

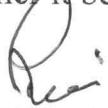
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 502 of 2012
Cuttack, this the 12th day of January, 2015

Dillip Ku. Barik Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.MISRA)
Member (Admn.)


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

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/00502 OF 2012
Cuttack, this the 12th day of January, 2015

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

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Dillip Kumar Barik,
aged about 35 years,
S/o Kishori Barik,
At/PO- Khatkhatia, PS- Manamunda,
Dist- Boudh, Odisha.

...Applicant

(Advocates: M/s. N.R.Routray, S.Mishra, T.K.Choudhury, S.K.Mohanty,
N.Hota, R.K.Mohanta.

VERSUS

Union of India Represented through

1. Secretary,
Ministry of Communication & IT,
Department of Post, Dak Bhawan,
Sansad Marg, New Delhi-110016.
2. Post Master General,
Berhampur Region, At/PO-Berhampur,
Dist- Ganjam, Pin-760001.
3. Superintendent of Post Offices,
Phulbani Division,
Phulbani.
4. Swetapadma Bastia,
D/o Radha Charan Bastia,
At/PO- Khatkhatia, Via- Baghiabhal,
Dist- Boudh- 762030.

..... Respondents

Advocate(s) : Mr. P.R.J.Dash.

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W.R.D

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ORDER

A.K.PATNAIK, MEMBER (JUDL.):

This OA has been filed by the Applicant under section 19 of the A.T. Act, 1985 praying therein to declare the selection of Respondent No.4 for the post of GDSBPM of Khatkhatia Branch Post Office as bad and illegal and to direct the Respondent No.3 to select the applicant to the post in question.

2. Respondent No.3 has filed a counter in which it has been stated that the post of GDSBPM of Khatkhatia Branch Post Office in account with Baghiabahal Sub Post Office fall vacant due to retirement of the regular incumbent and in order to filling up the said vacancy, notification was issued to the District Employment Officer, Boudh on 23.11.2011 to sponsor name of the candidates, besides issuing local open notification inviting applications from open field candidates fixing the last date of receipt of application as 22.12.2011. In the said notification it was specifically mentioned that the post was offered to the candidate from the UR community and in case minimum required number of three candidates of the said community is not available then the vacancy will go to the other community candidate in the order of OBC, ST and SC. The employment exchange did not sponsor any name but fifteen applications were received in response to the notification out of which applications of three candidates were received beyond the due date and accordingly, their cases could not be taken into consideration. Out of the remaining twelve candidates, applicant was found to have secured the highest mark in the Matriculation examination but discrepancy was found in his application inasmuch he failed to submit the undertaking regarding his other source of income as stipulated in para 4(ii) & 6(6) of the notification. So also in Column 9 of

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the application, the applicant mentioned 'Nil' against the column 'other source of income' and also left column 10(a) to (e) 'blank'. It has further been stated that as per para 3.2 of G.I.Deptt of Posts Letter dated 17.09.2003 'As GDS is a part time employee, a candidate applying for any category of GDS will have to supplement his income from other employment sources so as to have adequate means of livelihood to support himself and his family'. As the applicant has applied for the post of GDSBPM he should have income from other sources to maintain his livelihood. But since in the accompanying document, he mentioned that he has no other source of income his candidature was not considered. As he did not fill up the columns against 10(a) b)(d) & (e), as per conditions stipulated in para 8 of the notification his candidature was rejected which did not warrant any interference by this Tribunal.

3. Applicant has filed his rejoinder in which he has contested the grounds on which his candidature was rejected by stating that as per the Government of India Notification dated 17.09.2003 a certificate regarding his alternative source of income will have to be submitted by a candidate before he/she is given appointment letter and, therefore, rejection of his candidature at the threshold on the ground of non submission of undertaking is not sustainable. Hence he has reiterated grant of the relief claimed in this OA.

4. Despite service of notice and adequate opportunities neither the Respondent No.4 entered appearance nor filed any counter.

5. We have heard Mr. N.R.Routray, Learned Counsel for the Applicant and Mr. P.R.J.Dash, Learned ACGSC appearing for the Departmental Respondents and perused the materials placed on record.



6. Mr. Routray has contended that the Respondents rejected the candidature of the applicant under misconception by giving incorrect interpretation to the conditions in para 4.(ii) of the notification even without taking into consideration the Government of India Notification dated 17.09.2003 with a view to favour Respondent No.4. By specifically drawing our attention to the conditions at para 4(ii) of the notification Mr.Routray submitted that when it has specifically been provided in the said para that "as Gramin Dak Sevak Branch Postmaster shall have to give an undertaking that he has other source of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family" it clearly implies that this condition will be insisted upon only after selection but before appointment order is issued and, therefore, rejection of the candidature at the threshold runs contrary to both the Government of India guidelines as well as the condition No.4 (ii) of the Notification. Hence, the applicant is entitled to the relief claimed in this OA.

7. On the other hand, Mr.Dash contended that the rejection of the candidature of the applicant cannot be found faulted with as the applicant failed to submit the undertaking as a precondition for selection as it was stipulated in para 8 of the notification that applications received after the prescribed date, applications not accompanied by the required documents and applications which are incomplete will be rejected. Hence it has been submitted by Mr.Dash that as there is no miscarriage of justice; interference in the matter is uncalled for. Accordingly, he has prayed for dismissal of this OA.

8. We have considered the rival submissions of the parties and find that the sole issue which needs determination in this OA is as to



whether the candidates need to furnish the undertaking at the stage of submission of application or at the stage of appointment. The Government of India instruction issued vide letter dated 17.09.2003 provides as under:

“3. Against the aforesaid backdrop, the whole matter has been re-examined x x x office in its entirety in consultation with Ministry of Law, which has also termed the above condition as violative of Constitutional provisions. The above matter was placed before the Postal Services board. The Postal Services Board considered the above issue and also the issue of enhanced security in view of increased cash handling liability of GDSs. Keeping in view all the relevant considerations and after careful deliberation, the Postal Services Board has decided as follows:

3.1 The condition of income preferably derived from landed property or immovable assets, for recruitment to the posts of Gramin Dak Sevaks (GDSs), including GDS BPM/SPM, will be deleted.

3.2 As GDS is a part-time employee, a candidate applying for the post of any category of GDS will have to supplement his income from other employment sources so as to have adequate means of livelihood to support himself and his family. A certificate to this effect will have to be obtained from the candidate before he/she is given an appointment letter.

3.3 In view of increase in cash handling liability and line limit of the GDSs, security amount (which is Rs. 4000/- at present) will be enhanced to Rs. 10,000/- for GDS SPM/BPM and Rs. 5000/- for other categories of GDSs. The Security will be in the form of Fidelity Bond or NSC pledged to the Department in the name of the President of India.

3.4 The above enhanced security deposit will be effective from the date of next renewal of security bond for the existing GDSs and with effect from date of employment for the new GDSs. ”

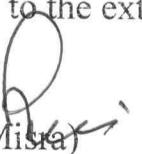
9. The conditions in question is provided in the notification at para 4(ii) which reads as under:

“4(ii). As Gramin Dak Sevak Branch Postmaster shall have to give an undertaking that he has other source of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family’.

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10. Law is well settled that when the language of a rule/instruction/guideline is clear without any ambiguity question of giving interpretation by the Tribunal does not arise. Further it is needless to emphasize that the executive is bound to adhere to the conditions laid down in the Rules/instruction/guidelines issued by the competent authority/Government of India. The doctrine of occupied field demands that conditions stipulated in the Rules/instructions/guidelines will hold the field in the matter of selection. Now going by the aforesaid instruction of the Government of India as well as the conditions stipulated in para 4(ii) of the notification there can be no iota of doubt to hold that undertaking to the extent of having other source of income has to be provided by the selected candidate before he/she is appointed to any GDS post and, therefore, in our considered view that rejection of the candidature of the applicant, when admittedly he has secured the highest mark in the matriculation examination which is the determining criteria for the post of GDS BPM being illegal is not sustainable in the eye of law. Resultantly, the selection of the Respondent No.4 as GDSBPM of Khatkhatia Branch Post Office is hereby quashed and Respondent No.3 is directed to consider the candidature of the applicant vis-a-vis others to the post in question as per the observations made above.

11. With the aforesaid observations and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)