

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

OP (CAT).No. 145 of 2015 (Z)

**AGAINST THE ORDER/JUDGMENT IN OA NO.180/00829/2014 of CENTRAL
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 02.07.2015
PETITIONER(S)/RESPONDENTS:**

- 1. UNION OF INDIA
REPRESENTED BY THE CHIEF POSTMASTER GENERAL
KERALA CIRCLE, TRIVANDRUM 695033**
- 2. THE SENIOR SUPERINTENDENT OF POST OFFICES
ERNAKULAM DIVISION, ERNAKULAM 682011**

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENT(S)/APPLICANT:

**ABHILASH K.ARAVIND
S/O.K.G.ARAVINDAKSHAN NAIR, GDSMD, KAKKANAD
ERNAKULAM DIVISION, RESIDING AT SREESAILAM
KOCHUPURACKAL HOUSE, PAINGARAPILLY PO, MULANTHURUTHY
ERNAKULAM DISTRICT, 682314**

R BY SRI.M.A.SHAFIK

**THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 01-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

kkj

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF OA.NO.180/00829/2014 DATED 02.10.2014 FILED BY THE RESPONDENT BEFORE THE HON'BLE CAT, ERNAKULAM BENCH

ANNEXURE A1: TRUE COPY OF THE LETTER NO.B-6/11-2/2014 DATED 16.09.2014 ISSUED BY THE 2ND RESPONDENT

ANNEXURE A2: TRUE COPY OF THE LETTER NO.B-6/11-2/2014 DATED 16.09.2014 ISSUED BY THE 2ND RESPONDENT

ANNEXURE A3: TRUE COPY OF THE ORDER NO.APPT/GDSMD/KAKKANAD DATED 15.01.2009 OF THE ASP EDAPPALLY SUB DIVISION

ANNEXURE A4: TRUE COPY OF THE NOTIFICATION NO.B-6/11-2/2014 DATED 12.08.2014 ISSUED BY THE 2ND RESPONDENT

ANNEXURE A5: TRUE COPY OF THE APPLICATION DATED 21.08.2014 SUBMITTED BY THE APPLICANT

EXHIBIT P2: TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS

ANNEXURE R`1: TRUE COPY OF THE NOTIFICATION DATED 04.07.2008 ISSUED BY THE ASP, ERNAKULAM SUB DIVISION FOR THE RECRUITMENT OF GDS MD KAKKANAD

ANNEXURE R2: TRUE COPY OF THE HEALTH CERTIFICATE DATED 31.12.2008 ISSUED BY THE ASSISTANT, SURGEON, GOVT HOSPITAL, MULANTHURUTHY TO THE APPLICANT

ANNEXURE R3: TRUE COPY OF THE CONDUCT CERTIFICATE DATED 31.12.2008 ISSUED BY THE ASST SURGEON, GOVERNMENT HOSPITAL MULANTHURUTHY TO THE APPLICANT

ANNEXURE R4: TRUE COPY OF THE CONDUCT CERTIFICATE DATED 06.01.2009 ISSUED BY THE HEAD MISTRESS, GOVT HIGH SCHOOL, MULANTHURUTHY TO THE APPLICANT

ANNEXURE R5: TRUE COPY OF OATH OF ALLEGIANCE DATED 15.01.2009 OF THE APPLICANT

ANNEXURE R6: TRUE COPY OF THE CHARGE REPORT OF THE APPLICANT ASSUMING THE CHARGE AS GDS MD KAKKANAD DATED 15.01.2009

ANNEXURE R7: TRUE COPY OF O.A.NO.708/2014 FILED BY THE APPLICANT

EXHIBIT P3: TRUE COPY OF THE REJOINDER DATED 08.01.2015 FILED BY THE RESPONDENT

ANNEXURE A6: TRUE COPY OF THE SALARY SLIP FOR THE MONTH OF JANUARY 2009 OF THE APPLICANT

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EXHIBIT P4:TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONERS AS PER THE DIRECTIONS OF THE CENTRAL ADMINISTRATIVE TRIBUNAL

ANNEXURE R8: TRUE COPY OF THE EXTRA COST REGISTER MAINTAINED AT ERNAKULAM HO PERTAINING TO FEBRUARY 2009

ANNEXURE R9: TRUE COPY OF THE RELEVANT PAGE OF THE PAY BILL NO.B 166/10-2009 CORRESPONDING TO THE REVISION OF TRCA

ANNEXURE R10:TRUE COPY OF RELEVANT PAGES OF GRADATION LIST

ANNEXURE R11:TRUE COPY OF THE DECLARATION DATED 15.01.2009 SUBMITTED BY THE APPLICANT

ANNEXURE R12: TRUE COPY OF THE PRESERVATION PERIOD OF POSTMAN BOOK IS 18MONTHS AND THE RULING REGARDING

ANNEXURE R13: TRUE COPY OF THE FIDELITY BOND EXECUTED BY POSTAL, TELECOM BSNL EMPLOYEE CO-OPERATIVE SOCIETY

ANNEXURE R14: TRUE COPY OF THE ORDER DATED 30.11.2011 IN OA.NO.394 OF 2011 OF THE HON'BLE TRIBUNAL

ANNEXURE R15: TRUE COPY OF THE GUIDELINES FOR RELATING SUBSTITUTE/PROVISIONAL ARRANGEMENTS MADE IN PLACE OF REGULAR GRAMIN DAK SEVAKS CONTAINED IN SWAMY'S COMPILATION OF SERVICE RULES FOR POSTAL GRAMIN DAK SEVAK.

EXHIBIT P5:TRUE COPY OF THE ORDER IN OA.NO.180/00829/2014 DATED 02.07.2015 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

**K.SURENDRA MOHAN &
SHAJI P.CHALY, JJ.**

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Dated this the 1st day of September, 2015

JUDGMENT

Surendra Mohan, J.

The respondents in Original Application No. 180/00829/2014 of the Central Administrative Tribunal, Ernakulam Bench have filed this Original Petition challenging Exhibit P5 order by which the application has been finally disposed of. The respondent had approached the Central Administrative Tribunal complaining that he had not been called for an interview for selection to the post of Gramin Dak Sevak Mail Deliverer ('GDSMD' for short). Applications were invited for appointment to the post by a notification dated 12.08.2014. The respondent had been working as a Gramin Dak Sevak ('GDS' for short). As per paragraph 5(A)(2) of the Circular that was admittedly applicable, it has been provided that, a Gramin Dak Sevak should have worked for at least 5 years in that capacity as

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on the first day of January, 2014, to be qualified to apply for the post that was notified. According to the respondent, he had been working as a GDS from 15.12.2008 onwards. Therefore, according to him, he satisfied the requirement of having worked as a GDS for more than five years. For the above reason, it was contended that he was also entitled to participate in the selection for appointment to the post of GDSMD that was notified. During the pendency of the Original Application, the Central Administrative Tribunal had passed an interim order permitting the respondent to appear for the selection. Accordingly, he participated in the selection and has obtained 66% marks in the examination. Considering all the above aspects, the Central Administrative Tribunal has allowed the Original Application and has declared that the applicant is eligible to be considered for promotion to the cadre of Postman for the year 2015. The petitioners are aggrieved by Exhibit P5 order.

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2. According to Sri.M.Nagaresh, the Assistant Solicitor General of India who appears for the petitioners, the respondent had worked only as a substitute prior to 15.01.2009. He was actually appointed only on 15.01.2009. His prior service as a substitute, is not liable to be reckoned for any purpose whatsoever. It is pointed out that, such service put in as a substitute would not confer any benefit on a substitute employee. Various decisions where the Central Administrative Tribunal as well as the Hon'ble Supreme Court had to consider the question of regularization of such substitutes are relied upon in support of the contention that, service rendered as a substitute was of no consequence. It is contended that, the Central Administrative Tribunal has passed the order, without considering the above aspects. Advocate M.A.Shafik appears for the respondent.

3. This appeal comes up before us for admission. We have heard the respective counsel at length. We have

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also considered the contentions advanced before us, anxiously.

4. A perusal of paragraph 5(A)(2) of Annexure A4 circular produced along with the Original Application stipulates that, Gramin Dak Sevaks “should have worked for at least five years in that capacity as on the first day of January, 2014”, in order to be eligible for being considered for appointment to the notified post. A perusal of the above provision shows that, what is contemplated is that, a GDS should have “worked” for at least five years in that capacity. It is not stipulated that, such work should have been rendered pursuant to a substantive appointment or that, work experience obtained as a substitute was liable to be excluded. Therefore, on a plain and grammatical understanding of the clause, it is clear that, what is stipulated is only that the candidate should have worked for at least five years in that capacity as on 01.01.2014. The petitioner admittedly possesses that qualification. The only

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difference is that, his service prior to 15.01.2009 was not pursuant to a regular appointment. The Central Administrative Tribunal has held that since he had worked for more than five years, it was not necessary that he should have worked in a substantive vacancy to be qualified for being considered for selection. We do not find any infirmity in the said reasoning. The decisions relied upon by the learned Assistant Solicitor General of India all relate to regularization of employees who had put in long periods of service as substitutes. Different considerations arise, in such a situation where the question of regularisation of an employee is considered. Here the qualification stipulated is only work experience, without any differentiation as substitute service or regular service. In the absence of any such differentiation in the circular, we would not be right in incorporating any such additional stipulations into the circular. In the above view of the matter, the finding of the Central Administrative Tribunal that the respondent was

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qualified for being considered for selection does not call for any interference.

5. The learned Assistant Solicitor General of India points out that, the time stipulated by Exhibit P5 for compliance with the direction contained in the said order is only 30 days, which is about to expire. He therefore seeks an extension of the said time limit. The request is accepted. The time limit stipulated is extended by a period of 30 days from today. With the above modification, Exhibit P5 order is confirmed.

For the above reasons, this OP(CAT) is dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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