

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No. 209 of 2015 with O.A. No.01/2015

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

OA 209 of 2015 Sri Kasinath Sethi, aged about 28 years, S/o. Sri Dukhabandhu Sethy, of Vill. /P.O. Begana, P.S. Patna, Dist. Keonjhar-758016.

...Applicant

-VERSUS-

1. Union of India represented through the Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi-110001.
2. Postmaster General, Sambalpur Region, At /PO/Dist. Sambalpur-768001.
3. Supt. Of Post Offices, Keonjhar Division, At/P.O. Keonjhargarh, Dist.Keonjhar-758001.

.....Respondents

OA 1 of 2015 Prasanta Kumar Patra, aged about 19 years, S/o. Shyam Sundar Patra, a permanent resident of At-Khajuridiha, Po-Tendra, Via-Saharapada, PS-Swampatna, Dist-Keonjhar and a selected candidate for the post of GDSBPM Begana BO under Keonjhar Division.

...Applicant

-VERSUS-

1. Union of India represented through the Secretary-cum- Director General(Posts), Department of Posts, Government of India, Dak Bhawan, New Delhi-110001.
2. Postmaster General, Sambalpur Region, At/PO/Dist. Sambalpur-768001.
3. Supt. Of Post Offices, Keonjhar Division, At/P.O. Keonjhargarh, Dist.Keonjhar-758001.
4. Sub Divisional Inspector (Postal) Ghatagaon Sub Division, At/Po/PS-Ghatgaon-758027, Dist-Keonjhar.
5. Mr.Kasinath Sethi, S/o. Sri Dukhabandhu Sethy, of Vill/PO Begana, P.S. Patna, Dist. Keonjhar-758016.

.....Respondents

For the applicant : Mr. S. K. Ojha, counsel (OA 209/2015)
Mr. S.K. Nayak, counsel
Mr.T.Rath, counsel (OA 1/2015)

For the respondents: Mr.A.K.Mohapatra, counsel (OA 209/2015 & OA 1/2015))
Mr.S.K.Ojha, counsel (Intervenor – OA 1/2015)

Heard & Reserved on : 25.04.2019

Order on : 17.5.2019

O R D E R

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

Since both the O.As are interlinked, these were taken up for consideration for hearing and disposal together with the consent of both the parties. Both the OAs are being disposed by this common order.

2. The basic facts connected with both the O.As are that both the applicants in these OAs had applied for the post of GDSBPM for Begana BO as per notification issued by the respondents on 21.11.2013 (Annexure-A/1 to the OA No. 209/15. After the process of selection was over, the applicant of O.A. No.01/15 Sri Prasanta Kumar Patra was declared as the selected candidate and vide order dated 28.7.2014, he was informed by the Department to provide suitable rent free accommodation for functioning of the post office in the post village i.e. Begana, within one month of receipt of the appointment order. But Sri Patra could not provide the said rent free accommodation within the time stipulated by the respondents, for which a notice dated 25.11.2014 (Annexure-A/4 in OA No. 1/15) was issued to him. Sri Patra was informed that the owner of a house had agreed to provide for the accommodation for the functioning of the post office, but subsequently he withdrew his consent, for which, Sri Patra was informed to show cause as to why the selection made in his favour will not be cancelled due to failure in providing a suitable accommodation for functioning of the post office as per the requirement of the Department vide order dated 28.07.2014 in which he was offered the engagement as GDSBPM, Begana. The applicant in OA No. 1/15 thereafter submitted a representation dated 17.12.2014 (Annexure-A/6 series to the OA No. 1/15) furnishing the copy of the willingness of another house owner to provide accommodation. However, in the meantime, the Department took a stand that due to failure of the applicant in OA No. 1/15 (Sri Prasanta Kumar Patra), his selection as GDSBPM, Begana BO has been

cancelled and offer for engagement to be issued to the waitlisted candidate, who is Sri Kasinath Sethi the applicant in OA No. 209/15.

3. Being aggrieved Sri Patra filed OA No. 1/15, in which this Tribunal vide order dated 08.01.2015 directed the respondents not to fill up the post in question till the next date. This interim relief is continuing till date and the Department is unable to issue the offer of engagement to the next candidate on merit list i.e. Sri Kasinath Sethy, who is the applicant in O.A. No.209/15.

4. The main ground taken by the applicant in OA No.01/15 is that the cancellation of Sri Patra's selection by Respondent No.3 vide order dated 22.12.2014 (Annexure-A/7) is not justified since he had submitted representation dated 17.12.2014 (Annexure-A/6 series to OA No. 1/15) informing the willingness of another house owner of Begana Village. It is stated that the applicant being an outsider to the village has taken all possible care to arrange accommodation for functioning of the post office. It is also stated in the OA that as per D.G. (Posts) letter dated 22.09.2011 (Annexure-A/8 series in OA No.1/15), the Branch Post Office can also function at Panchayat building. It is stated that the Respondent No.3 has not taken any action for shifting of the Begana, BO to Panchayat building. Lastly, the applicant stated that he is the most meritorious candidate and his name has been deleted from the select panel list vide order at Annexure A/7 for no fault of the applicant. Hence it is bad in law and the impugned order dated 22.12.2014 (Annexure-A/7 to the OA No. 1/15) may be quashed.

5. The counter has been filed by the respondents stating that the applicant had given the willingness of more than two house owners in the village and both of them withdrew their willingness subsequently. He failed to provide the rent free accommodation for the functioning of the post office in the village till 22.11.2014 for which his name has been deleted from the select list for failure to provide rent free accommodation though a reasonable opportunity was provided to him. Regarding the issue of functioning of the post office in Panchayat office, there is a proposal for functioning of post office in Panchayat office building, but no specific information has been received and the matter is

under consideration of the Government of Odisha. This argument is not relevant for the purpose of the applicant who is required to provide a suitable rent free accommodation.

6. The applicant in OA No. 209/15 had filed MA No. 491/19 to intervene in OA No. 1/15 as he was an interested party in that OA. This M.A. for intervention was allowed by the Tribunal vide order dated 22.07.2015. Accordingly, the applicant in O.A. No.209/15 has been incorporated as respondent No.5 who has filed a counter stating that the applicant in O.A. No.01/15 failed to fulfil the pre-condition for engagement as GDSBPM and he tried to mislead the authority by submitting documents to show willingness of different house owners from time to time. He, therefore, submitted that the OA filed by Sri Patra has no merit and is liable to be dismissed.

7. Rejoinder has been filed by the applicant reiterating his stand in the OA.

OA No. 209/2015

8. In OA No.209/15 the applicant has prayed for the following relief:-

- “(i) To admit the O.A;
- (ii) To direct the official respondents to offer engagement to the applicant against the post of GDSBP, Begana BO within a stipulated period;
- (iii) To give consequential benefits to the applicant;
- (iv) To pass any other order/orders as deem fit and proper for the ends of justice.”

It is submitted that after cancellation of the selection of Sri Patra applicant in OA No.01/15 vide order dated 22.12.2014 (Annexure-A/7 to the OA No. 1/15) the applicant in OA No. 209/15 is entitled for engagement for this post, since he was the wait-listed candidate in the merit list next to Sri Patra. Hence, his prayer is to direct the respondents to offer the engagement to the applicant.

9. In the counter filed in OA No. 209/15, it is stated by the respondents that the prayer made by the applicant is not tenable since OA No. 1/15 is sub judice before the Tribunal.

10. Both the OAs were heard together. Learned Counsel for the applicants in both the OAs reiterated their respective stand in the O.A opposing each other. Sri S.K. Ojha, learned Counsel for the applicant in OA No.209/15 cited two judgments in support of his case i.e. the case of State of UP –vs- Ram Swarup

Saroj [(2001) 1 SCSLJ 268] and the case of Saroj Kanta Mohapatra & Others – vs- State of Orissa & Another [2015(11) OLR 367]. In the case of Ram Swarup Saroj (supra) the dispute related to preparation of merit list by UPSC and validity of select list after the expiry of one year. Clearly the cited case is factually distinguishable. Regarding the case of Saroj Kumar Mohapatra (Supra), the issue of temporary employment resorted to State Government instead of permanent absorption was considered and it was held that appointing authority cannot ignore the selection panel or decline to appoint from the selection panel as per the whims of the authority.

11. The issue in this OA is whether the cancellation of the selection of the applicant in OA No.1/15 vide order dated 22.12.14 (Annexure-A/7 to the O.A. No. 1/15) is legally sustainable. It is seen that in the order dated 28.07.14 by which Mr. Patra was informed about his selection, the following conditions were stipulated :-

“You are hereby provisionally selected for engagement to the post of GDSBPM, Begana BO in account with Saharpada SO under Keonjhar HO subject to satisfactory verification of certificates/documents submitted by you. You have to provide suitable rent free accommodation for the post office in the post village within one month of receipt of this letter, failing which, you forfeit the right to be engaged in the said post.

The provisional selection is subject to the following conditions :

- (i) Provisions of Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 as amended will be applicable.
- (ii) You have to take up your residence in the post village before appointment.
- (iii) You have to furnish an undertaking to the effect that you have other sources of income besides allowances paid or to be paid by the Government, for adequate means of livelihood to support yourself and your family.
- (iv) You have to furnish security for Rs.25,000/- in the form of Fidelity Guarantee Bond or National Savings Certificate pledged to the Department in the name of the President of India or in the shape of a Bank Guarantee from any Nationalized Bank before appointment and the bond is to be renewed every five year.”

It is clear from above that the offer of engagement as GDSBPM, Begana BO is subject to the applicant to provide a rent free accommodation for the post office in Begana BO within one month of receipt of the letter. The applicant has tried about three house owners, who initially agreed to provide accommodation but had gone back from their word subsequently. Finally, notice dated 25.11.2014

(Annexure A/4) issued by the respondent No.3 in OA No. 1/15, giving the applicant three days' time to inform as to why his selection has not been cancelled. In reply, the applicant in OA No. 1/15 had submitted a letter dated 17.12.2014 (Annexure-A/6 series) intimating the willingness of one Sri Kshirod Sethy to provide the accommodation in the post village. However, without considering the said letter, the respondents passed the order dated 22.12.2014 (A/7) informing the applicant that due to his failure to provide rent free accommodation for the post office within one months from the date of engagement order dated 28.7.2014, his name has been deleted from the select panel list and action will be taken for filling up of the vacant post from waiting list as per merit. Applicant had informed to the respondents about the willingness of Sri Kshirod Sethy as stated in Para 4.7 of the OA. It was stated that the willingness of Sri Kshirod Sethy providing accommodation was handed over to the Inspector (respondent No.4) in which Sri Sethi had agreed to give the house for the post office. Nothing has been mentioned in the counter to specifically contradict this averment of the applicant in OA No. 1/15. The counter does not state anything about the letter dated 17.12.2014 of the applicant. Hence, the respondents have not properly considered the applicant's proposal vide letter dated 17.12.2014 of the applicant at Annexure-A/6 series.

12. It is a fact that the applicant in OA No.1/15 is No.1 in the merit list and the applicant in O.A. No.209/15 is No.2 in the merit list. Hence, Sri Patra is more meritorious and deserves fair consideration and reasonable opportunity to fulfil the conditions of engagement order before taking a decision by deleting his name from the select list or cancelling the engagement order. Further it is noted that the proposal submitted vide letter dated 17.12.2014 has not been duly considered by the respondents before taking a decision to delete his name from the selection or cancel his engagement.

13. In view of the above and in the interest of justice, we allow the OA No. 1/15 in part by setting aside the order dated 22.12.2014 (Annexure A/7 in OA No. 1/15) and directing the respondents to consider the proposal submitted by the applicant vide his letter dated 17.12.2014 (Annexure A/6 series to OA No.

1/15) and allow further time of one month from the date of receipt of copy of this order, to the applicant to arrange a suitable rent free accommodation if the house owner indicated in letter dated 17.12.2014 declines due to lapse of time. It is necessary for the respondents-authorities to provide reasonable opportunity to the applicant in OA No. 1/15 as stated above to fulfil the requirement as stated in the engagement order dated 28.07.14. It is made clear that if the applicant of OA No. 1/15 fails to comply all terms and conditions of the order dated 28.7.2014 within the time stated above, then the respondents will have the liberty to cancel the engagement order dated 28.7.2014 issued to the applicant in OA No. 1/15 and to proceed to fill up the vacancy as per provisions of law.

14. Both the OAs are disposed of in terms of directions as in paragraph 13 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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