

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.5882 of 2018
Date of Decision: 29.10.2019**

Union of India and Ors.	Versus	...Petitioners
Manjit Singh and Anr.		...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

--

Present: - Mr. Namit Kumar, Advocate for the petitioners.

HARINDER SINGH SIDHU, J.

The Union of India and others have filed this petition assailing order dated 01.11.2017 (P.3) passed by the Central Administrative Tribunal, Chandigarh whereby O.A No.060/00002/2017 filed by respondent No.1 has been allowed.

2. One Satnam Singh GDS BPM Dehriwal Branch Office (in account with Tarsika Sub-Post Office under Amritsar Head office) was put off duty w.e.f 12.11.2012 as disciplinary proceedings were pending against him.

3. In view thereof the Senior Superintendent of Post Office issued Employment Notice dated 21.1.2014 inviting applications for one post of GDS BPM Dehriwal Branch Office under OBC in account with Tarsika Sub-Post Office under Amritsar Head Office. As per the said Employment Notice, the engagement was provisional till the disciplinary proceedings against Satnam Singh were finally disposed of and he had exhausted all channels of departmental and judicial appeals etc. and in case it was finally decided not to take Satnam Singh back into service till regular engagement was made.

4. Five applications including that of respondent No.1 were received. Respondent No.1 was found meritorious. After completion of pre-engagement formalities including obtaining a certificate of medical fitness he was offered appointment vide order dated 13.6.2014 and joined duties on 9.7.2014. Satnam Singh unfortunately died on 21.1.2015. The appellants passed order dated 24.6.2015 terminating the services of respondent No.1. He submitted representation dated 03.8.2016 followed by reminders dated 23.8.2016 and 15.9.2016 against the order of termination but there was no response. He filed OA No.060/01008/2016, which was disposed of vide order dated 8.11.2016 with a direction to the appellants to consider and decide his representation by passing a speaking order. Thereafter, order dated 27.12.2016 rejecting his claim was passed. Aggrieved, he filed the Original Application which has been allowed vide the impugned order.

5. The case of the appellants before the Tribunal was that the engagement of respondent No.1 was provisional till the disciplinary proceedings against Satnam Singh were finally disposed of and in case it was decided not to take him back in service till regular engagement was made. The petitioner had been rightly terminated and he could not claim regular appointment.

6. The learned Tribunal referred to the appointment letter of respondent No.1 dated 13.6.2014 as per which his services were to be governed by the GDS (Conduct and Engagement) Rules, 2016 and all other Rules and Orders applicable to Gramin Dak Sewaks. Reliance was also placed upon paragraph 12 of the GDS (Conduct and Engagement)

Rules, 2016 relating to provisional engagement made in place of regular incumbents which reads as under:

“12. The extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of the next higher authority should be taken in respect of all provisional appointments exceeding 180 and where the period exceeds one year, express approval of the Head of the Regional/Circle, as the case may be, would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment.”

7. Based thereon the Ld. Tribunal concluded that the Rules contemplate a situation where the regular incumbent is not reinstated. In such a situation in terms of Paragraph 12 immediate action is to be taken to regularize the provisionally engaged appointee. Learned Tribunal held that Paragraph 12 implied that if a person had been appointed after following proper procedure to fill up a post which fell vacant for any reason and the regular incumbent did not join, then the provisionally engaged appointee was required to be regularized in service without resorting to fresh recruitment. It not being the case of the appellants that respondent No.1 had not been appointed after following a regular procedure, the order terminating his services was quashed. The appellants were directed to re-consider his case and offer him appointment on regular post.

8. Learned counsel for the appellant has argued that vide communication dated 1.8.2016 (Annexure R.4) of The Ministry of Communication and I.T, all Heads of the Postal Circles have been directed to stop the engagement/selection of all types of Gramin Dak

Sewaks with immediate effect in view of the proposal for online selection of Gramin Dak Sewaks. Hence, the order of the Tribunal directing the appointment of respondent No.1 on a regular post is not justified.

9. We have gone through the aforesaid communication which reads as under:

*“To
All Head of Circles
Sub: Proposed on line selection of all categories of GDS-reg.
I am directed to request you to stop selection/engagement of all types of Gramin Dak Sevaks with immediate effect. It is further requested to stop all cases of engagement which are under process, Cases where selection has already been finalized and communicated to candidates only need not be withheld.
2. These orders are issued in view of proposal for on line selection of Gramin Dak Sevaks. Further orders in this regard may kindly be awaited.
3. This issues with the approval of competent authority.”*

10. This directive of the Ministry may not apply to the case of respondent No.1. Respondent No.1 was engaged on provisional basis on on 13.06.2014. Satnam Singh died on 21.1.2015. In terms of Paragraph 12 of the GDS (Conduct and Engagement) Rules, 2016 a right accrued to respondent No.1 for appointment much before issuance of communication dated 1.8.2016. Moreover this communication itself states that cases where the selection has already been finalized and communicated to candidates need not be withheld. Thus, the reliance by the learned counsel for the appellant on this communication is misplaced.

Consequently there is no merit in this petition and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 29, 2019

manoj

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

