

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/565/2017

Date of Reserve:25.04.2019

Date of Order: 05.07.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Rudra Narayan Mishra, aged about 22 years, S/o. Sri Parshuram Mishra, permanent resident of Vill./PO-Arei, PS-Binjharapur, Dist-Jajpur.

...Applicant

By the Advocate(s)-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-751 001.
3. Sr.Supdt. of Post Offices, Cuttack North Division, Mahanadi Vihar, Cuttack-753 001.
4. Inspector of Post Offices, Jajpur Sub-Division, Jajpur Road, Dist-Jajpur-755 019.

...Respondents

By the Advocate(s)-Mr.B.Ray Mohapatra

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a physically challenged (OH) person. In response to an advertisement dated 29.04.2016 (A/1) issued by the Department of Posts,

he had submitted an application for the post of Gramin Dak Sevak Mail Deliverer (GDSMD), Mahisara B.O. under Jenapur S.O., the post being reserved for OH category. Simultaneously, the Local Employment Exchange was also requested to sponsor the names of the eligible candidates. On receipt of the applications, as above, the same were scrutinized and accordingly, the names of the eligible candidates were notified. However, since the selection did not progress, the applicant sought for information under the RTI Act. It was communicated to him that as per letter dated 01.08.2016 of the D.G.Posts, New Delhi, instructions have been issued to all the Heads of the Circles to stop selection/engagement of all types of GDSs with immediate effect as well as to stop all cases of engagement which are under process. After the restraint period as stipulated by the D.G.Posts was over, a general notification dated 27.3.2017 was issued inviting applications from the intending candidates for filling up more than 1000 posts in GDS category. According to applicant, in so far as GDSMD, Mahisara BO is concerned, no further notification was issued nor the process of selection notified under A/1 dated 29.04.2016 was cancelled. It is the submission of the applicant that since in the general notification dated 27.03.2017 there has been no vacancy earmarked for physically handicapped category, he submitted a representation dated 04.04.2017 to the respondent-authorities with a request to take further action in the

matter of selection in pursuance of notification dated 29.04.2016. Since there was no response, the applicant has invoked the jurisdiction of this Tribunal in this O.A. praying for the following reliefs.

- i) To admit the Original Application.
- ii) To direct the Respondent No. 2 to 4 to finalize the selection commenced vide Selection Notification No.B4/GDSMD/Mahisara BO dated Jajpur Road the 20.04.2016 for the post of GDSMD in Mahisara BO within a specified time.
- iii) To declare the action/inaction on the part of the Respondents is illegal, arbitrary and outcome of non-application of mind so also contrary to law.
- iv) To pass any other order/orders as deemed fit and proper for ends of justice.

2. The grounds on which the applicant has claimed reliefs are that since the selection process pursuant to notification dated 29.04.2016 was stopped in view of instructions issued by the DG Posts vide letter dated 1.8.2016, it cannot be said that the entire process of selection stood nullified. Since the respondents issued a general notification dated 27.03.2017 inviting applications from the open market for filling up a large number of GDS posts, over and above, the vacancy sought to be filled up vide notification dated 29.04.2016, it was incumbent on the part of the respondents to resume the selection process for the post of GDSMD, Mahisara BO. The applicant has pointed out that 3% reservation to PH category candidates under the provisions of Persons with Disability (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995, cannot be taken away on the basis of the executive instructions issued by the Department of Posts.

3. Opposing the prayer of the applicant, respondents have filed their counter. According to respondents after the instructions were issued by the DG Posts vide letter dated 01.08.2016 to stop all cases of engagement which are under process, the selection process for the post of GDSMD, Mahisara BO was stopped, because, the selection had not been finalized. After that, no letter from the Postal Directorate to continue such stopped process of selection was issued. Subsequently, the Department decided to implement the online selection of GDS vide instructions No.17-23/2016-GDS dated 17.01.2017. This fact was also intimated to the applicant in response to his RTI application. It is the case of the respondents that the post of GDSMD, Mahisara BO has not yet been notified in the online selection process as various aspects like workload statistics are under consideration and after certain justification/approval of the competent authority, the post will be notified in the online recruitment process and if the post will be justified for OH candidates, the applicant may apply for the same. The respondents have pointed out that when the Department issued circular for online selection of all the GDS posts, all the recruitments which were stopped earlier subsequently cancelled.

4. Applicant has filed a rejoinder to the counter in which it has been stated that there is no embargo to finalize the incomplete selection offering appointment to the applicant who is a physically handicapped person when fresh selections have been commenced after introduction of new selection procedure. It has been submitted that Respondent No.3 ought to have proceeded with the selection when fresh selections have been undertaken after 01.08.2016 or approached the Respondent No.2 seeking necessary clarification to that effect. Applicant has relied on the decision of this Tribunal in O.A.No.260/000/38/2017 (Chiranjibi Pradhan vs. UOI) disposed of on 15.09.2017 in support of the reliefs sought in the present O.A. According to applicant, the ratio decided in O.A.No.260/000/38/2017 is applicable to this O.A., the facts of both the OAs being similar. Incidentally, he has mentioned the observations made by this Tribunal in that O.A., which are as follows:

“...It is quite apparent that the respondents have treated the selection process in a very lackadaisical manner without realizing that eligible persons aspirant for a Government job have reposed their trust on the Government and such trust is being betrayed without any rhyme and reason. Respondents might have taken a decision for online selection of GDS, but that is no reason why persons who had applied in response to their earlier advertisement need to be deprived of a chance for consideration under the post advertised”.

5. We have heard the learned counsels for both the sides and perused the records. Applicant has also filed another decision of this Tribunal in

O.A.No.260/00174/2017 disposed of on 24.05.2018 which according to him, is squarely applicable to his case herein.

6. We have perused the decisions of this Tribunal in O.A.No.260/000/38/2017 and O.A.No.260/00174/2017. In O.A.No.260/000/38/2017, the applicant had applied for the post of GDSBPM at Kansa Branch Office in response to an advertisement dated 29.10.2012 issued by the Department of Posts. The said selection process was cancelled because, 30 days' time was not given for submission of application from the date of advertisement. A new advertisement was issued on 26.4.2013 in supersession of earlier advertisement. The applicant also applied for the post in question in response to this advertisement. The selection process could not be completed till 30.6.2015. On 28.5.2015, the Postal Directorate issued a letter that whenever the vacancy notified on or before 31.3.2015 had not got filled up by 30.6.2015, the notification would be cancelled and vacancies will be filled up under a new process through aptitude test method. Since the selection against 2013 advertisement had not been completed by 30.6.2015, the respondents cancelled the selection process. On 1.8.2016, the Postal Directorate issued another letter to the field offices directing to stop selection/engagement of all types of GDS with immediate effect in view of a proposal of online selection of GDS. In this connection Paragraph-4 of the order reads as follows:

"4.We have carefully perused the documents submitted by the applicant. Respondents had issued an advertisement on 29.10.2012. Because the said advertisement was flawed, they had cancelled the selection process. Applicant lost a chance for consideration for the post of GDSBPM, Kansa BO for no fault of his. Selection under the 2nd advertisement dated 26.4.2013 also remained inconclusive due to "administrative reasons". Again it was no fault of the applicant that the respondents could not complete the selection process for two long years right upto 30.6.2015 when the selection process again got cancelled for the second time. It is quite apparent that the respondents have treated the selection process in a very lackadaisical manner without realizing that eligible persons aspirant for a Government job have reposed their trust on the Government and such trust is being betrayed without any rhyme or reason. Respondents might have taken a decision for online selection of GDS, but that is no reason why persons who had applied in response to the earlier advertisement need to be deprived of a chance for consideration under the post advertised".

7. In Paragraph-6 of the order, this Tribunal held as under:

"6.It certainly does not, behove a model employer that it will play with the lives of the applicants who seek employment and for no fault on their part, they are shown the door with abysmal cruelty and unreasonableness. After perusing the documents, the O.A. and examining the Memo filed by the Respondents, we are of the considered view that although the Government had decided to adopt an online selection process for future employment, they cannot throw the selection process into the dustbin pursuant to 2013 advertisement for the post of GDSBPM, Kansa BO and wash their hands off their responsibility to give justice to the applicants. At this point of time, we do not know if the applicant in the present O.A. will pass the test of the selection process and we do not want to entertain that question. It is our intention that the selection process initiated by the advertisement dated 26.4.2013 should attain a finality and all the applicants including the present applicant in the O.A. should get justice by way of due consideration as per the prevalent rules".

8. Accordingly, this Tribunal in that O.A. directed as under:

"7.In view of the above, impugned order dated 4.10.2016 is quashed and set aside. Consequently, we direct the Respondents to finalize the selection process to the post of GDSBPM, Kansa BO in pursuance of their advertisement dated 26.4.2013 within eight weeks from the date of receipt of this order".

9. The facts of the case in hand are not identical to the facts in O.A.No.260/000/38/2017 inasmuch as the respondents could not complete the selection process for two long years right upto 30.06.2016 in pursuance of 2nd advertisement dated 26.4.2013 which remained inconclusive due to administrative reasons. In the instant case, the advertisement was issued on 29.04.2016 and while the selection process was going on the same was stopped in view of Postal Directorate's letter dated 1.8.2016. Therefore, the facts in O.A.No.260/000/38/2017 being distinct from the facts of the present O.A., the decision rendered in that O.A.No.260/000/38/2017 is of no help to the applicant.

10. The decision of this Tribunal in O.A. No.260/00174/2017 as relied upon is also not applicable to the facts of the present O.A. inasmuch as in that case the candidature of the applicant therein had been selected for the post of GDS, Packer, Baripada SO whereas in the present case during the process of selection, it was stopped in pursuance of Directorate letter dated 1.8.2016.

11. Coming to the merit the matter, it is the case of the respondents that the post of GDSBPM, Mahisara BO was not notified in the online selection process as various aspects like workload statistics are under consideration and after certain justification/approval of the competent authority, the post will be notified. Further, it has been pointed out that the provision of reservation of certain no. of posts in GDS category was earlier examined in Postal Directorate and as per Director General, Posts Letter No.21-8/92/ED&TRG dated 22.04.1994, it was decided by the Postal Services Board that no specific post shall be reserved for PH category, but arrangements should be made for adequate representation. However, it has been made clear that the applicant may apply for the post in question through online process as and when it will be notified.

12. We have considered the rival submissions advanced at the Bar. It is not a case where after the selection process was complete, further course of action has been stopped. Since the respondents have made it clear that when the post of GDSMD, Mahisara BO will be notified for online selection process, the applicant may apply for the same and in this respect online selection process has already been commenced for filling up a large number of vacancies in GDS category except Mahisara BO as the workload statistics of the said BO are under consideration and subject to justification and approval of the competent authority, the post may be notified for

online selection process. In view of this, interference by this Tribunal at this stage is uncalled for.

13. For the reasons discussed above, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS