

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00494/2017

Wednesday, this the 27th day of November, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Sreekuttan

Aged 27 years, S/o.Sivandan

Gramin Dak Sevak Mail Deliverer

Aramada P.O, Thiruvananthapuram – 695 032

Residing at “Sivasadanam”

Chemmanilmela, Naruvamoodu P.O

Thiruvananthapuram – 695 528

...Applicant

(By Advocate – Mr.B.Harish Kumar)

v e r s u s

1. The Chief Postmaster General
Kerala Circle, Thiruvananthapuram-695 033

2. The Senior Superintendent of Post
Postal Department South Division
Thiruvananthapuram – 695 036

3. The Assistant Superintendent of Post
Postal Department, East Sub – Division
Thiruvananthapuram – 695 036

4. Ambady V.S
S/o.Vijayappan Nair.R
GDSMD, Aramada SO
Aramada P.O, Thiruvananthapuram-695 032

...Respondents

(By Advocate- Mrs.P.K.Latha,ACGSC for R1-3, Mr.Varghese John for R4)

This application having been heard on 20th November 2019, the Tribunal on 27.11.2019 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/494/2017 is filed by Mr.Sreekuttan, Gramin Dak Sevak Mail Deliverer (engaged in the vacant post as substitute), Aramada P.O, Thiruvananthapuram aggrieved by the denial of appointment to the existing vacancy of GDSMD. The reliefs sought for in the Original Application are as follows:

“ 1. To call for the records leading to the selection and appointment to the post of GDSMD and set aside the same in so far as it denies the appointment of the applicant as GDSMD.

2. To declare that the applicant is eligible and legally entitled to be appointed to the existing vacancy of GDSMD under the third respondent's office giving preference to him on the basis of his service put in as substitute/outsider in terms of Annexure A2 and A3

3. To direct the second and third respondent to make appointment to the existing vacancy of GDSMD under the third respondent office by appointing the applicant as GDSMD.

4. Any other appropriate order or direction as this Tribunal deem fit in the interest of justice. ”

2. The applicant was initially engaged as a substitute for one Arun Kumar against the post of GDS MD with effect from 1.7.2014 onwards. Thereafter he had worked as substitute without having any break as GDSMD till the said Arun Kumar was promoted to the post of Postman to

.3.

Nemam post office during the month of August 2015. Thereafter he had been engaged as an outsider and worked as GDSMD in the existing vacancy and completed more than 240 days of duty in the year 2015. The applicant had also worked about 273 days in the year 2016 (Annexure A1). Hence the applicant claims that he is entitled to be considered with preference for the post of Gramin Dak Sevak Mail Deliverer in view of past engagements. As per Annexures A2 and A3 circulars of the Director General of Posts, the applicant will get a preferential claim for consideration in the above post. Now the third respondent initiated steps to make appointment from among fresher without having any experience in accordance with Annexure A-5 notification. The applicant made earnest effort to apply for the said post through online application, but the same has not yet materialized and now the applicant is facing the threat of termination.

3. As grounds, applicant submits that denial of appointment to the post of GDSMD is arbitrary, unjustifiable and against Annexures A2 and A-3 orders issued by the Postal Department. Applicant claims that since he has been engaged for 273 days in the year 2016, he is entitled for consideration in the matter of appointment as GDSMD.

4. Respondents have filed reply statement and it is stated therein that being only a leave substitute of the original incumbent, the applicant has no *locus standi* to claim the benefits of Annexure A2 and A3 letters which are applicable only to those who were engaged as casual labourers after

.4.

following all the prescribed recruitment formalities. Appointment of part time/full time contingent staff has been banned by the Government of India with effect from 29.11.1989. On the contrary, applicant was engaged intermittently as a substitute in the leave vacancies of GDSMD in Aramada SO from July 2014 to November 2015. Respondents rely upon the judgement of this Tribunal in O.A No.417/09 in a similar matter which held that *“There is no dispute that the applicant who was engaged as a substitute by the regular incumbent on his own responsibility has no preferential right to continue in the post...”*.

5. The post of GDSMD, Aramada SO became vacant with effect from 9.11.2015 consequent to the promotion of the regular incumbent. That vacant post was managed by engaging some outsiders including the applicant. When the post was notified for filling up by 3rd respondent, the applicant had not submitted any application till 3.7.2017. Thereafter the post was notified for online selection. The applicant had not intimated the competent authority regarding his inability to apply for the post online and rushed to this Tribunal by filing the present O.A. As per the interim direction issued by this Tribunal, respondents accepted the manual application dated 27.6.2017 submitted by the applicant. Respondents submits that Annexures A-2 and A-3 orders have no application in this matter as the applicant is neither a part time nor a full time casual labourer and it is a settled issue that the benefit of Annexure A-2 scheme is applicable only to those casual labourers who were engaged prior to

.5.

1.9.1993. Hence the respondents submits that the O.A is liable to be dismissed.

6. Heard Ms.Smrithi representing Mr.B.Harish Kumar,learned counsel forthe applicant , Mrs.P.K.Latha, ACGSC, learned counsel for official respondents and Mr.Varghese John, learned counsel for respondent no.5. Perused the records.

7. The short question for consideration in this Original Application is whether the applicant who is a temporarily engaged intermittently on stop gap basis is entitled for benefits under Annexures A-2 and A-3 orders or not.

8. In this case, applicant has claimed that he had completed 273 working days in the year 2016 as per Annexure A1 pay and allowance slips and hence is entitled for consideration for the post of GDSMD as per Annexures A-2 and A-3 orders of the Postal Department. It is written in the Annexure A-1 series as subject that 'Engagement of outsider in the vacant post of GDS MD at Aramada' whereas Annexures A-2 and A-3 are in respect of preference of **casual labourers** in the matter of appointment as ED Agents. Here the applicant was initially engaged as only a substitute against a leave vacancy. Annexures A-2 and A-3 orders are applicable only to those who were engaged as casual labourers after following all the prescribed recruitment formalities. In Post Offices, vacant posts are being managed by engaging some outsiders on administrative exigencies. When the post was

.6.

notified for filling up, the applicant had not submitted his application nor represented his inability to apply online. We are of the opinion that the respondents have rightly pointed out that the case in hand is squarely covered by the the Hon'ble Apex Court's judgment in *Secretary, State of Karnataka v. Umadevi* (2006) 4 SCC 1 wherein it is held that:

“Merely because a temporary employee or a casual worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.”

9. In Annexures A-2 and A-3 stipulates that “it has been decided that Casual labourers whether full time or part time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment of ED posts, provided they fulfill all the conditions and have put in a minimum service of one year.” The applicant herein is neither a part time nor a full time casual labourer, but only a leave substitue. Being a leave substitute, the applicant is not eligible for the benefits of Annexures A-2 and A-3. We are of the view that there is no merit in the Original Application and hence it is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

- Annexure A1 - A true copy of the pay and allowance slip issued by the respondent authority during the year 2016.
- Annexure A2 - A true copy of the above D.G post letter dated 6.6.1988
- Annexure A3 - A true copy of the letter dated 31.3.1992
- Annexure A4 - A true copy of the judgment dated 26.3.2007 passed by the Hon'ble High Court
- Annexure A5 - A true copy of the notification dated 11.5.17 issued by the 1st respondent
- Annexure R1 - True copy of the order of this Tribunal in O.A No.865/2013
- Annexure A6 - A true copy of engagement letter issued by the 3rd respondent
-