

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00342/2018

Date of Order: This, the 01st day of April 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Sri Bidyut Bikash Barman
S/o Shri Hiren Barman
Vill – Rupia Bathan, P.O. – Chamata
Pin – 781306, Dist – Nalbari (Assam).

...Applicant

By Advocates: Mr. D. N. Sharma & Mr. A.D. Goswami

-VERSUS-

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Communications & I T
Department of Posts, Dak Bhawan
New Delhi – 110116.
2. The Chief Postmaster General
Assam Circle, Meghdoot Bhawan
Guwahati – 1.
3. The Superintendent Post Offices
Nalbari Barpeta Division
Nalbari – 781335.

... Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

O R D E R (ORAL)**NEKKHOMANG NEIHSIAL, MEMBER (A):**

By this O.A., applicant makes a prayer for a direction to the respondent No. 3 to cancel the impugned order No. A/X-21/EDA/Amoni BO (sub) dated 28.03.2016 issued to 1st candidate and the applicant being the 3rd candidate in the panel of selection list be called for engagement.

2. The main ground for relief of the applicant is that he was denied fair, just and reasonable opportunity of employment as granted under the Article 14 and 16 of the Constitution of India. The engagement order issued to 1st candidate should be cancelled as he was not interested of his engagement and the 2nd candidate in the panel of selection list has been appointed as GDS BPM Kharua, at another place/office on 10.05.2016 and applicant being the 3rd selected be called for engagement. The candidate who stood in 1st position had submitted his unwillingness to the engagement letter issued by the appointing authority within a stipulated period of one month vide his letter No. A/X-21/EDA/Amoni BO (sub) dated 14.06.2016 and the second candidate had been appointed as BPM, Kharua B.O. on 10.05.2016. Thereafter, the turn of 3rd selected candidate

comes. But the appointing authority has not act according to guide lines of directorate Memo No. 17-23/2016-GDS dated 01.08.2016 as aforesaid and deprived the applicant from his legal claim for engagement. Thus the action of the respondents is arbitrary, whimsical and mala fide.

3. Applicant stated that the Postal Directorate vide letter No. 17-23/2016-GDS dated 01.08.2016 clearly state that cases where selection has already been finalized and communicated to the candidates only need not be withheld. In the instant case, selection has already been made and a list of selected candidate has been finalized. The process of Communication to the selected candidate has been started. Since the candidacy of both the 1st and 2nd selected persons have been ended, the applicant being the next eligible candidate should have been called for appointment. But the respondents have violated the principle of natural justice by depriving the applicant.

4. According to the applicant, the Appointing Authority acted in mala fide while conducting the recruiting process by not calling the 3rd selected candidate or he is, for the post of GDS BPM Amoni B.O. just after one month from the date of issue

of appointment letter to 1st candidate which is a pre condition as per content of paragraph viii of Directorate's letter No. 17-39/2012-GDS dated 16.09.2015 which is denial of equal opportunity of employment, illegal and against natural justice.

5. Applicant further stated that the impugned order passed by the Superintendent, Post Offices, Nalbari vide his order No. A/X-36/EDA/Amoni BO (sub) dated 14.06.2016 & 11.07.2018 are discriminatory in the eye of law and as per guidelines issued in paragraph (viii) of Directorate letter No. 17-39/2012-GDS dated 16.09.2015. According to the applicant, after receipt of clear instructions from Postal Directorate letter No. 17-23/2016-GDS dated 01.08.2016, the instructions have been followed by the other Postal Divisions to complete the process of appointment in the post of GDS BPMs where the selection process has been started. Even, the Superintendent of Post Offices, Nalbari has verified the documents of the incumbents namely Shri Bhudeb Medhi and Trideb Talukdar on 13.07.2016 and 26.08.2016 for appointment. But not taking action for verification of documents of the applicant is unfair, discriminatory and illegal.

6. Facts of the case are that the applicant was one of the candidates appearing for the post of Gramin Dak Sevak Branch Postmaster at Amoni BO in account with Chamata S.O. Nalbari HO in response to the Notification dated 12.02.2016. The respondent authorities after going through the process of recruitment selected five candidates. The applicant was put at 3rd position in the merit list. Subsequently offer of appointment was not accepted by the 1st selected candidate namely Sri Pallab Barman. The 2nd selected candidate also got appointment in another Post Office. This leads to the situation wherein the 3rd candidate namely present applicant demanded that he should be given appointment as selected by them.

7. The respondent authorities in the written statement filed on 18.03.2019 took a stand that since the letter of unwillingness submitted by the 1st candidate dated 07.08.2018 was received by them only on 11.08.2018 and in the meantime on-line selection for all categories of GDS was in place vide letter No. 17-23/2016-GDS dated 01.08.2016, therefore, they are not in a position to offer appointment letter to the applicant.

8. We have gone through the pleadings and submissions made by the parties. We have also perused the letter No. 17-39/2012-GDS dated 16.09.2015 on the subject of '*Selection Process for engagement to all approved categories of GDS Posts – Review thereof*' and relevant portion of the same is recorded as hereunder:-

"3. Wherever notification has been issued adopting the new method of selection made effective from 01.04.2015, the same will be cancelled and the concerned recruiting authorities will be directed to initiate action to fill up the post taking recourse to the process outlined above. Besides this, where vacancies have been notified on or before 31.03.2015, action will be taken by the respective recruiting authorities by completing the process already undertaken."

9. From the above, it is seen that vacancies which were notified on or before 31.03.2015, the recruitment process were required to be completed without any restriction. From the statement made by the respondent authorities at para 5 of the written statement, it is seen that this vacancy has already occurred on 31.03.2011. But the advertisement for filling up the vacancy was notified on 12.12.2016. If the respondent authorities were to go strictly by direction of the Ministry's letter stated above i.e. dated 16.09.2015, they should not have gone ahead with the recruitment process as the Notification/

advertisement was done after 31.03.2015. However presumably, considering that vacancies have already occurred on 31.03.2011, they have gone ahead with the recruitment process, selected the 1st candidate and also 2nd candidate got appointed at another office on 10.05.2016.

10. Having gone through the recruitment process and having given appointment letter to the 1st candidate and also the 2nd candidate in another office, it is felt that the respondent authorities are not fair in denying the appointment letter to this applicant when he was already selected. The argument that the letter of unwillingness by the 1st candidate was received only on 11.08.2016 and in the meantime, instructions of the department dated 01.08.2016 has been received is not maintainable. The argument appears as if the department is bound by the letter of communication of unwillingness by the 1st selected candidate. Since nobody has joined the post, it is considered that the recruitment process is still opened and the 3rd selected candidate deserved to be given appointment as demanded by him.

11. Accordingly, the respondent authorities are hereby directed to issue offer of appointment to the applicant, Sri Bidyut Bikash Barman within a reasonable time but not later than two months from the date of receipt of a copy of this order.

12. With the above directions, O.A. stands disposed of accordingly. No order as to the costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)