

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01438/2018

DATED THIS THE 14th DAY OF JUNE, 2019

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

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

Sri Umesh J.K.
S/o J.H.Kannaiah Setty
Age: 40 years
Ex-Assistant Superintendent
of Railway Mail Service
Bangalore City RMS, Bangalore-560023
Residing at:
Flat No.A-802
Foundation Silver Springs
Hootagalli, Mysore-560017.

....Applicant

(By Advocate Sri P.Kamalesan)

Vs.

1. Union of India
Represented by Director General of Posts
Dak Bhavan
New Delhi-110001
2. Post Master General
S.K.Region
Bangalore-560001.
3. Senior Superintendent of Post Offices
Hassan Postal Division
Hassan-573101.
4. Chief Post Master General
Karnataka Circle
Bangalore-560001.

....Respondents

(By Advocate Sri M.V.Rao)

ORDER

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

The case of the applicant is that while working as Inspector of Posts at Sakleshpura Sub Division during the year 2013, he was nominated as a member of the Selection

Committee for selecting a GDS MS for Keralapura SO. The selection committee which met on 23.4.13, selected Sri Manjunath who secured 59.4% marks in SSLC examination, which is high marks among the candidates. The Superintendent of Post Offices, Hassan Postal Dvn., Hassan submitted a detailed report dtd.16.5.2014(Annexure-A2) regarding recruitment to the post of GDS under Holenarasipura Sub Dvn., in response to Post Master General, S.K.Region, Bangalore letter dtd.2.12.2013. The respondent No.2 directed the concerned authority to terminate the selected candidate Sri Manjunath for the post of GDS MD, Keralapura and accordingly, he was terminated. Aggrieved by termination, Sri Manjunatha filed OA.125/2016 and the Tribunal vide order dtd.19.12.2016(Annexure-A3) quashed the termination order and further ordered 50% back wages. Then the Chief Post Master General, Karnataka vide letter dtd.4.4.2017(Annexure-A4) directed to distribute the amount of back wages to be paid to Sri Manjunatha among the 3 members of selection committee and SPOS, Hassan Dvn. equally.

2. The applicant submits that he had applied for the post of Assistant Professor (Economics) Govt. First Grade College in the Dept. of Collegiate Education, Karnataka and was selected for the post and therefore he submitted a letter for technical resignation for the post of Asst.Superintendent of RMS, Bangalore Sorting Dvn., on 9.8.2017(Annexure-A5). The Sr.Superintendent, RMS, Bangalore, Sorting Dvn., Bangalore vide letter dtd.31.8.2017 communicated the letter received from Sr.Superintendent of Post Offices, Hassan dtd.23.8.2017(Annexure-A6) an order for recovery of Rs.40,170/- from the applicant. When his request for accepting technical resignation was pending, he approached the CPMG, Karnataka through E-Mail (Annexure-A7) and CPMG advised to credit the amount and get relief since the

recovery is as per the Tribunal's direction. Accordingly, he credited the amount of Rs.40,170/- on compulsion on 4.9.17 and the same was intimated to Sr.Superintendent of Post Offices, Hassan by Sr.Superintendent RMS, Bangalore Sorting Dvn., Bangalore vide letter dtd.4/5.9.2017(Annexure-A8). Then the CPMG, Karnataka vide letter dtd.6.9.2017(Annexure-A9) accepted the technical resignation of the applicant. The applicant had submitted a detailed representation on 30.9.2017(Annexure-A10) regarding unjustified recovery imposed. He submits that the order of recovery is unreasonable and arbitrary and unsustainable under law. Further there was no concept of selection committee for selecting a candidate for GDS post during 2013. The appointing authority alone is competent to select and appoint a GDS candidate. The Hon'ble CAT has not implicated the Selection Committee and observed that process of termination of engagement is illegal and not the process of selection for engagement. Therefore, the order of recovery is not based on facts. He submits that he was forced to credit the amount under coercive methods and the manner in which he was forced to credit the amount for accepting his technical resignation is against all norms and principles of administrative ethics. Hence, he filed the present OA seeking the following relief:

i. Quash the Senior Superintendent of Post Offices, Hassan Division, letter No.B2/125/CAT/2016 dtd:23.8.17, as communicated by Sr.Superintendent of RMS, Bangalore Sorting Division letter No.KI/10/11/XII-11 dtd:31.8.2017 vide Annexure-A6.

ii. Issue direction to respondents to refund the Rs.40,170-00 (Forty thousand and hundred seventy only) cited by the applicant on 4.9.17.

3. Per contra, the respondents in their reply statement have submitted that the applicant while holding the charge of Inspector of Posts, Sakleshpura Postal Sub Division was nominated as a member of the selection committee formed by respondent No.3 vide letter dtd.19.4.2013(Annexure-R1) in connection with the

selection process for the post of GDS MD Keralapura SO. In response to open notification, 8 applications were received to the post of GDS MD. After scrutinizing the applications, 7 applications were considered by the Committee. Among the 7 considered applications, the candidate Sri Manjunatha who scored 374 marks out of 625(59.84%) in SSLC has been selected to the GDS MD post provisionally on 3.5.2013 by Inspector of Posts, Holenarasipura Sub Dn subject to verification of documents. In the meantime, based on a complaint received at the office of respondent No.2, he ordered for an investigation on 8.11.2013 against the allegation of accepting bribery. While investigating the cases of engagement, it was noticed that the engagement of Sri Manjunath to the post of GDSMD, Keralapura SO was irregular as in his application form dtd.19.4.2013, the column no.8 'Do you know cycling?' was not filled in but left blank(Annexure-R2). The knowledge of cycling for selection to the post of GDS MD was mandatory. It was also stipulated in the said notification that 'incomplete applications, application without prescribed enclosure and applications received after the due date will not be entertained'. On receipt of inquiry report from respondent No.3, respondent No.2 ordered to disengage Sri Manjunatha from the post of GDSMD Keralapura SO. Accordingly respondent No.3 after issuing show cause notice to the said GDSMD and after personal hearing terminated him from the post on 16.6.2014. Aggrieved by the termination, Sri Manjunatha approached the Tribunal and got order for reinstatement with half back wages. Accordingly, Sri Manjunatha was engaged as GDS MD w.e.f.22.4.2017 with half back wages for the period from 17.6.2014 to 21.4.2017 which works out to Rs.1,60,680/-. The respondent No.4 has directed to distribute the amount of backwages to be paid to Sri Manjunatha among three members of the selection committee of GDS engagement. As the applicant was one

of the members of the Selection Committee, he was requested by the 4th respondent to credit an amount of Rs.40,170/- as his share and he had voluntarily credited the amount to the department to get the relief orders as he tendered technical resignation to join the Dept. of Collegiate Education as Asst. Professor. He had not challenged the request of the department either through representation or through judicial forum. Further the respondents have not issued order for recovery from the pay of the applicant. Hence it is not correct to say that he had credited the amount on compulsion and unavoidable situation. It is not correct to say that there was no selection committee for selecting a candidate for GDS posts during 2013. As per Annexure-R1, a selection committee was formed by the Supdt. of Post Offices, Hassan Division consisting of three members and the applicant is also one of the nominated members of the committee. Applicant argued that he is nominated only to assist the appointing authority in the selection process and no way responsible for appointment and the Tribunal had also observed that the process of termination of engagement is illegal and not the process of selection. In the instant case also the irregularity happened in the selection process itself which led to appointment of a person who had submitted incomplete application to the post. Had the applicant along with other members of the committee properly checked the application of Sri Manjunatha who was selected to the post, he would not have been selected and thereafter his termination from the post, reinstatement with backwages as per the Tribunal's order would not have happened. As such the root cause for the payment of backwages was irregularity in the selection process committed by the selection committee and the applicant is one of the members of the committee. Hence, there was serious lapse on the part of the selection committee.

4. The respondents submit that once the applicant was relieved from the

department on resignation, coming up with an allegation that the amount was credited through coercive by the respondents is not tenable and approaching the Tribunal to get the amount refunded is bad in law. If such an attempt is admitted, it will set a bad precedent that whenever any official was asked to credit the amount of his share towards his irregularity, he will credit the amount at the first instance to have either safe retirement or to get himself relieved from the post on resignation and then approach the Tribunal to get the amount refunded from the department. Hence, the OA may be dismissed as devoid of merit.

5. 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 part of a selection committee relating to the appointment of a GDS and contrary to what the applicant says, the committee was constituted vide Annexure-R1 in which the applicant was a member. The selected candidate had left one of the columns blank namely item No.8 as seen at Annexure-R2. The selection committee of which the applicant was one of the members has clearly confirmed vide Annexure-R3 that all the columns of the application have been filled in. In fact in the foot note, it is mentioned that the application should be rejected as incomplete if any of the columns in the application is left blank. Therefore, it is clear that the applicant who was part of the selection committee was definitely responsible for not verifying the selected candidate's application form properly and giving a certificate relating to the filling up of the columns. Subsequently, based on the Tribunal's order, the GDS who was terminated based on his leaving the column blank was reinstated with backwages. The department had started the process of recovering the unnecessary loss due to the back wages and in the meantime since the applicant got a better job as

Asst.Professor(Economics) in the Dept. of Collegiate Education, Karnataka, in order to get himself relieved, checked with the then CPMG for immediate relief and on coming to know from the CPMG that part of the back wages has to be recovered from him, had voluntarily remitted the amount to get himself relieved and join the better post. As rightly contended by the respondents, no recovery order was issued nor was there any compulsion on the part of the respondents at that point of time. The applicant had not challenged the contention of the respondents that since he was part of the selection committee he should be held responsible for the part of back wages. The respondents maintain that no unreasonable recovery has been ordered against him and based on the communication relating to his share of back wages, the applicant had voluntarily credited the amount to the department. It is apparent that there was an error in the selection process and the applicant was certainly a part of the selection committee responsible for this lapse. However, before any disciplinary action could be taken against him, on his own volition, he had sought technical resignation for which the then CPMG had suggested that the process could be expedited if the amount held against him was paid. The applicant could have very well objected to this at that point of time before getting relieved and obviously in his own interest to secure a better job, he had not chosen to do so. The department had to unnecessarily pay for the back wages due to the negligence on the part of the applicant and the other members.

6. Therefore the OA being devoid of merit is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred by the applicant in OA.No.170/01438/2018

- Annexure-A1: Copy of selection process for GDS psot at Keralapura SO
dtd.23.4.2013
- Annexure-A2: Copy of Senior Superintendent of post offices, Hassan Dv. Letter
No.B2/GDS/Rect dt:16.5.2014
- Annexure-A3: Copy of Hon'ble CAT, Bangalore order dtd.19.12.16
- Annexure-A4: Copy of Chief Post Master General, Karnataka, Bangalore letter
No.LC/2-39/2016 dtd.4.4.17
- Annexure-A5: Copy of letter for Technical Resignation submitted by applicant
dtd.9.8.17
- Annexure-A6: Copy of Senior Superintendent of Post office, Hassan letter
No.B2/125/CAT/2016 dtd.23.8.17. Communicated by Senior
Superintendent, RMS, Bangalore letter No.KI/10/11/XII-11 dtd.31.8.17
- Annexure-A7: Copy of E Mail from CPMG, Bangalore dtd.1.9.2017
- Annexure-A8: Copy of Senior Superintendent of RMS, Bangalore Sorting Dn,
Bangalore letter No.KI/10/11/XII-11 dtd.4/5.9.17
- Annexure-A9: Copy of Senior Superintendent, Bangalore Sorting Dn., Bangalore
letter No.BGR/STA/VR/Resignation/DLGS dtd.6.9.17
- Annexure-A10: Copy of representation of applicant dtd.30.9.17

Annexures with reply statement:

- Annexure-R1: Letter dtd.19.4.2013
- Annexure-R2: Form of application for the post of GDSMD
- Annexure-R3: Copy of Check Slip
