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 KOLKATA BENCH
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O.A. No.350/01502/2015.
 M.A. 350/00189/2016
 M.A.350/00109/2018

Date of order : This the 25th Day of February, 2020.



Hon'ble Mrs.Bidisha Banerjee, Judicial Member
Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member

Sri Goutam Bose,
 Son of Late Sankar Chandra Bose,
 an Unemployed youth,
 Aged about 37 years,
 Residing at Ukilpara (South), Rasikganj,
 P.O. – Bishnupur,
 District – Bankura, Pin – 722 122.

..... Applicant.

Versus

1. The Secretary,
 Ministry of Communications,
 Department of Posts,
 Dak Bhawan,
 New Delhi – 110 001.
2. The Chief Post Master General,
 West Bengal Circle,
 Yogayog Bhawan,
 C.R. Avenue,
 Kolkata – 700 012.
3. The Senior Superintendent of Post Offices,
 Bankura Division,
 Bankura - 722
4. The Inspector of Post Offices,
 Bishnupur Sub-Division,
 Bishnupur – 722 122.

..... Respondents.

For the applicant : Mr. K. Sarkar, Counsel
 For the respondents : Mr. P. Pramanik, Counsel

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ORDER (ORAL)

Per : Dr (Ms) Nandita Chatterjee, Member(A)

The applicant has approached this Tribunal praying for the following relief :



"8. i) to issue direction upon the respondents and their men and agents to cancel, quash, set aside the impugned speaking order dated 10.08.015 forthwith;

ii) To issue appropriate necessary direction to allow the applicant to join in the post of GDSMD, Arabani B.O. in account with Bishnupur Sub-Office forthwith;

iii) to issue further direction upon the respondents to act in accordance with recruitment standing instruction of the Postal Department in favour of the applicant forthwith;

iv) to produce connected departmental records at the time of hearing;

v) to pass any other order or orders or further order or orders as to this Learned Tribunal may deem fit and proper."

2. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record.

3. The facts, in brief, are that the applicant was an aspirant to the post of GDSMD of Arabani Branch Office in account with Onda Sub-Office of Bankura Postal Division. The respondent authorities, after scrutiny of applications, prepared a merit list wherein the applicant was empanelled at serial No.5 on merit.

The candidate at Sl. No.1 worked for six months and thereafter resigned from the post. The other four candidates who were higher in merit than the applicant also registered their unwillingness and the post of GDSMD of Arabari Branch Office once again, fell vacant. The applicant represented praying that he may be allowed to join the said post, being next in order of merit.

The respondent authorities however, not having favoured him with any response, the applicant approached this Tribunal in first stage litigation in O.A.932/2015 which was disposed of by this Tribunal on 15.07.2015 with a direction to dispose of his pending representations, consequent to which the respondent authority issued a speaking order dated 10.08.2015.

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Being aggrieved with the same, applicant has approached this Tribunal in the instant O.A challenging the said speaking order.

4. The applicant has, inter alia, advanced the following grounds in support of his claim.

(a) That, although the respondents have opined that as per GDS Engagement Rules, the panel is valid for one year with effect from the date of publication, whenever a waiting list survives, the period of waiting list may be extended to a period of two years.

(b) That, when the last selected candidate had indicated that she was not interested for the notified post, the applicant who was next in the merit, should have been invited to join well before the last date of validity of the panel.

(c) That, although the applicant had represented numerously to the respondent authorities, the respondents only acted on the orders of the Tribunal in his earlier O.A.932/2015.

5. The respondents, per contra, would controvert the claim of the applicant by arguing as follows :

(i) That the notification for filling up the post of GDSMD, Arabani Branch Office in account with Onda Sub-Office of Bankura Postal Division was notified on 30.12.2013. The terms and conditions of such engagement were noted explicitly in such notification and the last date for receiving applications was 31.01.2014.

(ii) Selection was made on the basis of marks secured in Madhyamik/qualifying examinations and a panel of 5 candidates was prepared and published on 09.05.2014.

(iii) According to rules, the panel would be valid for one year after its final publication, and, consequently validity of the said panel came to an end on 08.05.2015.

(iv) The top most candidate was offered appointment and was engaged as GDSMD with effect from 20.06.2014. She, however, resigned with effect from 21.02.2015 and her resignation was accepted on 07.04.2015 after completion of formalities.

(v) The next candidate was thereafter offered engagement but despite being issued with a provisional selection letter, the candidate who was 2nd in order of merit, did not join her post despite reminders. Her candidature was accordingly cancelled on 20.05.2015.

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(vi) The candidates 3rd and 4th in position of merit, have expressed their unwillingness for the said post on 28.04.2015 which was well before the completion of further selection process of 2nd meritorious candidate.

(vii) The engagement of the candidate 2nd on merit could not be completed before 20.05.2015 by which time the panel had expired.

The respondents would further aver that as the notification clearly stated that no correspondence should be made by the applicants for the selection process after submission of application, the representation of the applicant, which was violative of such instructions, did not merit consideration and the speaking order on his representation was issued only upon directions of the Tribunal.

6. The primary issue for adjudication in the instant matter is whether the applicant should have been considered for engagement to the post of GDSMD in the notified vacancy.

6.1 At the outset we would refer to the speaking order dated 10.08.2015 which the applicant would challenge in the instant O.A.

The speaking order at Annexure A-8 to the O.A is reproduced below





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A-8

Government of Posts, India
Superintendent of Post Offices
D.M.O., Bankura-722101

Memo No. 350/01502/2015 dated at Bankura the 10-08-2015

SPEAKING ORDER

This is in pursuance of Hon'ble CAT's order dated 15-07-2015 and regarding the representation of Sri Goutam Bose, applicant of O.A. No.350/01502/2015, as regards grievance of the Applicant as follows:

An engagement notice inviting application for filling up the vacant post of Gramin Dak Sevak/ Mail Deliverer (GDSMD) of Arabani Branch Office in the concerned of Onda Sub Office was issued by the Inspector Posts, Bishnupur Sub Division on 30-12-2013 mentioning therein all the conditions of such engagement. The last date of receiving of application was fixed up as on 31-01-2014. Taking all applications received within the target date an merit list in chronological order was prepared according to marks obtained in Madhyamik or equivalent examination excluding marks obtained in additional subjects (if any) keeping the candidate at top who had secured highest mark. As per extant GDS engagement Rule a Panel list with validity of one year from the date of its publication. The panel for the post of GDSMD-Arabani was prepared by Inspector Posts, Bishnupur Sub Division taking first five candidates from the top of the aforesaid list of all candidates on 09-05-2014. The top most candidate of the said engagement panel list, namely, Sampa Mandal was offered provisional engagement vide Inspector Posts letter No. A-1/GDS/MD/Arabani dated 16-06-2014 and was engaged as GDSMD-Arabani BO w.e.f 20-06-2014. But said Sampa Mandal had submitted her resignation letter to Inspector Posts, Bishnupur Sub Division on 21-02-2015 which was accepted on 07-04-2015 after completing due formalities and after completing total past work verification. Consequently, the 2nd candidate of the Engagement Panel became eligible for engagement for the post and accordingly Smt. Deblina Sarkar, 2nd to the said panel, was offered vide

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Inspector Posts, Bishnupur Sub Division letter No. A-
 1/GDS/MD/Arabani dated 08-04-2015.

Smt Sarkar did not turn up till 06-05-2015. A reminder was issued to her on 07-05-2015 fixing a last target date of her attendance within/by 14-05-2015. She did not turned up this time also.

On the other hand the validity of the aforesaid panel of five (5) candidates was expired w.e.f 08-05-2015, no other candidates were allowed for engagement though two other candidates next to Smt Sarker put willingness for cancellation of their candidature vide their representation dated 28-04-2015. The candidature of Sri Goutam Sarkar at serial no. 5 can not be considered as the validity of the panel has expired on 08-05-2015.

Being aggrieved of the above mentioned action of the Department, Sri Goutam Bose filed instant application before Hon'ble CAT, Calcutta Bench. As the validity of the engagement panel was expired on 08-05-2015, no process for further engagement from selected panel of GDSMD, Arabani B.O. was made.

In view of above observation, the representation of Sri Goutam Bose is disposed of in compliance with Hon'ble CATs order dated 15-07-2015 in OA No 350/00932/2015 in the matter of Goutam Bose Vs UOI & ors.

(A. Lahiri)
 Senior Superintendent Of Post Offices
 Bankura Division, Bankura-722101

By Regd/AD

To
 Sri Goutam Bose,
 A/o- Late Sankar Ch Bose,
 Ukilpara(South), Rasikganj,
 P.O.- Bishnupur,
 Distt-Bankura- 722122

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The principal grounds on which the authorities have rejected the candidature of the applicant is that the validity of the panel expired on 08.05.2015 and as the formalities of closing the candidature of the candidate 2nd on merit could only be completed after 14.05.2015, the scope of offering engagement to the candidate at Sl.No.5 did not arise.

6.2 The applicant, in support of his claim, has furnished an office order of the authorities dated 25.06.2010 (RJ-1) in his rejoinder, wherein the following is stated "It has been decided that in all cases of future engagement of all categories Gramin Dak Sevak including the cases which are currently in process and selections not finalised, a select panel of the candidates may be

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drawn up based on the sole criterion of merit. The panel should be operated in the event of the following contingencies.

- (i) Refusal by the meritorious candidate.
- (ii) Resignation by the 1st candidate even after joining within one year.
- (iii) Review made by the higher authority within one year

The select panel will be in the proportion of 5 candidates for one vacancy i.e. 1:5. The Select Panel will be valid for one year from the date of finalisation and after that it would lose its validity."



The applicant would also furnish in his support the document that that he had initially approached the respondent authorities for his engagement as GDSMD at Arabani Branch Office on 07.05.2015 which was duly received by the Bankura Division on the particular date itself.

6.3 It transpires that the candidate 2nd in order of merit had to complete her formalities within 06.05.2015 (that is within the stipulated period of 20 days) which was prior to expiry of the panel on 08.05.2015. Although the candidate 2nd in order of merit, did not seek any further time to respond, the authorities offered another 7 days time on 07.05.2015 suo moto thereby extending the period beyond the validity of the panel.

6.4 Although the respondents have averred that the notification dated 30.12.2013 clearly stipulated that no correspondence should be made by the applicants about the selection after submission of the application, no such clause is contained in the notification annexed at Annexure A-1 to the O.A reproduced as under :

"Department of Post
 O/o the Inspector of Post Offices
 Bishnupur Sub Divn, Bankura Division
 Memo No.A/GDSMD/Arabari/2013-14 dated at BSP the 30.12.2013
 ENGAGEMENT NOTICE

On cancellation of this office previous notification if any for engagement as GDSMD of Arabari B.O applications are invited from the Citizen of India for selection to the post of GDMD of Arabani B.O in a/w Onda Sub Office

The post is kept unreserved. The selected GDSMD might have to do the duty of BPM and mail carry also if required.

The conditions for applications are furnished below:-

1. The applicant should be a citizen of India..
2. The applicant should have passed class VIII standard Preferences will be given to the candidates with the matriculation qualification or its equivalent examination passed (for the case of equivalent exam certificate of recognition from a recognised board should be attached reflecting periodicity of recognition). Selection to be made on the basis of marks obtained in that examination and no weight age will be given for higher education Equivalency certificate should be attached, authenticity of marks will be verified as and when selection will be done/best on merit.

[Signature]

3. The selected candidate should take up residence at the delivery jurisdiction of this B.O.
4. The age of applicant will be minimum 18 years and maximum 65 years as on the last date of receipt of application i.e. 31.01.2014.
5. The applicant should not work as agent of any insurance company and not involve in any financial institution.
6. The applicant should not involve in any politics and not holding any elective post at the time of application.
7. A GDS is a part time employee. A candidate applying for the post of any category of GDS will have to supplement his income from other sources so has to have adequate means of livelihood to support himself/herself/and his/her family. A certificate to this effect will have to be submitted by the candidate.
8. The post carried monthly allowances of Rs.(4220-75 (increment)-6470) (subject to revision of workload) for GDSMD and with admissible DA time to time.
9. Full time employees working in other organisation, etc. and student studying in schools/college/university on regular measure should relieve from their previous position before taking up GDSMD [pst].
10. The applicant should be abided by Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 and should have fulfilled all the criteria mentioned therein.
11. The applicant should have sufficient working knowledge of Regional language and simple arithmetic.
12. The applicant should be physically fit and should have fair cycling knowledge.

On fulfilling the above conditions and being agreed, the applicant should apply in plain paper in the following format to the Inspector of Post Offices, Bishnupur Sub Divn Bankura Division, Bankura super scribining

"Application for the post of GDSMD, Arabani B.O in a/w Onda S.O" on the upper portion of the envelope & in application form. Application without superscription or wrongly super scribed will be summarily rejected.

Last date of Receipt of application: 31.01.2014.

Application should be sent through register/Speed Post only. Applications received by ordinary post will be summarily rejected.

Sd/-Illegible
Inspector of Post Offices
Bishnupur-Sub Divn. Bankura"

There is nothing on record to substantiate that further representations on the process of selection forbidden by such notification. Hence, the applicant was well within his rights to stake his claim for engagement vide his letter dated 07.05.2015.

6.5 Therefore the admitted facts from the above discussion emerge as follows :

(i) That a notification was issued on 30.12.2013 stating that the last date of receipt of applications was 31.01.2014 and the applicant,

[Signature]

along with others were enlisted in the selection panel, the applicant being 5th in order of merit.

(ii) The notification does not debar an aspiring candidate from entering into correspondence on the process of selection.

(iii) That, while the topmost candidate on merit had resigned from the job after 6 months, candidate 2nd on merit did not complete formalities within the stipulated time, and the 3rd and 4th candidates have expressed their unwillingness before the expiry of the validity of the panel.

(iv) The time limit offered to the candidate 2nd on merit, expired on 06.05.2015, and, as per rules, could no further extension was to be offered to the candidate as the stipulated timeline had expired.

(v) As per rules, the panel expired on 08.05.2015.

(vi) From records, it would transpire that the applicant had represented to the respondents authorities for consideration of his candidature on 06.05.2015, 7.5.2015 and 8.5.2015 (Annexures A-9, A-10 & A-6 to the O.A) respectively. His representations followed the unwillingness of the candidate 2nd on merit conveyed on 05.05.2015 (Annexure A-9 to the O.A). Consequently, on 06.05.2015, the panel remained valid and there was reasonable scope for consideration of the case of the applicant who was 5th in terms of merit. Hence the respondents should have offered him engagement subject to fulfilment of requisite formalities.

(vii) The respondent authorities kept silent on his representations and only chose to reject his prayer by the speaking order in compliance to the directions of the Tribunal when the applicant approached the Tribunal in first stage litigation.

6.6 We are given to understand that the post at Arabani Branch Office continues to be vacant. Ld. Counsel for the respondents would submit that no steps have taken to re-advertise the post.

7. We are hence of the considered view that, given the extant rules of the respondent authorities in connection with engagement of GDS, in particular, with reference to maintenance of panel thereon, the applicant should have been offered engagement during the life time of the said panel. Extending the offer to the 2nd seniormost candidate in terms of merit on 07.05.2015 when she had categorically expressed her unwillingness on 05.05.2015 defies any reason or logic, such extension being contrary to the communication dated 17.04.2015 of the respondent

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authorities at Annexure R/7 to their reply which had laid down a stipulated timeline for completion of the formalities.

8. Hence given the fact that

- (a) the vacancy continues to exist,
- (b) that the applicant was 5th in order of merit,
- (c) that the candidates above him in merit had either resigned or expressed their unwillingness to join such position,
- (d) that such unwillingness was conveyed prior to expiry of the panel, and, also
- (e) that the applicant had made honest attempts to reach out to the respondent authorities with a prayer for engagement,

leads us to the inevitable conclusion that the respondent authorities failed to act as per rules in rejecting the candidature of the applicant.

Accordingly, we would quash and set aside the speaking order dated 10.08.2015 and direct the respondent authorities to offer engagement to the applicant as GDSMD in Arabani Branch Office (which reportedly remains vacant) subject to completion of requisite formalities. The entire exercise shall be completed within 12 weeks from the date of receipt of a copy of this order.

9. Hence O.A is allowed. There would be no orders as to costs.

10. M.A bearing No.109/2018 praying for early date of hearing and M.A bearing No.189/2016 filed by the applicant for a direction on the respondents to file their reply are accordingly disposed of.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)