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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 16.09.2019

+ **W.P.(C) 9567/2018 & CM APPL. 37218/2018**

SH. BRAHMPRAKASH SHARMA Petitioner
Through : Mr. S.K. Gupta, Advocate alongwith
petitioner in-person.

versus

UNION OF INDIA AND ORS. Respondents
Through : Mr. Ravi Prakash, CGSC for UOI
alongwith Mr.M.K. Bharti, Deputy
Director, Pay & Accounts
Department, GSI, ER, Kolkata.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. The present petition is directed against order dated 17.05.2018 passed by the Central Administrative Tribunal by which OA filed by the petitioner herein stands dismissed.
2. The necessary facts which are required to be noticed for disposal of this writ petition are that the petitioner applied for the Combined Graduate Level Examination, (CGLE), 2015 conducted by the Staff Selection Commission, New Delhi in the year 2015. The petitioner was called for an interview held on 16.03.016 after he was found to be successful in the result of the Tier 1 and Tier 2 examinations. On 29.06.2016, the final result of

SSC,CGLE-2015 was declared and the petitioner was selected for the Post Code 1 for the post of Assistant for the pay grade of Rs.4,200/-. The Staff Selection Commission nominated the name of the petitioner to the Ministry of Mines on 27.07.2016.

3. It is the case of the petitioner that neither did he receive any communication from the Ministry of Mines regarding his joining nor the names of selected candidates were published by the Ministry of Mines on its website. The petitioner did not receive any information either through phone or the e-mail as was mentioned by him in his application form.

4. The petitioner also contends that he contacted the Ministry of Mines over phone many times but could not get the information related to his joining. The petitioner also claims that he contacted Ministry of Mines over phone on 08.03.2017 and could manage to get the information to the extent that the offer of appointment was to be issued by CGI, Kolkata, whom he contacted over phone and learnt that the appointment letter had been issued by GSI, ER, Kolkata.

5. On 09.03.2017, the petitioner contacted the Post Master, Okhla Industrial Estate, New Delhi regarding the speed post which contained the offer of appointment issued by GSI, ER, Kolkata. The Post Master appended the remarks on the application that the speed post article has been 'wrongly delivered' to someone else on 07.10.2016 and that it was accordingly a case of wrong delivery.

6. The petitioner reached Kolkata and made a representation to ADG & HOD, GSI, ER, Kolkata. Another representation was made to DG, GSI, CHQ and a copy thereof was submitted to the Public Grievance Section of GSI, CHQ, ER, Kolkata on 15.03.2017.

7. However, the offer of appointment of the petitioner was cancelled on 31.03.2017 by GSI, ER. The petitioner made a representation to ADG, GSI, ER, Kolkata for giving him a second opportunity of joining on 03.04.2017. On 10.04.2017, the petitioner made another representation to DDG(P&A), GSI, CHQ, Kolkata.

8. Based on his representations, GSI, ER Kolkata addressed a letter to the Post Master, Okhla Industrial Estate, New Delhi on 19.04.2017 for verification of the claim of the petitioner.

9. The petitioner again went to Kolkata on 21.04.2017. On 05.05.2017, the Post Master confirmed the veracity of the claim of the petitioner. However, the representation of the petitioner was rejected which led to the filing of the OA.

10. Mr. Gupta, learned counsel for the petitioner submits that the petitioner no doubt learnt that he had been selected on 03.10.2016 but initially he kept waiting patiently to receive the letter of appointment but subsequently when he realized that he had not received any letter, he took all possible steps from making phone calls to personally visiting Kolkata to making representations. He submits that the fact of non-delivery of appointment letter stands fully established by two endorsements made by the Post Master, PO : Okhla Industrial Estate stating that the letter had been delivered to a wrong person.

11. Counsel further submits that the petitioner belongs to the General Category and having succeeded in the examination and interview, he should not be deprived of the post. Additionally, it is urged before us that the respondents have failed to comply with their own OM as per which a registered reminder is to be sent immediately after the expiry of 5 weeks

time, if necessary, if the candidate does not respond. He submits that this option is mandatory in nature and not optional and the respondents cannot be allowed to follow a pick-and-choose policy.

12. He further submits that the purpose of giving the telephone number and e-mail address in the application form is to ensure that the candidate is informed immediately about his selection and is not left to the mercy of receiving a speed post, which in the facts of the present case was not delivered to the petitioner.

13. He submits that the learned Tribunal has erred in reaching a conclusion without any basis that the petitioner was trying to find a job elsewhere. It is contended that there was no material before the Tribunal to record such an adverse finding against the petitioner.

14. Counsel further contends that once it was established that the speed post was not delivered to the petitioner but wrongly delivered to someone else, no fault can be found with the petitioner. He states that in case the writ petition is allowed, the petitioner would not claim seniority or back wages. He further submits that vide order dated 12.09.2018, the respondents were directed to keep a post vacant till further orders.

15. Learned counsel for the respondents submits that there is no infirmity, illegality or impropriety in the order passed by the Tribunal, which would warrant any interference in proceedings under Article 226 of the Constitution of India. It is contended that the petitioner was well aware as early as on 03.10.2016 that he had been selected; no explanation has been rendered by the petitioner for the delay in the steps taken by him post-March, 2017 and as to why he kept silent for a period of 5 months. It is further contended that the Tribunal has rightly reached the conclusion that

for 5 months the petitioner was not very keen to join at Kolkata and was exploring other career avenues as well; and that the petitioner started making enquiries about the appointment letter only after he got to know about the cancellation of the offer of appointment on 03.04.2017.

16. We have heard learned counsel for the parties and considered their rival submissions.

17. The basic facts which we have noted in the foregoing paragraphs are undisputed as far as they relate to the petitioner appearing in the examination and his participation in the interview and his being selected. It is also undisputed that an appointment letter was issued in his favour on 03.10.2016, which got delivered to someone else on 07.10.2016. This fact is well established on the basis of two endorsements made by the Post Master, PO : Okhla Industrial Estate. The only question which arises for our consideration is as to whether the petitioner can be penalized to the extent of depriving him of his employment as he did not report to the Department on time.

18. We find that the petitioner did not receive the appointment letter which could also have been sent by the concerned department through e-mail address contained in the application form; or the petitioner could have been informed about his selection on telephone as well. OM dated 01.01.2014 in fact reads in favour of the candidate. The said OM states that a registered reminder may be sent immediately after the expiry of 5 weeks' time, 'if necessary'. In the context of the purpose to be achieved, the term 'if necessary' has to be given a wide interpretation and not a narrow one. In our view, this would mean that in case the person does not repond after the expiry of period of 5 weeks, deliberate efforts should be made to inform the

person.

19. The word 'if necessary' should also be interpreted to mean that in case a candidate has responded within the period of five weeks but is still not taking steps to join the department after being duly served with the copy of the appointment letter, in such case, a reminder may not be issued by the department.

The relevant para of the impugned order reads as under :

“7. At least five weeks time from the date of issue of the Offer of Appointment should be given to the candidate to respond to the Offer of appointment. A registered reminder may be sent immediately after the expiry of five weeks time, if necessary. If the candidate does not join duty within 3 months from the date of the first letter, his candidature may be cancelled. However, if the candidate further makes a request for extension of joining time and on consideration by the Cadre Unit, it is decided to grant him extension beyond 3 months, he/she may be asked to join within the stipulated time and he/she may also be informed that on joining the post his/her seniority would be determined as per provision made in DOP&T O.M. No.9/23/71-Estt. (D) dated 6.6.78 as amended vide O.M. No. 35015/2/93-Estt(B) dated 9.8.1995.”

20. For the reasons aforesaid, we set aside the order of the Tribunal and allow the OA. Counsel for the respondent, on instructions of Mr.M.K. Bharti, Deputy Director, Pay & Accounts Department, GSI, ER, Kolkata who is present in court submits that the petitioner may be directed to join

after a period of 3 months. The request of 3 months' time is declined.

21. It is directed that the petitioner will join the office of Director General GSI, Eastern Region, Kolkata on or before 15.10.2019. The statement of counsel for the petitioner that the petitioner would not press either for seniority or back wages is taken on record; and it is made clear that the petitioner shall not press for seniority and back wages.

22. With these directions, the writ petition is allowed. The pending application also stands disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 16, 2019

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