

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00350/2018

DATED THIS THE 26th DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

V.C.Loganathan
S/o V.N.Chandrashekaran
Aged about 38 years
R/a No.03, 'Sri Venkateshwara Nilayam'
4th Main, 6th Cross
Evergreen Street
Udayanagar, A.Narayanapura
Bangalore-560 016.

....Applicant

(By Advocate Sri B.S.Venkatesh Kumar)

Vs.

1. Union of India represented by
Secretary to Government
Department of Posts
Ministry of Communications &
Information Technology
Dak Bhavan
Parliament Street
New Delhi-110 001.
2. The Postmaster General
South Karnataka Region
GPO Building
Bangalore-560 001.
3. The Director of Postal Services
Palace Road
Bangalore-560 001.
4. Senior Supdt. of Post Offices
Bangalore East Division
No.14, Museum Road
Bangalore-560 001.
5. Sub-Post Master HSG
Museum Road Post Office

No.14, Museum Road
Bangalore-560 001.

6. Vijayakumar
Father's name not known
Major
Working as Gramin Dak Sevak
Museum Road Post Office
No.14, Museum Road
Bangalore-560 001.Respondents

(By Advocate Sri Sayed S.Kazi for R1 to R5)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as part time GDS Mail Packer in Ulsoor Bazaar Post Office on 12.12.2005 as a substitute in place of one Shri Ravi Kumar who was sent to officiate as Postman of Vivek Nagar Post Office. However, no written order appointing him was issued to him. But the attendance register showing his name and signature in token of having attended to duties for the period from 12.12.2005 to 30.11.2006 is produced at Annexure-A1. He continued to work in the said post till 7.2.2008 on which date, the Post Master of Ulsoor Bazaar Post Office orally directed him to report for duty in the 5th respondent's office and to work as a substitute in place of one Shri Anil Kumar who was promoted as Postman Group D and accordingly the applicant joined the 5th respondent's office and had been working up to 14.2.2018 but no written order was issued for the same. However, he was able to secure the attendance register extract for the period from February 2008 to September 2008(Annexure-A2). He also submitted two absentee statement of Museum Road PO for the months of November 2009 and January 2010 which clearly shows that he has officiated in the place of aforesaid Anil Kumar from 1.11.2009 to 21.11.2009 and from 12.1.2010 to 31.1.2010. In fact he has continuously worked in the place of

Anil Kumar from 8.2.2008 to 14.2.2018. He has produced the Attendance register extracts of Museum Road PO for the period from 1.1.2014 to 3.9.2017(Annexure-A4 series), absentee statement from Feb 2017 to Jan 2018(Annexure-A5 series), salary paid slips for some months in 2017 and January 2018(Annexure-A6 series) and letter dtd.5.9.2012 of the Chief Post Master, GPO, Bangalore(Annexure-A7) in support of his claim.

2. The applicant submits that he was working as Gramin Dak Sevak from 12.12.2005 to 14.2.2018 i.e. for more than 12 years continuously. But all of a sudden, the 5th respondent orally directed the applicant not to attend the office from 15.2.2018 and subsequently when the applicant himself presented on 15.2.2018 to report for work, he was not permitted to attend office. On enquiry from the other colleagues, it came to know that the 6th respondent has been taken as a substitute in place of the applicant and therefore, he was prevented from attending to duties. From the above facts, it is clear that the respondents have removed the applicant from GDS service not to accommodate a person who has been recruited by regular recruitment process but only as a substitute. This is impermissible in law. The Hon'ble Apex Court, the High Courts and the Tribunals in a catena of judgments held that a substitute cannot be replaced by another substitute and such substitute can be replaced only by a person who is selected on regular employment. He was not issued with either appointment order, transfer order or termination order. This is violative of service rules. The respondent cannot adopt the hire and fire policy at their whims and fancies. In the year 2005 when he was initially directed to report for duties he was aged 25 years and worked till February 2018 after putting in more than 12 years of substitute service and now at the age of 38 years he has been deprived of his

right to earn his livelihood. It is impossible for him to get any job as he has crossed the age limit for the same. He is married and has a child and in addition he has the social responsibility of looking after his three sisters one of whom is a physically challenged person. He solely depended on the salary he was drawing and the action of the respondents depriving him of his sole bread winning avenue is arbitrary, unjust and unsustainable. In the circumstances, he approached the office of Labour Commissioner for taking him back to duty but by letter dtd.3.4.2018(Annexure-A8), he has been informed that he should approach the Tribunal for adjudication of his dispute. Accordingly, he filed the present OA seeking the following relief:

- a. Call for records of the case from the respondents and on perusal;*
- b. Issue a writ of mandamus directing the respondents to immediately take back the applicant into service and allow him to work in the place where he was working before his oral removal order.*
- c. Issue a writ of mandamus directing the respondents to regularize the services of the applicant since he has already worked for more than 12 years and extend all consequential benefits.*
- d. Grant such other relief/s as this Hon'ble Tribunal deems fit to grant to the applicant in the circumstances of the case including an order as to costs of this litigation in the interest of justice.*

3. On the other hand, the respondents have submitted in their reply statement that the applicant is neither engaged/appointed by the department and no orders have been issued by any authority to that effect. He only worked as leave substitute provided by one Smt.Vasantha Kumari, GDS Mail Packer, Museum Road Post Office in her place when she applied for leave without allowances and officiated in the departmental vacancy like Postman/MTS under her own responsibility and hence paid for the period for which the applicant had worked in her place as provided under Rule-7 of GDS(Conduct and Engagement) Rules

2011 and the substitute cannot claim for any service benefit as he is only leave substitute provided by the regular GDS on her own responsibility. As per Rule-7 of GDS(C&E) Rules, 2011, it is the responsibility of the regular GDS to provide the suitable substitute/outsider in their place on their own responsibility and the department has no role in this regard. Further, in the proforma of leave application prescribed for GDS, it is enjoined that regular GDS has to take responsibility of the substitute. Besides, in the leave sanction orders, it is specifically enshrined that the substitute may be discharged by the competent authority at any time without assigning any reason. While the applicant was working as above, the GDS has changed her substitute and the department has nothing to do with the action of the regular GDS. Hence, the question of discharging the applicant by the respondents does not arise as he was not engaged by the department in the capacity of GDS as per the engagement rules/instructions.

4. The respondents submit that when one Sri Ravi Kumar, GDS Mail Packer engaged at Ulsoor Bazaar PO had applied for leave without allowance to officiate as Postman providing the applicant as his substitute under his own responsibilities as per provision of Rule 7 of GDS(C&E) Rule, the applicant has been paid the wages for days he had worked. Since the applicant was not engaged as per the rules/instructions by the department after following normal recruitment rules, there is no question of giving any written order of engagement/appointment. This leave arrangement got terminated on rejoining back of Sri Ravi Kumar, GDSMP. Hence, the work performed by applicant as leave substitute does not fall under the definition of duty. Likewise, when Sri Anil Kumar who was a regular GDS Mail packer had applied for leave without

allowances to officiate as Postman, in his place the applicant had worked as a leave substitute under the provision of Rule 7 of GDS(C&E) Rule. This arrangement got terminated when Sri Anil Kumar rejoined back his original post on termination of officiating arrangement. The applicant further worked as leave substitute in place of Smt.Vasantha Kumari, GDS Mail packer. Hence, the argument of the applicant that he had worked continuously in place of Sri Anil Kumar from 8.2.2008 to 14.2.2018 is not correct. His contention that he was working as GDS from 12.12.2005 to 14.2.2008 is also not correct as he had only worked as outsider in leave vacancy of regular GDS and there is no question of termination and taking back to work does not arise as the outsiders were provided as per requirement. His work as leave substitute in the leave vacancy cannot be termed as duty. Hence, there is no question of depriving his right to earn his livelihood. The entry of the name of the applicant in the Attendance Register is just to keep a record for arranging the payment of outsider wages who worked against such arrangement. Further, it is not mandatory for the GDS to provide the same person as his/her leave substitute during their leave. This Tribunal in identical cases in OA.No.177/2017 and OA.761/2015 has dismissed the claim of the applicants therein vide orders dtd.13.8.2018(Annexure-R1) and dtd.8.2.2018(Annexure-R2). The present OA is also identical one and hence, the same is liable to be dismissed as it is a settled matter.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and denies the allegation that he was a leave substitute provided by Smt.Vasantha Kumari, GDS Mail Packer, Museum Road PO. In fact he was directed to work in the place of Sri Ravi Kumar, GDS who was working in Ulsoor Post Office. It is incorrect to say that he worked in place of Ravi Kumar as his

leave substitute as Sri Ravi Kumar was sent on deputation to Vivek Nagar Post office and was not on leave. It is a fact that he continuously worked from December 2005 to February 2008 in Ulsoor Bazaar and Museum Road Post Offices as an outsider. This arrangement was disturbed by another outsider(6th respondent) in his place in violation of several decisions rendered by this Tribunal. He would have no case if his place was given to any regular GDS. Therefore, the action of the respondents is illegal. The judgments referred by the respondents in OAs.No.177/2017 & 761/2015 are not applicable to his case.

6. The respondents have filed additional reply statement stating that there was no direction issued by the department to the applicant to work in place of Ravi Kumar as Ravi Kumar provided the applicant as his leave substitute to officiate as Postman. It is purely the discretion of the regular GDS to propose an outsider to work as his/her substitute and the department has no role to call him when there is a need and to terminate an arrangement. Smt.Vasantha Kumari, GDSMP Museum Road has given three names of the outsiders to work as substitute in her leave period. The service of the outsider stands terminated before completion of 90 days and it cannot be claimed as matter of right. When there is a vacancy and if he requests to officiate, sometimes he will be called purely on officiating basis under the declaration that he has no right to claim anything except the salary for the period he officiated. Mere signing in the attendance register does not mean that he was appointed against regular vacancy after observing all recruitment formalities like notification, verification of documents etc. Since the applicant was not appointed by the department, the question of discharge giving notice does not arise. The applicant might have worked at different offices or different spells against different posts during the period, but this does not mean

that he should be continued and in fact the leave substitute to be changed at the regular interval by the regular GDS by providing other substitute and the department has not appointed the 6th respondent as well. It is not binding on the part of the regular GDS to continue with the same outsider and they need to be changed with suitable person and it is not the case of the department to change to disturb anybody.

7. The applicant has filed additional rejoinder reiterating the submission already made in the OA and the rejoinder and contended that there is no rule that leave substitute needs to be changed at regular intervals by regular GDS by providing other substitute. There is no point in replacing one substitute by another regularly. The department will gain anything by doing so but the individuals would be in great hardship if such replacements are made regularly. As per clause(2), during leave, every ED Agent should arrange for his/her work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing. Hence, the clause makes it clear that the appointment of substitute has tacit approval of the authority who sanctions leave. Therefore, it cannot be said that department has nothing to do with the appointment or discharge of such substitutes. It is amusing to note that Smt.Vasantha Kumari, GDSMP has given names of three persons to work as her substitute in her leave period. Firstly, no details are forthcoming as to on which date those names were furnished by her, why three names were furnished as normally only one person's name is furnished. He is not aware whether the department has given a direction or not but he was permitted to work for long period of more than three years in Ulsoor Bazaar Post Office from 2005 to 2008.

8. The respondents have filed additional reply to the additional rejoinder and submit that there is no restriction to the GDS to suggest only one person to look after his/her duties during their period of absence. Since substitutes are the outsiders, if the person provided by the regular GDS does not turn up, another person as suggested by the GDS needs to be called for. It is only a precautionary measure to avoid the eleventh hour pressure, the GDS are instructed to provide names of two or more outsiders so as to call them in case of emergency to look after his/her duties. The GDS also can change his/her substitute subject to the availability of the persons so provided and there is no compulsion to the regular GDS to continue the same substitute in his/her place and the department has nothing to do with the action of the regular GDS as the whole responsibility lies on the GDS. The services of the outsiders will be given a break once in 90 days and no outsider will be engaged continuously for more than 90 days without any break. Either the substitute should be replaced or should be given a break as per departmental rules. Since the Postmaster felt that the work of the applicant was not upto the mark, he asked the GDS to provide the names of other three substitutes as the work was hampered and cannot be dependent on one outsider. When the regular GDS was granted leave by the competent authority that does not mean that the substitute whose name has been suggested by the regular GDS in the leave application has been given appointment. The leave application submitted by the GDS should be provided with a substitute name for drawal of allowance to the outsider during his/her period of absence.
9. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant was engaged by a GDS employee as his/her leave

substitute over a period of time whenever they took leave or otherwise. No letter of appointment was ever given to the applicant and he was also not recruited to the department through any regular process. He was a leave substitute for the GDS employees as a stop gap arrangement. His name being part of the attendance in the respondent organisation has been explained by the respondents as necessary for the purpose of drawal of the wages due to him for the period he worked as a leave substitute. The case of the applicant is exactly similar to the case handled in OA.No.761/2015 by this Tribunal vide order dtd.08.02.2018 wherein at para-15 it is stated as follows:

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.

10. We do not find any difference in the present case and therefore, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred by the applicant in OA.No.170/00350/2018

Annexure-A1: Copies of attendance register extracts for the period from December 2005 to September 2006 of Ulsoor Bazaar Post Office

Annexure-A2: Copies of attendance register extracts from Feb 2008 to September 2008

Annexure-A3: Copies of absentee statement for 11/2009 & Jan 2010

Annexure-A4: Copies of attendance register extracts from 1.1.2014 to 3.11.2017

Annexure-A5: Copies of absentee statement of Museum Rod PO from February 2017 to January 2018

Annexure-A6: Copies of salary statement for October 2017 to January 2018

Annexure-A7: Copy of letter dtd.5.9.2012 showing that the applicant was in service

Annexure-A8: Copy of letter dtd.3.4.2018 from Chief Labour Commissioner, Bangalore

Annexures with reply statement:

Annexure-R1: Copy of the order in OA.177/2017 dtd.13.8.2018

Annexure-R2: Copy of the order in OA.761/2015 dtd.8.2.2018

Annexures with rejoinder:

-NIL-

Annexures with additional reply statement:

-NIL-

Annexures with additional rejoinder:

-NIL-

Annexures with additional reply to the additional rejoinder:

-NIL-
