

7

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA Nos.462 & 463 of 2010

Cuttack this the 16th day of August, 2012

CORAM:

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

AND

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

OA No.462 of 2010

Lalit Mohan Rana, aged about 38 years, Son of Damodar Rana, At/Po-Ganjuguda, PS-Phulbani Sadar, Dist.Kandhamal, at present GDS Branch Post Master,Ganjuguda Branch Post Office, At/Po.Ganjuguda, Dist. Kandhamal.

....Applicant

By legal practitioner –M/s.S.K.Mohapatra,M.R.Mohanty,
Counsel.

-Versus-

- (1) Union of India represented through its Secretary, Ministry of Communication, Department of Posts, Government of India, DAK Bhawan, New Delhi. /
- (2) Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
- (3) Chief Postmaster General, Orissa, At/Po.Bhubaneswar, Dist. Khurda.
- (4) Post Master General, Berhampur Region, At/Po. Berhampur, Dist. Ganjam.
- (5) Superintendent of Post Offices, Phulbani Division, Phulbani, Dist. Kandhamal.

....Respondents

By legal practitioner -Mr.S.B.Jena, ASC

OA No.463 of 2010

Padma Charan Sahani, aged about 44 years, Son of Late Jogeswar Sahani, At/Po.Adasipada, PS-Khajuripada, Dist. Kandhamal, at present GDS Branch Post Master, Adashipada Branch Post Office, At/Po.Adasipada, Dist. Kandhamal.

....Applicant

By legal practitioner –M/s.S.K.Mohapatra,M.R.Mohanty,
Counsel.

-Versus-

- (1) Union of India represented through its Secretary, Ministry of Communication, Department of Posts, Government of India, DAK Bhawan, New Delhi.
- l

- (2) Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
- (3) Chief Postmaster General, Orissa, At/Po. Bhubaneswar, Dist. Khurda.
- (4) Post Master General, Berhampur Region, At/Po. Berhampur, Dist. Ganjam.
- (5) Superintendent of Post Offices, Phulbani Division, Phulbani, Dist. Kandhamal.

....Respondents

By legal practitioner -Mr.S.B.Jena, ASC

ORDER

C.R. MOHAPATRA, MEMBER (A):

The Superintendent of Post Offices, Phulbani Division, Phulbani, Respondent No.5 vide notification/advertisement under Annexure-A/1 dated 04-11-2009 invited application from existing eligible Gr.D and EDA/GDS employees of the Phulbani Division for appearing at the Departmental Examination for promotion to Postman/Mail Guard cadre for the vacancy year of 2006-07 & 2008.

2. It is not in dispute that both the applicants in OA Nos.462 & 463 of 2010 are working as GDS Branch Post Masters in Phulbani Postal Division. It is also not in dispute that pursuant to the Notification/Advertisement at Annexure-A/1, both the Applicants applied and appeared at the Departmental Examination but could not come out successful for promotion and, that the persons who came out

successful have meanwhile been promoted to the posts for which examination was held. Thereafter, being aggrieved they have approached this Tribunal with prayer to quash the Notification/Advertisement under Annexure-1 and to direct the Respondents to hold selection exclusively for the GDS employees out of 50% quota meant for them.

3. By filing a detailed reply the Respondents have opposed the prayer of the Applicants and have prayed for dismissal of both the OAs being devoid of any merit. Applicants have filed rejoinder, more or less reiterating the stand taken in their OAs.

4. Heard the submission of the respective parties and perused the materials placed on record.

5. In both the OAs, the applicants seek to quash notification/advertisement as, according to them, the same ~~being~~ de hors the Rules. We notice that though the Applicants are aware that the persons selected pursuant to the said notification/advertisement have already joined the post they have not been arrayed as Respondents in the OAs. When the advertisement has been sought to be quashed, the selected candidates being necessary party should have been


made as Respondents. Therefore, it would be unjust, improper and a nullity if the advertisement is quashed without affording adequate opportunity to the person who might be prejudicially affected in the event such an order is passed. This is a fundamental requirement of natural justice which can not be ignored under any circumstance. Hence by applying the ratio of the decision of the Hon'ble Apex Court in the case of **Prabodh Verma and others v State of Uttar Pradesh and Others**, (1984) 4 SCC 251, the OAs are liable to be dismissed.


6. It is not the case of the Applicants that they have challenged the procedure adopted by authorities in issuing the advertisement under Annexure-1. Rather, both the Applicants after having taken part in the process of selection and knowing fully well the conditions stipulated in the advertisement, they are not entitled to challenge the criteria or process of selection. Surely, if the Applicants' name had appeared in the merit list, they would not have contemplated challenging the selection or advertisement under Annexure-1. They approached this Tribunal only after they found that their names did not figure in the merit list. Hence by

L

applying the ratio of the decision of the Hon'ble Apex Court in the case of **Manish Kumar Shahi v State of Bihar and others** (2011)1 SCC (L&S) 256 we have no hesitation to hold that both the OAs lack any merit.

7. For the reasons discussed above, both the OAs stand dismissed. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)


(C.R. Mohapatra)
Member (Admn.)