

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00959/2016

DATED THIS THE 28TH DAY OF JULY, 2017HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

Sri.Gurumallesha,
Age: 27 years,
S/o late Shivananda,
Working as MTS,
Channapatna HQ-571501,
Residing at:
Hunchagalli Village,
Kodihalli Hobli,
Kanakapura Taluk-562117. ... Applicant

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India,
Represented by Secretary,
Department of Post,
Dak Bhavan,
New Delhi-110 001.

2. Chief Post Master General,
Karnataka Circle,
Bangalore-560001.

3. Superintendent of Post Offices,
Channapatna Division,
Channapatna-571501.

... Respondents

(By Shri M. Rajakumar, Senior Central Government Counsel)

ORDER (ORAL)DR. K.B. SURESH, MEMBER (J):

Heard. The matter is in a very small compass. The applicant was appointed as a provisional GDS on 25.03.2009 following the disciplinary action against the then incumbent. He continued in that position till 2015. The Rule 12 GDS (Conduct and Engagement) is quoted below:

"12. The extant provisions provide for a provisional appointee to be placed on a waiting list for being considered for a regular appointment after he/she has completed three years of continuous employment. To avoid prolongation of such provisional appointments, approval of the next higher authority should be taken in respect of all provisional appointments exceeding 180 and where the period exceeds one year, express approval of the Head of the Region/Circle, as the case may be, would be necessary. Where the regular incumbent is not reinstated, immediate action must be taken to regularize the regularly selected provisional appointee against the said post without resorting to fresh recruitment."

2. Therefore when it was found that the original incumbent was dismissed from service, the applicant ought to have been regularized in service with effect from 25.03.2009 which is the original date of engagement.

3. In 2015, the applicant had applied for a Limited Departmental Competitive Examination or being selected as a Postman and came out first in the list but somehow the respondents internally felt that applicant had not completed regular service by the time he had written the examination and did not give him that employment and had given it to some other as well. The stand taken by the respondents is totally wrong. Therefore the rules position vide G.S.R 511(E) dated 28.06.2012 states as follows:

"2(ii)(B) For clauses (c) and (d), the following clause shall be substituted, namely:-

"(b) 50% by direct recruitment on the basis of Competitive Examination Limited to Gramin Dak Sevaks of the recruiting Division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy(ies) belong, failing which from amongst Gramin Dak Sevaks of the neighbouring Division/Unit on the basis of the said Examination, failing which by direct recruitment from open market.*

**Gramin Dak Sevaks are holders of Civil posts but they are outside the regular Civil Service due to which their appointment will be by direct recruitment".*

It only says that the concerned person should have worked as GDS for 5 years. There is no mention of any regular service as such. Nothing can be assumed in a qualificatory bar. What is stated on the face of it can only be taken. Therefore on these twin grounds applicant is eligible for his appointment. If the respondents have wrongly appointed somebody that is the look out of the respondents and not of the applicant. Therefore there will be a mandate to the respondents to grant the benefit of appointment to the applicant from the date on which the substitute was appointed with all due benefits. This shall be done within the next two months.

4. OA is allowed. No order as to costs.

(P. K. PRADHAN)
MEMBER (A)

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