

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 640 of 2004
OA No. 8 of 2005

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

OA 640 of 2004 Prakash Ch. Sahoo, aged about 26 years, S/o Shri
 Brundaban Sahoom, Vill-Padhanpatna, PO- Banamalipur,
 PS-Balipatna, Dist.- Khurda.

OA 8 of 2005 Benudhar Behera, aged about 30 years, S/o Late Sanatan
 Behera, At-Kharida Sahi, PO-Nagapur, Dist.-Puri.

.....Applicant

VERSUS

Respondents in OA 640/2004

1. Union of India, represented through its Secretary, Communication-cum-Director General, Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, New Capital-751001.
3. The Senior Superintendent of Post Offices, Bhubaneswar Division, Forest Park, New Capital-751009.
4. Shri Benudhar Behera, Branch Postmaster, Mukundadaspur, Via-Pipli, Dist.- Puri.

Respondents in OA 8/2005

1. Union of India, represented through its Secretary, Communication-cum-Director General, Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, New Capital-751001.
3. The Senior Superintendent of Post Offices, Bhubaneswar Division, Forest Park, New Capital-751009.
4. Prakash Ch. Sahoo, S/o Shri Brundaban Sahoom, Vill-Padhanpatna, PO- Banamalipur, PS-Balipatna, Dist.- Khurda.

.....Respondents.

For the applicant : Mr.K.C.Kanungo, counsel
 Mr.K.P.Mishra, counsel (OA 640/2004)
 Ms.S.Mohapatra, counsel (OA 8/2005)

For the respondents: Mr.L.Jena, counsel (OA 640/2004 & 8/2005)
 Ms.S.Mohapatra, counsel (OA 640/2004)
 Mr.K.C.Kanungo, counsel (OA 8/2005)

Heard & reserved on : 10.7.2019

Order on : 4.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Both the OAs are considered together because the applicant in one of these OAs is the respondent No.4 in the other OA. The dispute between the applicants in both these OAs pertains to the selection for the post of GDSBPM, Mukundadaspur Branch Office of Puri District which was notified by the respondent No.3. Hence both the OAs were heard together and are being disposed of by this common order.

2. The brief facts of the case is that the post of GDSBPM, Mukundadaspur BO fell vacant on 1.11.1998. Thereafter, the respondent No.3 in both the OAs, i.e. Senior Superintendent of Post Offices, Bhubaneswar Division, initiated the process to fill up the said post by issuing a notification dated 13.2.2001 inviting application from outsiders. He also requisitioned the name of the candidates from the District Employment Exchange of Puri. The vacancy was earmarked for OBC/SC/ST/OC candidates in descending manner of preference. In response to public notification, 34 candidates had applied out of which 26 candidates were from the preferential OBC category. The applicants of both these OAs were amongst these 26 applications received in response to public notification.

3. Regarding the selection, it is mentioned in the Counter filed by the respondents in OA 8/2005 as under :

“While examining the cases of first preferential OBC community, the following OBC candidates were taken in to the panel in order of merit i.e. as per highest percentage of marks secured in HSC examination.

Sl.No.	Name of the candidate	Sl.No. in Check sheet	Marks secured in HSC Exam	Percentage
01	Sri Prasanta Ku. Choudhury	07	527/750	70.26
02	Sri Rabinarayan Sahu	28	460/700	65.71
03	Sri Prakash Chandra Sahoo	19	476/750	63.46
04	Sri Benudhar Behera	18	359/700	51.28

The appointing authority (Respondent No.3) while finalizing selection took the following view. The candidature of first highest meritorious candidate Sri Prasanta Kumar Choudhury was considered and rejected on the ground that he

was earlier selected for the post of GDS SPM, Patia GDS SO and subsequently found unsuitable due to non-fulfilling of rent free accommodation criteria resulting to cancellation of his selection. Further the income certificate submitted by him along with his application for the post shows that his annual income is Rs.12000/- derived from tuition whereas as per rules, the candidate must have adequate means of livelihood and preference will be given to those candidates whose income is derived from landed property or immovable assets owned independently. He also failed in arranging rent free accommodation in the post village of Mukundadaspur BO in spite of call vide Respondent No.3 letter Nos.A-198 (Sub) dated 6.2.2003 (Copy annexed herewith as Annexure R/2)."

4. The candidature of both the Sl.No.1 & 2 of the list at para 2 above, were rejected. The candidates at Sl.No.3 & 4 of the said list are the applicants in OA No. 640/2004 and OA No. 8/2005 respectively. The respondent No.3 rejected the candidature of the applicant in OA No. 640/2004 (Sl. No.3 of the list at para 3 above), on the ground that his income is derived from house rent instead of agricultural land. He selected the applicant in OA No. 8/2005 (Sl.No. 4 of the list at para 3 above) and appointed him in the said post of GDSBPM, Mukundadaspur BO vide order dated 6.5.2003, copy of which is enclosed at Annexure A/6 of the OA.

5. Being aggrieved, the applicant in OA No. 640/2004 complained to the CPMG (respondent No.2 in OA No. 8/2005 and 640/2004) who reviewed the matter. On review, it was observed that the rejection of the candidature of the applicant in OA No.640/2004 was not in accordance with the rules. Hence, selection of applicant in OA No. 8/2005 was found to be improper. The respondent No.2 directed vide order dated 27.12.2004 (Annexure R/7 of the counter filed by respondent No. 1 to 3) to cancel the selection of the applicant in OA No. 8/2005 as per the procedure contained in the letter dated 30.11.1997 (Annexure R/4 in OA 8/2005) and select a suitable candidate as per the rules from amongst the meritorious candidates.

6. Thereafter, the respondents issued show cause notice vide order dated 6.1.2005 (Annexure A/7 in the OA No.8/2005) to the applicant in OA No. 8/2005, who moved this Tribunal by filing OA 8/2005 seeking the following reliefs in OA No.8/2005 :

- “(i) quash the impugned notice dated 6.1.2005 as at Annexure-5 by concurrently holding the same is bad, illegal and not sustainable or maintainable in the eye of law and thereby allow the applicant

- to continue and discharge the duty of Branch Post Master of Mukundadaspur Branch Post Office;
- (ii) pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice."

7. Prior to filing of OA No.8/2005, the 3rd meritorious candidate in the select list had filed the OA No. 640/2004 seeking the following reliefs mainly on the ground that he was more meritorious than the applicant in OA 8/2005 who has been selection in violation of the existing rules and guidelines of the department :

"Your Lordship may be graciously pleased to call for the records of selection and be pleased to quash the selection and appointment of Respondent No.4 as GDS BPM, Mukundadaspur for the end of justice.

AND

Be further pleased to direct the Respondents No.1 to 3 to consider the appointment of the applicant as the GDSBPM, Mukundadaspur GDS Branch office forthwith.

AND

Any other further order/orders, direction/directions and relief/reliefs as deemed fit in the circumstances of the case may please be allowed."

8. The grounds mentioned in OA No. 8/2005 are that the impugned show cause notice dated 6.1.2005 was illegal and arbitrary, since no specific allegation has been made in relation to the selection in question and there is a violation of principles of natural justice. It is further mentioned that there is no scope of making any representation on the part of the applicant. It is also mentioned that in the OA No. 640/2004, the Tribunal had directed that the appointment of the applicant in OA No.8/2005 will be subject to the final result of the said OA. It was therefore pointed out that the authorities did not have jurisdiction to interfere in the matter under Section 19 of the A.T.Act, 1985, since the matter is pending before this Tribunal. It is further stated that the applicant had submitted all the required documents and there is no nuisance on the part of the applicant vis-a-vis the selection in question. It was mentioned in the OA No. 8/2005 that the show cause notice dated 6.1.2005 (Annexure A/7) is violative of Article 14, 21 and 300A of the Constitution of India and is liable to be quashed.

9. On prayer for the interim relief, the order dated 14.1.2005 was passed in OA 8/2005 as under :

"Admit. Issue notice to the Respondents requiring them to file counter within six weeks.

There shall be ad-interim stay of the notice under Annexure-A/7 dated 6.1.2005 and, as a consequence thereof, the Applicant shall be allowed to continue as GDSBPM of Mukundadaspur Branch post office until further orders."

10. Thereafter, the Tribunal vide order dated 9.11.2005 passed the following order :

"Heard the Id. Counsel for both the parties in part.

Having heard the rival parties, we direct the Respondents to carry out the verification of the documents/income conditions of the candidates as directed by the reviewing authority and the result of the verification so carried out be submitted before the Tribunal by the next date of hearing which is fixed on 23.12.05.

Copies of this order be given to both the parties."

11. The applicant of the OA No. 8/2005, being aggrieved by the order dated 9.11.2005 of this Tribunal, challenged the same in WP(C) 14852/2005 before the Hon'ble High Court and the said order dated 9.11.2005 of this Tribunal was stayed vide order dated 21.12.2005 of the Hon'ble High Court. After passing of the interim order dated 21.12.2005 by Hon'ble High Court the proceeding in both the OAs were kept pending before the Tribunal and these were taken up after the disposal of the said Writ Petition vide order dated 13.12.2018.

12. The above Writ Petition was finally disposed of by the Hon'ble High Court vide order dated 13.12.2018 with the following observations/directions :

"While considering the matter, this Court stayed the order dated 9.11.2005 of the Tribunal vide its order dated 21.12.2005 directing that the parties will be governed by the interim order.

In that view of the matter, the Tribunal is directed to dispose of the Original Application No.8 of 2005 pending before it within a period of four months from the date of receipt of the certified copy of this order. The order of the Tribunal dated 9.11.2005 will not be implemented till disposal of OA No. 8 of 2005."

13. The counter filed by the respondents No. 1 to 3 in OA No. 8/2005 averred that in view of the order dated 27.12.2004 (Annexure R/7 of the counter) passed by the respondent No.2, stating that the appointment of the applicant to the post of GDSBPM, Mukundadaspur is liable to be cancelled, the applicant in OA 640/2004 is required to be selected for the said post subject to necessary conditions that would be given in the appointment letter.

14. The counter has been filed by respondent No.4 who is also the applicant in OA 640/2004 stating that he was more meritorious than the applicant in respect of marks.

15. No rejoinder has been filed by the applicant in OA 8/2005 or by the applicant in OA 640/2004.

16. In OA No.640/2004, the respondent No. 1 to 3 filed counter reiterating the facts in the counter filed in OA NO. 8/2005 and stated that in view of the order dated 27.12.2004 of respondent No.2 (Annexure R/6 in OA No. 640/2004), the appointment of the respondent No.4 in OA No. 640/2004 (applicant in OA No. 8/2005) is to be cancelled. The respondent No.4 of the OA No. 640/2004 has filed his counter stating that the OA No. 640/2004 was filed after 17 months of his appointment to the post of GDSBPM and hence, it was barred by limitation. It was averred that the applicant in OA No. 640/2004 did not fulfil all the requirements of appointment as per Annexure A/1 of the OA. It was also stated that the applicant had not furnished any income out of landed property and hence, he was ineligible for selection/appointment.

17. Heard learned counsels for the parties. The issue to be decided in this case is whether the decision of respondent No.2 in OA No. 8/2005 to order cancellation of the appointment of the applicant in the OA No.8/2005 vide order dated 27.12.2004 (Annexure R/7), based on which the order dated 6.1.2005 (Annexure A/7 of OA 8/2005) was issued, is legally sustainable or not. The order dated 6.1.2005 stated as under :

"Whereas Shri Benudhar Behera has been selected and appointed to the post of GDS BPM, Mukundadaspur BO in account with Pipli SO with effect from 2.6.2003.

2. And, Whereas the selection of Shri Benudhar Behera to the post of GDS BPM, Mukundadaspur BO in account with Pipli SO has been reviewed by the Competent Departmental Authority and observed that the selection is made in contravention of the rules and not in conformity with the selection procedures of the Department.

3. As such it is proposed to terminate the appointment of said Shri Benudhar Behera from the post of GDS BPM, Mukundadaspur BO in account with Pipli SO, Sri Benudhar Behera is hereby given an opportunity to submit the representation if any so as to reach this office within fifteen days of receipt of this Memo, failing which it will be presumed that Shri Benudhar Behera has nothing to represent and final orders will be issued."

18. The order dated 27.12.2004 of the CPMG stated as under :

“(v) The application of Shri Prakash Ch. Sahoo was rejected on the ground that the candidate’s income was derived from house rent but not from agriculture and the SSPOs, Puri failed to report the candidate’s honesty and trustworthiness etc. Rejection of the application of Shri Sahoo on the aforesaid ground is not justified. No certificate such as honesty and trustworthiness is required from any authority as per departmental rules at the time of selection. As per notification, the applicant must have adequate means of livelihood and preference will be given to those applicants whose income is derived from landed property and immovable assets owned independently. In this case, Shri Sahoo provided income certificate from house rent to the tune of Rs.15000/- per annum and having landed property in his own name. The action of the SSPOs to reject the candidature of Shri Sahoo is not in conformity with the departmental rules and selection of Shri Benudhar Behera for the post of EDBPM is not proper.

(vi) While examining the application of Shri Prasanta Kumar Choudhury, it is noticed that the date stamp dtd. 25.3.2001 has been impressed on the application where as the ASPOs(HQ) has initiated with date 5.3.2001. If the application of Shri Prasant Ku. Choudhury was received in time, then he should have been given a chance to provide rent free accommodation in Mukundadspur village and if at all he failed to provide the same and failed to stay in the post village then the next eligible candidate Shri Prakash Ch. Sahoo should have been offered the post of GDSBPM, Mukundadaspur, as per the instructions contained in CO letter No. ST/10-1/65/Rlg/Corr/2001 dtd. 21.12.2001.

(vii) It is noticed that the selection of Shri Benudhar Behera, is irregular and not in conformity to the rules.”

19. From above, it is revealed that the main reason for which the application of respondent No.4 in OA 8/2005 was rejected, was because his income was derived from house rent and not from agriculture and SSPOs, Puri failed to report on the candidate’s honesty and trustworthiness. It is further stated in the order dated 27.12.2004 that the rejection of the application on this ground is not justified, since no certificate of honesty or trustworthiness was required from any authority as per the rules and nowhere in the rules it is mentioned that preference will be given to the candidates whose income is derived from landed property and immovable property. Thus it was observed by respondent No.2 after review that Sri Sahu (applicant in OA No.640/2004) was not selected for the post and his case was rejected and applicant in OA No. 8/2005 (Sri Benudhar Behera) was selected by respondent No.3 in violation of the rules. Accordingly the impugned show cause notice/order dated 6.1.2005 (Annexure A/7 in OA No. 8/2005) was issued. It is seen that order dated 6.1.2005 did not explain any reason for the decision as mentioned in the order dated 27.12.2004 of the respondent No.2. It simply stated that the reviewing authority has observed that the selection of the applicant in OA No. 8/2005 has been made in contravention of the rules without explaining the reasons for such findings as explained in the order dated 27.12.2004 (Annexure R/7 to the counter by respondents No. 1, 2 & 3 in OA No. 8/2005). Nothing has been produced by the applicant in OA No. 8/2005 to show that the existing rules or guidelines of the department did not permit the candidature of the applicant in OA No. 640/2004 in the selection in question and the decision of the respondent No. 3

in rejecting his candidature was in accordance with the rules and he was ineligible for the post as averred in the OA No. 8/2005. Nothing has been produced on behalf of the applicant in OA No. 8/2005 who is also respondent No.4 in OA No. 640/2004, to show that the decision of the respondent No.2 as communicated in the order dated 27.12.2004 (Annexure R/7) is not in accordance with the rules. On the other hand, the applicant of OA No. 640/2004 is found to be more meritorious and he fulfils all the criteria and rejection of his candidature by the respondent No.3 on the grounds not provided under the rules, was illegal as clearly explained in the order dated 27.12.2004 of the respondent No.2. Hence, the grounds mentioned in OA No. 8/2005 and in the counter of the respondent No.4 in OA No. 640/2004 do not justify any interference of this Tribunal in the decision taken by the respondents.

20. In view of the above, we do not find anything wrong with the decision of the respondents in issuing the order dated 6.1.2005 for cancellation of the appointment of the applicant in OA No.8/2005. The respondents are, therefore, directed to take necessary action in accordance with the order dated 6.1.2005 (Annexure A/7 of OA No. 8/2005) and the order dated 27.12.2004 of the respondent No.2 (Annexure R/7 of the counter filed by the respondents No. 1, 2 & 3 in OA No. 8/2005) and take appropriate action in the matter as per provisions of law.

21. Accordingly, the OA No.8/2005 is dismissed and OA No.640/2004 is allowed to the extent as mentioned above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath