

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00373/2015

HYDERABAD, this the 7th day of April, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



C. Divakar S/o C. Rama Subbaiah,
Aged 20 years, Occ : Unemployee,
Selected GDS Packer, Chilamakur SO,
D.No.3/232, Eswar Reddy Nagar,
Proddatur-516360.

...Applicant

(By Advocate : Mr. B. Gurudar)

Vs.

1. Union of India, Rep : By the
Chief Postmaster General, A.P.Circle,
Hyderabad.
2. The Postmaster General, Kurnool Region,
Kurnool-518002.
3. The Supdt. Of Postoffices, Proddatur Division,
Proddatur-516 360.
4. The Inspector (Postal), Proddatur South Sub-Dn,
Proddatur-516360.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr.CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to the selection to the post of Grameen Dak Sewak (GDS) Chilamakur Sub Post office.

3. Brief facts of the case are that the applicant was selected as Grameen Dak Sewak by the respondents on merit when he responded to the notification dated 20.8.2014 and the provisional appointment order was issued on 23.9.2014. On the advice of the respondents, accommodation for the office was also secured. However, when he did not get regular appointment letter, a representation was submitted on 1.12.2014 and the respondents replied that it was because of the Tribunal order in OA 1152 of 2014. Aggrieved, the OA is filed.

4. The contentions of the applicant are that he has been selected on merit basis and was also issued a provisional letter of appointment on 23.9.2014. The Tribunal vide its order dated 29.9.2014 in OA 1152/2014 has asked to continue the applicant in the cited OA to be continued in service but did not state in the post under reference. Therefore, the applicant in the OA referred could have been accommodated in some other GDS post. Further keeping the appointment of the applicant pending even after the request of the applicant in the cited OA was rejected is unfair. Had the respondents appointed the applicant immediately, the issue would not have arisen. Stop gap arrangement for the post for which the applicant was selected cannot go on indefinitely. Applicant has also secured accommodation for the office.



5. Respondents in their reply statement state that the applicant was issued a provisional appointment letter on 23.9.2014 and the applicant was asked to submit relevant documents, which he did on 30.9.2014. In the meanwhile, the son of the deceased employee who was working in GDS post under reference on a substitute basis, approached the Tribunal in OA 1152 of 2014 when his request for appointment on compassionate grounds was rejected. Tribunal directed the applicant in the OA 1152/2014 to be continued in service on 29.9.2014 on an interim basis and therefore, the applicant in the instant OA was not issued regular appointment orders. Further, the appointment could not fructify because the applicant submitted the required documents after stipulated time on 30.9.2014 after receipt of the Tribunal order on 29.9.2014. The delay is on the part of the applicant.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard to appointment of the applicant to the post of GDS Chilmakur Sub post office. The applicant was selected and issued the letter of provisional appointment on 23.9.2014. However, before he could submit the relevant documents to issue the regular orders on 30.9.2014, this Tribunal directed the temporary substitute working in the post, under reference, to be continued in service by an interim order dated 29.9.2014 in OA 1152/2014, when the substitute challenged the rejection of his selection to the cited post on compassionate grounds. The Tribunal order was to continue the substitute in service and therefore, in the background of the applicant having been selected to the post in question, it would have been proper to adjust the substitute in any other vacant GDS post. By not doing so, the respondents have made a mistake and for the

same the applicant should not suffer, as observed by the Hon'ble Apex Court in a catena of judgments as under:



The Apex Court in a recent case decided on 14.12.2007 (*Union of India vs. Sadhana Khanna*, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of *M.V. Thimmaiah vs. UPSC*, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. (iii) It has been held in the case of *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363* wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

II. The Ld. Counsel for the respondents has submitted that the substitute has been appointed on compassionate grounds to the said post based on the final orders of the Tribunal in the OA 1152 of 2014 and since the matter is 6 years old, it may not be possible to accommodate the applicant as GDS in the cited post at this point of time. We differ with her submission since it was respondents' mistake, which led to the non-appointment of the applicant. The Tribunal order was to continue the substitute in service and if the respondents had any doubts about the order, the same could have been got clarified by filing an MA, which the respondents did not do. The matter is pending adjudication since 6 years and the applicant has approached the Tribunal within the limitation period. Therefore, injustice would be done if the relief sought by the applicant is not granted, since he was nowhere at fault in the entire episode.

III. Hence, in view of above, we direct the respondents to consider appointing the applicant in any vacant GDS post in the Postal Division which undertook the recruitment process, provided he is found otherwise eligible as per the documents submitted, on notional basis from 30.9.2014.

The consequential benefits of notional seniority and fixation of pay, etc shall be granted except back wages. Time allowed to implement the judgment is 3 months from the date of receipt of this order.

With the above direction, the OA is disposed of with no order as to

costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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