chilh) Mirzapur with immediate effect subject to the final decision of Hon'ble High Court of Allahabad. Sri Kanti Kumar Kashyap should clearly understand that his engagement on the above post is totally temporary and liable to be rejected any time without giving any information and he cannot challenge it in any court of

law.”

Thus, the above quotation makes it abundantly clear that applicant herein is also liable to be granted alternative appointment in light of the Circular dated 23.02.1979 referred above.

16. The relevance of the Circular dated 23.02.1979 can also be ascertained from the provisions enshrined in method of recruitment listed in Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001. The relevant rules(s) of above said Section which deals with the issue of grant of alternate appointment are quoted herein below:

“2. Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at time of discharge they had put in not less than three years’ continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G.,P. & T., Letter No. 43-4/77-Pen., dated 23-2-1979.

(19) Giving alternate employment to ED Agents.- (1) It has been decided that the ED Agents, whose services are to be dispensed with on departmentalization of their offices, may be provided for in other available Extra-Departmental posts if they are suitable and willing.

(2) It has further been decided that if at the time of departmentalization of a particular office, it is not possible to provide the discharged ED Agents in a vacancy in the vicinity / neighbourhood of his residence, his name may be kept on waiting list and he be offered the vacancy that may arise subsequently in the vicinity / neighbourhood of the place of his residence. If, however, the discharged ED Agent refuses to avail himself of this opportunity, no preference for further vacancies may be given to such an Agent.

It may also be mentioned in this connection that while the policy should be to provide discharged ED Agents with alternative employment near their original office, it should be ascertained from them, if they would be prepared to accept a job at some distance from their place of residence rather than waiting for a vacancy to occur near their home station.

(3) These orders will also be applicable in cases where ED Agents are deprived of their employment because a Post Office has to be closed down (downgraded on account of being considered unremunerative as per Rule 568-A of P & T Manual, Volume – IV). It is requested that these instructions may be brought to the notice of all concerned.”

17. Thus, having considered the entire facts and circumstances of the case and strictly taking into account the deliberations made above and quotations reflected in preceding paragraphs, this Tribunal is of the considered opinion that the instant OA is liable to be allowed and is accordingly, allowed. The impugned order dated 14.11.2012 is hereby set aside. The competent authority amongst the

respondents is hereby directed to re-consider applicant's case afresh strictly in light of this judgment keeping in view the orders, judgments quoted herein. A reasoned and speaking order shall be passed specifically in accordance with the rule positions regarding grant of alternate appointment as have been quoted in this judgment. The said order must be passed within four months from the date of receipt of certified copy of this judgment and it shall be communicated to the applicant within ten days thereafter, without fail.

18. All associated MAs stand disposed of accordingly.

19. No costs.