

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 769 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member(J)**

Shri Gopabandhu Sahoo, aged about 42 years, S/O-Niladir Sahoo, At-Banikantha Nagar, PO/PS-Athgarh, Dist-Cuttack, at present working as Inspector of Posts, N 2nd Sub-Division, Bhubaneswar RMS.

.....Applicant

-Versus-

1. Secretary-Cum-Director General(Post) Dak Bhawan, New Delhi-110001.
2. Chief PMG, Odisha Circle, At/PO-Bhubaneswar, GPO-751001, Dist-Khurda.
3. Director Postal Services(HQ), O/O CPMG Odisha Circle, At/Po-Bhubaneswar GPO-751001, Dist-Khurda.
4. Sr. Supdt. RMS(N) Division, Cuttack.
5. HRO, RMS(N) Division, Cuttack.

.....Respondents

For the Applicant : Mr. S. B. Jena

For the Respondents: Mr. D. K. Mallilck

Heard & reserved on: 29 .04.2019

Order on: 17.5.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The O.A. No. 769/2015 has been filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "a) That the memo of charges listed at Annexure-A/3 punishment imposed vide Annexure-A/7 and the order of the appellate authority under Annexure-A/9 be quashed.
- b) And pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost. "

2. The applicant has been proceeded against while he was working as a Inspector of Post Office (in short IPO Baripada (West) Mayurbhanj District. Under his jurisdiction the post of GDSMD/MC Patharchakuli BO felt vacant due to retirement of the ex-incumbent and it was decided to make recruitment. The applicant as IPO being appointing authority responsible for recruitment of the GDSD/MC Patharchakuli BO, notified the vacancy to the Employment Exchange along with simultaneous public notification dated 23.07.2011 and the last date for receipt of application/sending mail was kept on 22.08.2011. Twenty three numbers of candidates responded to the above notifications and Employment Exchange sponsored 40 candidates out of which 12 candidates

applied for the post. After due process one Shri Deepak Kumar Mishra, who secured highest mark was selected for the post and was offered letter of appointment and he joined as GDSMD/MC, Patharchakuli BO on 10.09.2011.

3. Thereafter, the applicant was issued a charge sheet under Rule 14 of CCS(CCA) Rules 1965 vide the CPMG memo dated 17.12.2013 (Annexure-A/3) for alleged irregularities committed by the applicant during the selection to the post of GDSMD/MC, Patharchakuli BO. It is stated in the OA that after conducting the inquiry the Inquiring Officer (in short IO) held that the charges of Article I and II against the applicant have not been proved as per his report (Annexure-A/4).

4. However, the Disciplinary Authority did not agree with the findings of the Inquiring Officer in respect of Article No.1 but agreed with the findings of Article No. II and sent a disagreement note to the applicant vide his letter dated 18.06.2014(Annexure-A/5). The applicant submitted a representation on 27.06.2016(Annexure-A/6). It is stated in the OA that the Disciplinary Authority without considering the points raised in the representation as per Annexure-A/6, issued the penalty of reduction of pay by one stage for a period of three years with further direction that the applicant will not earn increments during the period of reduction and on expiry of this period the reduction will have the effect of postponing his future increments of pay vide order dated 14.07.2014(Annexure-A/7).

5. Applicant preferred an appeal before CPMG as Appellate Authority (Respondent No.2) vide his appeal dated 18.08.2014 and it was rejected vide order dated 25.02.2015 of the Appellate Authority(Annexure-A/9). Therefore, the OA has been filed by the applicant. The following main grounds have been urged by the applicant in this OA :-

- i) The applications for the post in question, received after the prescribed date and not accompanied by the required documents and incomplete applications would be rejected as per the condition of the vacancy notice as per the format approved by the CPMG. Accordingly the application of Shri A. K. Mohanta was rejected as mentioned in the check sheet(Annexure-A/10). Article No.1 of the memo of charges alleged that the applicant committed irregularities in ignoring the application of Shri A. K. Mohanta, who secured higher mark than the selected candidates and he is ignored by the applicant without verifying the documents submitted by him, thereby showing favour to Shri Deepak Kumar Mishra, the candidate who was selected by him. It is stated in the OA in Para-4.18 that the application of Shri Ashok Kumar Mohanta was rejected because of it's incompleteness as per condition laid down in Para- 7 of the notification that Shri Mohanta did not fill up in the form from Column 9 to 14 and due to this,

rejection of his application by the applicant was justified. It is further stated that there was no obligation on part of the applicant to accept the incomplete application against the condition of the notification. It is stated that the facts that Shri Mohanta submitted incomplete application has been overlooked by the Disciplinary Authority in this case. It is stated that this notification format was circulated by the Circle Office containing the condition that incomplete application shall be rejected. Accordingly, the application of Sri A.K.Mohanta was rejected by the applicant. The Disciplinary Authority did not mention the rule or instruction of the Dept. Of Posts in which incomplete application is to be accepted.

- ii) The applicant strictly followed the instructions of the DG, Posts vide his letter dated 17.9.2003.

6. It is further stated that the appellate authority in his order clearly mentioned that his office was devised and circulated the format for notifying the vacancies in the application form for the post of GDS. It is further stated that although there were some typographical error in the check sheet, but it did not affect the final selection. It is also mentioned in the order of Appellate Authority that some of the conditions were not checked as these were required for GDSBPM and not for GDSMD/MC.

7. Counter has been filed by the respondents objecting to the submissions in the OA stating that DGP's letter dated 17.09.2003 has stated that sole criteria of the selection to the post of GDS is merit. Other eligible conditions may be verified before appointment and stated that the disagreement note which stated that, what has been omitted by the candidate Sri A.K.Mohanta in his application, did not affected his selection. It was further stated that the circular dated 25.06.2010(Annexure-R/1) stipulates maintenance of 05 meritorious candidates against one vacancy of GDS. These instructions have not been followed by the applicant in this case. It is further stated in the counter that the selected candidate has not secured the highest marks and the candidature of Shri A. K. Mohanta was ignored by the applicant on the ground of incomplete application form. It has given the plea in the OA that the points raised in his representation dated 27.06.2014 (Annexure A/6) in reply to the disagreement note, have not been considered. After considering the application of the applicant, the disciplinary authority imposed the penalty order commensurate with the gravity of misconduct.

8. Rejoinder has been filed by the applicant stating that contention of the respondents that merit is the sole criteria and that candidature of Shri A.K. Mohanta was rightly rejected as his application was not incomplete form. The Inquiry Authority was wrong on his part to say that denial of

candidature of Shri A. K. Mohanta has no right for consideration for selection since he has submitted incomplete application.

9. We have heard learned Counsel for the applicant. It is specifically pointed out that as per the report of the IO at Page 46 of the OA, the charges have not been proved against the applicant. It is submitted that in the disagreement note it is stated that the IO did not examine whether it was appropriate to issue the notification in a format for application in view of the changed recruitment rule. Some of the Columns such as column No. 2(A), (iii) (V) and Column-7 specified by the applicant were unwarranted. It is also stated that the IO's report has procedural lacuna while examining the facts.

10. Heard Ld. Counsel for the respondents, stating that filling up Column 9 to 14 of the application form will not be a bar as stated by the Disciplinary Authority in his disagreement note.

11. We have considered the submissions of learned counsels as well as the pleadings of the parties with regard to specific points raised in the disagreement note of the disciplinary authority, that applicant's reply at Annexure A/6 has mentioned that most of the points mentioned in the disagreement note have not been included in the charge sheet, for which, these points cannot be raised after completion of the inquiry. However, the representation was not accepted by the disciplinary authority who held the applicant guilty of the charge at Article I and imposed the punishment order dated 14.7.2014 (Annexure A/7).

12. It is seen from the impugned order dated 14.7.2014 some of the points mentioned in the order were not included as a charge. For example, the point about the format of the application. The disciplinary authority states in the impugned order that the format specified by the applicant was not meant for the GDSMD/MC as it was meant for the GSBPM. However, use of wrong format has not been included in the Article I of the charge against the applicant. Since the correctness of the format specified by the applicant for the selection in question has not been questioned in the charge sheet, its validity cannot be questioned in subsequent order, since questioning it outside the charge sheet would deprive the applicant from defending himself against such allegations. If the format for application is taken as correct, then action of the applicant not to consider the application of Sri A.K.Mohanta would not appear to be irregular. On the other hand, if the format used is an incorrect format and on the basis of such incorrect format, the application of Sri A.K.Mohanta who had secured more marks, was rejected, then it would be a serious irregularity. The disciplinary authority has proceeded with the assumption that the applicant has used the wrong format, without including this allegation in the charge sheet.

13. The appellate authority in his order dated 25.2.2015 (Annexure A/9) while upholding the punishment order, has accepted the argument of the disciplinary authority that the applicant has rejected the application of a meritorious candidate by using a wrong format of application which is not applicable for selection of GDSMD/MC.

14. In view of the above, the impugned orders imposing punishment are not sustainable under law. Accordingly, the order dated 14.7.2014 (Annexure A/7) and the order of the appellate authority dated 25.2.2015 (Annexure A/9) are set aside and the matter is remitted to the disciplinary authority i.e. the respondent No.3 to reconsider the matter in the light of the discussion at paragraphs 12 and 13 of this order and issue a fresh order in the matter as per law within three months from the date of receipt of a copy of this order, keeping in mind the observations made in this order.

15. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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