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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 230 of 2010
Cuttack, this the 21st day of August, 2012

Rabindra~~s~~nath Biswal Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(A.K.PATNAIK)
Member(Judl)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.230 of 2010

Cuttack this the 21st day of August, 2012

CORAM:

THE HON'BLE SHRI C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE SHRI A.K.PATNAIK, MEMBER (A)

.....
Rabindranath Biswal, aged about 49 years, Son of Trilochan Biswal, GDSSV, Sahid Nagar, Mukhya Dak Ghar, Bhubaneswar-751 007.

...Applicant

By legal practitioner: Mr.T.K.Mishra,Counsel

-Versus-

1. Union of India represented through its Director General of Post, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, Dist. Khurda.
4. Ranjan Kumar Parida, GDS BPM, Dalakasoti BO, Via-Balipatna SO, PO. Balipatna, Dist. Khruda.
5. Suryakanta Mahapatra, GDSMD/MC, Gopinathpur BO, PO. Old Town, Via-Bhubaneswar-2, Dist. Khurda.
6. Mitanjali Mishra, GDS BPM, Dakhinaradas BO, PO.Dakhinaradas BO, Via Rench, Dist. Puri.
7. Atulya Kumar Panda, GDS MD, Nahantara BO, Now GDS BPM Incharge, PO. Taradapada BO, Via-Nimapada, Dist. Puri, Pin-752 106.
8. Dinabandhu Biswal, GDSBPM, Sahadapada BO, Via-Balanga, PO.Sahadapada BO, Dist. Puri.
9. Ranjan Kumar Maharana, GDSMD, Bindha BO now working as GDSBPM incharge, Patrapada BO, Po.Patrapada BO, Via-Bhubaneswar-19, Dist. Khurda.
10. Mahadeb Sahoo, GDSMD Dandipur BO, now GDSBPM incharge, Dandipur BO, Po-Dandipur BO, Via-Balanga, Dist. Puri.
11. Laxmidhar Jena (II), GDSMC, Mukundadaspur BO, now working as GDSMD/MC, Sompur BO, Via-Pipili, PO.Sompur, Dist. Puri.
12. Laxmidhar Jena (I), GDSMD/MC, Sompur BO now GDSMD/MC, Sompur BO now GDS BPM incharge Sompur BO, Via-Pipili, Po.Sompur, Dist. Puri.

13. Hemanta Kumar Swain, GDS BPM, Nahantara BO, Via-Nimapada, PO.Nayahat, Dist. Puri.
14. Rama Ch. Nath, GDSMD/MC, Kamakantia BO, Via-Balanga, PO.Kamakantia BO, Dist. Puri.
15. Buxi Jagabandhu Patra, GDSMD/MC, Laxmisagar SO, Po-Laxmisagar, Bhubaneswar, Dist. Khurda.
16. Anirudha Sethy,GDSBPM,Bantugram BO, Via-Nimapada, Po.Bantugram BO, Dist. Puri.
17. Niranjan Behera, GDSSV, Orissa Assembly SO, Po-Orissa Assembly, Bhubaneswar, Dist. Khurda.
18. Suratha Mallick, GDSMD, Bamanala SO,PO.Bamanala, Via-Rench, Dist. Puri.
19. Bijay Kumar Muduli, GDSMC,Dakhinaradas BO, Via-Rench,PO.Dakhinaradas,Dist.Puri.

...Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC

(For Res.Nos.1 to 3)

M/s.D.P.Dhalasamanta,
N.M.Rout, Counsel

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O R D E R

C.R.MOHAPATRA, MEMBER (A):

The Applicant who is at present working as GDSSV, Sahid Nagar, Mukhya Dak Ghar, Bhubaneswar-751 007, Odisha has filed this Original Application with the prayer to quash the advertisement dated 4-11-2009 and pursuant to the advertisement selection conducted and result dated on 26-04-2010. The main ground of challenge of the advertisement is that the Respondents issued the advertisement without mentioning the clear cut vacancies available in different years.

2. Respondents in their counter have stated that as per the rule, the vacancy is required to be announced before

the date of examination. The Senior Superintendent of Post Offices, Bhubaneswar Division is the authority to announce the vacancy position, as per the Rules before the date of examination. Announcement of vacancy position depends upon the approval of the Head of the Circle, i.e. Chief Postmaster General, Orissa Circle, Bhubanswar. On receipt of instruction vacancy position was declared on 19.01.2010 which was modified on 28.01.2010 and circulated among all concerned before the scheduled date of examination. As per the schedule the examination was conducted on 31.01.2010. Result of the examination was declared on 26.04.2010. It has further been stated by the Respondents that pursuant to the advertisement the applicant applied to appear at the examination. Accordingly he was issued with the Hall Permit. But the applicant did not take part in the examination held on 31-01-2010. Hence it has been stated by the Respondents this OA being devoid of any merit is liable to be dismissed.

3. No rejoinder has been filed by the Applicant despite opportunity. Similarly, no separate counter was filed by the private Respondents. However, Mr.Dhalsamanta,

Learned Counsel appearing for the Respondents submitted that he will adopt the counter filed by the Respondent Department.

4. Heard Learned Counsel appearing for respective parties and perused the records. Mr.T.Mishra, Learned Counsel appearing for the Applicant while reiterating that as vacancy position was not notified or mentioned in the advertisement as required under the Rules, the advertisement is not sustainable in the eyes of law and as such, further action pursuant to the advertisement has to be annulled. This was contested by the Learned Counsel appearing for other sides. According to them, the applicant having applied but not participated in the selection despite opportunity, has lost his right to challenge the validity of the advertisement. Their further contention is that vacancy position was duly communicated to all concerned prior to the scheduled date of examination. As such the stand of the Applicant that since vacancy position was not mentioned or notified the advertisement is liable to be quashed is not justified.

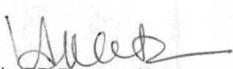
5. The advertisement under Annexure-A/1 was for holding of departmental examination for promotion of Gr.

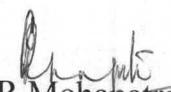
D/GDS to Postman cadre for the vacancies of the year 2006, 2007 and 2008. Admittedly the applicant applied pursuant to the advertisement and like others he was permitted to appear at the selection which was scheduled to be held on 31-01-2010. But the applicant did not avail of the opportunity. Result of the examination was declared on 26.04.2010 after which the applicant filed this OA on 03.05.2010 making the prayers mentioned above. Though opportunity was available to the Applicant to agitate before his authority about the short comings in the advertisement, he did not do so till filing of this OA. Obviously for this reason, this Tribunal instead of admitting this OA only issued notice to the Respondents on the question of admission. Hence this OA is held to be barred by Section 20 of A.T. Act, 1985.

6. In so far as merit of the matter, we may state that public interest litigation is not maintainable in service matter before this Tribunal. This OA is as good as public Interest litigation as the applicant has sealed his right to challenge the validity of the advertisement in not appearing at the examination pursuant to his application and Hall Permit sent by the Respondent-Department. Needless to say that the

applicant has tried to follow 'dog in the manger' policy which would not be of any help to him.

7. For the discussions made above, we find no merit in this OA. This OA is accordingly dismissed. No costs.


(A.K. Patnaik)
Member(Judl.)


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