

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE
ORIGINAL APPLICATION NO.170/00032/2020**

ORDER RESERVED ON 30.06.2021

DATE OF ORDER: 04.08.2021

CORAM:

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

(On video conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh)

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

(On video conference from his residence at Bangalore)

B.M.Pradeep Kumar
Age: 39 years
S/o Late Mallik Shetty, GDS
Bidarakka B.O.
Hassan District
Residing at
Bidarakka B.O.-573136
Via Keralapura
Hassan District.

....Applicant

(By Advocate Shri P.Kamalesan – through video conference)

Vs.

1. Union of India
Represented by Secretary
Department of Post
(Postal & Accounts Wing)
Dak Bhavan
New Delhi – 110001.
2. Chief Post Master General
Karnataka Circle
Bangalore-560001.
3. Post Master General
S.K.Region
Bangalore-560001.
4. Superintendent of Post Offices
Hassan Postal Dn
Hassan-573201.

.....Respondents

(By Advocate Shri N.B.Patil – through video conference)

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

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i. Direct the respondents to consider the applicant for the post of (Gramin Dak Sevak) GDS by keeping him in the wait list for GDS appointments.
 - ii. Grant any other relief as deemed fit into the facts and circumstances of the case, in the interest of justice and equity.
2. The facts of the case as pleaded by the applicant are as follows:
 - a) The applicant's father Late Mallik Shetty was working as a GDS BPM at Bidarakkata B.O. and expired on 15.02.2013.
 - b) The applicant submitted application for compassionate appointment. The Post Master General, S.K.Region, Bangalore vide letter No.SK/R & E/16-32/2013 dated: 28.7.2015, directed SPOS, Hassan Dn, to obtain the relevant documents and submit to the CRC for consideration for compassionate appointment.
 - c) The Post Master General, S.K.Region, Bangalore vide letter No.R&E/2-6/938/14 dated 7.1.2015 (Annexure-A2) informed the applicant that his request for compassionate appointment, cannot be considered in view of clarification issued by Postal Directorate on 9.10.2013, on the grounds that the applicant is married and married son is not considered as dependant member on a GDS.

- d) The Post Master General, S.K.Region, Bangalore vide letter No.SK/R&E/16-32/2013 dated 9/10.8.2016(Annexure-A3), informed that the Circle Relaxation Committee, which met on 17.6.2016 considered the request of applicant and rejected it on the grounds that applicant has scored less than 36 points and is consequently not a hard and deserving case..
- e) The applicant submitted a representation on 3.8.2018, requesting the respondents to reconsider his case for compassionate appointment vide Annexure-A4.
- f) The applicant submits that the applicant was engaged on stop gap arrangement from 22.4.2013 to 2018 and working for more than 3 years. Copy of the orders for stop gap arrangement issued by Superintendent of Post Offices, Hassan Dn, Hassan vide Memo No.BO-168/2013 dated: 22.4.2013, 2.8.2013, Memo No.BO-199/2017 dated: 26.10.2017, 2.2.2018 and 21.5.2018, Memo No.BO/231/2018 dated: 22.6.2018 are enclosed. (Annexure-A5)
- g) The applicant submits that he was not considered for compassionate appointment and he had completed more than 3 years in the stop gap arrangement in the GDS post. Therefore, he is eligible to be kept in waiting list for considering him for GDS Post. Hence the OA.

3. The respondents in their reply statement have averred as follows:

- a) There are three types of engagements for GDS posts in the respondent department, namely –
- i. Regular engagement

- ii. Provisional engagement and
- iii. Stop gap arrangement/engagement

The above types are elaborated further:

- i. Regular engagement is the engagement made after following the procedure prescribed in GDS (Conduct and Engagement) Rules 2011, i.e. issuing an online notification and selecting the candidate with the highest merit. Such candidate will continue to work in the post without any conditions for termination, unless the said candidate so engaged comes to adverse notice in day to day work.
- ii. Provisional engagement is the engagement made for the posts which fall vacant due to suspension (Put Off Duty) for monetary fraud/misbehaviour etc of regularly engaged GDS or in case where a compassionate appointment case is under process at Circle Office level and there are chances of awarding the engagement to the son/daughter of deceased GDS employee of that post. Such selection is also done by following the procedure prescribed in above quoted rules, but with a condition that, if the incumbent of the post is re-instated or a compassionate appointment is awarded to the family member of deceased employee, then such provisionally engaged candidate should hand over the charge of the post for such candidates. The selection method as prescribed in the GDS (Conduct & Engagement) Rules 2011, i.e. issue of notification as in the case of regular engagement, is followed for appointing a candidate on provisional basis, and.
- iii. Stop gap arrangement – an outsider is allowed to hold charge of the post until a candidate is appointed to the post by the above mentioned two processes. In this case, the procedure of inviting a notification etc is not followed and such stop gap candidates are

given to understand the terms and conditions before accepting the charge of the post.

- b) Sri Mallik Shetty B K, the father of the applicant, was working as GDS BPM/MD, Bidarkka BO a/w Keralapura w.e.f. 21.04.1985. He expired on 15.02.2013 while in service. He left behind his wife Smt. Anandamma and one married son i.e. the applicant.
- c) The applicant had applied for compassionate appointment and the same was forwarded by respondent No.4 to respondent No.2 vide letter No. B2-2-10/2013 dated 13.09.2013. The compassionate appointment case of the applicant was forwarded to respondent No.2 by respondent No.3. The Circle Relaxation Committee which decides the compassionate appointment cases of the entire Karnataka Circle had met on 17.6.2016 and examined the case of the applicant and rejected the case as not a hard and deserving case. As per Postal Directorate guidelines, the engagement of GDS on compassionate appointment will be based on merit points. The applicant had secured less than 36 points. The engagement of GDS on compassionate grounds should be in hard and deserving cases and the term hard and deserving case would mean over and above 36 points. Since the applicant had secured less than 36 points, his case was rejected as not a hard and deserving case. The same was communicated to the applicant by respondent No.3 vide letter No.SK/R&E/16-32/2013 dated 09.08.2016 which was produced as Annexure-A3 of the OA.
- d) The applicant was engaged on stopgap arrangement in respect of following posts which fell vacant due to various reasons like Termination/POD/Death/transfer temporarily for a period of less than 90

days on various spells by Inspector-Posts, Holenarasipura sub division. The applicant was engaged temporarily in different posts for a period less than 90 days.

	From	To	Vacancy caused due to	Remarks
1	20.05.2013	17.08.2013	Death of Sri Mallikashetty w.e.f. 15.02.2013	Bidarkka BO A/w Keralapura SO
2	14.10.2017	10.01.2018	Transfer of Sri Chandrashekara Naik V as BPM Bendekere A/w Arsikere HO w.e.f. 01.08.2016	Kattimallenahally A/w Arkalgud SO
3	12.01.2018	10.04.2018	-do-	Kattimallenahally A/w Arkalgud SO
4	12.04.2018	31.05.2018	-do-	Kattimallenahally A/w Arkalgud SO
5	01.06.2018	28.08.2018	Sri Prabhakara Nayaka POD w.e.f. 29.01.2018	Lakkur BO A/w Keralapura SO
6	31.08.2018	20.11.2018	Sri Prabhakara Nayaka POD w.e.f. 29.01.2018	Lakkur BO A/w Keralapura SO
7	24.11.2018	20.02.2019	Termination of Sri Nagaraja w.e.f. 22.08.2017	Anandur BO A/w Keralapura SO
8	23.02.2019	17.05.2019	Termination of Sri Nagaraja w.e.f. 22.08.2017	Anandur BO A/w Keralapura SO
9	22.05.2019	16.08.2019	Termination of Sri Nagaraja w.e.f. 22.08.2017	Anandur BO A/w Keralapura SO
10	22.08.2019	18.11.2019	Termination of Sri Nagaraja w.e.f. 22.08.2017	Anandur BO A/w Keralapura SO
11	21.11.2019	13.02.2020	Termination of Sri Nagaraja w.e.f. 22.08.2017	Anandur BO A/w Keralapura SO

- e) The arrangement made was purely local arrangement and his engagement to the vacant posts is on contract and temporary basis and has been terminated before completion of 90 days. Before entrusting the work, he was made aware that stopgap engagement made was purely temporary and on contract

basis and liable to be terminated by the appointing authority at any time without assigning any reason and that he is required to hand over the charge to the provisionally/regularly selected candidate. An order to the effect was issued by respondent No.4 on each occasion. The memo issued by respondent No.4 vide No.BO-199/2017 dated 26.10.17 and memo No.BO-231/2018 dated 22.6.2018 is produced and marked as Annexure-R1 & R2 respectively. In both the Annexures, the applicant had signed agreeing for the conditions of stopgap engagement accordingly the applicant agreed to the terms and conditions and worked under stop gap arrangement for the above said periods.

- f) The person who has been engaged on the basis of provisional or in the capacity of substitute to GDS, have no legal rights as far as regularization, i.e. the recruitment rules do not provide for recognition of past services that should have been rendered by them against any post.
- g) The applicant has not undergone any selection process prescribed by the Respondent Department at the time of his engagement under stop gap arrangement. Engagement of the applicant with the respondent department was to carry on the day to day work of the Post Office in order to render uninterrupted service to the members of public.
- h) In Writ Petition No.24557/2013 (S-CAT) between the *Union of India, Department of Posts v/s Sandeep H.L.* in similar subject, the Hon'ble High Court of Karnataka, Bangalore vide its order dated 18.11.2013 while allowing the WP has held that

“....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”.

The above order is squarely applicable in this instant case also(Annexure-R3).

- i) Hon’ble Supreme Court in the case of *Debika Guha vs. Union of India and others [(2000) 9 SCC 416]* 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.”

- j) Hon’ble Supreme Court in the case of *State of Karnataka & others vs. Uma Devi (3) other (2206) 4 SCC 1* 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, 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.

- k) Hon’ble Supreme Court of India 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 vs.*

Debika Guha and others [(2000) 9 SCC 416] and decision of the constitution bench of the Court in *Secretary, State of Karnataka and others vs. Uma Devi and others [(2006) 4 SCC 1]* did not consider the regularization of the respondent.

- 1) The applicant is trying to enter the post through back door. In view of the points narrated above, 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.

4. Heard the learned counsels of the applicant as well as the respondents.

5. 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.

6. In the present case, the applicant has admittedly been appointed on 'stop gap basis' and not on provisional basis. He has been working on stop gap basis in 11 broken spells, on various different posts. All these appointments were not exceeding 90 days.
7. He has worked for a period of around 90 days on "stop gap basis" from 20.05.2013 to 17.08.2013. His subsequent engagement again on "stop gap basis" was after a gap of more than 4 years starting from 14.10.2017. This period of engagement from 14.10.2017 to 13.02.2020 has been in 10 broken spells each, not exceeding 90 days with an intermediate gap ranging from 4 to 7 days.
8. The service rules relating to appointment of Postal Gramin Dak Sevaks indicate clearly that there is no provision or any rule which allows for any person who has

been working on “stop gap basis” to be placed in the waiting list of GDS to be considered for appointment later, depending on availability of posts. The rules provide that 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. If we take the period from 14.10.2017 to 30.02.2020 to be almost continuous, after ignoring the fact that it is in 10 broken spells with gaps of a few days each, even then the total period is less than 3 years.

9. It is only in cases of appointment on provisional basis where the period of appointment exceeds three years, that the name of such provisional appointees can be included in the waiting list as prescribed in D.G., P & T., Letter No.43-4/77-Pen., dated 23.2.1979.
10. The applicant’s claim for being considered for inclusion in the waiting list for appointment as GDS is, therefore, inadmissible since he has never been provisionally appointed to the post. His appointment was only on stopgap basis. Moreover, his appointment was not for a continuing period of 3 years or more.
11. In our constitutional scheme, there is no room for backdoor entry in the matter of public employment. In the backdrop of this constitutional philosophy, it would not be proper to give directions for such a consideration, to applicants who have not been appointed following the procedures laid down under the existing rules applicable for GDS in the Postal Department. However, the applicant should be free to apply for consideration for appointment as GDS whenever the applications for the posts are invited by the department at any time in the future.

12.Keeping the above in view, the present OA, being devoid of any merit, deserves to be dismissed.

13.The OA is accordingly, dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)

/ps/