

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 195 of 2007

Cuttack, this the ~~17th~~ day of March, 2011

Jayashree Sahu Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes*

A.K.
(A.K.PATNAIK)
Member(Judl)

C.R.
(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 195 of 2007

Cuttack, this the ~~17th~~ day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Jayashree Sahu, aged about 26 years, W/o.Rohit Kumar Dehury of
Jatia, PS-Parjang, Dist. Dhenkanal.

.....Applicant

By legal practitioner : M/s.S.K.Rath,N.K.Sahoo, Counsel

-Versus-

1. Union of India represented through its Director General of Post Offices, Government of India, Ministry of Communication, Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Postmaster General, Sambalpur Region, Sambalpur Town/Dist. Sambalpur-768 001.
4. Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, Town/Dist. Dhenkanal-759 001.
5. Sub Divisional Inspector of Posts, Kamakhyanagar, At/Po.Kamakhyanagar, Dist. Dhenaknal.
6. Bipin Behari Behera, aged about 25 years, S/o.Ramakanta Behera, GDSBPM, Basoi, At/Po.Basoi, PO.Parjang, Dist. Dhenaknal.

....Respondents

By legal practitioner: Mr.R.C.Behera, ASC

M/s.N.Lenka,S.K.Nayak,

A.Parida, S.Prashan


and Miss.S.Mohanty

(Intervener)

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

In brief, the case of the Applicant is that, notification for recruitment to the post of GDSBPM, Basoi BO was issued by the Respondent No.4 on 18.10.2000. Pursuant to the notification, applicant submitted her application with all required documents. She was provisionally selected for the post of GDSBPM by the Respondent NO.4



vide order under Annexure-3 dated 8.11.2001 in which Respondent No.5 was directed to appoint the applicant to the post after observing usual formalities and submit appointment papers to the Respondent No.4. According to the Applicant pursuant to the order under Annexure-A/3, she reported to the Inspector of Posts but the Inspector of Posts did not take any action to allow her to join in the post. She brought the above fact to the notice of the Respondents 2 and 3 through successive representations and as it appears, there being no response on the said representations of the applicant, she has approached this Tribunal in the present OA with prayer to direct the Respondents 4 and 5 to allow her, pursuant to the order of appointment under Annexure-3 to continue in the post in question.

2. In the counter, Respondents' stand is that the applicant, vide order under Annexure-3 was provisionally selected for appointment to the post of GDSBPM of Basoi Branch Post Office with specific stipulation that she should provide rent free accommodation for the post office and should take up residence in the post village. The declaration submitted by applicant dated 16.7.2001 to provide the rent free house belonging to one Prafulla Dehury in the Basoi Village was subsequently forwarded to the Sub Divisional Inspector (Postal) Kamakhyanagar for verification. But Shri Dehury denied providing the accommodation to the applicant for running of the post office. After receipt of intimation from the concerned SDIP, applicant was asked vide letter dated 26.11.01 to intimate



particulars of the accommodation to be provided by her in the post village within ten days otherwise her selection will be cancelled. But the applicant did not respond. Then the SPOs Dhenkanal cancelled the selection of the Applicant and issued appointment in favour of next meritorious candidate i.e. Shri Trailokya Pradhan. Later on his selection was also cancelled due to failure to provide rent free accommodation for Basoi BO. Then appointment order was issued to next meritorious candidate i.e. Shri Bipin Bihari Behera vide letter dated 5.4.2002. Meanwhile one Shir Nimal Chandra Sahoo who was top in the merit list and had been excluded from the selection for the reason that he was working as GDMC in other Branch Post Office, filed OA No. 1042 of 2002 challenging the selection of Shri Bipin Bihari Behera in which this Hon'ble Tribunal passed some interim order and in obedience to such interim order the selection and appointment of Shri Bipin Bihari Behera was kept in abeyance until further orders vide letter dated 11.4.02. Pursuant to the direction of this Tribunal dated 12.12.03 in OA No. 1042 of 2002, Shri Nirmal Chandra Sahoo was selected as GDSBPM, Basoi BO as a result of which the selection of Shri Bipin Bihari Behras was cancelled. Shri Nirmal Chandra Sahoo also failed to provide rent free accommodation for the post office in the post village. Hence, the selection of Shri Nirmal Chandra Sahoo was cancelled. Thereafter, Shri Bipin Bihari Behra filed OA No. 679 of 2005 challenging the cancellation of his selection. In order dated 5.7.2006 this Tribunal directed the

Superintendent of Post Offices to refer to the merit list and if it is found that the applicant is placed against Sl.No.2 in accordance with the merit list, his case may be considered for appointment to the post of GDSBPM, Basoi BO notwithstanding the bar as stated by the Respondents in their counter within a period of four months from the date of receipt of the order from this Tribunal. On examination of records, Shri Bipi Bihari Behera whose appointment was cancelled earlier was selected and appointed to the post in question vide Memo dated 9.5.2007 and pursuant to the order of appointment, he reported to duty on 18.5.2007.

3. Applicant filed his rejoinder more or less reiterating her stand taken in the OA. Respondents 1 to 5 filed their additional counter. But no separate counter has been filed by the Intervener despite adequate opportunity granted to him.

4. The main contention of the Learned Counsel for the Applicant is that before terminating the selection and appointment of the Applicant, no show cause notice was issued to the Applicant and the so called letters under Annexure-R/8 & Annexure-R/9 have not been served and that only to favour Shri Bipin Bihari Behera, Respondent No.4 in connivance with Respondent No.5 & 6 cancelled the selection and appointment of the Applicant. The letters under Annexure-R/8 & R/9 have been manufactured by the Respondents 4 & 5 only to frustrate the claim of the applicant in this OA. Since the cancellation of the selection was in violation of the principles of natural justice, the applicant is

entitled to the relief claimed in this OA. This was stoutly opposed by Learned Counsel appearing for the other sides. According to them, in the instant case no opportunity was required to be afforded because in the case of the Applicant, the cancellation of appointment was due to non-fulfillment of the conditions provided in the rules and advertisement as also in the order of selection i.e. to provide rent free accommodation. Further it was contended by the Respondents' Counsel that no material has been produced by the Applicant even along with this OA showing willingness of any of the villagers to provide a rent free accommodation for the running of the post office. Accordingly, Respondents' Counsel has prayed for dismissal of this OA.

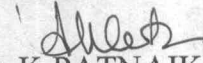
5. We have considered the rival submission of the parties and perused the materials placed on record. After receipt of the counter, though the Applicant filed rejoinder but did not bring the letters under Annexure-R/8&R/9 within the purview of the challenge to this OA by way of amendment. She has also not produced any agreement or undertaking of any of the Villagers of the Basoi Village willing to provide the house for the running of the post office as required under the Rules. One has to fulfill this condition before his/her joining the post but on that ground one cannot be kept out of the consideration. Since the Applicant was considered but as she failed to provide the rent free accommodation, her appointment was rightly cancelled. The selection of the Respondent No.6 as it appears from record was on the basis of the


order of this Tribunal dated 5.7.2006 in OA No. 679 of 2005. This order has neither been challenged by the Applicant before any higher court or through any RA. In so far as noncompliance of the principle of natural justice is concerned, before expressing any opinion on this aspect, we would like to rely on the observation of the Hon'ble Apex Court in the case of **Punjab National Bank v. Manjeet Singh** [2007] 1 SCC (L&S) 16 in which it was held by Their Lordships as under:

“the principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising there under is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.

6. As stated above, we find that even if before cancellation of the selection, opportunity had been afforded to the Applicant, in the facts and circumstances, the result would not have been different. Hence by applying the law laid down by the Hon'ble Apex Court, as aforesaid, we hold that non-observance of the principle of natural justice in the present case cannot be a ground to allow the prayer of the applicant made in this OA.

7. For the reasons discussed above, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member(Judl.)


(C.R.MOHAPATRA)
Member (Admn.)