

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE**

**ORIGINAL APPLICATION NO.170/00318/2019**

ORDER RESERVED ON 13.11.2020

DATE OF ORDER: 27.11.2020

**CORAM:**

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)**

**HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

Basavaraj

Aged 33 years, S/o Mahadevappa

GDS MD/MC, Sultanpura BO

A/w Gabbur SO, under Raichur HO

Residing Near Government School

Sulthanpura Village

Raichur Taluk-584113.

....Applicant

(By Advocate Shri B.Venkateshan)

Vs.

1. The Union of India & others

Represented by the Secretary.

Department of Posts

Dak Bhavan

New Delhi - 110001

2. The Postmaster General

North Karnataka Region

Dharwad-580001.

3. The Superintendent of Post Offices

Raichur Division

Raichuru-584101.

4. The Assistant Supdt. of Post Offices

Raichur Sub Division

Raichur-584102.

....Respondents

[By Advocate Shri N.Amaresh (proxy for Shri K.Dilip Kumar)]

## **ORDER**

### **PER: RAKESH KUMAR GUPTA, MEMBER (A)**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

- a) To call for the records from the respondents, peruse them and direct them to consider the applicant's case to regularize in the vacant post of the GDS MD/MC, Sulthanpur BO in account with Gabbur SO, under Raichur HO in which post he has been working since three years.
- b) To pass such orders as this Hon'ble Tribunal deems fit and expedient in the facts and circumstances of the case including the cost of this application in the interest of justice and equity.

2. The facts of the case, as pleaded by the learned Counsel for the applicant, Shri B.Venkateshan, are as follows:

- i. The Applicant passed SSLC in 2004 and PUC in 2006. He belongs to the Scheduled Caste community.
- ii. One post of GDS MD/MC became vacant due to the dismissal of incumbent GDS MD/MC Shri Khader Pasha, S/o Karim Sab on 29.02.2012.
- iii. The applicant was appointed to work in the said post on stop-gap arrangement basis vide Memo No.ASP/SubDn/Stopgap/GDS/Sulthanpur-BO/Dlgs/16, dated 01.06.2016. He continued to work from 01.06.2016 till the date of filing of this OA vide memos dated 18.01.2017, 13.04.2017, 24.08.2017, 02.12.2017, 27.01.2018, 08.05.2018, 27.08.2018, 19.11.2018, 19.11.2018 & 25.02.2019(Annexures-A5 to A14 respectively). Accordingly, the applicant who has been appointed till

- 25.05.2019 would be completing 3 years of continuous service in the post.
- iv. The applicant submitted that in accordance with the provisions contained in DG P&T Letter No.43-4/77-Pen, dated 18.05.1979 and circular No.19-34/99-ED & Training dated 30.12.1999, it has been ordered that efforts should be made to give alternative employment to ED Agents (now redesignated as GDSs) who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at any time of discharge, they had put in not less than three years continuous service, in such cases their names should be included in the waiting list of ED agents discharged from service as prescribed in DG P&T letter No.43-4/77-Pen, dated 23.2.1979(Annexure-A15). Since the applicant has been working as GDS MD/MC since 01.06.2016, therefore he fulfils the conditions for regular appointment as per rules, in the interest of justice and equity.
- v. The applicant has quoted the case laws in two similar cases recently decided by this Tribunal viz. Arun Jyothi v/s Union of India & others in OA.No.884/2016 decided on 09.10.2017(Annexure-A16) and Shri Giri Rao v/s Union of India & others in OA.No.11/2018decided on 26.11.2018 (Annexure-A17). In batch of cases decided by the Hon'ble Apex Court in *Surendrakumar Gyani v/s State of Rajasthan* in Civil Appeal No.833/1986, it was held that '*the daily rated clerks recruited on purely temporary basis on a stop gap measure to tackle the volume of work for the time being with the express stipulation that their services could be terminated at any time without notice. They deserved a*

*sympathetic consideration for appointment/regularisation against the existing vacancies if qualified and eligible in recognition of their valuable services.'*

- vi. He has further stated that the respondents are not interested in regularising his services though he has been working for the past three years. Such non-action on the part of the respondents is violative of the principles of natural justice and the rules on the subject.

3. The respondents have filed a detailed reply in the matter through Shri K.Dilip Kumar, learned counsel representing the respondents. In the reply statement, he has averred as follows:

- i. The post of GDS MD/MC Sultanpur BO a/w Gabbur SO was running on stop gap arrangement basis since the regular incumbent was on Put Off Duty since 24.03.2010 and removed from service on 29.02.2012. The applicant, who was an outsider candidate, was engaged on stop gap arrangement basis with effect from 01.06.2016 to manage delivery and conveyance work of the Branch Post Office. His engagement was not continuous as claimed by him. Other incumbent has also been given the charge of the post at intervals. The details of stop gap arrangements including breaks are as per the chart provided at Annexure-I of the reply (Annexure-R1).
- ii. In its stop gap arrangement order given to the applicant, it is clearly mentioned in para-2 of the Memo dated 25.02.2019 that the applicant is offered the stop gap engagement to the post of GDS MD/MC. It is also mentioned that he should clearly understand that his engagement in stop

gap arrangement is purely temporary and on contract basis and is liable to be terminated by the appointing authority at any time without notice and without assigning any reasons and that he is required to hand over the charge to the provisionally/regularly selected candidate, if he is not so selected later.

- iii. The post was not taken up for filling up online as there was a pending CAT case filed by previous regular incumbent Sri Khader Pasha. The present OA has no merits for consideration. The applicant is trying to enter the GDS post through back door. The applicant was engaged on stop gap arrangement purely on temporary basis and he has not undergone any selection process for regular engagement. The engagement of the applicant without following regular recruitment procedure will cause injustice to the genuine meritorious candidates. The applicant is not entitled to any reliefs sought for by him and the OA is liable to be dismissed *in limine* as bereft of any merits, as they are neither maintainable on facts nor on law.
- iv. The orders of this Tribunal in Arun Jyothi case have been challenged before the Hon'ble High Court of Karnataka Bench Kalaburgi in WP No.200136/2018 and the disposal is awaited. Action is in process regarding Giri Rao case. As such the matters have not reached finality. Moreover, the judgments quoted are applicable in individual cases of the applicants of those cases and are not relevant in the present case.
- v. In Writ Petition No.24557/2013(S-CAT) in the case of *Union of India, Department of Posts v/s Sandeep H.L.*, the Hon'ble High Court of Karnataka, Bangalore has held as follows:

*“In the matter on hand, the respondent was admittedly taken on duty on local appointment/stop-gap appointment. He was not appointed provisionally. He has not passed the test or has completed the formality which is prescribed for regular appointment. In this view of the matter, it is not open for the respondent to claim continued service on regular basis and consequently, the Tribunal is not justified in directing the petitioners to include the name of the respondent in the list of candidates who will be appointed regularly. Hence, the impugned order is liable to be quashed.”*

- vi. The cases of claim for regular engagement in the Department by the outsiders who have worked as substitutes have already been decided by the Hon’ble Apex Court rejecting the claim of the petitioners. In the case of *Debika Guha v/s Union of India and others [(2000) 9 SCC 416]*, the Apex Court held that *‘the substitutes have no legal claim merely on the basis of having worked continuously and if there are cases where the substitutes have worked for a longer period, it is for the department to consider the same as to whether there was a proper case for absorption or not and pass appropriate orders.’*
- vii. In *State of Karnataka & Others Vs. Uma Devi & Others [(2006) 4 SCC 1]*, the Hon’ble Supreme Court has held that *‘in view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the back drop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily wages, ad-hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Article 14, 16 & 309*

*of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment.”*

- viii. The Hon’ble Supreme Court in Civil Appeal No.2319/2007 (arising out of SLP(C) No.21448 of 2005) in the case of *Postmaster General, Kolkatta & Others vs. Tutu Das (Dutta)* has examined the claim of one substitute who worked for about seven years in a GDS vacancy without having undergone the process of due selection at the time of initial engagement. The Hon’ble Supreme Court relying on the judgments in *Union of India and Others v/s Debika Guha and others* {(2000) 9 SCC 416} and the decision of the Constitution Bench of the Court in *Secretary, State of Karnataka and others v/s Uma Devi and others* [(2006) 4 SCC 1] did not consider the regularization of the respondent.
- ix. In OA.No.141/2014, this Tribunal vide its order dated 19.02.2014 has held as follows:

*“..... The learned counsel for the applicant admits that the applicant has been appointed on stop gap arrangement vide order dt: 30.08.2012 on the condition that the appointment is purely on temporary basis and on contract basis and is liable to be terminated by the appointing authority without assigning any reasons and that she is required to hand over the charge to the provisionally/regularly selected candidates, if she is not selected later.*

*The respondents have issued notification to fill up the post of GDS BPM Periampady and one Shri P.Janardhana, regular GDS MD, Daggaladka is transferred vide order dt: 20.08.2013. When the applicant has been appointed on certain conditions on stop gap arrangement, she cannot ask for continuation of her service as GDSBPM Periampady. She has to hand over the charge to Shri P.Janardhana, the transferred candidate. When the transferred candidate wants to report as GDSBPM Periampady, the applicant has to handover the charge to the transferred candidate. The*

*applicant has not made out a case for grant of relief. OA is liable to be dismissed.*

*Accordingly the OA is dismissed at the admission stage itself. No order as to costs.”*

4. The respondents have, submitted that all the above mentioned orders are squarely applicable in the case on hand. The applicant is trying to enter the post through back door. He is not entitled to any relief sought for by him and the OA is liable to be dismissed *in limine* as bereft of any merit.

5. In the rejoinder to the reply furnished by the respondents, the applicant has further submitted that the SPOs, Raichur vide memo No.RCR/B-II/CAT/Basavaraj/Sulthanpur/2019, has ordered the termination of services of the applicant alleging that there is suspected fraud committed by him at Sulthanpur BO. Accordingly, as per orders of the ASPOs, Raichur Sub Division Memo dated 27.4.2019, the Mail Overseer of the said Sub Division, orally, without giving any show cause notice nor any written order, terminated his services with effect from 28.05.2019. The applicant submitted that he has not committed any misconduct of what so ever nature while discharging his duties till the date of his termination. It is only a cooked up case of alleged misconduct only to see that he is terminated before 2 days of his completion of 3 years of service so as to deny him regularization of his services as he was to complete 3 years as on 31.05.2019. The respondents have filed their reply on 31.01.2020, but they have not discussed anything about this aspect of termination of applicant's service in their reply statement in order to cover up their unwarranted action.

6. A careful examination of service rules of Postal Gramin Dak Sevak indicates that there is no provision or any rule for appointments under stop-gap arrangement to the post of Gramin Dak Sevak(GDS) to look after the work. The rules provide

for only provisional appointment of ED Agents (now called as GDS) which are as follows:

***(17) Provisional appointment of ED Agents.-*** *It has come to the notice of this office that provisional appointments made to ED posts are being allowed to continue for indefinite periods and when regular appointments are made, the provisionally appointed persons do not readily hand over the charge. The following instructions are issued in this regard:-*

*(i) As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing Authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor.*

*(ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new Post Office is opened or where a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A).*

*(iii) Where an ED Agent is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized, a provisional appointment may be made, in the form annexed (Annexure-B). It should be made clear to the provisionally appointed person that if ever it is decided to reinstate the previous incumbent, the provisional appointment will be terminated and that he shall have no claim to any appointment.*

*Even in cases where an appointment is made to fill the vacancy caused by the dismissal/removal of an ED Agent and the dismissed/removed employee has*

*not exhausted all channels of appeal, the appointment should only be provisional. The offer for appointment should be in the form annexed (Annexure-B).*

*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 the 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.*

7. The facts of this case indicate that this appointment had been made after the regular incumbent to the post had initially been on put off duty since 24.03.2010 and subsequently removed from service on 29.02.2012. However, the applicant was engaged only on stop-gap arrangement basis with effect from 01.06.2016 i.e. about 4 years after removal of the regular incumbent on that post. The GDS Service Rules have the provisions for provisional appointment in cases where an existing GDS is put off duty pending departmental or judicial proceedings against him and it is not possible to ascertain the period by which the departmental/judicial proceedings are likely to be finalized. In such cases, a provisional appointment can be made, as specified under the Rules. However, this was not done for almost 4 years after the regular incumbent had been removed from the post.

8. The applicant had been appointed on stop-gap arrangement for a period starting from 01.06.2016 till 25.05.2019 by issuing 12 orders of stop-gap arrangements of different periods of 89 days each with a gap of 2 or 3 days in between. This applicant has therefore worked for a period which is slightly less than 3 years, (short by around 26 days approximately, if we take into account the break-in periods of 2 or 3 days in between the various orders and 5 days after 25.05.2019). The Rules provide for efforts to be made to give alternative

employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the 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.

9. The applicant's claim for regularization in the post of GDS, is barred by the following reasons:

- a) He has never been provisionally appointed to the post. His appointment was on stop gap basis only.
- b) His appointment was not for a continuous period of 3 years or more as prescribed under the rules.

The applicant, therefore, cannot claim, as a matter of right that he should be given an opportunity or consideration for being put in the waiting list or for being regularized on that post. In the back drop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the applicant who has not been appointed following the procedure laid down under the existing rules applicable for GDS in the postal department. In our constitutional scheme, there is no room for back door entry in the matter of public employment. However, the candidate should be free to apply for consideration for appointment as GDS whenever the applications for the post are invited by the department at any time in the future.

2. The Original Application, therefore, being devoid of any merits is liable to be dismissed. Accordingly, the OA is dismissed.

3. There shall be no orders so as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

/ps/

**Annexures referred to by the applicant in OA No.170/318/2019:**

Annexure-A1: Applicant's SSLC marks card dtd.9.7.2004

Annexure-A2: Applicant's PUV marks card of 2006

Annexure-A3: SC certificate issued by Tehsildar, Raichur

Annexure-A4 to A14: Appointment orders of the applicant

Annexure-A15: GOI No.[17] dtd.18.5.1979/30.12.1999

Annexure-A16: Order dtd.9.10.2017 in OA.No.884/2016

Annexure-A17: Order dtd.26.11.2018 in OA No.11/2018

Annexure-A18: Apex Court judgment dtd.3.9.1992 in Civil Appeal No.833/1986

**Annexures with reply:**

Annexure-R1: The chart showing the details of stop gap arrangement of applicant

Annexure-R2: Stop gap arrangement order dtd.25.02.2019

Annexure-R3: High Court of Karnataka order dtd.18.11.2013 in WP.No.24557/13

**Annexures with rejoinder:**

Annexure-A1: SPOs, Raichur Memo dtd.24.4.2019

Annexure-A2: ASPO's Raichur Sub Dn. Memo dtd.27.4.2019

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