

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/773/2015

Date of Reserve: 07.01.2019

Date of Order: 22.1.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Kshiroda Prasad Nayak, aged about 28 years, S/o-Aruni Nayak, At/PO/Via-Bakingia, PS-Raikia, G.Udayagiri (Sriramapanda), Dist-Kandhamal-762 110.

...Applicant

By the Advocate(s)-M/s.S.Mohanty
B.Biswal

-VERSUS-

Union of India represented through:

1. The secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, P.M.G. Square, Bhubaneswar, Dist-Khurda, PIN-751 001.
3. The Superintendent of Post Offices, Phulbani Division, Phulbani-762001.
4. Inspector of Posts, G.Udayagiri Sub-Division, At-G.Udayagiri, Dist-Kandhamal, PIN-762 100.

...Respondents

By the Advocate(s)-Mr.B.Swain
ORDER

PER MR.GOKUL CHANDRA PATI, MEMBER(A):

In this Original Application, the applicant has prayed for the following reliefs:

"...to admit this case and issue notice to the respondents to file their show cause as to why the case applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and pass necessary order to set aside the impugned order vide Annexure-6 dt. 5.10.2015 and further direction be given to the respondent more particularly respondent No.3 and 4 to give appointment to the applicant in the post Gramin Dak Sevak MD/MC, Kanbageri block, G.Udayagiri SO, within a stipulated period and the applicant be given all other financial and consequential benefits".

2. Learned counsel for the applicant was heard in the matter. He submitted that the applicant was a candidate for the post of Gramin Dak Sevak Mail Deliverer (in short GDSMD), Kanbageri B.O. under G.Udayagiri Subdivision Office. He received a letter dated 23.2.2015(A/3 to the O.A.) from the respondents, by which he was offered the appointment for the said post by the Respondent No.4 and was asked to produce the original documents for verification. The applicant complied with the direction. Thereafter, he received no further instructions about the appointment. Being aggrieved, he filed O.A.No.437/2015, which was disposed of by this Tribunal vide order dated 22.7.2015 (A/5) with a direction to respondents to consider and dispose of the representation of the applicant by a reasoned order. Accordingly, the respondents passed the impugned order dated 5.10.2015 (A/6) rejecting the said representation of the applicant. The learned counsel for the applicant further argued that as stated in the letter dated 23.2.2015, the applicant was at SI.No.2 in the select panel and since the 1st candidate after about 3 – 4 months of his joining, resigned from the post of GDSMD, Kanbageri BO, hence, the applicant will be entitled for appointment to the said post as per the letter dated 23.2.2015. In support of his arguments, learned counsel for the applicant cited two judgments of the Hon'ble High Court of Orissa reported in (i) 2017 (II) ILR-CUT-923 (Dr.Rajalaxmi Beura vs. Vice Chancellor, OUAT & Ors.) and (ii) 2006(1) OLR-31 (Shri Gagan Behari Pradhan vs. State of Orissa & Ors.).

3. Per contra, learned counsel for the respondents submitted that the letter dated 23.2.2015 was issued by Respondent No.4 irregularly since after joining of No.1 candidate of the select panel, the selection process came to an end and if No.1 candidate resigned after some time, it was necessary to adopt

fresh procedure for selection as per the existing rules. This procedure was not followed by Respondent No.4 for which the Respondent No.3 instructed the Respondent No.4 not to take further steps in the matter. Further, there was instruction from the R.O. to stop selection process for all GDS posts other than the post of GDSBPM. Thereafter, no further step was taken by the respondent No.4. It was further stated that the applicant was not issued any appointment order and if he would have joined in pursuance to any appointment order, then, he would have had a right. It was further submitted that since the letter dated 23.2.2015 was issued for verification of document, it cannot be considered as an appointment letter.

4. We have considered the submissions as well as the pleadings by both the parties. The letter dated 23.2.2015 states as under:

"Sub: Selection of GDSMD/MC Kanbageri BO under G.Udayagiri SO:

Your Application dated 03.04.2014 for the above purpose was received in this office and while making selection for the post you secured second position. Now the necessity for filling up the post has become necessary and accordingly you are offered the same. You may appear in the office of the undersigned within seven days for verification, so that further action for imparting training for three days and joining will be taken up".

5. From the above, it is clear that the letter dated 23.2.2015 calls for the verification of documents and although it was not worded correctly, but it cannot be considered as a formal appointment letter, which is required to be issued after verification of documents and completion of formalities. It is only after issue of appointment letter, the applicant would have got a right to join against the post in question or deputed for training prior to joining against the post. Respondent No.4, after receiving the instruction from Respondent No.3

to stop the process, should have informed the applicant accordingly in continuation of his letter dated 23.2.2015. In absence of that the applicant had to run to the Tribunal by filing O.A.No.437 of 2015 for a direction to dispose of his representation. It is not understood as to why the respondents did not bother to communicate their decision not to proceed with the appointment against the post in reply to his representation.

6. The relevant portion of the impugned order dated 5.10.2015 (A/6) which has been passed by the respondents in pursuance to the orders of this Tribunal in O.A.No.437 of 2015 reads as under:

"4. Xxx xxxx xxx xxxx

(f). In the meantime instructions were received on 09.06.2015 under the Superintendent of Post Offices, Phulbani No.AR-2/Ch-VII dated 01.06.2016 with mention "stop selection of vacant post of GDSs (other than GDSBPM)" with immediate effect.

(g) To the above instructions a clarification was sought for from the Superintendent of Post Offices, Phulbani vide this office No.A/Kanbageri BO dated 20.06.2015 as to whether Sri Kshiroda Prasad Nayak a previous selected candidate appearing in the panel will be taken into service since his position in the panel has already been informed to him on 23.02.2015. But to this the Superintendent of Post Offices, Phulbani replied vide his No.AR-2/Ch-VII dated 29.06.2015 (Received on 03.07.2015) with mention "no further action will be taken without prior approval from RO (Office of the Postmaster General, Berhampur).

5. In view of all the above threadbare discussions the action initiated for appointment of Sri Kshiroda Prasad Nayak (Applicant) to the post of GDSMD/MC, Kanbageri BO under G.Udayagiri SO is hereby cancelled and thereby Sri Nayak could not be appointed to the post as applied by him initially".

7. From the above it is clear that the appointment could not progress because of the instructions of Respondent No. 3 to Respondent No.4 to stop

the process of appointment of GDS till the instruction is received from the Office of the Post Master General, Berhampur.

8. We have also perused the decisions cited by the learned counsel for the applicant. In Dr.Rajalaxmi Beura (supra), the petitioner had earlier approached the Hon'ble High Court challenging the advertisement and claiming regularization against the post of Asst. Professor (Bio-Technology). However, after the process of selection was over, the petitioner was placed at Sl.No.4 of the merit list. No.1 candidate was appointed, but subsequently, he resigned. Candidates at Sl.Nos. 2 and 3 were not available for appointment. So the next person available was the petitioner being placed at Sl.No.4 of the merit list. Under such circumstances, the direction was given by the Hon'ble High Court to give substantive appointment to the petitioner and regularize her services against the vacancy caused due to resignation of the candidate at Sl.No.1 of the merit list. Factually stated, the facts in Dr.Rajalaxmi Beura's case (supra) are different and distinct from the facts of the case in hand.

9. In Gagan Behari Pradhan vs. State of Orissa & Ors. (supra), the petitioner Gagan Behari Pradhan had participated in the recruitment test for Driver and in the merit list published, his name was at Sl.No.6. The first five candidates were appointed against the vacancies. The claim of Shri Gagan Behari Pradhan was that his case should have been considered against two more vacancies, which were existing at that point of time. When this request of the petitioner was not accepted, he approached the Hon'ble High Court. The Hon'ble High Court observed that since the petitioner was a selected candidate, he has a right to be considered for appointment against the existing vacancy.

10. In our considered view, the facts in the above cited case are quite different from the facts of the case in hand because of the fact that whereas in the present case. the selection had taken place for one post only whereas in Gagan Behari's case, more vacancies were available and the validity of the panel prepared for appointment to the post of Driver was for one year. Moreover, there was no decision of the authorities to stop the process of recruitment.

11. In the instant case, the candidate at Sl.No.1 of the merit list having worked for some time against the post had resigned. Thereafter, the respondent no.4 issued a letter dated 23.2.2015 for verification of documents without verifying the fact whether the select list after joining of the candidate at Sl.No. 1 was valid since the vacancy notified was for one post. In any case, under Rule-4 of GDS(Conduct & Engagement) Rules, 2011 the authorities superior to the recruiting authority has the power to review the appointment and even in cases where appointment orders were issued finally, steps can be taken to cancel the after giving due opportunity to the concerned candidates if there is some irregularity in the recruitment process. In this case, no formal appointment was issued and the superior authority to Respondent No.4 has issued instruction to stop the recruitment process as stated in paragraph-5(iv) of the counter-reply filed by the respondents, which has not been effectively controverted in the rejoinder. The applicant has also failed to produce any rule or instructions showing that when the recruitment is made only for one post of GDS, after joining of the candidate with higher merit, the merit list would remain valid and others in the list would be given the appointments in the event of any subsequent vacancy. In absence of such rule/instructions, the action of the Respondent No.4 to issue the letter dated 23.2.2015 will not be

appropriate. Further, the contention of the respondents that the panel became invalid after joining of candidate at Sl.No.1 holds good since it has not been effectively rebutted by the applicant.

12. In view of above discussions, the O.A. lacks merit and is accordingly dismissed.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEBER(A)