

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1276 of 2013

Reserved on : 23.9.2019

Date of order: 04.12.2019

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Samaresh Pal,
Son of Sri Lakshmi Kanta Pal,
Aged about 35 years,
Working as Postal Assistant of Divisional Office
Under Sr. Supdt. Burdwan Division,
Residing at Chhotonilpur (West),
Ward No. 15, P.O. Sripally,
Dist. Burdwan, Pin No. 713 103.

..... Applicant.

Versus

- 1) Union of India
Through the Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhawan,
New Delhi 110 001
- 2) The Director (E & DE),
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi 110 116
- 3) The Chief Post Master General,
Yogayog Bhavan,
C.R. Avenue,
Kolkata 700 012
- 4) The Sr. Superintendent of Post Office,
Burdwan Division,
P.O & Dist. Burdwan,
Pin No 713 103

..... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

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For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with non-selection to the post of Inspector of Posts consequent to the examination of 2011, the applicant has approached this Tribunal praying for directions on the respondents to finalise the results in respect of the applicant for promotion to the post of Inspector of Posts and also to grant him promotion to the said post by an early date.

2. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record.

3. The facts, in a narrow compass, is that the respondent authorities had decided to conduct the IP Examination in 2011 for promotion to the posts of Inspector of Posts. The applicant, being an eligible candidate, participated in the selection test. A circular was issued by respondent No. 3, namely, the Chief Postmaster General, West Bengal Circle, that the vacancy position for the said examination is 'Nil' and aggrieved by the same, two aspirants to the posts of Inspector of Posts approached this Tribunal in O.A. No. 845 of 2011. This Tribunal, disposed of the O.A. vide its order dated 30.9.2011 objecting to adjustment/absorption of 24 surplus qualified candidates of IP Examination, 2009 against future vacancies and directed the department to conduct an examination for IP cadre in 2011. Although the said examination was conducted, the results were not announced on account of pendency of O.A. No. 29/2012 and 53/2012, which being subsequently dismissed, the respondent authorities declared the results of the IP Examination, 2011 on 8.1.2013.


According to the applicant, the applicant's result was shown in the said panel as provisional which was violative of para 9 of the letter dated

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
8.1.2013 that mandated the Heads of the Circles to immediately finalize such cases so that provisional candidates may not have to wait inordinately for their results.

4. According to the respondents, the authorities of the West Bengal Circle, vide their letter dated 26.12.2011, had intimated that the vacancy position was 15 OC, 3 SC and 2 ST, totaling to 20 vacancies. Accordingly, when the result of the West Bengal Circle was declared on 8.1.2013, 20 vacancies were filled up in accordance with the said vacancy position.



The applicant, however, would challenge the said vacancy position relying on order dated 8.1.2013 issued by the Assistant Director General (at Annexure A-4 to the O.A.) and, particularly, para 11 of the same, which disclosed that there were 22 surplus qualified candidates who were sought to be adjusted against the vacancies of 2011. The applicant would hence argue that the total number of vacancies to adjust surplus candidates ought to have been 22 and not 20 as averred by the respondents.

5. When the combined merit list was obtained from the approved outsourced agency responsible for conducting the examination, it transpired that the applicant, an OC candidate had received 622 aggregate marks in the said IP Examination, 2011 and, that, two other candidates, namely, Shri Sanjay Mondal and Shri Sunil Debnath (both OC candidates) had obtained 642 and 634 marks respectively. As the last selected OC candidate had secured 646 marks, the applicant was, therefore, 18th in merit in the OC category. The applicant would contend that as the total number of vacancies ought to be 22, the total number of OC category vacancies should consequently be 17 and, as one Shri



Nilanjan Samanta, Srl. No. 6 among the selected candidates had declined to accept his promotional post, Shri Sanjay Mondal and Sunit Debnath as well as the applicant should all be accommodated against the 15th, 16th and 17th vacancies respectively in the OC category.

The respondents have controverted the claim of the applicant by arguing as follows:-

- (a) That, although there is a reference to accommodating 22 surplus candidates against the vacancies arising in 2011, the factual position is that of the 22 surplus candidates, 2 lady candidates, namely, Smt. Srabani Basak and Smt. Seema Guha, had, from the start, been allotted to the West Bengal Circle. Accordingly, there were a net requirement of 20 vacancies to accommodate the balance 20 surplus candidates who had participated in the IP Examination, 2009.

The respondents would reiterate that the break up of vacancies for the departmental quota in 2011 were OC-15, SC-3 and ST-2.

The respondents have also clarified, in their sur-rejoinder, that, as per the result of IP Examination, 2009, 14 candidates were selected as qualified on merit (OC-8, SC-5 and ST 1) and, that, one ST vacancy of the West Bengal Circle was filled up through review of the failed ST candidates and, hence, all 15 vacancies of West Bengal Circle of IP Examination, 2009, were filled up. The respondents would further clarify that one Shri Dilip Ekka, who secured highest marks in the ST quota in the IP Examination, 2011, was not declared as qualified in IP Examination, 2011, as he was working as Postmaster Gr. I at the material point of time. Hence, the resultant vacancies were filled up by the next two

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successful candidates in order of merit namely, Shri Soumen Kisku and Shri Atowa Orawn, and, it was not that any additional vacancy was declared to accommodate the ST candidate, who was in the 3rd position in the ST merit list.

(b) The respondents have refuted the claim of the applicant that he was a provisional candidate whose results are required to be finalized by the respondent authorities expeditiously, by arguing that all candidates were permitted to appear in the Examination of 2011 provisionally subject to the outcome of O.A. 29/2012 and 53/2012 and, in, compliance to the orders of the Tribunal in O.A. No. 845 of 2011.

(c) According to the respondents, the applicant had obtained only 622 aggregate marks in merit, and, was consequently placed in the 18th position in the OC category. There were only 15 declared vacancies. The respondents would further argue that, the 6th candidate in order of merit, Shri Nilanjan Samanta had foregone his promotion as Inspector of Posts, and the resultant vacancy (which was carried forward to the next year), even if made available for the candidates participating in the Examination 2011, could not have accommodated the applicant as two other candidates in OC category were higher up than the applicant in merit. The respondents have averred that, two incumbents/candidates higher than the applicant on merit have also not been granted promotion given the availability of only 15 vacancies. Hence, the question of promoting any candidate lower in merit position to the applicant does not arise.

The applicant has also admitted during hearing that no candidate junior to him on merit has been promoted as Inspector of

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Posts consequent to the IP Examination, 2011. The applicants' averments that one ST candidate was promoted out of turn has been nullified by the respondent authorities explaining that, because the candidate, who secured first position on merit was not eligible for the post of Inspector of Posts as he was surviving as Postmaster Gr. I, the next two candidates were automatically considered to fill up the two notified vacancies.

5. We have carefully considered the rival contentions, the documents on record and have applied our mind to decide as to whether any discrimination or injustice were met out to the applicant in his non-selection to the Post of Inspector of position consequent to the IP Examination, 2011 and we infer as follows:-

(i) The respondent authorities had taken a position to accommodate 22 surplus candidates who had participated in IP Examination, 2009 against vacancies occurring in the year 2011. This decision was challenged by those candidates who were legitimate promotees aspirants against vacancies of 2011 and some of such aggrieved candidates obtained an order from this Tribunal in O.A. No. 845 of 2011 vide which this Tribunal declared the action of the respondent authorities to accommodate surplus candidates participating in IP Examination, 2009 against vacancies arising in 2011 as illegal and further directed the respondent authorities to conduct the Examination in 2011 and to select candidates on merit.

(ii) The examination was conducted with the help of an outsourced agency who thereafter furnished a provisional select list which, after the dismissal of O.A. No. 53 of 2012 and O.A. No. 29 of



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2012 by this Tribunal, was finally published in which 20 candidates (15 OC, 3 SC and 2 ST) were declared as successful.

(iii) Admittedly, there were only 20 vacancies available to accommodate the selected candidates and the fact that the respondent authorities desired to accommodate on an earlier occasion, 22 surplus candidates of 2009 Examination against 2011 vacancies does not automatically prove that 22 vacancies were required to accommodate such surplus candidates. Two of such candidates, Smt. Srabani Basak and Smt. Seema Guha had already been adjusted against existing vacancies of West Bengal Circle and hence only 20 vacancies were required to accommodate the outsider surplus candidates, who had qualified in IP Examination, 2009.

(iv) This being the position, it is undisputed that there were 15 OC vacancies, and, even if the selected candidate at Srl. No. 6 failed to join his promotion post, the applicant did not have a right to be considered on the resultant vacancy, as he was in the 18th position in the merit list for OC candidates and, that, there were 2 candidates above him, who had secured more marks, a fact admitted by the applicant and the respondents alike.

(v) The respondents have clarified to our satisfaction that no ST candidate was promoted out of turn despite being lower down the list, hence, parallel drawn to such ST candidates by the applicant to claim his right for accommodation does not hold good.

6. Accordingly, we do not find that any invidious or discriminatory treatment was made out to the applicant as no candidate, lower to him on merit, had been promoted out of turn depriving him of his rightful

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promotion. The scope of final publication of his result does not arise as because the respondents have disclosed that he has obtained 622 marks on merit but he did not find place in the list published on 8.1.2013, as he was not placed in the list of the first 15 successful OC candidates on merit.

7. In ***Union Public Service Commission v. S. Thiagarajan, (2007) 9 SCC 548***, the Hon'ble Apex Court held in a context wherein persons having better grades were included in select list, while the respondent who was assessed as "Good" was left out, the mere fact that the respondent was eligible and qualified did not entitle him to be included in the select list.



In ***Director of Horticulture, Odisha v. Pravat Kumar Dash and others (2019) 2 SCC (L&S) 500***, the Hon'ble Apex Court held that appointments are to be made only in terms of applicable recruitment rules or in terms of executive instructions issued by the State.

As the recruitment rules in conducting IP Examination, 2011 were adhered to by the respondent authorities in compliance to directions of the Tribunal in O.A. No. 845 of 2011, we do not consider that the applicant has a right to appointment as he has not been able to establish that there were any violation of recruitment rules in the selection process.

8. In ***Lt. CDR M. Ramesh v. Union of India & others (2019) 1 SCC (L&S) 213*** the Hon'ble Apex Court held that there is no vested right of appointment nor is the State under duty to fill up vacancies and that merely because a person has been selected, it does not give him an indefeasible right for claiming appointment and the State is under no

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duty or obligation to fill up vacancies for justifiable and appropriate reasons.

9. In this case, the respondents had notified 20 vacancies in 2011 and had proceeded to fill up the same as per Recruitment Rules. The contentions of the applicant that there were 22 vacancies against which he should have been rightfully accommodated falls through, as because, the respondents have explained to our satisfaction that IP Examination of 2011 had notified only 20 vacancies and any reference to 22 surplus candidates was subject to the fact that two of such surplus candidates were already accommodated against the existing vacancies.



The applicant failed to establish his position in the select list of 15 OC candidates on merit. Hence, his claim to finalization of result fails as his marks and merit position have been disclosed to him. Resultantly, being lower in merit and given the notified vacancy position, the applicant has no right to claim promotion in the context of IP Examination, 2011.

10. Accordingly this O.A. is dismissed on merit. There will be no orders on costs.

(Dr. Nandita^h Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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