
(2023) 04 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 836 Of 2012

Shyam Bihari Pandey

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 16(1)

Citation : (2023) 04 CAT CK 0028

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : R B Pandey, S C Upadhyay, R.P. Singh

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. Shri R.B. Pandey, learned counsel for the applicant and Shri R.P. Singh, 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, rule or direction quashing and set aside the impugned order dated 14.05.2012 passed by the respondent no. 3 by which the respondent no. 3 has to terminate the services of the applicant from the said post of G.D.S. E.D.R. Dak Runner, Shri Niwas Dham Mirzapur (Annexure – A-1 to the original order)

(ii) To issue an order, rule or direction in the nature of mandamus directing the respondents to allow the applicant to work on the said post as the applicant fulfills all the eligibility condition on the said post and has served for considerable period about 7 months regularly with the entire satisfaction of his superior.

(iii) To issue an order, rule or direction directing the respondents to appoint the applicant on the post of C.P. Chaukidar the duties of which are being discharged by the applicant even today if the applicant is not appoint as G.D.S.E.D.R Dak

Runner. To clarify the applicant who is continuously working as C.P. Chaukidar should be appointed on the said post or he should be appointed as G.D.S.E.D.R. Dak Runner.

(iv) To issue any other order, rule or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case to which the applicant may be found entitle in law.

(v) To award the cost of the application to the present applicant."

3. The compendium of the facts narrated in the instant original application is that the applicant is aggrieved from impugned order dated 14.05.2012 passed by the Assistant Superintendent of Post Offices, West Sub Division, Mirzapur thereby terminating the services of the applicant from the post of G.D.S.E.D.R. Dak Runner. By way of the present original application, applicant seeks a direction to the respondents to allow him to work on the said post as he fulfills all the eligibility condition of the said post and has served for considerable period of about seven months regularly with the entire satisfaction of the competent authority of the respondents.

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 posted as C.P. Chaukidar in Jigna Post Office on 17.07.1992 in lieu of Sri Vishwanath who handed over the charge of C.P. Chaukidar to the applicant. Applicant worked as C P Chaukidar from 17.07.1992 to 20.07.1993 to the entire satisfaction of the authorities concerned. Applicant's counsel submits that after Shri Vishwanath Pandey retired, applicant was handed over the charge of C P Chaukidar on 20.07.1993 but no official order was passed in this regard. Applicant was orally instructed by the Assistant Superintendent of Post Offices Mirzapur to keep on doing the duty of watch and ward of the Post Office and the applicant did the same. Learned counsel submits that respondents were callous to the extent that they neither issued any order of appointment nor made any payment against the duties which the applicant had performed on oral assurance of the authorities concerned. The applicant even wrote a letter dated 21.06.2010 requesting the Assistant Superintendent of Post Offices Mirzapur to appoint him on the said post but his request was not paid any heed to. Again on 15.07.2010, the applicant preferred a letter to the Superintendent of Post Offices Mirzapur requesting his appointment but the same was also left unheeded.

6. Learned counsel for the applicant further submits that the Assistant Superintendent Post Office Mirzapur passed orders for appointing the applicant on the post of G.D.S.E.D.R. Dak Runner for the exchange of Dak for 88 days vide letter dated 09.03.2012. Learned counsel submits that the applicant worked continuously on the post of G.D.S.E.D.R. Dak Runner from 01.11.2011 to 23.05.2012 is proved by the attendance sheet of the applicant duly verified by the Sub Post Master Jigna, R S District, Mirzapur. A certificate with regard to the

continuous working from 01.11.2011 to 23.05.2012 of the applicant on the above said post was also issued by the Post Master Shri Niwas Dham. Furthermore, the applicant fulfills all the eligibility conditions of C.P. Chaukidar as well as G.D.S. E.D.R. Dak Runner because he is High School pass and has also worked on the post of G.D.S.E.D.R. Dak Runner for seven months continuously and in the OA, the applicant has submitted that he is still discharging the duties of C P Chaukidar. Learned counsel submits that the order of the respondents vide which the applicant's service have been terminated from the post of G.D.S.E.D.R. Dak Runner and the act of the respondents of taking the work of C P Chaukidar from the applicant but not paying remuneration and not issuing order of appointment is illegal, arbitrary, capricious and against the spirit of Article 16(1) of the Constitution of India. The applicant has been discharging the duty of C P Chaukidar after the retirement of Shri Vishwanath Pandey on 30.09.1998 and in the OA, he has submitted that he is still discharging the duties on the oral orders of the respondents. Learned counsel submits that the applicant has also been relieved from the charge of G.D.S.E.D.R. Dak Runner on 23.05.2012 in compliance with the orders of the Assistant Superintendent of Post Offices Western Sub Division, Mirzapur dated 14.05.2012 passed without giving any notice. Learned counsel further submits that against the said act of the respondents and the order passed thereby, there lies no appeal in the relevant Service Rules and therefore the applicant had no alternative but to approach this Tribunal.

7. Learned counsel for the respondents denies the claim of the applicant and by way of his counter reply, he submits that the claim of the applicant on the post of CP Chaukidar Jigna R.S. cannot be accepted because the arrangement for performing the duties of C P Chaukidar from 17.07.92 to 20.07.93 had been made under leave arrangement. Further, it is stated that as per the departmental rules and guidelines, the post of CP Chaukidars are dying cadre posts and after recruitment or death of regular incumbents of these posts, no appointment or further arrangement on these posts can be done. Further, no written or oral order or assurance was even given to the applicant from the respondents' authority regarding his appointment or to keep performing the duties of CP Chaukidar after the retirement of Shri Vishwanath Pandey who was the regular incumbent on the said post. The applicant is clearly misleading the court and wants to earn the benefit of a bogus claim. Learned counsel further submits that the applicant was engaged temporarily for 88 days only vide Memo dated 28.10.2011 and again for 88 days vide Memo dated 09.03.2012. These temporary arrangements were discontinued vide Memo dated 24.01.2012 and Memo dated 14.05.2012 which are totally legal and justified and falls under the scope of the respondents. The memos were not issued arbitrarily and thus no illegality or capriciousness can be attributed to them.

8. It is further stated that appointment on GDS Runner cannot be done directly also. On receipt of approval from the office of the PMG Allahabad for appointment on GDS Runner Post, an appointment can be done only after following all the

requisite formalities and procedures of appointment as mentioned in department rules and instructions.

9. Learned counsel for the applicant denies the averments of the learned counsel for the respondents and by way of his rejoinder, submits that there was a clear order of the Tribunal dated 12.12.2012 to appoint the applicant but the respondents flouted the same by substituting other persons as stop-gap arrangement and depriving the applicant of appointment. Further, upon receiving the order dated 12.12.2012, the respondents cancelled the appointment of substitutes just to cover up their arbitrary action. Learned counsel for the applicant also submits that even if a certain cadre is dying, respondents have no right to remove or appoint any employee arbitrarily without following the procedures prescribed in rules.

10. By way of supplementary affidavit, learned counsel for the applicant also submits two persons namely Shri Surendra Bahadur Singh as well as Shri Rangdeo Singh who were appointed on 26.06.2013 for 88 days purely on Stop Gap management for a period up to 24.09.2013. It is a settled law by the Apex Court that an Ad-hoc employee cannot be replaced by an Ad-hoc employee. Thus, terming respondents' action as completely illegal and arbitrary, learned counsel prays that the instant original application may be allowed.

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

12. The major grievance of the applicant is that he has been subjected to deceive and fraud from the respondents as he was made to work for a certain period of time on the oral orders of the respondents and also on oral assurance that he would be given formal appointment. However, such an appointment was given at a very belated stage and that too, without accruing the financial and other admissible benefits to the applicant for the work he did earlier on oral orders of the respondents. Learned counsel for the applicant has submitted that the respondents' act of not appointing the applicant and paying him salary against the work done by him is against the very principles of natural justice. The applicant is also aggrieved from the removal order dated 14.05.2012. Applicant has alleged that despite working continuously from 01.11.2011 to 23.05.2012 i.e., for seven months, he has been removed without notice.

13. Even if the above averments of the applicant's counsel are accepted, it is also pertinent to mention that any work or duty which is said to have been performed by a person in the absence of a formal order cannot be deemed as true. Furthermore, the onus of procuring an official engagement / appointment order from the employer lies as much on the employee as on employer. Any work or duty performed on merely oral assurances cannot be considered as relevant.

14. Furthermore, the applicant's counsel is right on the part that an ad-hoc employee cannot be replaced or substituted by an ad-hoc employee. There are several rulings of the Apex Court establishing the said fact. However,

respondents have denied this claim of the applicant submitting that in contradiction to what has been said by the applicant's counsel, the applicant was never replaced by Shri Rajeshwar Prasad Yadav but he was replaced by Shri Bharat Lal Dubey, i.e., the regular incumbent of the post GDS MC Sri Niwas Dham Jigna R.S. Mirzapur. Further, respondents by way of their supplementary counter affidavit have cogently established that as on date the post of GDS MC Hargarh Jigna R.S. Mirzapur over which the applicant is claiming for appointment is not lying vacant.

15. In addition to the above deliberations, the most significant aspect which is pertinent to be mentioned here is that in the instant case, the applicant was granted an interim relief by the Tribunal vide order dated 12.12.2012 whereby a direction was issued to the respondents to appoint the applicant. However, from the perusal of the records and analysis of the averments exchanged between the parties, it is established that the said order dated 12.12.2012 was never complied with by the respondents. This undoubtedly tantamount to contempt of the order of the Tribunal. However, the said non-compliance was never challenged by the applicant in accordance with the existing legal procedures. In case the order dated 12.12.2012 was not complied with, as has been alleged by the applicant's counsel in his rejoinder affidavit, the applicant ought to have agitated his grievance in accordance with rules but the same was never done.

16. In accordance with the above deliberations, we are of the considered opinion that the cause of the action does not survive as on date. The applicant through his learned counsel is seeking his engagement on the post of GDS MC Hargarh Jigna R.S. Mirzapur which he is claiming to be lying vacant as on date. However, the respondents have cogently explained and submitted enough documentary evidences to assert that the said post is not lying vacant as on date. Thus, it would be in the fitness of things that the instant original application is dismissed and the same is accordingly, dismissed.

17. All associated MAs stand disposed of accordingly.

18. No costs.