

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 847 of 2010
Original Application No. 941 of 2010
Original Application No. 180/00275/2015

Thursday, this the 12th day of April, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

1. Original Application No. 847 of 2010 -

V.K. Anil Kumar, S/o. Kunjikirishna Pillai, aged 45 years,
 GDSMD Parandode (Provisional), residing at Uthrattathi,
 Valiya Kalingu, Parandode PO, Aryanadu, Thiruvananthapuram -
 695 542. **Applicant**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Communications, Department of Posts, New Delhi.
2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
3. Superintendent of Posts, Trivandrum South Division, Thiruvananthapuram. **Respondents**

[By Advocate : Mr. N. Anilkumar, Sr. PCGC (R)]

2. Original Application No. 941 of 2010 -

Sini T.R., W/o. Sajeev C.V., aged 37 years, GDSBPM,
 Pallithodu, Thuravoor, Cherthala, Alappuzha, residing at
 Mundakal Chira, Thalayazham PO, Vaikom,
 Pin – 686 607. **Applicant**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Communications, Department of Posts,

New Delhi.

2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram.
3. Superintendent of Posts, Trivandrum South Division, Alappuzha.
4. Surekha R., Surya Soumya, Karuvatta North, Alappuzha District. **Respondents**

[By Advocate : **Mr. N. Anilkumar, Sr. PCGC (R)**]

3. **Original Application No. 180/00275/2015 -**

Ushakumary C.M., aged 45 years, W/o. Prassannakumar, Chakkattu Cheruvil House, Punnaveli PO, Mallappally, Pathanamthitta District, Kerala, Pin – 689 589. **Applicant**

(By Advocate : **Mr. Unni K.K.**)

V e r s u s

1. Chief Post Master General, Kerala Circle, Office of Chief Postmaster General, Thiruvananthapuram – 695 033.
2. Superintendent of Posts, Thiruvalla Division, Thiruvalla 689 101.
3. Inspector of Posts, Mallappally Sub Division, Mallappally 689 585.
4. Postmaster, Keezhuvaipur Post Office, Keezhuvaipur 689 587.
5. Krishnadas K., Kottavathukkal House, Kallissery PO, Alapuzha District 689 124. **Respondents**

[By Advocate : **Mr. N. Anilkumar, Sr. PCGC ® (R1-4)**]

These applications having been heard on 20.03.2018, the Tribunal on 12.04.2018 delivered the following:

COMMON O R D E R

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

OAs Nos. 847 and 941 of 2010 were remanded by the High Court of

Kerala vide its judgment dated 9th August, 2017 in OP (CAT) Nos. 3488 and 3521 of 2011. Since the issue involved in the said two OAs are integrally connected with the issue, facts and circumstances in OA No. 180/275/2015, these three cases are being dealt with under this common order. The pleadings and record in OA No. 847 of 2010 are referred to in this common order for the sake of convenience.

2. Applicants are engaged by the respondent department as Gramin Dak Sevaks (for short, GDSs) under different nomenclatures like 'Substitute', 'Provisional', 'Outsider', etc., sometimes with written orders of appointment/engagement and sometimes without any official order of appointment/engagement. But their working in the post offices in the aforesaid capacities are reflected in the payment vouchers issued by the post offices concerned. Applicants in OA Nos. 847 and 947 of 2010 have approached this Tribunal apprehending that they may be retrenched and replaced by the candidates selected in response to the notification issued by the respondents and also by the persons engaged as 'substitutes' etc. with lesser length of service than the applicants. Applicants state that the insistence of three years continuous service in the DG P&T letter No. 43-4/77 Pen., dated 18.5.1979 and circular No. 19-34/99-ED&Trg., dated 30.12.1999 for giving preference in re-engagement of GDS is *ultra vires* the provisions in the Industrial Disputes Act, 1947 - regarding the order in which the employees are to be retrenched and the order in which they are to be re-inducted in service. The relief sought by the applicant in OA No. 847 of 2010 is as under:

- “i. To call for the records leading to D.G. P&T Letter No. 43-4/77-Pen., dated 18.5.1979 and circular no. 19-34/99-ED&Trg., dated 30.12.1999 and declare that they are ultra vires the Industrial Disputes Act and Articles 14 and 16 of the Constitution of India to the extent it prescribes a minimum of 3 years continuous service for granting preference in re-employment for Gramin Dak Sevak and to direct the respondents not to implement the said condition as against the applicant;
- ii. To direct the respondents to engage the applicant as Gramin Dak Sevak in preference to persons with lesser service as Gramin Dak Sevak in Trivandrum South Division;
- iii. grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- iv. Grant the costs of this Original Application.”

Similar relief is sought by the applicants in OA No. 941 of 2010 and OA No. 180/275/2015 and also *mutatis mutandis*.

3. Respondents resist the pleas of the applicants contending that applicants are misleading the Tribunal by portraying themselves as provisional employees while they are only 'Outsiders'/'Substitutes' engaged intermittently to work in various posts by way of stop gap arrangement till regular appointments are made to such posts. The respondents state the manner in which such people are engaged on stop gap basis, as follows:

“4.When a GDS post falls vacant action is immediately taken to re-assess the workload of the post to ascertain whether the post is justifiable to be filled up. Statistics are taken for this purpose and work load calculated. If found justifiable, a proposal is taken up with the O/s. Chief Postmaster General seeking approval for filling up. On receipt of approval, notification is issued inviting applications from the open market and employment exchange. All these procedures are time consuming and during this time, as the post cannot be kept vacant which would affect delivery of mail, outsiders like the applicant who have some experience in doing delivery work are engaged on stop gap basis to do the work so as to avoid disruption in delivery of mail.....

5.Normally provisional appointments are resorted to in the put-off vacancies of the regular incumbents pending inquiry. If after the inquiry proceedings, the original incumbent was found innocent and acquitted of the charges, he would have to be reinstated into service. Such discharged provisional appointees having not less than three years service, had the right to be given appointment in any GDS post in the respective Division. If there were no vacancy at that time, their names were to be included in the waiting list of GDS maintained in the Divisions and they were entitled to be appointed against any subsequently arising GDS posts in the Division.....”

4. According to the respondents as per the impugned letters of DG Posts, dated 18.5.1979 and 30.12.1999 the applicants do not possess three years continuous service. Respondents specifically points out that the aforesaid impugned letters issued by the DG Posts actually lays down the conditions/guidelines to be followed for conducting provisional appointment and since the applicants do not fulfill such conditions they cannot be considered for such provisional appointment. Referring to the observations made by the apex court in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.* - 2006 (4) SCC 1 respondents point out that the applicants are attempting to enter the Department through back door which is clearly impermissible and violative of the Constitutional scheme of public employment or appointment to any office under the State envisaged in Articles 14 & 16 of the Constitution of India. Respondents contend that applicants are trying to bring the provisions of Industrial Disputes Act, 1947 to reap undue benefits and that the provisions of Industrial Disputes Act, 1947 is applicable only to a workman whereas applicants do not belong to any particular category of workman and are only outsiders engaged on temporary basis. It is also contended by the respondents that after having accepted numerous postings on temporary basis without any protest till now, they are estopped from coming up with the contention and challenging the provisions of DG Posts letter dated 18.5.1979.

5. We have heard Shri M.R. Hariraj, learned counsel for the applicants in OA Nos. 847 and 941 of 2010, Mr. Unni K.K., learned counsel for the applicant in OA No. 180-275-2015 and Shri N. Anilkumar, Sr. PCGC ®,

learned counsel appearing for the respondents in all these cases. Perused the record.

6. Shri M.R. Hariraj brought his arguments to a sharp focus on the need for employing the provisions of Sections 25(f), 25(g) and 25(h) of the Industrial Disputes Act, 1947 when a provisional GDS is discharged from service. He argued that GDSs are indeed workman coming within the definition of the term under Section 2(s) of the Industrial Disputes Act, 1947 and that whenever they are retrenched the principle contained in Section 25(g) must be applied i.e. 'last come first go'. Shri Hariraj submitted that there are juniors with lesser length of provisional service than the applicant continuing as provisional Dak Sevaks and whenever the Department decides to discharge the GDSs like the applicants by reason of the filling up of the post by regular hands or on return of the regular incumbents, the principle 'last come first go' has to be followed. He submitted that 'last come first go' is a principle in concordance with natural justice and good conscience and is in tune with the rights guaranteed under Articles 14 & 16 of the Constitution of India. In the matter of re-employment Shri Hariraj argued that the instructions contained in the impugned letters dated 18.5.1979 and 30.12.1999 of the DG Posts which insists on a minimum of three years continuous service for according preference is not in congruity with the principles contained in Sections 25(f), 25(g) and 25(h) of the Industrial Disputes Act, 1947 and therefore, the aforementioned impugned administrative instructions cannot be permitted to override the statutory provisions. The thrust of Shri Hariraj's arguments was

based on the applicability of the aforesaid provisions of the Industrial Disputes Act in the instances when the provisional hands like the applicants are disengaged/re-engaged.

7. OA Nos. 847 of 210 and 941 of 2010 were disposed of by this Tribunal by a common order dated 5.8.2011 placing reliance of the decision of the High Court of Kerala in WP(C) No. 17727 of 2004 (which was filed against the order passed by this Tribunal in OA No. 146 of 2002). The judgment of High Court in WP(C) No. 17727 of 2004 relied on by this tribunal in the aforesaid common order was as under:

“17. In the said circumstances we direct that expeditious steps are to be taken so as to see that the benefit of the regularisation is granted to the petitioner, without delay. This regularisation should be deemed as to have become operative from 25.12.2000. It may not be possible for the petitioner however to claim seniority, as rights of others are involved. Therefore, for the purpose of seniority, date relevant will be date of order of the regularisation and such proceedings are to be issued within two months from today.

18. As regards the claim for bonus sufficient materials have not been placed before this Court. Because of the direction for regularizing him as above made, the petitioner will have the right to entitlements as might be admissible. It will be appropriate that such claims are dealt with expeditiously. The order of the Tribunal therefore will stand set aside. A Writ Petition is disposed of on the above terms.”

Relying on the above judgment of the High Court this Tribunal directed the respondents to engage the applicants in OA Nos. 847 of 210 and 941 of 2010 as GDS in available vacancies in preference to persons with lesser service as GDS subject to the outcome of the SLP filed against the aforequoted judgment of the High Court.

8. While setting aside the common order passed by this Tribunal on 5.8.2011 in OA Nos. 847 and 941 of 2010 the High Court in the judgment dated 9.11.2017 in OP (CAT) Nos. 3488 and 3521 of 2011 observed:

“8. The factual position and sequence of events therein are not similar to the factual position pleaded by the applicants in the OA. The reliefs sought for were entirely different from the relief sought for in the other case. This being the position, we are of the view that Ext. P4 [*aforequoted judgment dated 1.3.2005 in WP(C) No. 17227/2004*], as such, is not applicable to the case of the applicants and that the Tribunal fell in error, in simply making the same applicable and extending the benefit flowing from Ext.P4 to the applicants in the present OAs as well. At the same time, it is to be noted that the merit of the relief sought for was not considered and decided based on the pleadings raised by the parties on both sides.”

(Italicised words supplied)

9. As observed above, the pleadings of the respondents are to the effect that the applicants are only provisionally appointed persons under the different nomenclatures like 'Provisional'/'Outsider'/'Substitutes', etc. and hence they cannot lay any claim on the post they hold for the purpose of regularisation or even for re-engagement again as provisional hands unless the three year period specified in the impugned DG Posts letters are satisfied. The respondents point out that the attempt of the applicants is to gain entry through back door. To buttress their contentions the respondents had placed heavy reliance on the Constitution Bench decision of the apex court in *Umadevi* judgement (*supra*).

10. Although the applicants have challenged the instructions contained in DG Posts letters dated 18.5.1979 and 30.12.1999, no specific grounds have been stated for treating the same as illegal or unjustifiable. On the other hand the applicants put forth a comparison of the provisional GDSs with the workman retrenched / re-engaged (for the latter Sections 25(f) to 25(h) Industrial Disputes Act, 1947 is the regime applicable). The attempt of the learned counsel for the applicants was to establish that the applicants stand in the same footing as the retrenched workmen envisaged in the Industrial

Disputes Act, 1947. However, the circumstances under which provisional hands are engaged in the regular posts of GDS have been explained in detail by the respondents in their reply statement the extracts therefrom have been quoted above.

11. The attempt of the applicants was to bring to our attention to the two legal scenarios competing to gain pre-eminence in these OAs . The applicants who are persons engaged as 'temporary', 'outsider', 'ad hoc' or 'casual', etc. claim that as they have served the Department for a considerable length of time they are entitled to be treated as 'workman' under Section 2(s) Industrial Disputes Act, 1947 and hence the principle of 'last come first go' should be applied when they are disengaged. According to the applicants therefore the insistence of three years continuous service as provisional hand as a prerequisite for their re-engagement as stated in the impugned letters of the DG Posts is contrary to the provisions contained in Sections 25(f) to 25(h) of the Industrial Disputes Act, 1947. The respondent department on the other hand maintains the ED agents (presently, GDSs) are outside the regimen of regular employment. The manner in which such persons work in the department is by way of 'engagement'- the respondents argue. The respondents therefore contend that the applicants cannot be treated as 'workman' within the meaning of that term in the Industrial Disputes Act, 1947.

12. The working of the Postal Department unlike other Government Departments is based on the service of employees who are experienced with

the knowledge of the nook and corner of the locality for delivering postal articles and money orders to the addresses correctly. In such circumstances when the regular sanctioned posts become vacant either on account of superannuation, long leave of the regular employee or suspension of the regular employee, stop gap arrangements become highly necessary to ensure that there is no stand still of postal services. In our view, considering the nature and functioning of the postal operations, such arrangements cannot be treated as conferring a right to the persons who were given engagement as stop gap/temporary/outsider employees. The impugned communications which insist on 3 years regular service for re-engagement has to be treated only as a welfare measure to the persons who have been engaged for quite long time so that simultaneously their experience can be utilized when a further occasion for provisional engagement arises. But if a person is engaged only for a short duration or only during short intervals, the experience gained by such persons will be less when compared to a person with three years experience as a provisional hand. In the above circumstances we feel that such a requirement in the impugned letters of the DG Posts cannot be treated as arbitrary or unreasonable.

13. The requirement of three years continuous service as provisional hands in the impugned DG Posts letters cannot be treated as violative or is in conflict with the provisions contained in Sections 25(f) to 25(h) because Department of Posts is considered as a part of the governmental functions. Any employment under the Department of Posts is a public employment. It is worth noticing that the apex court held in *Superintendent of Post Offices*,

etc. v. P.K. Rajamma & Ors. - (1997) 3 SCC 94 that GDSs are not Government servants but are only to be treated as holders of regular posts. This necessarily means that though they are not Government servants they are **employed / engaged under the State**. Article 16 of the Constitution of India envisages equality of opportunity in the matters of employment not only in relation to appointment to any office under the State but also **to any employment under the State**. In the above circumstances the argument that they are workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 is highly specious .

14. The apex court in *Umadevi* Judgement (*supra*) has laid down in emphatic terms that no public employment or employment envisaged under Article 16 of the Constitution can be overridden by gaining entry to such posts/employment through back door.

15. In the instant cases there is nothing to indicate that the engagement of applicants as provisional hands was after calling for candidates from the employment exchange or through a public advertisement. We note that the practice prevailing in the Postal Department engaging substitutes is only by way of a private arrangement by the regular GDSs with the consent of the departmental officials. Such substitutes also are paid out of the Government money for the services they have rendered. Such arrangements are permitted sheerly on account of the realities in the functioning of the Postal Department because only the persons having knowledge of the postal beats in the locality of the post office can effectively function as provisional

employees/substitutes. However, if all such provisional persons are given regular appointments or are given the right for re-engagement, we are afraid, it would offend Articles 14 and 16 of the Constitution of India. Therefore, we are of the considered view that the OAs have no merit and hence they are only to be dismissed.

16. Accordingly, the OAs are dismissed. The interim orders passed in the above cases shall stand vacated. Parties shall suffer their own costs.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”

Original Application No. 847 of 2010

APPLICANTS' ANNEXURES

Annexure A1(A)- A true copy of appointment order dated 17.9.1993.

Annexure A1(B)- A true copy of appointment order dated 18.1.1994.

Annexure A1(C)- A true copy of appointment order dated 23.8.1994.

Annexure A1(D)- A true copy of appointment order dated 30.10.1995.

Annexure A1(E)- A true copy of appointment order dated 17.5.2000.

Annexure A1(F)- A true copy of the charge report dated 3.11.2005.

Annexure A1(G)- A true copy of the acquittance roll for June, 2010

Annexure A2 - A true copy of the notification No. ASP(Ndg.)/DS/APPT/2010-11 dated 7.8.2010 issued for the 3rd respondent.

RESPONDENTS' ANNEXURES

Annexure R1- A specimen of appointment of orders issued to provisional appointees as per letter No. 43-4/77 dated 18.5.1979 Annexure A DG Post.

Annexure R2- A specimen of appointment of orders issued to provisional appointment as per letter No. 43-4/77 Pen dated 18.5.1979 Annexure B DG Post.

Original Application No. 941 of 2010

APPLICANTS' ANNEXURES

Annexure A1(A)- A true copy of charge report dated 29.8.2005.

Annexure A1(B)- A true copy of charge report dated 15.3.2006.

Annexure A1(C)- A true copy of charge report dated 1.2.2008.

Annexure A1(D)- A true copy of charge report dated 1.5.2008.

Annexure A1(E)- A true copy of the letter No. GDS/Leave/KKM dated 18.7.2008.

Annexure A1(F)- A true copy of the charge report dated 5.2.2009.

Annexure A1(G)-A true copy of the memo No. GDSS)/Kollothamangalam, dated nil.

Annexure A1(H)-A true copy of the charge report dated 8.2.2010.

Annexure A2 - A true copy of the order No. B3/Pallithodu dated 29.10.2010 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

Nil

Original Application No. 180/00275/2015

APPLICANTS' ANNEXURES

Annexure A-1- True copy of the notice No. MSD/GDS/Enggmt/Keezhuvaipur SO dated 26.11.2014.

Annexure A-2- True copy of the application dated 13.12.2014 of the applicant to the post of GDS MP.

Annexure A-3- True copy of the order dated 22.12.2014 in OA No. 180/1118/2014 of this Hon'ble Tribunal.

Annexure A-4- True copy of the covering letter with postal receipts dated 14.1.2015.

Annexure A-5- True copies of the acknowledgment cards.

Annexure A-6- True copy of the application submitted by the applicant dated 10.1.2015.

Annexure A-7- True copy of the reply dated 25.2.2015.

Annexure A-8- True copy of the appeal with postal receipt.

Annexure A-9- True copy of the letter dated nil issued to Krishnadas K.

Annexure A-10- True copy of the attendance register for the period of January 2013 to December 2014, obtained under Right to Information Act.

RESPONDENTS' ANNEXURES

Annexure R1- True copy of the acquittance roll filed collectively.

Annexure R1(a)- True copy of the letter No. EST/13/RTI/05/2015 dated

17.4.2015.

Annexure R1(b)- True copy of the order dated 30.11.2011 in OA No. 394 of 2011 of this Hon'ble Tribunal.

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