

7

Central Administrative Tribunal,
Cuttack Bench, Cuttack

Original Application No. 52 of 1992

Date of decision: 14th July, 1992

Kumari Nandita Mishra	Petitioner
Versus	
U.P.S.C. and others	Opp. Parties.

For the Petitioner : M/s. A.S. Naidu,
P.K. Mohapatra,
C.R. Dash,
P.K. Mohanty,
Advocates

For the Opp. Party Nos. 1 & 2 : Mr. A.K. Swain, Addl. St. Counsel

For the Opp. Party Nos. 3 and 4: Mr. A.K. Misra, Sr. St. Counsel

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

A N D

THE HONOURABLE MR. M.Y. PRIOLKAR, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

....

8

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 52 of 1992

Date of decision: July 14, 1992

Nandita Mishra Petitioner

Versus

Union Public Service Commission
and others. Opp. Parties.

For the Petitioner : M/s. A.S.Naidu,
P.K.Mohapatra,
C.R.Dash,
P.K.Mohanty,
Advocates.

For the O.P.Nos.1&2 : Mr. A.K.Swain, Addl.St.Counsel
(Central)

For the O.P. No.3 : Mr. Aswini Kumar Misra, Sr.St.
Counsel (Central)

C O R A M;

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
A N D
THE HONOURABLE MR. M.Y.PRIOLKAR, MEMBER (ADMN.)

J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to direct Opposite Party Nos. 1 and 2 to accept the candidature of the Petitioner for the Civil Services Main Examination, 1991 and allow her to take different examinations prescribed under the rules including the Viva-Voce Test.

2. Shortly stated, the case of the Petitioner is

✓

9

14

1/2/1

that , she was one of the applicants for competing the examination for appointment to the cadre of Indian Administrative Service. The Petitioner while filing the application before the Union Public Service Commission had given two addresses namely her permanent address and the address to which communications/correspondence should be made and i.e. C-5, Unit IX, Bhubaneswar, Orissa 751007. The permanent address as stated is 'N-1/255, Nayapally, Bhubaneswar'. Originally, an application form was submitted by the Petitioner Kumari Nandita Mishra in which the above mentioned permanent address and present address was given so as to enable her for sitting in the preliminary examination. Result of the Preliminary Examination was published on 5th January, 1992 and according to the Petitioner, though the application forms for final examination had been sent by the Union Public Service Commission to the address mentioned in the application form she did not receive the same and therefore the regular application form could not be submitted by her before the U.P.S.C. and later she received a communication from the UPSC contained in Annexure-1 dated 3rd February, 1992 stating that her candidature for the Civil Services Examination for the year 1991 cease to operate because a regular application form was not received, in the office of the U.P.S.C. within the stipulated period. According to the Petitioner, ^{at} ~~on~~ that stage, she become aware of this fact and immediately sent an application in the prescribed form on 4th February, 1992. The U.P.S.C. did not allow her to sit for the Examination and therefore, this application has been filed with the aforesaid prayer.

Vr.

10

//3//

3. On 7th February, 1992, the case was admitted for hearing and an interim order was passed directing the U.P.S.C. to allow the Petitioner Kumar Nandita Mishra to take the examination and result of this application will govern the future course of action to be adopted. This order was repeated in the order dated 19th May, 1992.

4. Opposite Party No.1 is the Union Public Service Commission represented by its Chairman. Opposite Party No.2 is the Secretary, Union Public Service Commission. Opposite Party No.3 is the Post Master General, Orissa Circle. Opposite Party No.4 is the Post Master, Sahid Nagar Post Office, Bhubaneswar and Opposite Party No.5 is the Principal (Centre Superintendent) Ravenshaw College, Cuttack where the written examination was to be held.

5. Counter has been filed on behalf of Opposite Party No.1 and 2 and a separate counter has been filed on behalf of Opposite Party Nos.3 and 4.

6. We have heard Mr. A.S.Naidu learned Counsel appearing for the Petitioner, Mr. Aswini Kumar Misra learned Standing Counsel (Central) for Opposite Party Nos.3 and 4 and Mr.A.K. Swain learned Addl. Standing Counsel (Central) for Opposite Party Nos. 1 and 2 at a considerable length, on the merits of this case. Mr. Naidu learned counsel appearing for the Petitioner invited our attention to paragraph 4 of the counter filed on behalf of Opposite Party Nos.3 and 4. therein it is stated that the Registered Parcel which was despatched by the U.P.S.C. in the address of Kumar Nandita Mishra (Petitioner) 'C-5, Unit 9, Bhubaneswar-751007' was not received for delivery in the Post Office Sahidnagar, Bhubaneswar-751007. Hence the said

lv

//4//

Parcel could not be delivered to Kumari Nandita Mishra (Petitioner) It is further stated in the next paragraph that Regd. Parcel sent by the U.P.S.C. bearing No.1855 dated 18th December, 1991 despatched to the address of Kumar Nandita Mishra N-1/255, Nayapally, Bhubaneswar-751007 was received in the said post office on 26th December, 1991 and was sent back to the U.P.S.C. as Kumari Nandita Misra was not staying in the given address.

7. In their counter, the Opposite Party Nos.1 and 2 have maintained that all steps were taken by the U.P.S.C. in giving due reasonable opportunity to the Petitioner to file her regular application form and since they were returned back to the U.P.S.C. for non delivery, a general citation was issued by the U.P.S.C. in the important News Paper intimating all candidates that he/she who-so-ever has not received the application forms for appearing at the main examination are at liberty to approach the UPSC giving their description, number and other details so that necessary steps would be taken by the U.P.S.C. There being no response from the Petitioner, no other option was left with the U.P.S.C. but to presume that Kumar Nandita Mishra was no longer interested to sit for the examination. Necessarily when the application for sitting in the regular examination dated 4th February, 1992 was received in the U.P.S.C it stood rejected because ^{it} ~~which~~ was filed after the stipulated period. ^{it} ~~It~~ is therefore, maintained by the UPSC that the case deserves no merit and liable to be dismissed. Mr. Naidu learned counsel for the petitioner submitted that there being no laches on the part of the petitioner and no opportunity having been made available to the petitioner to take necessary steps in time, the future prospects of the petitioner should not be jeopardised. It was further contended by Mr. Naidu that ^{it} ~~if~~ there is

WV

12

//5//

any default on the part of the petitioner Kumari Nandita Mishra, undoubtedly she is out of court, the application should be dismissed. In the absence of any laches on the part of the Petitioner Kumari Nandita Mishra, and in view of the fact that in pursuant to the interim order issued by this Bench, she having appeared in the examination and having turned out successful, a liberal view should be taken by this Bench and the delay, if any, should be condoned.

8. On the other hand it was urged by Mr. Swain learned Additional Standing Counsel (Central) for Opposite Party Nos. 1 & 2 that the petitioner was not alive to the situation and she was not taking necessary steps as was expected from her after there was a general citation issued in the News Paper. The fact of having turned out successful in the examination would be no ground to take a liberal view because it was in pursuant to an interim order issued by this Bench which is subject to the result of the ^{Case} examination. Therefore, according to Mr. Swain the case should be dismissed.

9. Mr. Aswini Kumar Misra learned Standing Counsel appearing for the Opposite Party Nos 3 and 4 basing on the averment finding place in the counter filed by Opposite Party Nos. 3 and 4 submitted that since the first parcel was not received in the Sahidnagar Post Office, there was no laches on the part of the Postal Department for non delivery of the parcel to Kumari Nandita Misra. It was further contended by Mr. Misra that the second parcel could not be delivered to the Petitioner's address at Nayapally because none were found to be present at the spot and therefore, according to rules, the parcels have been

len

13

11/6/11

18

returned back to the U.P.S.C. In such circumstances, there was no laches on the part of the Postal Department.

10. We have given our anxious consideration to the arguments advanced at the Bar. Undoubtedly, Kumari Nandita Misra, should have taken necessary steps if the general citation published in the News paper would have come to her notice. Of course intention of UPSC is very laudable and wholesome in giving notice to the candidates in general that if there has been any default on the part of any candidates in complying with the prescribed rules, an opportunity is being given through general citation to take necessary steps. Even though the UPSC had made laudable attempts to protect the interest of the different candidates, the court ^{cannot shut} ~~of the~~ ^{its} ~~short~~ ^{eyes} to the fact that there are many a slips between the cup and the lip. The possibility of this fact ~~and~~ of the general citation having been published in the news paper did not attract the attention of Kumari Nandita Mishra cannot be completely overruled. Had she been indolent or not interested for the examination she would not take immediate steps after receipt of Annexure-1 and therefore, her conduct does not appear to us to be unsatisfactory. That apart here is a case where there has been an omission on the part of the Petitioner in not filing the application in due time and there exists no laches or indolence on her part. This unfortunate situation has arisen because of the first parcel was not received in the Sahidnagar Post Office and the Second parcel could not be delivered in her Nayapally address as none were present there. It is told to us that in her application form she was particularly mentioned that all correspondence must be made in ^{her} ~~my~~ temporary address i.e. her address in Unit 9. Of course the UPSC was an

14

19

//7//

abundant precautionary measure sent the second parcel to her Nayapally address .Mr. Swain filed the original letter bearing No. F.7/6/92-E, IV dated 8.7.1992 issued from the UPSC addressed to Mr. Swain where it has been mentioned that the Petitioner Kumari Nandita Mishra has qualified for the interview which necessarily means that she has turned out successful in the examination. Taking into consideration all the above mentioned facts and circumstances and the ~~unforeseen~~^{and unfortunate} situation arising in this case relating to which neither parties would have any controlled, ^{for} the ends of justice, we do not think it just and proper to dismiss the application on a technical ground. Therefore, we would allow the prayer of the petitioner and condone the delay in receipt of the application and direct the UPSC to allow her to take the interview and her result be published.

11. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

[Handwritten signature]
14.7.92

MEMBER (ADMINISTRATIVE)

[Handwritten signature]
14.7.92
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/14.7.1992/K.Mohanty.