

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01740/2018

DATED THIS THE 28th DAY OF NOVEMBER, 2019

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

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

Sri.Dada Peer, 44 years
S/o Late Sri.Honnursab
Working as GDS Mail Delivery/Mail Carrier
Hirekasavi Branch Office: 577 428
Account with Shiralkoppa Sub-Office
Shivamogga District.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Chief Post Master General
Karnataka Circle
Palace Road
Bengaluru: 560 001.
2. Post Master General
S.K.Region
O/o CPMG, Palace Road
Bengaluru-560 001.
3. Superintendent of Post Offices
Shivamogga Division
Shivamogga: 577 201.
4. Inspector of Posts
Shikaripura Sub-Division
Shikaripura: 577 427
Shivamogga District.

....Respondents

(By Advocate Sri Vishnu Bhat, Sr.C for CG)

ORDER

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

The case of the applicant is that in response to the notification dtd.15.6.2015 inviting the applications for the post of GDS MD/MC, Hirekasavi BO, the

applicant submitted application on 25.6.2015. The respondent No.4 vide order dtd.20.10.2015(Annexure-A1) communicated to the applicant that he is selected for the post of GDS MD/MC and charge of the post would be handed over to him after completion of the verification of the original documents with regard to education qualification, proof regarding date of birth and medical examination. After verification of the original documents, applicant was permitted to report for the duty on 10.12.2015 vide intimation dtd.18.12.2015(Annexure-A2) along with charge report sent by R4 to R3. Thus the applicant is working as GDS MD/MC of Hirekasavi Branch office from 10.12.2015. On 30.1.2017(Annexure-A3), R4 has sent a communication stating that the applicant's qualification of having passing 10th standard is not valid in view of the clarification received by the Department from the Dean (Academic), KSOU Mysuru vide letter dtd.24.2.2016 to the effect that Bridge courses conducted by the Karnataka State Open University are not recognised by the State of Karnataka. It is further communicated that the competent authority in the department also vide circle office letter dtd.14.3.2016 and 3.1.2017 has confirmed that Bridge course certificate should not be considered for selection to the posts of GDS. Then the applicant filed OA.99/2017 before this Tribunal challenging the above communication. But the said OA was withdrawn with liberty to file fresh OA vide order dtd.12.10.2018(Annexure-A4) and also with direction to keep the interim order in force for one more month. Under the P&T ED Agents (Conduct and Service) Rules 2001 which are superseded by "Department of Posts Gramin Dak Sevaks (Conduct and Engagement) Rules 2011, educational qualification prescribed for ED Branch Post Masters is matriculation but in respect of ED Delivery Agents, ED Stamp Vendors and all other categories of EDs, it is 8th standard. However, in

the method of recruitment under both the rules, preferential qualification in respect of this category is matriculation. Since the applicant is appointed as GDS MD/MC, he possesses essential qualification of 8th standard even if his Bridge course certificate issued by Karnataka Open University is not recognized by the Karnataka Government. This Tribunal vide order dtd.17.2.2014 (Annexure-A5) in OA.1056/2013 in the case of MTS staff working in Accountant General's Office was pleased to grant reasonable time to acquire SSLC and till then their services are directed to be continued as a grace. Hence, before proposing to take action vide Annexure-A3, the department ought to have given the applicant an opportunity of passing the SSLC as a private candidate within a reasonable time of 1 or 2 years as the livelihood of his family members and himself is dependent upon his present employment and as also there is no misrepresentation or fault on his part to obtain the employment. The Hon'ble Apex Court in the case of *Surinder Singh Vs. UOI and Others in Civil Appeal No.143/2001*[(2007) 11 SCC 599] held that essential qualification is to prescribe a cut off level whereas preferential qualification is to assess better mental capacity, ability and maturity. In the instant case, if the respondents succeed to demonstrate that but for taking into consideration of the Bridge course qualification, the applicant would not have been appointed, then with his experience of more than three years in present employment that too in complete satisfaction of the higher authorities, administration may not find any justification for dispensing his services merely on the ground that Bridge course certificate is not valid since he possesses essential qualification of 8th standard. The applicant has filed the present OA with a prayer to quash or place under abeyance the order dtd.30.1.2017(Annexure-A3) or grant a reasonable time of 2 years of such time that this Tribunal deems fit for

acquiring SSLC qualification as a private candidate so as to sustain his appointment.

2. The respondents, on the other hand, have submitted in their reply statement that in response to the notification dtd.15.6.2015, the applicant sent his application and he was provisionally selected for engagement to the post of GDS MD/MC, Hirekesavi BO, a/w Shiralkoppa PO. The respondent No.4 vide letter dtd.20.10.2015 directed the applicant to bring all original documents pertaining to engagement for verification with originals. After verification, the applicant was engaged to the post of GDS MD/MC w.e.f. 10.12.2015 on provisional basis. The Dept. of Posts vide letter dtd.1.10.2015(Annexure-R1) communicated a copy of the letter dtd.24.8.2015 and a copy of the Gazette Notification dtd.10.6.2015 published by the Dept. of Human Resource Development, Dept. of Higher Education in the Gazette of India, Part I, Section 1 dtd.25.7.2015. The Human Resource Development Ministry vide its order dtd.29.12.2012 and 25.2.2014 has entrusted the regulatory work of Open and Distance Learning(ODL) mode of education in the higher education system to the University Grants Commission(UGC). Indira Gandhi National Open University vide notification dtd.1.5.2013 had dissolved the Distance Education Council of the University. It was communicated that all the degrees/diplomas/certificates including technical education degrees/diplomas awarded through Open and Distance Learning mode of education by the Universities established by an Act of Parliament or State Legislature, Institutions deemed to be Universities under Sec.3 of the UGC Act, 1956 and Institutions of National importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Govt., provided they have been approved

by UGC. The Registrar, Karnataka State Open University, Mysuru vide letter dtd.24.2.2016(Annexure-R2) made it clear that Bridge courses are not recognized by Govt. of Karnataka and that regarding considering this course for job, it was left to the discretion of respective boards/authorities/statutory bodies. Respondent No.1 has sent a clarification dtd.9.3.2016(Annexure-R3) regarding Bridge course. He issued further clarification vide letter dtd.3.1.2017(Annexure-R4). As per Directorate orders dtd.14.1.2015(Annexure-R5), pass in SSLC is mandatory for all categories of GDS engagement. The respondent No.4 issued show cause notice on 30.1.2017 to the applicant calling upon him to say as to why his candidature to the post of GDS MD/MC should not be cancelled. The applicant has represented on 10.2.2017 to consider his case on the light of the judgment of Hon'ble High Court of Karnataka in WP.Nos.17758-17759/2014 dtd.12.1.2015. The applicant has approached this Tribunal in OA.No.99/2017 which is dismissed as withdrawn by order dtd.12.10.2018 with liberty to file a fresh OA. The Tribunal had sanctioned interim order in the said OA that the respondents shall maintain status quo in respect of the applicant's present status as GDS MD/MC. It is not correct to say that if the applicant cannot be considered under the SSLC education qualification due to non-recognition of Bridge course, he may be considered under 8th standard marks. The claim of the applicant that at the time of his appointment(Annexure-A2), he did not possess any ineligibility is not correct. The applicant acquired the marks card of Bridge course during term end examination March 2014 which is not recognized for the purpose of employment to posts and services under the Central Government. There is no illegality in the stand taken by the 1st & 4th respondents. Show cause notice was issued by the respondent No.4 on the basis of clarification issued vide

dtd.3.1.2017 by the 1st respondent and reply furnished by the KSOU. The averment of the applicant to allow him to continue for one or two years in the same post to give him an opportunity to pass the SSLC examination is not justified as allowing to continue a candidate without an educational qualification in the post is against the law. If he is allowed to continue without required qualification and acquiring the same in next two years, it is denial of opportunities of those who were applied for the same job with SSLC qualification which is the recognized one. Further, there is no such provision to allow the GDS to engage with lesser qualification and allow them to acquire the required qualification in future. In the instant case, total 8 candidates have applied for the engagement of GDS based on SSLC qualification. If the applicant is considered for acquiring SSLC in due course, there will be discrimination to the other candidates. Further in a similar case in OA.No.447/2017, the Tribunal has dismissed the case being devoid of merit. The judgement given in OA.1056/2013 in the year 2014 is case specific and according to the instructions prevailing at that time, it cannot be generalized.

3. The respondents submit that the claim of the applicant that there is no misrepresentation on his part in securing the employment is not correct. The appointment to the post itself is not justified since he has produced a SSLC marks card of Bridge course which is not an approved one. The judgement of the Hon'ble Apex Court cited by the applicant is not relevant to the present case as the judgment was given in the year 2007 when the 8th standard pass was essential educational qualification. But now the minimum educational qualification to the post is 10th standard and there is no clause of essential and preferential educational qualification as per GDS engagement rulings

dtd.14.1.2015(Annexure-R5) wherein pass in SSLC is mandatory for all categories of GDS engagement. Therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed.

4. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. Both the parties have filed their written arguments note. The issue in this case is in a very short compass. The qualification prescribed for the post for which the applicant has been selected is SSLC and it is not denied that he has got the certificate of SSLC from the Karnataka State Open University after passing the Bridge course conducted by KSOU in March 2014. In several other cases also, we have held consistently that since the said Bridge course is not recognised by the Govt. of Karnataka, persons seeking employment cannot claim that the Bridge course offered by the Karnataka State Open University is equivalent to SSLC and therefore they are eligible for employment. The respondents have produced several communications in this regard and vide Annexure-R2, the University itself admits that the Bridge courses are not recognized by the State Government of Karnataka and therefore the same has been completely stopped from 2014. In other words, the courses did not enjoy any kind of recognition even prior to 2014 and therefore, the contention of the applicant in the written arguments that he had passed the exam in March 2014 and therefore this communication will not apply to him cannot be accepted. It is also seen from Annexure-R3 that the UGC has taken very strong objection to the Karnataka State Open University offering several programmes through distance learning mode by blatantly flouting the norms, guidelines and directives of University Grants Commission and erstwhile Distance Education Council of Indira Gandhi National Open University, New

Delhi. The UGC clearly stated that the programmes offered by KSOU, Mysore have not been recognized by UGC beyond 2012-13 for which a show cause notice was issued to them as early as 10.6.2011. The applicant has scored 415 marks out of 625 marks and therefore he got selected to the post. The respondents have enclosed the list of people who had been considered along with the applicant and it is seen that a person ranking No.2 has in fact scored 357 out of 625 in the same merit list. It is not clear whether this person is having SSLC qualification from a recognised course or that is also from the Karnataka State Open University. The applicant in the mean time has also passed the SSLC examination, KSEE Board in 2019 with total marks of 264. The applicant has also brought in a judgment of the Hon'ble High Court of Karnataka in WP.No.17758-17759/2014(S-KSRTC). In para-8 of their order, the High Court of Karnataka has mentioned that in accordance with the terms and conditions set out in the advertisement notification, it does not leave anybody in doubt that the products of KSOU are eligible to take part in the recruitment process in question subject to their being tested for a minimum of 500 marks. In the present case, the employment notification clearly stated SSLC and therefore, this judgment will not apply to the case of the applicant. The applicant relies on another judgment of the Hon'ble High Court of Karnataka in WP.No.47621/2014(S-CAT) wherein the validity and legality of the judgment passed by this Tribunal in OA.No.1056/2013 in acquiring the qualification of SSLC by 30.12.2015 by the persons who have already appeared for the SSLC examination held during March-April 2014, has been upheld. However, in this case, the employment rules stipulated acquiring the minimum educational qualifications within 2 years from the date of appointment which was extended to the applicant in that OA as a matter of

compromise resolution as a one-time measure beyond the period of two years. In the present case, the applicant by relying on a course certificate not recognised has certainly deprived the chances of a more deserving candidate. The OA, therefore, lacks merit and is dismissed. The respondents are free to offer employment to the next suitable candidate. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred by the applicant in OA.No.170/01740/2018

Annexure-A1: Copy of the communication dtd.20.10.2015 sent by R4 to applicant
Annexure-A2: Copy of the letter dtd.18.12.2015 from R4 to R3 regarding
applicant's reporting for duty
Annexure-A3: Copy of the impugned communication dtd.30.1.2017
Annexure-A4: Copy of the order dtd.12.10.2018
Annexure-A5: Copy of the order dtd.17.2.2014 in OA.1056/2013

Annexures with reply statement:

Annexure-R1: Dept. of Posts letter dtd.9.10.2015
Annexure-R2: The Registrar, Karnataka State Open University letter dtd.24.2.2010
Annexure-R3: Respondent No.1 letter dtd.9.3.2016
Annexure-R4: Respondent No.1 clarification letter dtd.3.1.2017
Annexure-R5: Directorate's order dtd.14.1.2015

Annexures with written arguments note filed by the applicant:

Annexure-1: Copy of the statement of marks of the Bridge Course
Annexure-2: Copy of SSLC examination of April 2019
Annexure-3: Copy of the order dtd.26.11.2018 in OA.447/2017 referred to as Ann-
R6 of the reply statement filed by the respondents
Annexure-4: Copy of the High Court order dtd.12.1.2015 in WP.No.17758-
17759/2014 (S-KSRTC)
Annexure-5: Copy of the 2nd High Court judgment dtd.5.2.2015 in
WP.No.47621/2014 c/w W.P.No.47622-24/2014 (S-CAT)

Annexures with written arguments note filed by the respondents:

Annexure-1: Merit List
Annexure-2: SSLC Examination results-2019 (Marks Sheet)
