

7

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 07 OF 2005 with O.A. 634/04
CUTTACK, THIS THE 18th DAY OF August, 2005

IN O.A.NO. 07 OF 2005

Krushna Chandra Sepanati..... APPLICANT

VS

Union of India & Others RESPONDENTS

IN O.A.NO. 634 OF 2004

Ranjan Kumar Parida Applicant

VS

Union of India & Others.....Respondents

FOR INSTRUCTIONS

- 1. Whether it be referred to reporters or not? ye
- 2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ye



(M.R.MOHANTY)

MEMBER(Judicial)



(B.N.SOM)

VICE-CHAIRMAN

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 07 OF 2005 with O.A. 634/04
CUTTACK, THIS THE 18th DAY OF August, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HONBLE SHRI M.R.MOHANTY, MEMBER(J)

.....

IN O.A.NO. 07 OF 2005

Shri Krushna Chandra Senapati, Aged about 28 years, S/o. Muralidhar Senapati of village – Villigram, Nimapara, Dist. Puri.

..... Applicant

Advocate(s) for the Applicant - M/s Kali Prasanna Mishra, J.K.Khandayatray, S.Mohapatra.

VERSUS

1. Union of India, represented through its Secretary, Communication-cum-Director General, Posts Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, New Capital-751001.
3. The Senior Superintendent of Post Offices, Bhubaneswar Division, Forest Park, New Capital-751009.
4. Ranjan Kumar Parida, aged about 25 years, S/o. Busudev Parida, Vill/P.O. Bhanapur, P.S. Belanga, Dist. Puri.

.....Respondents

Advocate(s) for the Respondents - Mr. B.N.Udgata, ASC(C) and M/s. K.C.Kanungo, C.Padhi

6

9

IN O.A.NO. 634 OF 2004

Shri Ranjan Kumar Parida, aged about 25 years, Son of Basudev Parida, Vill/P.O. Bhanpur, P.S. Balanga, Dist. Puri.

.....Applicant

Advocate(s) for the Applicant - M/s K.C.Kanungo, S.Behera, B.D.Das,
C.Padhi

VERSUS

1. The Secretary, Communication-cum-Director General, Posts Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, New Capital-751001.
3. The Senior Superintendent of Post Offices, Bhubaneswar Division, Forest Park, New Capital-751009.
4. Shri Krushan Charan Senapati, GDS Branch Postmaster, Bhanpur GDS Branch Post Office, Via-Rench, Dist. Puri.

.....Respondents

Advocate(s) for the Respondents - Mr. U.B.Mohapatra, Sr.S.C.(c), M/s K.P.Mishra,
J.K.Khandayatray,
S.Mohapatra,
S.Mallin(For R-4).

.....

2

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

The question of law and facts involved in O.A.No. 634/04 and O.A.7/05 being the same, the legal validity of appointment made to the post of GDS Branch Postmaster of GDS Branch Post office, Bhanapur, we have heard both the matters concurrently and, therefore, our order in O.A. 7/05 will answer the controversy raised in both the O.As. Applicants of each of the cases have been impleaded as Respondents of the rival cases.

2. The applicant, in O.A.No. 7/05, Shri Krushna Chandra Senapati, has approached this Tribunal being aggrieved by the impugned notice dated 6.1.05 issued by the Respondent No.3 directing him to file a representation against the proposed order of termination of his service as GDS Branch Postmaster, Bhanapur Branch Post office. His grievance is that it was stated in the said order that the selection of the applicant for appointment to the post EDBPM had been carried out in-contravention of the rules but no specific allegation was made in the said notice nor anything was mentioned as to how his selection to the post had been done in contravention of the rules and, if so, how he had contributed to such contravention of rules for which he has to face the consequences. The applicant further disclosed that he had not filed any representation in response to the said notice to the Respondent Department as he was of the view that any such effort would have been futile specially because no specific irregularity was indicated in the notice served on him, and, therefore, it was clear that the applicant was ill-equipped to defend himself in any manner and his case was doomed ab initio before the departmental

authority. His allegation is also that the notice was a mere formality put up by the Respondents to deny natural justice to him and that the Respondents had preconceived and predetermined decision to dispense with his service having serious civil consequences for him. He has, therefore, assailed the notice dated 6.1.05 issued by the Respondent No.3 as ab initio void, illegal and liable to be quashed.

3. The facts of the case in a short compass are that the applicant was appointed to the post of GDS BPM, Bhanapur consequent upon placing the earlier incumbent on put off duty as a disciplinary proceeding had been initiated against him. The appointment of the applicant to the post was preceded by a notification of the vacancy both through public notification and through employment exchange on 7.6.2000 and 19.5.2000 respectively. In response to both these notifications, 12 applications were received and all the candidates were considered and their inter se merit based on various parameters as indicated at Annexure-R/1 was considered and finally the candidature of the applicant was found to be most meritorious. The vacancy was earmarked for ST/SC/OBC/OC candidates in descending order. The selection, however, was not made on community basis because of limited number of candidates as also that no candidate was available from ST community^{and} only one candidate being available from SC community. The selection was, therefore, treated as open to all and that is how the applicant was selected on the basis of his merit. Two candidates, including the applicant, both belonging to OC community, had secured identical marks 44.71% in HSC examination but the applicant was selected being junior in age. He was offered appointment and he joined the office on provisional basis with effect from 12.3.03. It was after about two years, i.e., on 6.1.05,

12

when he was hoping to be declared regularly appointed; he was served with the impugned notice dated 6.1.05 stating that his case of provisional selection had been reviewed by the competent departmental authority who had observed that his selection had been made in contravention of the rules and his selection process being not in conformity with the procedure laid down by the department in this regard, his service should be dispensed with. Challenging the said order, he has come up in this application seeking an order quashing the impugned notice at Annexure-A/9 and to pass such other order/direction as may be deemed fit and proper in the interest of justice.

4. Per contra, the Respondents have opposed the application without disputing the facts of the case. They have submitted that the impugned notice had to be issued consequent upon the review of the selection process by the Director, Postal Services, office of the Chief Postmaster General, Orissa Circle in pursuance of a complaint filed by one Shri Ranjan Kumar Parida, Respondent No.4, alleging favoritism. He later filed ~~an~~ O.A. 634/04 challenging the selection and appointment of the applicant. The Director, Postal Services called for the documents pertaining to the selection, reviewed the matter and observed that the ground on which the candidature of Respondent No.4 had been rejected was not in conformity with the procedure governing the matter. He, therefore, directed that the selection so made be cancelled as per the procedure laid down in D.G.Posts letter dated 13.11.97 (Annexure-R/2) which enjoined upon the appointing authority to follow the principle of natural justice in terminating appointment in such cases. They have stoutly defended the decision to serve show cause notice on the applicant as the same was in compliance of the principle of natural justice. They further submitted that the applicant instead

of submitting any representation before the appointing authority and without exhausting the departmental remedies has filed this case. Relying on the order of the High Court of Orissa, dated 16.8.02 in the matter of Union of India vs Bharat Chandra Behera in O.J.C.No. 6613/01 submitted that a higher administrative authority has always the power, authority and jurisdiction to examine the process of selection to find out whether the same is vitiated by any illegality or material irregularity. The Hon'ble High Court has upheld the power of the higher authority to invoke his supervisory administrative power to cancel illegal and unconstitutional selection and consequential appointment. They have also relied on another judgment of the same High Court in O.J.C.No. 2468/01 dated 12.3.03 where it has been held "if the authority finds that the selection was made de hors the rule and without following due procedure, such a selection could be annulled and for annulling such a selection, show cause notice is not required to be issued to the selected candidates, since the selected candidates can have no say in the matter." They have also referred to the judgment of the Apex Court contained in the Civil Writ Petition No. 8615/04 and 9282/04 filed by Ms. Kamla Devi and Ms. Kamlesh respectively that the provisionally appointed GDS, unless they are recruited strictly as per the recruitment rules do not have any right whatsoever for claiming regularization.

5. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

6. The Ld. Counsel for the applicant had initially taken the position that appointing authority had no power to review a selection made in terms of the recruitment rules. In support of his submission he had relied

19

on a judgment of Orissa High Court. However, later on he did not press this point when his notice was drawn to the contrary judgment in the subject of the High Court of Orissa and the judgment of High Court of Delhi (Annexure-R/8) in W.P.C. Nos. 8615 & 9282 of 2004. He, however, was unrelenting on the point that the selection of the applicant was done de hors the recruitment rules. He has also challenged the order of the reviewing authority (Annexure-R/5) dated 28.12.04. The thrust of his argument is that the selection to the post in question was made in terms of the eligibility conditions as notified by the Respondent No.3 under Annexure-A/1. In the said advertisement, it was made a condition that 'the candidates will have to submit the attested copies' of the documents and if any application was found not properly filled in and 'without required documents' was liable to be rejected. One of the documents mentioned there was 'Solvency Certificate'. It was, on the basis of the said terms and conditions of the advertisement, the Respondent No.3 had prepared the datasheet (called check list) for the purpose of selection under Annexure-R/1. In that check list, column 4 relates to the information whether all the documents had been received, if not, to list the documents wanting. It is under that column, in respect of Respondent No.4, it was mentioned that 'Solvency Certificate' wanting. Because of this, as per the condition laid down in the vacancy notification, Respondent No.4 was found not eligible for consideration; notwithstanding, the fact that he had scored 58.13% marks in HSC. The number of candidates whose candidatures were rejected on similar ground was seven in number including that of the Respondent No.4. He has contested the observation of the reviewing authority that "the case of the 3rd meritorious candidate Shri Ranjan Kumar Parida was not considered on flimsy ground for not submission of solvency certificate along with the

2

application form and also being a single O.B.C. candidate” as arbitrary and illegal as such an observation was contrary to the conditions laid down in the vacancy notification, He further stated that it was unfortunate on the part of the reviewing authority to call non-submission of solvency certificate as a ‘flimsy matter’ after the Department had notified that submission of all the certificates listed in that advertisement including solvency certificate was an essential condition for consideration of the candidature of the candidates. His argument is that the reviewing authority did not possess any power to amend the said notification, on any ground, long after the selection was made, that also without striking down the notification as bad. He further submitted that the Tribunal should only see whether the terms and conditions of selection process as notified by Respondent No.3 under Annexure-A/1 were followed or not, both in letter and spirit, and if there would be any deviation noticed in the actual selection of the candidates from the advertised conditions, then and then only, the selection could be called illegal or it is liable to be struck down. He further argued that if the observation of the reviewing authority that the candidature of Respondent No.4 was not considered “on flimsy ground for non-submission of Solvency Certificate” is not allowed to stand, then no fault could be found with the selection process and that the applicant was the most meritorious candidate after the two other meritorious candidates, namely, Shri Prasanta Kumar Choudhary (OC) and Shri Anirudha Sethi (SC) who were not available for offer of appointment and his selection becomes unassailable. In sum, his argument is that the reviewing authority having not found fault with the advertisement for selection to the post under Annexure-A/1, had no jurisdiction to annul the selection to the post. His decision was arbitrary and unreasonable hence bad in law. e

7. The Ld. Counsel appearing for the Respondent No.4 submitted that merit-wise Shri Prasanta Kumar Choudhary who was the best not being available for appointment to the post, Respondent No.4 was the next best meritorious candidate for the selection. He submitted that it is not denied by the Respondents that he had given income certificate including evidence that he had landed property, which is reflected in the check list under Annexure-R/1. He also refuted the allegation of the applicant that he was not an O.B.C. candidate. He further submitted that the reviewing authority had rightly observed that rejection of his candidature on the ground that he did not submit solvency certificate along with his application was wrong as he had submitted the same later and his solvency status was also available from the fact that he possessed own house as well as landed property. The Ld. Sr. Standing Counsel observed in this regard that the selection having been made under open category, the controversy as to whether Respondent No.4 was OBC candidate or not is only of seminal value at present.

8. We have given our anxious considerations to the issues involved in the controversy placed before us. The applicant has raised a couple of issues; firstly, that the impugned notice dated 6.1.05 was a mere formality as the reviewing authority had already taken the decision to terminate his service. Secondly, that the finding of reviewing authority is bad in law even if the reviewing authority has inherent power bestowed on him to review a selection already made. However, that did not mean that he possessed the power to delete/ignore/overlook an essential candidate for

17

selection without assigning any reason, for such an action would tantamount to readvertising the vacancy.

9. We find lot of force in the arguments of the Ld. Counsel for the applicant. We have carefully gone through the report of the reviewing authority as contained in Annexure-A/10. We find that the reviewing authority has found no irregularity in the selection excepting that the case of Respondent No.4 was not considered on the ground of non submission of solvency certificate along with the application and it is on this ground, he hold that the selection of the applicant instead of Respondent No.4 as unjustified and called that selection not in conformity with the rules. He also observed that "it deviates rules of DG Posts Letter No. 19-11/97-ED & Training dated 27.11.97."

10. Admittedly, the post of GDS BPM, Bhanapur was advertised vide Annexure-A/1 where the candidates were called upon to submit the attested copies of some documents as listed there along with their applications as follows:

- a) H.S.C. Exam. Certificate, School Leaving Certificate.
- b) Mark sheet of H.S.C. or equivalent Exam.
- c) Two recent character certificates granted by two gazetted Officers.
- d) Caste Certificate from competent authority not below the rank of Tahasildar (Gazetted).

6

- 18
- e) Income, Solvency and Resident Certificates granted by Revenue Officer not below the rank of Tahasildar in candidate's own name.
 - f) Army discharge Certificate in case of Ex-Army Personnel.
 - g) Details of land if any registered in the name of the candidate, i.e., Plot No., Khata No., Area of the Plot etc. Should be furnished in a separate sheet with copy of sale deed/Mutation certificate etc.
 - h) Details of immovable assets other than above (g) with proof."

It was also noted there as follows:

"Application received after the due date, not properly filled in and without required documents are liable to be rejected."

Among the documents required under Sl.No. (e), the candidates were called upon to submit certificate of Income, Solvency and Residency granted by Revenue Officer not below the rank of Tahasildar. This condition being made compulsory in the notification itself, we are unable to find any valid reason for the reviewing authority to call in question the decision of the recruiting authority for rejecting the candidature of Respondent No.4 on the ground that he had failed to submit Solvency certificate along with his application. Nowhere in his review report, he has found the notification itself as defective for calling upon the candidates to supply various documents as listed above. The recruiting authority was, under law, bound by the terms and conditions of filing applications. It is now well settled law that when a

e

statutory functionary makes an order based on certain grounds, his validity must be assessed by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. This was the decision of the Apex Court in the Mohinder Singh Gill's case reported in AIR 1978 SC 851. It must be mentioned here that in taking that decision in Mohinder Singh Gill's case, the Apex Court relied on its earlier decision in Gordhandas Bhanji (AIR 1952 SC 16) which is reproduced below: -

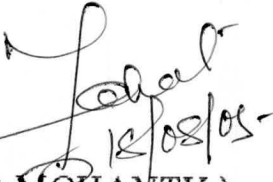
“ Public orders, publicly made, in exercise of a statutory authority can not be construed in the light of explanations subsequently given by the officer making the order of what he meant, or what was in his mind or what intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

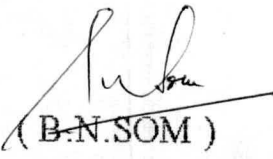
We are bound by the said pronouncement of law that public orders cannot be given a different meaning subsequently by any authority and everyone is bound by the order already published.

11. Thus, the reviewing authority has not only transgressed the law governing the field, he has also erred in observing that the selection should have been made following the guidelines communicated in Circle Officer's letter No. ST/10-1/65-RLG/Corr/2001 dated 21.12.01 and ST/10-1/RLG/Corr/2000, dated 18.7.01. We have perused the letters dated 21.12.01 and 18.7.01 relied on by him. The reviewing authority had found fault with the selection of the applicant as stated earlier because the selection was not done in consonance with the guidelines as referred to in those letters. But the

point to ponder is, these guidelines having been issued long after the notification of the vacancy in this case, the said notification could not be assailed on the ground of violating the guidelines issued later. Law is well settled in this score also. Further we find that calling for Solvency Certificate along with the Income Certificate is neither superfluous nor unreasonable on the ground that the person having land could still be insolvent and, therefore, the purpose to find out that the candidate selected will not be found insolvent, calling for such a certificate can hardly be called 'flimsy'. Thus, as the selection of the applicant was made strictly in terms of conditions given in the notification, the selection cannot be assailed by calling it irregular on any score because any such action would be only arbitrary and hence unacceptable in the eye of law.

12. Having regard to the above position of law and the facts of the case, we allow the O.A.No. 7 of 2005 and set aside the impugned notice dated 6.1.05 at Annexure-A/9 and allow the applicant to continue and discharge the duties of Branch Postmaster of Bhanapur Branch Post office. As a necessary consequence, O.A.No. 634 of 2004 stands dismissed. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

KUMAR