

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00503/2018
&
Contempt Petition No. 180/00041/2020
in
Original Application No.180/00503/2018

Tuesday, this the 2nd day of February, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

1. Original Application No.180/00503/2018 -

K.R. Rajesh Kumar, Kunjukattu House,
Pancachikapara, Poonjar PO, Kottayam-686 581,
Working as GDSMD (outsider), Poonjar Sub
Post Office. ... **Applicant**

(By Advocate Mr. P.R. Padmanabhan Nair)

v e r s u s

1. The Inspector of Posts, Pala Sub Division,
Pala – 686 575.
2. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam – 686 001.
3. The Sub Post Master, Poonjar Sub Post Office,
Kottayam – 686 581.
4. Post Master General, Central Region, Kochi – 682 016.
5. Chief Post Master General, Kerala Circle,
Thiruvananthapuram – 695 033.
6. Union of India, represented by the Secretary,
Ministry of Communication,
New Delhi – 110 001. ... **Respondents**

(By Advocate Mr. N. Anilkumar, SCGSC)

2. Contempt Petition No. 180/00041/2020 -

K.R. Rajesh Kumar, Kunjukattu House,
Pancachikapara, Poonjar PO, Kottayam-686 581,

working as GDSMD (outsider), Poonjar Sub Post Office. ... **Petitioner**

(By Advocate Mr. P.R. Padmanabhan Nair)

v e r s u s

1. Arunkumar, Father's name and age not known to the petitioner
The Inspector of Posts, Pala Sub Division,
Pala – 686 575.
2. Mohanan Achari, Father's name and age not known to the petitioner,
The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam – 686 001.
3. Babu Thomas, Father's name and age not known to the petitioner,
The Sub Post Master, Poonjar Sub Post Office,
Kottayam – 686 581. ... **Respondents**

(By Advocate Mr. N. Anilkumar, SCGSC)

This application and contempt petition having been heard on 27th January, 2021, the Tribunal on 2nd February, 2021 delivered the following :

O R D E R

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

This case has taken a very convoluted history mainly due to recalcitrance on the part of the respondents to deal with the directions of this Tribunal and the Honourable High Court of Kerala on an urgent basis.

2. The applicant in the OA has been serving in the Department of Posts as Gramin Dak Sevak Mail Deliverer (in short GDS MD) in various post offices under the 2nd respondent (the Senior Superintendent of Post Offices, Kottayam Division) from 2010 onwards as stated by him. He had submitted applications when called for by respondents for appointment as GDS. Finally, he approached this Tribunal for a direction to the respondents to consider him for appointment, taking into consideration his service in the

Postal Department, in OA No. 180/91/2014. By order dated 5th February, 2014 this Tribunal asked the Respondents to consider, the applicant as per rules of appointment to the post of GDS Branch Postmaster at any of the five vacancies for which he had submitted applications and to communicate the decision thereon within a period of two months from the date of receipt of the copy of the order (Annexure A1). After this order, the applicant was given stopgap employment as GDS MD at Poonjar Sub Post Office by the respondents on 4.11.2015 and he continued to work more or less continuously on this arrangement as GDS MD at Poonjar since then. Later respondent No. 1 (Inspector of Posts, Pala Sub Division) invited applications for regular appointment to the post of GDS MD at Poonjar Sub Post Office by Annexure A2 notice dated 10.3.2016. The applicant represented to the respondents to appoint him as the GDS MD, Poonjar taking into consideration his past service there. One of the conditions in the Annexure A2 notification was that the age of the applicants should be between 18 and 30 years on the date of the notification. This applicant, having crossed the age limit, did not apply for the post and instead approached this Tribunal once again by filing another OA for a direction to consider him for appointment taking into account his past experience. While this was under consideration, another order was issued by Department of Posts raising the age limit to 40 on 23.6.2016. This Tribunal by order dated 23.1.2017 in this OA No. 180/554/2016 directed the respondents as follows (at paragraph 10):

“10. As stated earlier, as per Annexure A-10 dated 23.06.2016 the entry age to GDS posts was raised up to 40 years with relaxation to 3 years to those belonging to OBC and 5 years in the case of candidates belonging to SC/ST. The relief sought for in this application is to quash Annexure A-1 dated 10.03.2016. Annexure A-10 was issued subsequent to Annexure A-3. The recruitment/selection process has not been completed. Hence, the benefit of Annexure A-10 may be available to the candidate to be selected

for the said post. But his claim that his past experience as GDS MD should also be considered for appointment to the post of GDS Mail Deliverer at Poonjar Sub-Post Office cannot be accepted. However, if the applicant applies for the post, and if the respondents relax the age so as to allow the applicant to participate in the selection process, then he can be allowed to participate in the selection process. It is made clear that the selection shall be made purely on merit.”

3. Aggrieved by the order that past experience of the applicant cannot be considered for the appointment and by the fact that the Tribunal did not set aside the Annexure A2 notice dated 10.3.2016, the applicant approached the Hon'ble High Court of Kerala in OP (CAT) No. 201 of 2017. This was disposed of on 9th August, 2017 by the Hon'ble High Court with the following directions at paragraph 8:

“8. The learned Asst. Solicitor General submits that part of the selection process like cycling test is already over. But in so far as Ext.P4 verdict has not been sought to be challenged from the part of the Department and in view of the fact that the petitioner was serving the Department from 04.11.2015, this Court finds it appropriate to direct the Department to finalise the selection process; also permitting the petitioner to participate in the proceedings based on the application stated as preferred by the petitioner. The said consideration shall be in tune with the relaxed norms as per Annexure A10 and the matter of age relaxation to the extent the applicant has served the Department shall also be considered by the Department, in accordance with law, passing appropriate orders in this regard.”

4. The applicant's main grievance when he filed this OA was that the respondents with utter disregard to the above orders of the Tribunal as well as the Hon'ble High Court of Kerala had not taken any action to complete the process of appointment to the post of GDS MD, Poonjar, as was initiated by Annexure A2 notification dated 10.3.2016. He submitted that the respondents have thereby willfully disobeyed the orders of this Tribunal and the Hon'ble High Court of Kerala and were seeking to replace him by inducting another outsider though he was continuing to work as GDS MD, Poonjar with effect from 4.11.2015, as an outsider, during this period. He

submitted that on 8.6.2018 the 1st respondent, namely the Inspector of Posts, Pala, allegedly orally ordered the 3rd respondent, namely the Sub Post Master, Poonjar, not to entrust any work of delivery of postal articles to him and, as such, he was attending office without any work from that date. No order was served in writing and the 1st, 2nd and 3rd respondents were thus alleged to have acted against the law and procedures established by practice in the Postal Department. The relief claimed against the respondents in this OA was to direct the respondents to allow the applicant to work as GDS MD, Poonjar Sub Post Office till the regular candidate is appointed to the above post after completing the process of selection as per Annexure A2 notification dated 10.3.2016 issued by the 1st respondent.

5. After initial hearing, this Tribunal was pleased passed an interim order on 25.6.2018 which reads as follows:

“Admit. Shri N. Anilkumar, Sr. PCGC(R) takes notice on behalf of the respondents and prays for time for filing reply statement.

At this stage, we feel it necessary in view of the categoric directions of the Hon'ble High Court in OP (CAT) 201/2017 to direct the respondents not to engage any outsider other than the applicant as GDS MD at Poonjar till a regular hand is appointed to the above post.”

6. Subsequent to this, Respondents filed a reply statement only on 26th March, 2019. It was admitted in the reply statement that the applicant had been engaged on a stopgap arrangement since 4.11.2015 and was, since 1.5.2016, continuing till date under the same arrangement. It was also accepted that a notification was issued on 10.3.2016 in order to fill up the post of GDS MD, Poonjar provisionally. The post was notified provisionally as the review of the work load of the post was under process. The last date

for receipt of applications was fixed as 16.4.2016. 37 applications were received, out of which 4 applications were nominated by the Employment Exchange. As per the notification the age limit, in accordance with the revised eligibility criteria as per Directorate order No. 17-39/6/2012-GDS dated 14.1.2015, was fixed at 30 years, relaxable by 3 years and 5 years for those coming under various quotas. The applicant being aged 40 years did not apply for the above post. The scrutiny of the applications was completed on 24.6.2016. However, a revision of the age limit to 40 years vide Directorate letter No. 17-17/2016-GDS dated 23.6.2016 was issued after the issue of the notification for the post. This caused the applicant to file OA No. 180/554/2016 and in due compliance of the interim order in the said OA, the applicant was allowed to continue in the post of GDS MD at Poonjar. The OA was defended on the ground that the applicant was engaged only on a stopgap arrangement, was not eligible for selection based on the eligibility criteria and had not even applied for the selection for the post of GDS MD, Poonjar. However, the Tribunal had disposed of the OA with direction that the benefit of Annexure A10 (age relaxation) may be made available to the candidates for the post, even as the Order did not allow the claim of the applicant to consider his past experience as GDS MD. It was only ordered that if the applicant applies for the post and if the respondents relax the age limit so as to allow the applicant to participate in the selection, then he can be allowed to participate in the same. It was made clear that the selection was to be made purely on the merit. After this, the Department had initiated action to file OP (CAT) before the Hon'ble High Court in this matter. Meanwhile, the applicant himself went ahead and filed OP (CAT) No. 201 of 2017 against the order dated 23.1.2017 in OA No.

180/554/2016, especially on his 2nd prayer to consider him for appointment after considering his past experience.

7. The reply states that the Hon'ble High Court disposed of the OP (CAT) No. 201 of 2017 on 9.8.2017. The respondents quote the directions earlier brought out at paragraph 3 above. The respondents state that the applicant had submitted an application on 9.3.2017 in due compliance with the order of the Tribunal. They submit that since the matter relating to the age could not be decided at the 'local level' and as the age of the candidates as per the notification by which the maximum age limit was 30 years, relaxable for quota categories, was specified, it was taken up with the Postal Directorate through CPMG, Kerala Circle. While this correspondence was going on, they accept that the recruiting authority disengaged the applicant. Aggrieved by this, the applicant has filed the present OA. In compliance of the interim order dated 25.6.2018 in the present OA, the applicant has been allowed to continue to work as substitute in the post of GDS MD, Poonjar till a regular selection is made. The case has also been taken up before the Postal Directorate for implementation in view of the orders of this Tribunal and the Hon'ble High Court of Kerala in OA No. 180/554/2016 and OP (CAT) No. 201 of 2017. On receipt of the orders from the Postal Directorate, the applicant will be considered along with other applicants and the case will be decided on merit. Till such time the applicant will be continue to be engaged as GDS MD, Poonjar.

8. After this reply was filed on 26th March, 2019 there appears to have been no further movement in the matter, until MA No. 180/454/2020 in this OA was filed for directions by the original applicant on 21st August, 2020. In this MA it was submitted by the applicant that Inspector of Posts, Pala had sent a letter on 20.3.2020 to the applicant stating that he has not submitted any application so far to the post of GDS MD, Poonjar and to consider him for the above post, he has to submit an application in the format enclosed before 30.3.2020. The above letter was received by him only on 8.4.2020, possibly due to Covid-19 disruptions. It has been produced in the MA as Annexure MA-1. Accordingly, the applicant submitted an application in the format duly filled in on 8.4.2020. A letter of information regarding his total experience till date as GDS MD for 6 1/2 years was also submitted with the said application, which is produced in the MA as Annexure MA-2. The applicant however reiterates that he had submitted the application for the above post on 9.3.2017 as per direction of this Tribunal and the same has been admitted in the reply statement filed by the 2nd respondent on 21.3.2019. The applicant also submits that, subsequently, on 14.8.2020, a person named Shri Charles George reported before the Sub Post Master, Poonjar (respondent No. 3) for training as GDS MD, Poonjar for 12 days. The 3rd respondent orally informed him that Shri Charles George has been selected for the post of GDS MD, Poonjar and, after 12 days training, he will be given the posting as GDS MD, Poonjar. The 3rd respondent also asked him to take Shri Charles George along with him in the area of delivery for these 12 days. The 3rd respondent also informed him that the 1st respondent, Inspector of Posts has given him a

direction in this regard and has orally informed him that the above Shri Charles George will be appointed as GDS MD, Poonjar.

9. The applicant submits in the MA that the 1st respondent Inspector of Posts has not obeyed the orders of the Hon'ble High Court as contained in the judgment dated 9.8.2017 in OP (CAT) No. 201/2017. The 1st respondent did not act as per the direction of the Hon'ble High Court for three years after the judgment and, instead, he had earlier directed an outside person on 8.6.2018 to work as GDS MD, Poonjar in his place. That order was done orally, as has been done now. This Tribunal then intervened by way of the interim order and allowed the applicant to continue to work as GDS MD, Poonjar. The judgment in OP (CAT) No. 201/2017 has not been challenged by the respondents and so they are bound by the Hon'ble High Court's judgment. The applicant submits that he was not called for any interview or any test, including cycling test, nor was called for verification of the documents including the records of his experience of 6 1/2 years, as directed by the Hon'ble High Court in above judgment to take into account his experience. He submits that the selection and engagement of the aforementioned Shri Charles George who is undergoing GDS MD training is vitiated and illegal and liable to be quashed.

10. This miscellaneous application was followed by another MA No. 180/486/2020 filed by the original applicant which repeated almost exactly the same points, except that the relief sought therein is to direct the 1st and 3rd respondents to allow the applicant/petitioner to carry on his work till the

appointment of regular hand as ordered by the Tribunal on 25.6.2018 by disengaging Shri Charles George from acting as GDS MD, Poonjar. In the earlier MA No. 180/454/2020 the relief sought was to direct the 1st respondent Inspector of Posts to stop the engagement of Shri Charles George as GDS MD Trainee at Poonjar Sub Post Office since it violated the orders of the Tribunal and the Hon'ble High Court in OP (CAT) No. 201/2017.

11. In response to the 2nd MA No. 180/486/2020, Respondents have filed objection stating that in compliance of the orders of the Hon'ble High Court, the Department has conducted the process of regular selection to the post, also considering the candidature of the applicant. The whole process was done based on the notification issued on 10.3.2016 and the applicant has also participated in the selection process. He was not selected because of his low merit score compared to the selected candidate. The selected candidate, after successful completion of training for two weeks, has joined the post on 25.8.2020. The copy of the order of selection is marked as Annexure R-1 attached in the reply to the MA. The Respondent No. 2 (Senior Superintendent of Post Offices, Kottayam Division) submits that the applicant was allowed to participate in the selection process but has secured much lower marks than the selected candidate. The selected candidate was actually 3rd in the merit list having secured 80.47% marks. However, the applicant in the same examination received only 43% marks and thus did not come under the zone of consideration. Since the first two candidates who had got a higher percentage of marks expressed their unwillingness to join the post, the 3rd candidate, Shri Charles George, was selected. The Respondents submit that Shri Charles George was selected after a regular

selection process and has been posted as a regular appointee. The wording 'provisional engagement' is only to show that he is on probation for year and after successful completion of probation, regular order shall be issued to him. He has been selected through a regular selection process and he has successfully completed his training period also. The Hon'ble High Court had directed to finalize the selection process of regular selection and also directed not to engage an outsider other than the applicant. The selected candidate is appointed after finalization of regular selection process and he is not an outsider but a regular hand. Hence, the respondents have now prayed that the MAs may be closed as the process of regular selection is completed and a regular hand is appointed and as such, the OA has become infructuous.

12. We have carefully heard learned counsel for the applicant Sri P.R. Padmanabhan Nair and learned counsel for the respondents Shri N. Anilkumar, SCGSC. We have also gone through all the averments and the documents submitted by the applicant and the respondents. As mentioned in the beginning, this matter seems to have gone through a very convoluted and complicated process because of various delays in decision making as detailed above. Whatever it may be, we now see that the Respondents now submit that process of final selection has been completed and it has been apparently conducted following the usual stages now governing such procedures. While the MA applicant has stated that he has not been called for any test or interview, the respondents claim that the applicant has also been allowed to take part in the selection process by writing the test, in spite of the fact that there had been confusion relating to his qualification due to

his age. The interim orders of this Tribunal were only to the effect to not engage any outsider other than the applicant as GDS MD till a regular hand is appointed. The applicant has not filed any other MA or made any argument at the time of hearing denying his participation in the test for selection and that his marks in the same are not the same as brought out in the reply of the MA respondent. From what is stated and as per the available evidence, we can only conclude that the applicant seems to have been allowed to take part in the process of selection and he seems to have done so willingly, without protest. At the end of the same he was, however, not successful. He cannot now claim that he was not considered. Shri Charles George has been selected and posted as a regular GDS MD in the post available at Poonjar after coming through the selection process. As such, we do not find that Shri Charles George's selection is against the order of this Tribunal in OA No. 180/554/2016, the interim order in this OA or the Order of the Hon'ble High Court in OP (CAT) No. 201/2017. The Hon'ble High Court in OP (CAT) No. 201/2017 had only found it appropriate to direct the Department to finalize the selection process permitting the applicant to participate in the proceedings based on the application stated as preferred by the applicant. The Hon'ble High Court had further indicated that the said consideration shall be in tune with the relaxed norms as per Annexure A10 (relating to age relaxation enhancing the age limit up to 40 years) and the matter of age relaxation to the extent that the applicant had served the Department was also to be considered by the Department in accordance with law. This implies that age relaxation only to the extent of the applicant's service in the Department was to be taken into consideration in accordance with law. This seems to have been done by allowing the applicant to take

part in the process. We also note that the process for the recruitment seems to been initiated, based on the notification issued on 10.3.2016 and the applicant had given an application on 9.3.2017 as per the direction of this Tribunal, which has been admitted in the reply of the respondents filed on 21.3.2019. While it appears that the respondent No. 1 Inspector of Posts sent another letter on 20.3.2020 stating that the applicant had not applied for the post (produced at Annexure MA-1), we do not think that this particular letter diminishes in any way, our finding that the applicant had been considered for the post at the time of the final selection and he seems to have taken part in the process willingly. In any case there are sufficient judgments including by the Apex court that previous experience is not a criterion for selection of candidates and filling up of the post of GDS MD. We do not also see any provision in the extant rules for reckoning previous service or experience while making selection to the GDS post.

13. We, therefore, do not find any merit in the OA and accordingly, dismiss the OA as being infructuous in the light of the fact that the final selection has been now completed by the respondent Department. The MAs Nos. 180/454/2020 and 180/486/2020 are also dismissed accordingly. No order as to costs.

14. The applicant had also filed a Contempt Petition No. 180/41/2020 alleging that the respondents have not complied with the directions of this Tribunal and for disobedience of the interim order dated 25.6.2018 passed by this Tribunal in OA No. 180/503/2018, by his disengagement from the

post of GDS MD. Since we have found that the respondents have disengaged the applicant from the post of GDS MD, Poonjar Sub Post Office on 25.8.2020 only after a regular appointment of a new incumbent, no contempt is seen to have been established against the interim order dated 25.6.2018. Accordingly, the Contempt Petition is also closed and notices discharged.

(Dated this the 2nd day of February, 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

“SA”

List of Annexures in Original Application No.180/00503/2018

- 1. Annexure A-1** – Photostat copy of order dated 5.2.2014 in OA No. 180/00091/2014 from the Central Administrative Tribunal Ernakulam Bench.
- 2. Annexure A-2** – Photostat copy of notice No. GDSMD/Poonjar dated at Pala 10.3.2016 from the Inspector of Posts Pala Subdivision the 1st respondent inviting applications from candidates for provisional appointment as GDSMD/Poonjar.
- 3. Annexure A-3** – Photostat copy of order dated 23.1.2017 in OA No. 180/00554/2016 from the Central Administrative Tribunal.
- 4. Annexure A-4** – Photostat copy of judgment dated 9.8.2017 in OP (CAT) No. 201 of 2017 from the Hon'ble High Court of Kerala directing the respondents to consider the applicant for the post of GDSMD, Poonjar Sub Post Office.
- 5. Annexure MA(1)** – Photostat copy of letter No. GDSMD/Poonjar dated at Pala the 20.3.2020 from the Inspector of Posts, Pala, the 1st respondent addressed to the applicant.
- 6. Annexure MA(2)** – Photostat copy of the application dated 8.4.2020 submitted by the applicant before the Inspector of Post, Pala Sub Division, Pala.
- 7. Annexure R-1** – True copy of the order of selection.

List of Annexure in Contempt Petition No. 180/00041/2020

- 1. Annexure A-1** – True copy of interim order dated 25.6.2018 in OA 503/2018 of this Hon'ble Tribunal.
