

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 16.07.2014

Pronounced on 24-7-2014.

Original Application No.59/2010

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Kaushlesh Kumar Shukla aged about 34 years son of Sri Umesh Chandra Shukla R/o Mohalla Azadnagar Near JRV School Hardoi.

-Applicant.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India through the Secretary Department of Post Dak Bhawan, New Delhi.
2. PMG Bareilly.
3. SPOs Hardoi.
4. Inspector of post offices central sub division Hardoi.
5. Sri S.N. Singh SPOs Hardoi.

-Respondents

By Advocate: Sri S.K. Awasthi.

ORDER

By Ms. Jayati Chandra, Member (A).

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (a) *That this Hon; Tribunal may kindly be pleased to issue a writ in the nature of certiorari quashing the impugned order 22.1.10 as contained in annexure in annexure no.1 with directions to respondents to make appointment on the basis of applications received with reference to the notification dated 1.4.09 annexure no.2.*
- (b). *Appoint the application being Ist in merit among all candidates.*
- (c). *Any other relief deemed just & proper in the circumstances of the case.*

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(d). *Allow the OA with costs.*”

2. The facts of the case as averred by the applicant are that the respondents notified the vacancy of GDS MD/MC by advertisement dated 01.04.2009. The applicant applied for the above post in answer to the advertisement as he fulfilled all the eligibility conditions. However, no appointment letter in favour of the applicant was issued. Even after enquiries about the character and income etc. was made through the District Magistrate and Superintendent of Police, Hardoi on 23.10.2009. The applicant made a representation by letter dated 12.10.2009 (Annexure-4). An application under RTI on his behalf has been made through Sri Brijesh Chandra, Advocate but only incomplete information has been given to him that the recruitment process in respect of GDS MD/MC, Saketput is not complete. The M.P., Hardoi also wrote a letter on 06.01.2010 to PMG, Bareilly for issuing appointment letter to the applicant on the said post. Thereafter, without any justification he was informed by impugned letter issued on 22.01.2010 that a direction to issue fresh notification has been taken. The order dated 22.01.2010 is a vague and illegal order and has been passed without application of mind on the basis of malicious report made of O.P.No.3 and 5 for getting a person of their choice appointed. In a similar matter in the case the Tribunal passed an order in O.A.No.346/1997 on 16.5.2001 quashing the impugned notification re-advertising the post. The applicant is first in the merit of all the candidates who had applied in response to Notification dated 01.04.2009 and also fulfills all the eligibility conditions and qualifications. He

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should be appointment rather than the post re-advertised.

3. The respondents filed their reply denying the averments so made by the applicant. An advertisement dated 24.2.2009 for the post of GDS MD/MC at Sakatpur was issued and only one application i.e. that of the applicant was received. On 08.05.2009, joint complaint by S/Sri Siya Ram Singh Santosh Kumar, Ram Bahan, Pawan Kumar and Shiv Ram was made regarding the selection process. An enquiry was conducted on the matter. It is found that required process for recruitment had not been followed. Thereafter, entire recruitment process initiated vide advertisement dated 01.04.2009 was cancelled vide order dated 13.5.2009 and fresh advertisement dated 6.6.2009 calling for applications was issued. An answer to the second advertisement seven applications were received but the applicant had not given any application in answer to the second advertisement. The Appointing Authority had considered the candidature of one Sri Peeyoush Mishra, who had the highest marks out of six candidates. The 7th candidate Sri Alok Dixit withdrew his candidature. However, several complaints had been lodged with the different postal authorities dated 16.7.2009, 5.10.2009 and 29.10.2009 respectively from the applicant and another complainant Sri Gautam Dwivedi. A second enquiry report dated 20.11.2009 disclosed that the second complaint Sri Gautam Dwivedi had applied against the first advertisement and had obtained 69.1% marks in High School Examination. His application was delivered by Speed Post Article No.EU 346600888IN to S.D.I. (C), Hardoi on 24.4.2009 but he had not been considered in

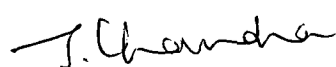
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the first or the second selection. Accordingly the second application was also cancelled. The applicant was informed by letter dated 4.2.2010 that on account of serious irregularities having been found in the entire recruitment process of the vacant post of GDS MD/MC, Sakatpur Branch Office, the entire appointment/recruitment process had been cancelled and the matter would be decided afresh. As and when the fresh advertisement is inserted, the applicant could apply.

4. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA. He has placed reliance on the case of ***Pabitra Kumar Roy vs. Union of Indian and Others reported in 2002 (1) ATJ-239***. During the course of hearing the learned counsel for the applicant cite the order of the Tribunal dated 22.11.2001 passed in O.A.No.409 of 2001.

5. We have heard the learned counsel for both the parties and perused the entire material available on record.

6. The applicant had based his entire case on an averment to the effect that the respondents have no right to advertised for the post a second time but must necessarily act on first advertisement issued. The respondents have stated that the selection process consequent to the first advertisement dated 01.04.2009 was enquired into on receipt of some complain. The enquiry found that only one application (that of the applicant) was received in response to the advertisement.




The applicant has not specifically denied this statement in his rejoinder. Furthermore, in ***Arun Kumar Nayak Vs. Union of India & Others (2006) (8) SCC-111***, in a case where initially names were invited from Employment Exchange and subsequently the department re-advertised the vacancy the Hon'ble Supreme Court has held that the action to be valid and in consonance with principles of fair play, justice and equal opportunity. Further they have held that there is no element of selection if there is only one applicant. The relevant para is quoted below:-

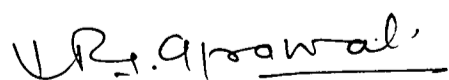
“It may be mentioned here that out of 40 candidates sponsored by the Employment Exchange, only 7 candidates submitted their application forms when called upon to do so. Thus, 33 were eliminated. Out of the balance 7 candidates, six candidates were again disqualified since they did not produce all the necessary documents. The candidature of only the 4th respondent was considered and he was selected on 15.10.1998. There was no element of selection.”

The facts and circumstances cited by the applicant in O.A.No.409/2001 and O.A.No.346/1997 being different from the present case, they are not of help to the applicant.

7. In view of the ratio laid down by Hon'ble Supreme Court and in the absence of any citation to the contrary the respondents have acted rightfully in canceling the entire selection process. No case is made out by the applicant in his favour and the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)

Amit/-


(Navneet Kumar)
Member (J)