

**Central Administrative Tribunal
Madras Bench**

OA/310/01852/2016

Dated 13th day of June Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

P.Ramachandran
S/o A.Pitchai,
No.79, Main Street,
Chokkanathapuram,
Vilangudi,
Madurai 625 018. .. Applicant
By Advocate **M/s.R.Rengaramanujam**

Vs.

1. The Union of India rep by
Director General of Posts,
Dak Bhawan,
New Delhi.
2. The Chief Post Master General,
Tamil Nadu Circle,
Chennai 600 002.
3. The Post Master General,
Southern Region,
Madurai 625 002.
4. The Superintendent of Post Offices,
Madurai Division,
Madurai 625 002.
5. Inspector of Post,
Arasarady Post Office,
Arasarady,
Madurai 625 016. .. Respondents

By Advocate **Mr.K.Ramasamy**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“...to direct the respondents to include the name of the applicant in the dovetailed list maintained by the 4th respondent and absorb him in the existing and future vacancies in the post of GDS in Madurai Division and pass such further or other orders as this Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.”

2. The case of the applicant is that he is working as ED Outsider/GDS w.e.f. 29.3.1990 and he had completed more than 240 days of service with a continuation period of 24 months and he is qualified to hold the post. According to him, he is still in service and carrying out the duties of GDS efficiently. According to the applicant, the respondents had framed a scheme to include the names of ED Outsiders who are engaged prior to 11.2.1988 and put in more than 240 days in any 2 years prior to 11.2.88 to be included in the dovetailed list for absorption. But the applicant in this case was not in service on the said cut off date and some of the ED outsiders had filed case before the Chennai Bench and this Tribunal had directed the respondents to include the subsequent ED Outsiders also in the dovetailed list. As per the said order the Outsider who are engaged prior to 01.9.93 were also included but the 4th respondent has now called for Direct Recruitment of GDS from the open market. Eventhough he had applied for considering him as a person entitled to get absorption, the 1st respondent has not considered him for inclusion in the dovetailed list.
3. The respondents entered appearance and filed a detailed statement denying the

claim of the applicant. According to them, the applicant is not directly engaged by the respondents as GDS. According to them, the applicant was occasionally engaged for work as GDS Outsider at the instance of the persons who take leave and they had engaged the applicant as substitute at their own risk. GDS Outsider will not come under the category of Casual Labour as they are not directly engaged by the respondents. Those GDS Outsiders engaged by the respondents were given one time chance for regularization as per the scheme prepared by the respondents and it was only a one time measure for those who were holding the post on or before 11.2.88. Those persons were included in the dovetailed list for regularization. The applicant was engaged from the year 1990 only i.e. after 11.2.88 and had not completed 240 days in a span of 2 years. The applicant is not eligible for inclusion in the dovetailed list. According to them, earlier in OA 405/12 Smt.R.Sudha vs. SSP, Kanniyakumari and 2 Others, the CAT had clarified that Outsiders engaged as Substitutes in the leave vacancies have no legal right to claim regularization as they were not appointed according to rules. According to them, as per a reasoned order of the Tribunal in ***OA 1820/13 dated 11.11.2016*** the Tribunal had disposed of cases in favour of the respondents denying any right on the part of the applicants. So, according to the respondents, the applicant is not entitled to get any regularization or inclusion in the dovetailed list as claimed by him. According to them, the Circular No.17-15/2015-GDS dated 07.5.2015 is not applicable to the applicant as it relates to Casual Labourers and how the preference has to be given to them.

4. The counsel for the applicant would contend that the applicant was engaged as

GDS Outsider from the year 1990 onwards and he had completed more than 240 days in 2 years within a period of 24 months.

5. The counsel for the respondents would also contend that as regards the case of the applicant, eventhough he states that he was employed from 1990 onwards, no reliable documents are produced to prove the engagement by the respondents. It may be true that the applicant was engaged as a Substitute and there is no direct appointment made by the respondents in this case. There is no explanation offered by the applicant regarding the undue delay for approaching the Tribunal in this case. Eventhough he states that he was in service from 1990 onwards, not even a representation was produced for showing that he had filed representation before the appropriate authority for getting his grievance mitigated. Though he states in the OA that he had given many representations, no copy of such representation and no impugned order passed by the respondents on that matter was produced to substantiate his claim that he has raised such a claim within a reasonable period. So, it was also contended by the counsel that the claim raised by the applicant is barred by limitation.

6. We have anxiously perused the pleadings, documents produced from both sides. On going through the pleadings, it can be seen that according to the applicant, he began his service as GDS Outsider from 29.3.1990 and he had worked more than 240 days within a span of 24 months. The respondents had not included him in the dovetailed list. The counsel for the applicant mainly rely on the decision of this Bench in OA 1208/13 and Batch dated 06.8.2018 wherein a batch of cases relating

to the engagement of GDS Outsiders from August 1993 were considered. The counsel for the applicant would contend that the same decision applies to the applicant also and he should be given the benefit. On a perusal of the said order, it can be seen that the said order was passed relying on the Hon'ble Apex Court decision in *State of Karnataka vs. M.L.Keshari* wherein it was held that “one time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi, are so considered.” It is admitted by both the applicant and the respondents that the respondents had implemented Umadevi's case and a dovetailed list was prepared on the basis of the scheme for GDS Outsider engaged by the respondents till 11.2.88. This was a one time exercise undertaken by the respondents. According to respondents, all those who are eligible were included in the list and the dovetailed list is not in existence as the GDS Conduct & Employment Rules had come into existence. This Tribunal by judgment in OA 1820/13 dated 11.11.2016 had categorically held that those outsiders engaged after 1988 are not entitled to get the benefit of the scheme as it is now not in existence.

7. In this particular case it has come out that this applicant has not approached this Court till the year 2016. Eventhough he says that he was in service as GDS Outsider from 1990 onwards, it is not clear why he waited so long for coming to the Tribunal. Eventhough he represents that he had given so many representations to the respondents, he has not produced any copy of the said representations or any postal receipt to indicate that he has given representations to the respondents for including him in the dovetailed list in time. He has produced only a representation produced as

as Annexure A6 given to the respondents just before the filing of this OA dated 11.4.16. There is also no order seen passed on the said representation before the Tribunal. So, there is no impugned order also in this case. On a perusal of the documents produced, we find that as per records applicant worked in the Railway Colony Sub-Post Office for a period of 317 days. But, thereafter the applicant has produced a document which shows he was thereafter engaged only from the year 2006-2007. There is no explanation given for this long break in his engagement. It seems that the applicant was not in service in between 1991 and 2006 and it was because of this he did not approach any authority or Tribunal for his relief. So, it is clear that this is a case filed after undue delay and laches on part of the applicant. After the implementation of Scheme, new rules for the Conduct & Engagement of GDS has come w.e.f. 2001 and the scheme implemented for GDS Outsiders is not in existence. Further, the applicant has also failed to show that the department had issued any order for including GDS Outsiders after 1988 as claimed by the applicant. The respondents had produced copy of the Circular No.17-15/2015-GDS dated 07.5.15 mentioned in the OA before the Tribunal to show that the said order is not at all related to the inclusion of GDS Outsiders as claimed in the application. In the absence of any evidence to show that he had given representation to the authorities concerned and they have rejected the same, there is no cause of action for him to file this application in the Tribunal.

8. Much water has flown after Suguna's case and those who are aggrieved had come before the Tribunal and obtained the relief also. But the applicant in this case

had not approached the Tribunal till the year 2016. The Hon'ble Supreme Court has made clear that the regularization of GDS in the dovetailed list will be treated as a one time measure. It is true that the exercise has to be completed within a reasonable period. Here even after passing of more than 10 years the applicant has not given any representation for mitigating his grievance to the respondents. In ***State of U.P. & Ors v. Arvind Kumar Srivastava & Ors (reported in 2014 KHC 4682)*** it was held -

“(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

We are of the view that this principle can be applied to this case also. There has taken place undue delay and laches and the applicant cannot be permitted to claim the benefits of a one time scheme which is already implemented and closed by the respondents.

9. In the circumstances, the only inference that can be drawn is that the applicant

was not at all interested in seeking redressal to the grievance when the time was running. This cannot be considered as a case where the applicant has come up primarily on denial of his legitimate right.

10. In view of the above facts, we are of the view that the OA is barred by limitation and hit by latches on the part of the applicant.

11. Hence OA will stand dismissed forthwith. No costs.

(T.Jacob)
Member(A)

13.06.2019

(P.Madhavan)
Member(J)

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