

OA.No.170/00761/2015/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00761/2015

DATED THIS THE 08th DAY OF FEBRUARY, 2018

HON'BLE SHRI K.B. SURESH, MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

T.Hariprasad
Age:42 years
S/o. Late Thimmaiah
Ex.Substitute GDS MD
Nagarabavi P.O.,
Bangalore-560 072.

Residing at
1154-4th 'A' Cross
M.C.Layout
Govindarajanagar
Bangalore-560 040.

... Applicant

(By Advocate Shri P.Kamalesan)

Vs.

1. Senior Superintendent of Post Offices
Bangalore West Division
Bangalore-560 086.
2. A.S.P.II
Bangalore West Sub-Division
Bangalore-560 086.
3. Chief Post Master General
Karnataka Circle
Bangalore-560 001.
4. Sub-Post Master
Nagarabhavi P.O.
Bangalore-560 072.
5. Union of India
Represented by Secretary
Department of Posts
Dak Bhavan
New Delhi-110 001. ... Respondents

(By Advocate Shri M.Vasudeva Rao, Sr.PC for CG)
ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

The applicant has filed the present OA seeking the following relief:

- i. Direct the respondents to consider for engagement of the applicant in any of the vacant posts/ or leave vacancies at Bangalore West Postal Division.*
 - ii. Direct the respondents to consider the applicant for any GDS vacant post at Bangalore West postal Division, as per the instruction of DG post vide letter No.17-141/88-ED/Trg dtd:6.6.1988 vide Annexure-A7.*
2. According to the applicant, he was engaged as GDS substitute/outsider at Nagarbhavi Post Office on 4.1.1994 and continued up to 20.1.2015. Thereafter he was orally terminated from engagement from 21.1.2015 onwards. He has referred to the charge reports dtd.4.1.94, 15.6.95 and some of the dates till 1998 having assumed charge as GDS packer at Nagarbhavi PO (Annexure-A1). He submits that he sought information from the respondents through RTI regarding his duty particulars and they provided insufficient information which indicates continuous engagement of the applicant from 4.10.2010 to 31.1.2015(Annexure-A3). Even after he preferred an appeal for providing information under RTI, he was not provided with all the information. The applicant submits that he has been working for almost 21 years as GDS either in vacant post or in leave vacancy and hence he should be considered in terms of DG Posts letter dtd.6.6.1988(Annexure-A7). His representation for considering him for appointment as GDS in any of the vacant post in Bangalore West Division(Annexure-A8) went unanswered. Hence, the applicant has filed the present OA seeking the relief as mentioned above.
3. The respondents have filed their reply statement in which they have referred to Rule-7 of the GDS (Conduct & Engagement) Rules 2011 which

OA.No.170/00761/2015/CAT/Bangalore Bench says that whenever a regular GDS goes on leave he should arrange for his work being carried out by a substitute. The substitute will work in place of a regular GDS during the leave vacancy on sole risk and responsibility of the respective regular GDS. Such substitutes are not engaged following the recruitment rules framed under Article 309 of the Constitution of India and no formal appointment order is issued to the substitute. The substitute works purely on temporary basis as outsiders and no service records are kept in respect of substitutes. They also do not come under the purview of the Casual Labourers(Grant of Temporary Status & Regularization) Scheme as per the instructions contained in the Postal Directorate letter dtd.12.4.1991 and there is no provision to regularize the engagement of the substitutes or to provide an engagement in the department as a GDS on regular basis on the basis of his service rendered as substitutes in the Department. More over as per para (3) (4) under Rule 7 of GDS (Conduct & Engagement) Rules 2011, the substitute may be discharged from engagement by the appointing authority at any time without assigning any reasons.

4. According to the respondents, the applicant was working as substitute in the leave vacancy of the regular GDS MDs Shri Murugan and Shri M.D.Harish at Nagarabhavi Sub Post Office. He was only engaged as their substitute by the respective regular GDS on leave arrangement on sole risk and responsibility of the respective regular GDS. He was not engaged as duly following any recruitment rules and no formal appointment was issued. Therefore, giving preference to the applicant for engagement as GDS does not arise. Moreover the contention of the applicant that he was initially engaged as GDS Packer w.e.f. 4.1.1994 cannot be accepted. From copies of the charge reports submitted by the

applicant at Annexure-A1, it was noted that he was engaged as substitute by the regular GDS on some occasions only and no records are produced to show that he was continuously engaged as substitute from 4.1.1994 to 21.1.2015 against any clear vacant post.

5. The respondents further submit that the point raised by the applicant that in terms of the information furnished under RTI, the applicant was continuously engaged from 4.10.2010 to 31.1.2015 is incorrect. In respect of RTI, the details of the period where the applicant was engaged as substitute as outsider in the place of regular GDS MD- Nagarbhavi SO, was furnished and it was not explained that the applicant was continuously engaged. Therefore, the respondents submitted that the contention made by the applicant regarding continuous engagement is incorrect and he is not entitled to any relief as he was engaged only as substitute/outsider in place of different regular GDS for short period on leave vacancy. They have also referred to an order of the Hon'ble Supreme Court in case of Debika Guha vs. UOI & Ors. [(2000)9SCC 416] wherein it is 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'.

6. The respondents have also referred to the order of Hon'ble Apex Court in Uma Devi's case saying that regularization of services of the persons who have not been appointed following the due procedure cannot be considered. They have also referred to another judgment of the Hon'ble Apex Court in case of Postmaster General, Kolkata & Ors. vs. Tutu Das

OA.No.170/00761/2015/CAT/Bangalore Bench where similar claim of one substitute worked for 7 years in a GDS vacancy without having undergone the process of selection was rejected.

7. The respondents further submitted that the Hon'ble High Court of Karnataka in WP.No.24557/2013(S-CAT) in its order dtd.18.11.2013(Annexure-R1) had rejected the case of a person who was admittedly taken on duty on local appointment/stop-gap arrangement. In another WP.No.76348/2013 filed by Shri Suresh Bhovi, the Hon'ble High Court of Karnataka while dismissing the WP vide its order dtd.28.10.2014(Annexure-R2) held that the petitioner has no right to seek continuation of service in the said department in the light of the rules governing the appointment of substitute employees as Extra Departmental Agent. Further Writ Appeal filed against the order in WP.No.76348/2013 is also dismissed(Annexure-R3).
8. The applicant has filed a rejoinder in which he has submitted that the DG Posts vide Memo dtd.27.10.2002(Annexure-RJ1) issued instructions for regularizing the employment of substitutes provided by regular GDS during their period of leave/absence. Para-12 of the said OM mentioned that the extent provisions provided for a provisional appointee to be placed on a waiting list for regular appointment on completion of three years of continuous employment. Therefore, the applicant is eligible to be kept in waiting list for absorption against a regular vacancy. The applicant further mentioned that the reference made by the respondents to the order of the Hon'ble High Court of Karnataka in WP.No.24557/2013 would not be applicable in this case as the applicant in that case has worked for only 3 years from 22.9.2008 to 2.11.2011. Similarly the order of the Hon'ble High Court of Karnataka in WP.No.76348/2013 and Writ Appeal

No.100400/2015 would not be applicable as the applicant therein had worked only for 6 years. He further mentioned that Hon'ble High Court of Karnataka in its order dtd.13.11.2013 in Writ Appeal No.45/2013 had held that since the employees were working for more than 20 years, they are entitled for regularization. Therefore, since the applicant has also worked for more than 21 years, he is entitled to the relief as sought by him.

9. The respondents have filed an additional reply in which they again referred to Rule-7 of the GDS (Conduct & Engagement) Rules 2011 and stated that the applicant who was engaged as substitute by the regular GDS on leave arrangement has no legal right as far as regularization in the department is concerned. Referring to the DG OM dtd.27.10.2002 referred to by the applicant in the rejoinder, they mentioned that the regularization arises only in case of provisional engagements. In this case, the applicant worked in place of a regular GDS only in leave vacancy and was not appointed on provisional basis. Referring to the order of the Hon'ble High Court of Karnataka in Writ Appeal No.45/2013 which has been referred to by the applicant, they mentioned that the case of the applicant is not the same. The applicant was provided as substitute in place of regular GDS at different spell and was not appointed duly following recruitment rules of GDS (Conduct & Engagement) Rules 2011.

10. We have heard the Learned Counsel for both the parties. The Ld.Counsel for the applicant while emphasizing the points highlighted in OA as well as in the rejoinder submitted that the applicant has been working from 1994 onwards till 2015. Though he did not have any documents of his engagement during the period between 1998 and 2010, the information

OA.No.170/00761/2015/CAT/Bangalore Bench provided by the respondents from 4.10.2010 to 31.1.2015 and also copy of attendance sheets given in the OA indicates that the applicant has worked almost on continuous basis during this period. He also mentioned that in accordance with DG Post letter of 1988, the casual labourer as part time or full time may be given preference in GDS recruitment, if they put minimum one year of service. Therefore, having worked for nearly 21 years, the applicant deserves to be engaged as GDS on regular basis. He also referred to an order of Hon'ble Apex Court which says that termination of an employee through unfair means is illegal and the oral termination of service by the respondents is also not proper. Therefore, he sought direction on the respondents to engage the applicant as regular GDS.

11. The Ld.Counsel for the respondents, on the other hand, stated that the applicant was not appointed in a provisional basis or through regular selection process. He was simply engaged as substitute in leave vacancy provided by the regular GDS MD when they went on leave and during their leave period. The GDS (Conduct & Engagement) Rules 2011 clearly stipulate guidelines for allowing substitutes in place of regular GDS as well as engagement of the persons on provisional basis. Since the applicant was not engaged on provisional basis or through regular process of employment but simply as leave substitute, he cannot claim any legal right as far as regularization in the department is concerned. The DG instructions regarding keeping the persons in the waiting list are applicable to those who are appointed on provisional basis and continued for more than three years. Hence the same is not applicable to the applicant who was engaged only as leave substitute in place of regular GDS at sole risk and responsibility of respective regular GDS. Hence, the

applicant is not entitled to any relief.

12. From the records and submissions made by either side, it is clearly evident that the applicant was engaged as leave substitute and had not undergone any regular selection process and no provisional appointment order was also issued in his favour. As per the documents submitted by the applicant himself, there were some charge reports assumed on different dates between 1994 to 1998. The said charge memo only indicates temporary engagement against leave of regular GDS and there is no provisional appointment through a selection process. From the documents obtained by the applicant through RTI, there is no doubt that he was engaged from Oct, 2010 to 31.1.2015 against the leave vacancy of Shri Murugan and Shri M.D.Harish at Nagarabhavi Sub Post Office and the engagement is almost on a continuous basis though with some breaks. The applicant has made a reference to DG Posts instructions dtd.27.10.2002 regarding regularizing the employment of substitutes provided by regular GDS during their periods of leave/absence. The said instructions mention that it is necessary for the appointing authority to ensure that substitute is not allowed to work indefinitely, if the absence from duty of the regular GDS is likely to last indefinitely, the appointing authority should take immediate steps to make appointment and the person so appointed need not necessarily be the substitute. The said OM also indicates various instructions before issuing substitute engagement and stipulated that no substitute arrangement shall continue beyond one year. Hence the engagement of the applicant for more than a year should have been avoided by the respondents. However, the said OM does not stipulate any right for the substitute workers. The stipulation regarding placement in a waiting list for future engagement in regular vacancy

OA.No.170/00761/2015/CAT/Bangalore Bench applies for only provisional appointees since the provisional appointment is made following all the formalities prescribed for regular appointment. It is needless to say that in the case of the applicant, no selection process has been followed and he was allowed to work as substitute by regular GDS and hence it cannot be construed as provisional appointment or made equivalent to same.

13. Several cases have been cited by both sides. Order dtd.18.11.2013 passed by the Hon'ble High Court of Karnataka in WP.No.24557/2013(S-CAT) pertains to a case of similar nature and is quite relevant to this case. The petitioner therein was also engaged on a stop-gap arrangement and continued continuously for more than 3 years though there is a gap of 3 to 8 days in between various engagement periods. The Hon'ble High Court in its order referred in detail to the provision 6 of the GDS (Conduct & Engagement) Rules, 2011 pointing the guidelines for regulating substitute/provisional arrangements made in place of regular Gramin Dak Sevaks and Rule-17 pertaining to provisional appointment of ED Agents and observed vide para-7 of its order as follows:

7. The method of recruitment on regular basis is also prescribed under the Rules. The minimum and maximum age limit is prescribed apart from educational qualifications for being appointed on regular basis. Interviews will be conducted to find out the suitability of the candidate for the post of GDSMD.

From the aforementioned Rules, it is amply clear that even for making provisional appointment the candidate has to undergo the process of regular appointment. The list of provisional appointees would be prepared by the petitioners for being appointed provisionally on subsequent dates. Such list will be prepared after following the due process laid down for the appointment on regular basis. Thus, it is clear that a candidate who is appointed on provisional basis also will have to undergo test prescribed for regular appointment. On the other hand, for availing the services of a candidate on stop-gap arrangement, the Department need not have to post the candidate to undergo process of regular appointment. Aforementioned Rules clearly reveal that on no circumstance, should provisional appointment be made without following the formality which is prescribed for regular appointment. Since whole process of such selection will take about 60 to 90 days, stop-gap arrangement may preferably made at the local level by way of interim arrangement, through combination of duties or by allowing the GDS from a

neighboring office to function. Under no circumstances, such local appointment should exceed 90 days. Due to some unavoidable reasons, if the local appointment needs to be continued beyond 90 days, approval of the next higher authority is to be taken on one time basis for the reasons to be recorded in writing. Thus, it is clear that a stop-gap arrangement is nothing, but a local appointment for delivering mails on day-today basis till provisional or regular appointment is made. The stop-gap appointee has no right to claim regular appointment under the Rules.

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 no 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. Accordingly, the following order is made:-

The impugned order dated 13.2.2013 passed in OA.No.499/2011 is quashed.

Writ petition is allowed accordingly.

14. In another judgment of Hon'ble High Court of Karnataka in WP.No.76348/2013 and Writ Appeal No.100400/2015, the employee(respondent in WP.No.76348/2013) was engaged as substitute for nearly 6 years period. On his termination, he has approached the Central Industrial Tribunal-cum-Labour Court who rejected the case. The Single Bench of the High Court has also referring to the GDS (Conduct & Employment) Rules 2001 upheld the order of the Labour Court saying that the applicant therein had no right to seek continuation of service in view of the said rules. The Hon'ble Division Bench in its order dtd.1.12.2015 in WP.No.100400/2015 vide para-6 held as follows:

6. It is not in dispute that as per the general instructions issued by the Director General of Posts, every Gramin Dak Sevak is required to make alternative arrangement whenever he would apply leave for his work through a substitute person duly approved by the authority competent to sanction leave to a Gramin Dak Sevak. In the backdrop of these directions which are in vogue, it leads us to arrive at an irresistible inference that the appellant was indeed a candidate nominated to work as a substituted Gramin Dak Sevak in the absence of regular Gramin Dak Sevaks. At any rate, he did not hold any permanent post nor had any claim or right against any post. Under such circumstances, no exception can be taken to the judgment and award passed by the Labour Court as also the order of the learned Single Judge. In result, this appeal fails and accordingly stands dismissed. No costs.

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15. It is clear that the applicant though worked for certain period with the respondents as GDS was never selected through a regular selection process and no provisional appointment order was issued in his favour. He only worked as leave substitute and hence cannot be termed as provisional appointee. Keeping in view the relevant provisions pertaining to substitute workers and in the light of the observation of the Hon'ble High Court Karnataka in WP.No. 76348/2013 as well as Writ Appeal No.100400/2015 as mentioned in the earlier paras, we are clearly of the view that the applicant cannot claim any right for engagement as GDS worker only because of his working in the respective organization as substitute for certain period.

16. Therefore on detail consideration of the facts and circumstances of the case, we are of the view that the contention made by the applicant does not merit any consideration and hence the OA being devoid of any merit stands dismissed. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

/ps/

(DR. K.B. SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.170/00761/2015

Annexure-A1: Assumed and relieved charge report as ED Packer, dtd: 4.1.94, 15.6.95, 26.12.96, 13.1.97, 27.11.97, 13.1.98

Annexure-A2: Application under RTI Act dtd:25.2.15

Annexure-A3: Information received under RTI Act dtd:6.3.15

Annexure-A4: Appeal to Director of Postal Services dtd:1.4.15 against insufficient information furnished under RTI Act

Annexure-A5: Letter received from Appellate Authority under RTI Act dtd:11.5.15

Annexure-A6: Particulars regarding duty performed, copy of attendance register from Oct.2010 to Jan.2010 furnished by SSPOS, BG West Dn.
Dtd:14/15.5.2015

Annexure-A7: Copy of DG(P) Letter NO.17-141/88 ED Trg. dtd:6.6.1988

Annexure-A8: Copy of representation dtd:27.1.15.

Annexures with reply statement:

Annexure-R1: Copy of the order dated 18.11.2013 in WP.No.24557/2013(S-CAT) of

High Court of Karnataka

Annexure-R2: Copy of the order dtd.28.10.2014 in WP.No.76348/2013 of High Court of Karnataka

Annexure-R3: Copy of the order dtd.1.12.2015 in Writ Appeal No.100400/2015 of High Court of Karnataka

Annexures with rejoinder:

Annexure-RJ1: Copy of DG(P) Letter No.17-115/2001 GDS dtd:27.10.2002

Annexure-RJ2: Copy of DG(P) Letter No.05-24/88 SPBI dtd:17.5.88

Annexure-RJ3: Copy of Hon'ble High Court of Punjab and Haryana order dtd:8.11.2011 in RSA No.1373/88

Annexure-RJ4: Copy of Hon'ble High Court of Karnataka order dtd:13.11.2013, in Writ Appeal No.45/2013 and others

Annexures with additional reply statement:

-NIL-
