

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 630 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Ramesh Chandra Behera, aged about 40 years, Son of Late Duryadhan Behera, At. Subalaya, P.O-H. Burudi, Via – Humma – 761027, Dist - Ganjam.
2. Bhagirathi Das, aged about 30 years, Son of Yudhistir Das, At – Bhagirathipur, P.O. _ Rukunigaon, P.S – Chhatrapur, Dist – Ganjam.
3. Dilip Kumar Sahu, aged about 35 years, Son of Udayanath Sahu, At/P.O. – Munispenth, P.S. – Chhatrapur, Dist – Ganjam.

.....Applicant.

VERSUS

1. Union of India, represented through it's Secretary, Department of Posts, Shastri Bhawan, New Delhi - 110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, At/P.O. _ PMG Square, Bhubaneswar, Dist – Khurda – 751001.
3. Post Master General, Berhampur Region, Berhampur, At/P.O – Berhampur, Dist – Ganjam – 760001.
4. Senior Superintendent of Post Offices, Berhampur Division, Berhampur, At/P.O. – Berhampur, Dist – Ganjam – 760001.
5. Asst. Superintendent of Posts, Chhatrapur Sub Division, Chhatrapur, At/P.O. – Chhatrapur, Dist – Ganjam – 761020.

.....Respondents.

For the applicant : Mr. S. K. Dalai, Advocate

For the respondents: Mr. M. R. Mohanty, Advocate

Heard & reserved on : 16.03.2020

Order on : 04.06.2020

O R D E R**Per Mr. Swarup Kumar Mishra, Member (J)**

The applicants having a common cause of action and on being permitted to jointly prosecute this O.A., have approached this Tribunal in this Original Application under Section 19 of the A.T. Act, 1985, seeking for the following reliefs:-

- (i) *To admit this OA;*
- (ii) *To direct the Respondents to publish the result of the applicants in view of the advertisement under Annexure A-1*
- (iii) *To give appointment considering their eligibility with retrospective service benefits*
- (iv) *And/or pass any other/orders as deemed fit and proper.*

2. Facts of the matter in brief are thus: Applicants were the aspiring candidates for the posts of GDS in pursuance of an advertisement issued by the Respondent-Department vide A/1 dated 3.10.2013 by virtue of which 12 numbers of such posts had been sought to be filled up. Their grievance is that although the respondents gave appointment in respect of one post, they are yet to give appointment in respect of other posts. Their representations having not yielded any fruitful results, they have approached this Tribunal in this OA praying for the reliefs as mentioned above.

3. On being noticed, the respondents have filed a detailed counter opposing the prayer of the applicants. According to Respondents, out of 12 vacant posts of GDSs, they have given appointment in respect of one post i.e. GDSMD in Khallikote RS Sub Post Office after scrutinization of the applications and on completion of all formalities of recruitment process, as there was no prior permission of the competent authority required to fill up the GDS post of Sub Post Office. It has been pointed out that while the process was going on to fill up the other vacant posts in Branch Post Offices, instruction from Postal Directorate vide Letter No-17-39-7-2012-GDS dated 28.05.2015 (R/3) was received to fill up the vacant posts latest by 30.06.2015 in case notification have already been issued on or before 30.03.2015, adopting the old engagement procedure applicable prior to 01.04.2015, otherwise, notifications will be cancelled and the vacancies will be filled under the new engagement process. Further, the Directorate issued instructions vide L. No. 17-23/2016-GDS dated 01.08.2016 (R/4) to stop the selection/engagement of all types of GDS and to stop all cases of engagement which are under process. According to respondents the scrutinization/recruitment process of 11 numbers of vacant posts of GDS was not complete, for which the notifications issued stood cancelled with effect from 30.06.2015, as per the instruction of Directorate letter dated 28.05.2015.

4. According to respondents, notification for engagement of various GDSs was issued with direction to the applicants that they

should apply and submit their applications through Regd. Post with Acknowledgment, but the applicants have not submitted any proof of Acknowledgment in token of submission of his application. Besides the above, the respondents have stated that the present O.A. is barred by limitation in view of the fact that the applicants' prayer for appointment basing upon the notification dated 03.10.2013 having been cancelled by virtue of the Postal Director Letter dated 28.05.2015 as the recruitment process had not been completed till 31.03.2015 and the said letter was also affixed on the notice board of respondent no-5 for information. Therefore, the Respondents have pointed out that after cancellation of the notification on 28.05.2015, the cause of action arose for the applicants to approach this Tribunal, whereas they, without doing so sought information through RTI application, which was provided to them on 22/23.09.2015. Respondents have pleaded that presuming that the cause of action for approaching this Tribunal arose on 22/23.03.2015 when they received information under the RTI Act, the applicants should have approached this Tribunal thereafter, instead, they went on filing repeated RTI applications. Respondents have submitted that as per the settled position of law getting information under RTI Act does not erase and cure the delay. In this connection, they have relied on the orders of this Tribunal in MA No. 278/2019 Arising (arising out of OA No-230/2019-Jugal Kishore Samal Vrs DG BSNL).

5. With these submissions, they have prayed that the OA being devoid of merit is liable to be dismissed.

6. Applicants have filed rejoinder to the counter. In the rejoinder, the basic point urged is that there has been no such communication made to the applicants regarding the contents of letter dated 28.05.2015 or letter dated 1.8.2016 and/or regarding cancellation of the selection process. It has been submitted that whereas the notification dated 03.10.2013 pertains to filling up of 12 nos. Of posts of GDS, the respondents have given appointment in respect of the one Sub Post Office, i.e., Khalikote, which per se is arbitrary and colourable exercise of powers.

7. We have heard the learned counsels for both the sides and perused the records including the written notes of submissions filed by the parties. In support of their cases, the applicants have annexed to the written notes of submission the decisions of Hon'ble Supreme Court in Civil Appeal No. 9441 of 2019 decided on 18.12.2019 (AIRONLINE 2019 SC 1926), Civil appeal Nos. 5675-5677 decided on 06.05.2015 (2010 AIR SCW 4240). They have also cited the decision of Hon'ble Supreme Court reported in AIR 2013 SC 3372.

8. On the other hand, the respondents have also annexed to the written notes of submission the decision of the Hon'ble Supreme Court in Government of Orissa vs. Shri Haraprasad Dash & Ors. decided on 24.11.1997 and the decision of this Tribunal in O.A. No. 260/565/2017 decided on 05.07.2019. Besides, they have also

brought to the notice of the Tribunal the decision of CAT, Principal Bench, New Delhi in O.A. No. 3723 of 2016 decided on 07.02.2019.

9. As regards the facts in issue, it is to be noted that vide notifications dated 03.10.2013 were issued by the Respondent-Department inviting applications from the intending candidates for filling up 12 nos. Of vacant post of GDS in different Sub Post Offices and Branch Post Offices under Chatrapur Sub Division including the post of Gramin Dak Sevak MD, Karapada, the last date of receipt of such applications being on or before 24.10.2013. Admittedly, against those 12 nos. Of posts, the respondents have given appointment against the post of GDSMD, Khalikote RS Sub Post Office on completion of scrutiny of applications and the recruitment process on the ground that there was no prior permission of the competent authority required to fill up the said post on operational ground. The ground on which the rest of the posts were not filled up, according to the Respondents, is that while the process of recruitment was going on, Postal Directorate issued instructions dtd 28.05.2015 (R/3), which reads as under:

“i) All vacancies of GDS Posts for which notification has already been issued on or before 31.03.2015 by the concerned recruiting authority should be filled up latest by 30.06.2015 by adopting the old engagement procedure applicable prior to 01.04.2015.

ii) In case any of these vacancies are not filled up latest by 30.06.2015, the notification should be

cancelled and the vacancies should be filled under the new engagement process (Aptitude Test Method) applicable w.e.f. 01.04.2015”.

10. While the matter stood thus, the Postal Directorate issued further circular dated 01.08.2015 (R/4), with the following instructions:

“Sub: Proposed online selection of all categories of GDS- reg:

I am directed to request you to stop selection/engagement of all types of Gramin Dak Sevaks with immediate effect. It is further requested to stop all cases of engagement which are under process. Cases where selection has already been finalized and communicated to candidates only need not be withheld.

2. These orders are issued in view of proposal for on line selection of Gramin Dak Sevaks. Further ordrs in this regard may kindly be awaited”.

11. Based on the above instructions, it has been submitted by the respondents that the scrutinization/recruitment process of 11 nos. of vacant posts of GDS having not been completed, notifications for filing up the said posts stood cancelled.

12. Vide order dated 24.04.2019, this Tribunal had directed as an interim measure that the Respondents may proceed as per

notification dated 10.03.2019 (Annexure – A/6), but no final decision shall be taken in respect of three posts which are in question in this O.A. till next date. This interim order is in force as on date.

13. The applicants vide paragraphs – 4.2 and 4.3 of the OA have submitted as follows:

“4.2 That, the applicants at the intending candidates for the post of Gramin Dak Sevak for the Ganjam District and had applied for the said post by virtue of advertisement dtd. 3.10.2013 issued by the Respondent No. 6. It is also humbly submitted that at the relevant time there was advertisement for 12 posts and the applicants along with others were the applicants. Copy of the advertisement dtd 3.10.2013 for a particular post, i.e., for the post of Gramin Dak Sevak, MD, Karpada is annexed herewith as ANNEXURE- A/1.

4.3. That in pursuant to the aforesaid advertisement, the applicants have applied in respect of 12 posts in accordance to their category. Copy of the postal receipt dtd. 18.10.2013 is annexed herewith as ANNEXURE-A/2 series”.

14. In the counter filed, the respondents have replied as follows:

‘5. That in reply to the averments made in Para 4.2, 4.3 of the OA, it is humbly submitted that the applicants have

claimed that they have applied for all 12 post as per advertisement and they have also annexed the Postal receipts in Annexure-A/2 as proof of same but the said annexure shows the applicant No.1, i.e., Ramesh Chandra Behera attached 12 no. Of postal receipt and the applicant no. 2, i.e., Dilip Kumar Sahu attached 3 nos. of postal receipt and the applicant no. 3, i.e., Bhagirathi Das has not attached any postal receipt as per their claim. So it can't be ascertained from the copies of the postal receipts dated 18.10.2013 which are annexed as Annexure – A/2 series that the applicant had applied for the 12 posts as per the advertisement dated 03.12.2013, 27.09.2013 issued by the Respondent No. 6. It is also pertinent to mention here that in the notification dated 29.07.09.12 & 03.10.2013 issued by the Respondent No. 5, it was clearly mentioned that the post if reserved for a particular community, i.e., ST/SC/OBC/UR but how the applicants had applied against all communities. Further in the said notification it is clearly instructed to candidates that the application should be sent by Registered Post with acknowledgment (AD) as to confirm the delivery of application as well as to ascertain the person who received the same but the postal receipts attached by the applicants are booked as Registered letters without acknowledgement. So the claim of the applicants to have applied in respect of the 12 posts is not sustainable in eye of law".

15. In the above context, it is to be noted that the relief sought by the applicants in this O.A. as already quoted above, is for directions to be issued to Respondents to publish the result of the applicants in view of the advertisement under Annexure A/1 and to give appointment considering their eligibility with retrospective benefits. Advertisement under Annexure A/1 is for filling up the vacancy of GDSMD, Karapada. Therefore, this Tribunal is confined to the filling up the post in question as per of Annexure A/1 and not beyond that.

16. The respondents have brought to the notice of this Tribunal Memo dated 23.04.2014 enclosing thereto the check sheet in which the names of the applicant Nos. 1,2, and 3 find place at Sl. No.s 13 (Ramesh Ch. Behera), 5 (Bhagirathi Das), and 7 (Dilip Ku Sahu) respectively. In the said check sheet, the name of Bipra Ch. Barik the selected candidate has been found place at Sl. No. 2. It has been mentioned in the Memo dated 23.04.2014 as follows:

“Sri Bipra Charan Barik, S/o of Sri Sanyasi Barik of village Bhaiajhar PO, Sumandal PS, Kodala, Dist-Ganjam whose date of birth is 29.05.1993 is selected provisionally for the post of GDS Mail Deliverer, Khaklikote RS, SO under Chatrapur Head Office”.

17. At the cost of repetition, it is to be mentioned that this Tribunal is not concerned with any other notification than the vacancy of GDSMD, Karapada that had been sought to be filled up in pursuance of Annexure A/1 dated 03.10.2013. As already

observed above, a duty was cast on the respondents to complete the selection process having regard to the instructions dated 28.05.2015 by the Postal Directorate or even prior to that in order to complete the selection process latest by 30.06.2015.

18. Learned counsel for the applicant relied on the following citations:

1. AIR Online 2019 SC 1926 Judgment of Hon'ble Apex Court in case of Jharkhand Police Service Commission – Vrs- Manoj Kumar Gupta dated 18.12.2013
2. 2010 AIR SCQ 4240 2010 LAB IC 3107 Supreme Court of India, Civil Appela No. 5675-5677 of 2007 Chairman, All India Railway Rec. Board and Anr V. K. Shyam Kumar and Ors.

Learned counsel for the Respondents relied on the following citations:

1. CAT, Cuttack Bench judgement in OA No. 565/2017 in R. N. Mishra versus Union of India and others.
2. Supreme Court of India, Govt of Orissa Vrs. Shri Haraprasad Das & Ors.
3. CAT, Cuttack Bench Judgment in MA No. 278/19 (arising out of OA No. 230/19) in Mr Jugal Kishore Samal Vrs Director General, BSNL & Ors.

4. CAT, Principal Bench, New Delhi judgment in OA No. 3723 of 2016 in Manish Chaudhary Versus Govt. of NCT of Delhi & ors.

5. AIR 1999 SC 3837 R C Sharma vrs Udhamp Singh Kamal and Ors. in Appeal (Civil) 3119 of 1997

19. This Tribunal has gone through the pleadings, documents and citation relied by both the parties. The facts and circumstances of the decision as relied upon by learned counsel for applicant are different from the facts and circumstances of the present case and therefore are not applicable to the present case.

20. It is settled principle of law that the authorities have got the right to cancel any recruitment by assigning reason and the said cancellation should not be with any oblique motive or malafide intention. In the present case no appointment letter was issued in favour of the applicant and no selection list was also published. It is the specific case of the respondents that in view of the subsequent circular dated 28.05.2015 vide Annexure R/1 which provided the cut off date to be 30.03.2015 for inviting applications online, therefore, there was sufficient reasons not to issue any selection list or appointment letter in favour of the applicant in pursuance to the earlier advertisement in question. The applicant at that stage cannot claim that he had any right for appointment to any particular post in question. The applicant has failed to prove that the authorities have cancelled the recruitment process or had stopped it with any malafide intention or oblique motive. The fact

remains that no separate order has been issued mentioning that the recruitment process has been cancelled. But this Tribunal cannot overlook further fact that there was subsequent notification for receiving online application for the recruitment in order to fill up the post in question. Thus by necessary implication the earlier recruitment process has been deemed to be cancelled.

21. The applicant has also not approached this Tribunal in time and there has been delay by him in approaching this Tribunal in this OA in which he has challenged the order dated 22.09.2015

22. Therefore the OA is barred by limitation and also devoid of merit. Hence the OA is dismissed but in circumstances without any cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)