

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 340/2013

Reserved on : 26.07.2016

Jodhpur, this the 3rd day of August, 2016

CORAM

Hon'ble Dr Murtaza Ali, Judicial Member

Hon'ble Ms Praveen Mahajan, Admn. Member

Akha Ram S/o Shri Chutra Ram, Aged about 27 years, b/c Jat, R/o Sewari, District – Nagaur. (for selection to the post of GDSBPM, Postal Department)

.....Applicant

By Advocate: Mr S.P. Singh.

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Postmaster General, Western Region, Jodhpur.
3. Superintendent of Post Offices, Nagaur Division, Nagaur.
4. Khuma Ram Tard, S/o Shri Ram Ratan R/o Village – Sewari, District - Nagaur

.....Respondents

By Advocate : Mr K.S. Yadav for respondents No. 1 to 3.

None present for respondent No. 4.

ORDER

Per Ms Praveen Mahajan

Mr Akha Ram (Applicant) has filed this OA U/s 19 of Administrative Tribunals Act, 1985 seeking to quash selection

Mr Khuma Ram Tard (Private Respondent) on the post of GDSBPM, Sevadi issued by the official respondents.

2. The case of the applicant is, that he possesses all the requisite qualification for appointment to the post of GDSBPM. In pursuance of Annex. A/2 notification dated 07.11.2012, he applied for the post of GDSBPM, Sevadi (SriBalaji) against one unreserved category post, within the stipulated time. In the order of merit of selection, the applicant was placed at serial number 4 (Annex. A/4). The first three candidates above the applicant, in order of merit refused to join, making the applicant as number 1 in the select panel. However, the respondents did not take appropriate action for appointment of the applicant against the post of GDSBPM for more than four months. Applicant has stated in the OA that Annex. A/2 notification clearly says that the last date for receiving the application form was, on, or, before 14th December, 2012. The application form, of the private respondent was not submitted for selection to the post of GDSBPM because the envelope containing the application form had not superscribed the name of post on top of the envelope, hence, the competent authority returned the envelope. The private respondent approached the Postmaster General and submitted his complaint.

 The competent authority, vide communication dated 19.03.2013

back by speed post by the respondents since the name of the post for which the applicant applied, was not superscribed on top of the envelope. The private respondent approached this Hon'ble Tribunal by way of filing OA No. 152/2013 (Annex. A/5). An interim direction was issued on 15.04.2013 to consider the case of the private respondent provisionally, while preparing the merit list. The respondent, however, without formally accepting his application, or placing his name in the merit list appointed him permanently, without waiting for the final decision in his OA No. 152/2013. The applicant, was not extended an opportunity to keep his position, as no notice was issued to him. The applicant further states, that the candidature of private respondent was rejected due to non-fulfilling of the condition for selection to the post of GDSBPM. His name did not figure in the merit list dated 10.04.2013 (Annex. A/4) which was issued prior to the passing of interim order dated 15.04.2013 by the Hon'ble Tribunal. The applicant alleges that the action of the respondents is arbitrary and is in violation of Article 14, 16 and 21 of the Constitution of India.

3. In reply, the official respondents No. 1 to 3 have submitted, that in pursuance of Annex. A/2 notification, 17 applications were received till the due date. One application of Shri Khuma Ram

Due to non-mentioning of the name of the post for which he applied, on top of the envelop, the same was returned to him on 06.12.2012 with the remarks that 'post applied for is not mentioned thus, returned'. Thereafter, no application of the private respondent was received in the office till the cut off date of receiving the applications. The applicant, had also applied for the same post of GDSBPM Sewari. The selection was finalized and appointment committee selected the eligible candidates for the vacant post. When the other selected candidates in the wait listed panel refused to join, the case of the applicant was to be considered next. However, before the applicant could be called for appointment, interim order dated 15.04.2013 was passed by this Hon'ble Tribunal in OA No. 152/2013, to provisionally, consider the application of the private respondent, while preparing the merit list. In compliance to the said interim order dated 15.04.2013, the candidature of the private respondent Shri Khuma Ram Tard was considered. Since he had secured 85.64% marks in Class 10th, he was called to join as GDS BPM Sewari instead of the applicant, Shri Akha Ram Saran who had scored 72.33% marks in class 10th (i.e. less than the marks obtained by the private respondent). The private respondent, thus, joined on the post of GDS BPM on 23.05.2013 (AN) making the recruitment process complete.

4. Mr Khuma Ram Tard, the private respondent No. 4 has neither entered his appearance nor filed any reply despite service of notice.

5. We have considered the contentions made by the applicant and official respondents and also perused the record of the instant OA as well as OA No. 152/2013 filed earlier by the private respondent namely Mr Khuma Ram Tard.

6. While going through the record of OA No. 152/2013 filed by the private respondent No. 4, we find that the said private respondent received back his application form on 17.12.2012. Immediately, thereafter on 18.12.2012 he represented to the Superintendent, Post Office Nagaur, Division – Nagaur to accept his application form. In his representation he clearly stated that he had applied for the post of GDS on 04.12.2012, as per the advertisement dated 07.11.2012. He did so, well before 14.12.2012, which was the cut off date. The conditions in the advertisement did not stipulate that the post applied for should also be indicated on top of the envelop. Again, vide representations dated 25.02.2013 (Annex. A/7) and 20.03.2013 (Annex. A/5), the private respondent wrote to the department reiterating his earlier submissions. He clarified that the so called

was over. He requested for acceptance and consideration of his application.

7. This Tribunal after hearing the OA No. 152/2013 on admission, passed the following interim direction on 15.04.2013:

“Heard on interim relief. After considering the facts and circumstances of the case, the respondents are directed to provisionally consider the application of the applicant while preparing the merit list, in view of the fact that he received the returned envelope, by which his application was sent, after the expiry of last date of submission of the application, and only on the ground that he did not refer the post on the envelope for which has applied, his envelope was returned.”

The respondents, in pursuance of the said order re-examined the matter on merit and issued the appointment order to the private respondent. Without contradicting the averments made by the private respondent, the respondents placed the order of appointment and joining, on record through MA No. 128/2013 on 01.07.2013. Later, vide order sheet dated 25.09.2013, OA was dismissed for non-prosecution. Nevertheless, recruitment process in pursuance of Annex. A/2 notification in the instant OA stood completed. The respondents in the said OA No. 152/2013 did not dispute the annexures filed by the applicant alongwith OA. Thus, in the absence of any such rebuttal, the averments made by the private respondent have become final.

8. Notwithstanding the above discussion, the applicant in the instant OA has sought to challenge the Annex. A/1 i.e. appointment order of the private respondent on the ground that he did not apply in time and was nowhere in the merit list or waiting list. The applicant submits that the private respondent has been appointed only by virtue of Annex. A/5 interim order of the Tribunal dated 15.04.2013. We find that the ground taken by the applicant, that private respondent was ineligible because he did not apply in time, does not hold good. The private respondent had applied for the post of GDS BPM in time, but due to the issue of not mentioning the name of the post on the envelope, containing the application form, his form was sent back by the Department. The returned application form, as per averments and documents annexed in OA No. 152/2013 itself, was received by the private respondent only after expiry of the last date of receipt of application form. The private respondent immediately contacted the respondents and filed a representation alongwith requisite documents, which bears receipt of recipient and is annexed as Annex. A/6 of the said OA.

9. It is matter of record that the private respondent had applied well within time. It is also not disputed by the applicant that private respondent has secured 85.64% marks in his class 10th

Apparently, the private respondent stood higher in the order of merit. The respondent while considering his case provisionally (on the orders of the Tribunal) considered his case on merit and finalized his appointment. The respondents cannot be faulted for initiating a process based on the directions of the Tribunal or for correcting their mistake and granting a benefit, which in any case was due to the private respondent, on merit.

10. Mere inclusion of name in the waiting list does not automatically create any right in favour of the applicant, for appointment. The applicant has prayed for cancellation of selection process of the private respondent but he has failed to establish that it was in any way vitiated or compromised. He has not been able to make out a case that he was meted any discriminatory or biased treatment by the Respondents. He cannot claim the benefit of a mistake committed by the respondents which was rectified by them on reconsideration (even if such reconsideration was at the behest of Tribunal's order). We do not find any infirmity in the Annex. A/1 appointment order of the private respondent.

11. However, we cannot help but observe that the sequence of events dealt a harsh blow to the expectations of the applicant who

the private respondent but dura lex, sed lex. The law is harsh but it is the law.

12. In view of discussions made hereinabove, the OA is dismissed. No costs.


[Praveen Mahajan]
Administrative Member


[Dr Murtaza Ali]
Judicial Member

Ss/-