

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00174 OF 2017
Cuttack, this the 24th day of May, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Anil Kumar Satpathy,
aged about 21 years,
Son of Sri Pramod Kumar Satapathy,
permanent resident of
Vill. P.O/P.S. Balanga,
Dist-Puri-752105.

...Applicant

(By the Advocate- M/s. S. K. Ojha, S. K. Nayak)

-VERSUS-

Union of India Represented through

1. Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi.
2. Chief Postmaster General Odisha Circle, Bhubaneswar, Dist-Khurda- 751001.
3. Sr. Supt. of Post Offices, Cuttack North Division, Mahandi Vihar, Cuttack- 753001.
4. Asst. Supt of Post Offices, Kendrapara H.O., At/P.O/Dist-Kendrapara.
5. Inspector of Post Offices, Pattamundai Sub-Division, At/P.O.-Pattamundai, Dist-Kendrapara

...Respondents

(By the Advocate- Mr. M. R. Mohanty)

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ORDER

S. K. PATTNAIK, MEMBER (J):

The applicant has filed this O.A. for a direction to the Respondents to verify his original documents and on completion of all formalities of verification to issue appointment order since he had stood first in the merit list as per the Three Member Panel of the Selection Committee for selection to the post of GDS Packer, Batipada. Applicant also seeks quashing of the Circular dated 01.08.2016 (Annexure-A/3) directing awaiting of the further instruction and in cases where selection has already been finalized and communicated to candidates only need not be withheld.

2. The case of the applicant runs in a small compass and revolves around the ban order dated 01.08.2016 (Annexure-A/3) communicated by the Assistant Director General (GDS), Department of Posts, Ministry of Communication and I.T. Applicant had applied for the post of GDS, Packer reserved for Orthopedic Handicapped category. The Selection Committee vide their minutes dated 29.06.2016 (Annexure-A/1) selected the applicant having found fit subject to verification of genuineness of the certificate, character and antecedents as per the prevailing rules. A panel of five candidates was prepared according to the merit list and it was further directed that the name of the selected candidate will be declared only after the required certificates are verified. The applicant could gather information under RTI that Department had sought information about

verification of qualification of the candidate and, when the matter was under process, on 01.08.2016 the Assistant Director General (GDS) issued a letter (Annexure-A/3), which is extracted in verbatim below:

“To

All Head of Circles

*Sub: Proposed on line selection of all
categories of GDS- reg.*

I am directed to request you to stop selection/engagement of all types of Gramin Dak Sevaks with immediate effect. It is further requested to stop all cases of engagement which are under process. Cases where selection has already been finalized and communicated to candidates only needs not be withheld.

2. These orders are issued in view of proposal for on line selection of Gramin Dak Sevaks. Further orders in this regard may kindly be awaited.

3. This issues with the approval of competent authority.”

Further case of the applicant is that since his selection was finalized and was in the stage of verification of testimonial, his selection process should not have been withheld and the letter dated 01.08.2016 is wrongly interpreted by the department. Even though the selection was finalized on 29.06.2016, no further order was communicated by the department and even the selection was never cancelled and inviting further fresh application without finalizing the earlier selection process is ab initio void, and the Respondents are intentionally not giving appointment in spite of clear cut vacancy for which advertisement and selection was made by a Selection Committee.

4. Respondents contested the case by filing a counter. Submission of the Respondents is that pursuant to the notification to fill

up the post of GDS, Packer, Batipada SO, 15 candidates had applied. The Selection Committee met on 29.06.2016 and finalized the selection on the very same day preparing a panel of five candidates, where the present applicant was at Sl. No. 1, with highest marks and it was decided that the selected candidate will be declared only after verification of documents and fulfillment of other conditions. However, in the midst of process of verification of documents, instruction dt. 01.08.2016 (Annexure-A/3) was issued from the Ministry of Communication and I.T. to stop all cases of engagement, which are under process except the cases where selection has already been finalized and communicated to candidates. According to the Respondents since the verification was not completed, the selection was stopped and a fresh notification was issued on 23.03.2017 to fill up the post of GDS, Packer, Batipada in order to ensure transparency, fairness and better management of engagement process of GDS and to stop the malpractices at the local level. The contention of the Respondents is that since the candidature of the applicant was under consideration and he was not finally selected as the genuineness of documents was under verification and he was also not intimated about his selection, the selection cannot be said to have been finalized. Respondents further pleaded that the minutes of the Selection Committee dated 29.06.2016 was not meant for the knowledge of the candidates as the same was a confidential report and as per Annexure-R/1 dated 20.05.2016 name of the selected candidate can be declared only after the verification of all the certificates.

5. Admittedly, the notification for the post was made on 05.05.2016 and the Selection Committee comprising three members finalized the selection process on 29.06.2016 as per the minutes of the proceeding (Annexure-A/1) and Sri Anil Kumar Satapathy, the applicant, was selected for the post of GDS, Packer, Batipada S.O. having secured highest mark in HSC examination and having basic computer knowledge and fulfilling all other conditions required for the post and was considered fit for the post subject to verification of genuineness of the certificates, character and antecedents. So, once a selection is completed and only verification of genuineness of the certificates and other testimonials was required, the said selection process cannot be annulled by stroke of pen as has been done under Annexure-A/2. Since the impugned letter dated 16.09.2016 surfaced only after two and half months of the selection already made, it cannot be reversed on any colourable pretence when there was no illegality or irregularity in the recruitment process. In the case of *A.P. Aggarwal Vrs. Government of National Capital Territory of Delhi & Anr. (reported in AIR 2000 SC 205)*, the Hon'ble Supreme Court, and in the case of *Sarojakanta Mohapatra & Ors. Vrs. State of Odisha & Ors. (reported in 2015(1) OLR 367)* the Hon'ble High Court of Orissa, have categorically observed that denial of appointment to the selected candidate without any valid reason is arbitrary and unconstitutional.

6. Position of law has also been set at rest by the Hon'ble Apex Court in the case of *R.S. Mittal Vs. Union of India reported in*

1995 (1) Supreme Court Services Law Judgments 444. The relevant portion of the observation of Their Lordships in paragraph 12 runs as follows:

“It is no doubt correct that a person on the select-panel has no vested right to be appointed to the Post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then ordinarily there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government’s approach in this case was wholly unjustified.”

7. In view of the authoritative pronouncement of Hon’ble Supreme Court, since the applicant was legally selected having secured the highest mark, his appointment cannot be annulled under the pretext of a subsequent circular dated 01.08.2016 (Annexure-A/3) because the selection was already finalized and there was nothing to be adjudicated except verification of document. This non-communication is due to the laches of the department in not verifying the testimonial at an early date and even the department could have given a provisional appointment subject to verification of document, which they did not do. Since, there is

no justifiable reason to decline appointment to a applicant duly selected, Respondents are duty-bound to give effect to the selection process conducted on 29.06.2016 and are directed to take up verification of genuineness of the certificates and other testimonials preferably within a period of one month from today. If verification of testimonials cannot be done within that period, the appointment shall be provisional subject to final outcome of the verification but at no event the selection process can be stalled. Hence ordered.

8. O.A. is allowed accordingly and the subsequent notification issued for selection to the post of GDS, Packer, Batipada S.O. stands quashed. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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