

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH: ERNAKULAM.**

**ORIGINAL APPLICATION NO.197 of 2012**

**DATED THIS THE DAY OF 2<sup>nd</sup> DECEMBER, 2014**

**HON'BLE SHRI U.SARATHCHANDRAN .... MEMBER (J)**

**HON'BLE SHRI PRASANNA KUMAR PRADHAN ....MEMBER (A)**

Saji Jacob K, s/o. Jacob,  
Aged 42, Residing at 'Kalavanal',  
Koorachund Post Office,  
Vadakara,  
Kozhikode District 673 527.

.....Applicant

(By counsel Mrs.R.Jagada Bai)

v/s.

1. Union of India, represented by  
The Secretary to Department  
Of Posts, New Delhi 110 001.
2. The Superintendent of Post Offices,  
Vadakara Division,  
Vadakara 673 101.
3. Inspector of Post Offices,  
Koyilandy Sub Division,  
Koyilandy 673 305.
4. Sri Sreejish P.K.  
(Age and father's name not available),  
GDS MD, Koorachundu Post Office,  
Punathil Kandy, Kalpathoor,  
Meppayur, Vadakara 673 527.

..... Respondents

(By counsel Shri A.D.Raveendra Prasad for R-1 to R-3)

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**ORDER****HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A):**

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs;

- i. To quash Annexure-A-4;
- ii. To declare that the applicant is eligible to be considered for the post of Gramin Dak Sevak Mail Deliverer Koorachundu Sub Post Office by virtue of his experience of 07 years in the post;
- iii. Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order;
- iv. Grant costs to the applicant.

The facts of the case in brief are as follows;

2. The applicant worked as Gramin Dak Sevak Mail Deliverer (GDS-MD) in Athiyodi Sub Post Office whose name was changed as Koorachundu Post Office subsequently on various periods since 06.09.2004, though the applicant has claimed that he worked continuously up to 01.12.2011, except for some short spells of technical break of 02 or 03 days in an interval of 89 days. Applicant was mainly engaged in the post of GDS-MD, Koorachundu as a leave substitute of Shri M.Gopalan who was the regular incumbent. When the post fell vacant w.e.f. 12.03.2011 due to the promotion of the regular incumbent, the applicant was engaged to work in that post on purely ad-hoc basis as a part of stop-gap arrangement till regular arrangement was made. The respondent No.3 notified the post of GDS-MD for Koorachundu Sub Post Office vide memo No.SO-2/11-12 dated 23.08.2011 (Annexure-A-2). The applicant had also applied for the same since he satisfied all the conditions required for

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appointment of GDS-MD in the said Post Office. However, the respondent No.3 offered appointment to the 4<sup>th</sup> respondent without considering the application of the applicant. Subsequently the applicant was relieved from the post of GDS-MD, Koorachundu Sub Post Office on 02.12.2011 when the 4<sup>th</sup> respondent joined the post. Since the case of the applicant for the post was not considered by the respondent No.3, even though he had work experience of more than 07 years, the applicant sought relief from this Tribunal.

3. In his Original Application the applicant further submits that he applied for the post of GDS-MD to the respondent No.3 well in time. But same was not considered. Further appointment offer was delivered to the respondent No.4 by hand which indicated that his claim for the post of GDS-MD was deliberately turned down. The applicant relied on the order passed by the Hon'ble High Court of Kerala in W.P.(C) No.29232/2009(S) dated 30.08.2010 wherein it had observed in respect of applicant therein that, *"there is also force in the contention of the petitioner that her long experience will give her an edge over others even in a regular selection procedure"*. Accordingly applicant seeks direction for considering his claim to the post of GDS-MD in the Koorachundu Post Office.

4. The respondents in their reply statement submit that applicant had worked as a leave substitute for Shri M.Gopalan who was the regular GDS-MD in Koorachundu Post Office. It is a regular practice in the Postal Department for GDS who work in the departmental posts like postmen and Group-D in availing Leave without Allowance (LWA). Shri Gopalan had availed of LWA on many occasions during the period from 06.09.2004 to 11.03.2011

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nominating the applicant as his leave substitute. The post of GDS-MD, Koorachundu fell vacant on 12.03.2011 due to the promotion of Shri Gopalan to the cadre of Group-D. As per the policy of the department, appointment on regular basis to a post that fell vacant could not be made without assessment of work-load afresh. In the circumstances action was initiated by the 3<sup>rd</sup> respondent to fill up the vacancy on a provisional basis by observing all the prescribed formalities. Accordingly Annexure-A-2 notification was issued and it was intimated to the Employment Exchange. In the meanwhile applicant was engaged to work in the post on a purely ad-hoc basis as part of stop-gap arrangement. In response to the notification, 14 applications were received. As the marks secured in the SSLC examination was the main criterion with regard to the selection, 06 candidates were short listed on the basis of marks secured by them in SSLC. They were called for verification of documents held on 03.11.2011 at the office of the 3<sup>rd</sup> respondent. Since the applicant was not a matriculate, he was not called for the verification of documents. Shri Sreejish P.K. who is 4<sup>th</sup> respondent was the most meritorious candidate selected. Accordingly 4<sup>th</sup> respondent was placed in charge of the post of GDS-MD, Koorachundu Post Office w.e.f. 02.02.2011 terminating the engagement of the applicant and appointment has been regularized after completing the assessment of work-load of the post.

5. The respondents further submitted that the applicant was engaged in the post of GDS-MD, Koorachundu only as a leave substitute as nominated by the regular GDS-MD. When the post fell vacant w.e.f. 12.03.2011 due to the promotion of the regular incumbent, the applicant was engaged to work in the post on a purely ad-hoc basis as a part of stop-gap arrangement till

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regular arrangement was made. The applicant cannot be appointed solely on the ground that he had worked in the post as a leave substitute on many occasions and also on a purely temporary basis as a part of stop-gap arrangement. As per the instructions governing recruitment of GDS, no weightage is to be given to a person who had worked as a leave substitute in a GDS post. The applicant was not even a matriculate. The most meritorious candidate was selected for appointment to that post. With reference to the W.P.(C) No.29232/2009 before the Hon'ble High Court of Kerala, he mentioned that though while disposing the said WP, the Hon'ble High Court observed that there was force in the contention of the petitioner that her long experience would give her an edge over others even in a regular selection procedure, the "court has also made it clear in categorical terms that it was not considering the issues as the same were to be considered at the time of regular selection". The Hon'ble High Court had further given freedom to the respondents to make regular appointment in accordance with Rules permitting the petitioner also to make an application raising her claim of experience. The judgment of the Hon'ble High Court does not apply in this case. Hence, they prayed to dismiss the OA with costs.

6. The applicant has filed a rejoinder in response to the contentions made by the respondents that applicant was appointed purely on ad-hoc basis as a part of stop gap arrangement and saying that prolonged officiating service for 6-½ cannot be equated to an appointment on stop-gap arrangement. Further the required minimum qualification for the post of GDS-MD was 8<sup>th</sup> standard. If matriculates are considered as preferential category against the basic qualification then experience put up by the applicant for more than 06

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years should have also been taken into consideration as an additional qualification for the post. The applicant also referred to a judgment passed by the Hon'ble High Court of Assam in W.P.(C) No.3538/2011 decided on 19.04.2012 which observed as under;

“12. Before parting with the case records, we place on records that since both the petitioners have rendered their services as GDS MD and thereby gained experience, in case of any future employment including provisional appointment, their candidatures may be considered taking note of the experience gathered by them”.

7. The respondents filed additional reply statement submitting that the applicant who was nominated by Shri M.Gopalan, regular Gramin Dak Sevak Mail Deliverer (GDS-MD), Koorachundu Post Office while he had availed Leave Without Allowance, worked as a leave substitute on many occasions during the period from 06.09.2004 to 11.03.2011. As per the rules applicable, during leave, every Gramin Dak Sevak should arrange for his work being carried on by a substitute. The applicant as such a substitute engaged by Shri M.Gopalan, who is permanent incumbent. The post of GDS-MD, Koorachundu Post Office became vacant on 12.03.2011 consequent on promotion of Shri M.Gopalan, who is regular incumbent of GDS-MD, Koorachundu Post Office. The applicant who works as leave substitute in the post of GDS-MD, Koorachundu was allowed to work on ad-hoc basis in the vacant post of GDS-MD, Koorachundu with occasional breaks till regular/provisional appointment is made. It is the practice in the postal department to make stop-gap arrangement, purely on ad-hoc basis, in a GDS post immediately after it become vacant till

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regular/provisional engagement is made so as to maintain the service uninterrupted. This stop gap arrangement is being made without observing normal procedure for selection of a candidate for regular/provisional engagement as Gramin Dak Sevan as prescribed in Gramin Dak Sevak (Engagement Rules) 2011. The judgment at Annexure-A-7 has in quite unequivocal terms declared that stop-gap engagement having been made de hors the procedure prescribed by the Rules can not be sustained. The Hon'ble High Court made it clear that if such an engagement is held as valid same would amount to upholding the backdoor and illegal appointments and dismissed the Writ Petition. It was only as a consolatory gesture that Hon'ble High Court suggested that the candidature of the petitioner might be considered for future employments. Though the prescribed minimum qualification for engagement to the post of Gramin Dak Sevak Mail Deliverer is 8<sup>th</sup> standard, the matriculates were given preference. The applicant is a non-matriculate and working experience as Gramin Dak Sevak is not a criterion for consideration for regular / provisional appointment as Gramin Dak Sevaks.

8. Heard the learned counsel for both the parties.

9. The learned counsel for the applicant reiterated the points highlighted in the Original Application as well or in the rejoinder and submits that the applicant had worked as Gramin Dak Sevak Mail Deliverer (GDSMD) for various period between 2004 to 2011 and therefore had acquired experience in the process. Therefore he ought to have been considered by the respondents, even though he was not a matriculate. Experience should have offset additional qualification or matriculate candidates. Therefore the respondents should have

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considered the case of the applicant in the light of observation made by the Hon'ble High Courts in different judgments which were already been highlighted in the Original Application and in the rejoinder.

10. The learned counsel for the respondents on the other hand submits that applicant was not engaged in the post of GDS-MD following a regular procedure but as a leave substitute as recommended by the regular incumbent post when he went on leave. He was engaged only when the regular incumbent was on leave and hence was not be engaged continuously. Moreover though he had applied ~~application~~ for the post based on the advertisement made by the respondent-authorities, his qualification was found to be inadequate since matriculate candidates were available and the best candidate was selected by following the procedure. Therefore contention of the applicant cannot be sustained. The Hon'ble High Court of Kerala while making observation also stated that they have not gone to the merit of the case and this aspect can be examined at the time of selection process. The Hon'ble High Court of Gauhati has also made observations while dismissing the Writ Petitions.

11. We have carefully considered the facts of the case and also submissions made by the parties. From the records it is evident that the applicant was only worked as a leave substitute during the period 06.09.2004 and 11.03.2011 when the regular incumbent went on leave. When the post of GDS-MD fell vacant on 11.03.2011 due to promotion of the regular incumbent, he was engaged by respondents to work as GDS-MD on ad-hoc basis as a stop-

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gap arrangement till the regular arrangement was made. Thereafter following the selection process for the post the regular person was appointed and he joined on 01.12.2011.

12. The GDS conducted Employment Rules provide that during leave, every ED Agents or GDS should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. It appears that when the regular incumbent in the said post office went on leave, he <sup>nominated</sup> engaged the applicant as his leave substitute. The applicant was never selected through a regular selection process. The notification inviting the application for the post of GDS-MD (dated 23.08.2011) specifies the educational qualification as 8<sup>th</sup> standard. However it also mentions that matriculates will be preferred. In this case the respondents have selected a matriculate person for the post considering the marks obtained by him in the matriculation examination.

13. Both in the Original Application and during the arguments the applicant tried to highlight and give an impression that he has been working in that post for almost 6-½ years. But the same is not borne out by the facts. The leave substitute can be engaged only during the period when a regular incumbent is on leave and based on his nomination. Therefore the period of engagement on leave substitute will be limited. Neither in the application nor in the hearing, the applicant submitted specific periods during he was engaged as a GDS-MD. Therefore it can be presumed that he was engaged as leave substitute only intermittently when the regular person went on leave. Moreover

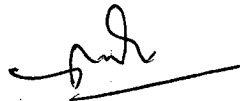
his engagement was not through a regular selection process but on being nominated by the regular incumbent. Only when the post fell vacant he was engaged by the authority on ad-hoc basis for nearly eight months i.e., from 12.03.2011 when the post was vacant and when the regular incumbent joined up to 02.12.2012. Therefore though the applicant worked as GDS-MD it would have been for a limited period and not for 6 - ½ years as he has been claimed.

14. The applicant has referred to the observations made by the Hon'ble High Court of Kerala and Hon'ble High Court of Gauwahati in two different judgments wherein they had observed that the experience gained by the applicants therein can be taken note of while considering their candidatures during the selection process. The respondents have submitted that the Hon'ble Courts did not considered the merits of the case but made certain observations. However, as has been observed by the Hon'ble High Courts in both the cases referred to earlier, the experience gained by a person is definitely of value and should be taken note of in a selection process. At the same time, the quantum of experience and the gap in merit between two candidates need to be kept in view while deciding the matter as there <sup>ISSUES</sup> ~~is such~~ <sup>^</sup> are quite relevant. Had all the candidates including the applicant had been matriculates, then the experience gained by the applicant would have been definitely given him an edge over others who had no experience. But in the instant case there is difference in the educational qualifications and the advertisement also specified that matriculates will be preferred. Further the applicant worked as leave substitute only intermittently and on ad-hoc basis only for 08 months. He cannot claim it as experience of 6-½ years. Therefore in this case his claim for consideration above a candidate with higher qualification does not hold ground.

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15. After carefully consideration of all the entire facts and circumstances of the case, we are of the view that the claim of the applicant for consideration for the post of GDS-MD in place of respondent No.4 cannot be accepted. Therefore we hold that the Original Application lacks merit and is therefore liable to be dismissed. However, it will open to the respondent authorities to take cognizance of his experience gained by the applicant as GDS-MD when he applies for similar post of GDS-MD in future.

16. Accordingly, Original Application is dismissed. No order as to costs.



(PRASANNA KUMAR PRADHAN)  
MEMBER (A)



(U.SARATHCHANDRAN)  
MEMBER (J)

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