

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.24 OF 1998

ALLAHABAD THIS THE 28th DAY OF SEPTEMBER, 2005

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Pankaj Kumar Agnihotri, S/o Sri K.K. Agnihotri, aged about 21 years, R/o C/o Mahesh Chand, Postman, Nagla Deena, Fatehgarh, Farrukhabad.

.....Petitioner

(By Advocate Shri S.K. Pandey.)

V E R S U S

1. Union of India, through the Secretary, Ministry of Posts & Telegraphs, New Delhi.
2. Director Postal Service/Postmaster General, Kanpur.
3. Sr. Supdt. Of Post Offices, City Division, Kanpur.
4. Supdt. Of Post Offices, Farrukhabad.
5. Sri Shrawan Kumar Misra, S/o Sri R.C. Misra, Posted as Postal Asstt. At Kannauj Mukhya Dakghar, under Supdt. Of Post Offices, Fatehgarh Division, Farrukhabad.
6. Janardan Prakash Dwivedi, S/o R.N. Dwivedi, Posted as Postal Asstt., Head Post Office Fatehgarh under Supdt. Of Post Offices, Fatehgarh Division, Farrukhabad.

.....Respondents

(By Advocate: Sri S. Chaturvedi (Absent.)

O R D E R

By K.B.S. RAJAN, Member (J)

When the employment exchange sponsored candidates are adequately available, does any of the vested right of those who had directly applied and

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were originally permitted to participate in selection get infringed when the permission so granted was withdrawn?

2. Brief Facts: The applicant along with certain others applied for the post of Postal Assistant and he was not one who was sponsored by the Employment Exchange. He along with another similarly situated were, however given permission to participate in the selection; however, due to the clear "departmental instruction that only those candidates will be permitted to be considered whose name has been sponsored by the Employment Exchange" the permission so granted had been withdrawn in respect of the two candidates. This cancellation has been assailed by the applicant on the following grounds:-

- "5(b) Because the respondent no.4 who has given permission to appear in the examination himself has cancelled the permission without affording any opportunity and without assigning any reason.
- 5(d) Because confining the candidature of the incumbents whose names are sponsored by the Employment Exchange, Fatehgarh excluding the right of consideration to other eligible persons is clearly arbitrary, illegal and violative of Article 14 of the Constitution of India.
- 5(f) Because the applicant possess higher educational qualification and is better meritorious than all the candidates who have been sponsored by the Employment Exchange.
- 5(g) Because in view of the law laid down by the Hon'ble Supreme Court in the aforesaid judgment,

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the provisions of the Act confining the selection from amongst the candidates sponsored by the Employment Exchange has become ineffective and inoperative. Therefore, the applicant is entitled to be considered for the said post."

3. The respondents have contested the OA and have contended that there being sponsored candidates, inclusion of the two individuals who had applied directly is not permitted.

4. Arguments were heard and the documents perused. The primary question is whether sponsorship through employment exchange is a sine qua non for selection.

In the case of **Union of India v. N. Hargopal, (1987)**

3 SCC 308, the Apex Court has held as under:-

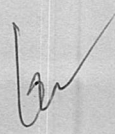
8. It is clear that it is the desire of the Government of India that all government departments, government organizations and statutory bodies should adhere to the rule that not merely vacancies should be notified to the Employment Exchanges, but the vacancies should also be filled by candidates sponsored by the Employment Exchanges. It was only when no suitable candidates were available, that other sources of recruitment were to be considered. While the Government is at perfect liberty to issue instructions to its own departments and organizations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such instructions if it thinks fit. Otherwise, the Government may not compel statutory bodies to make appointments of persons from among candidates sponsored by Employment Exchanges only. The question, of course, does not arise in

the case of private employers which cannot be so compelled by any instructions issued by the Government.

5. However, the above was impliedly varied in a subsequent decision of the Apex Court in the case of **Excise Supdt. v. K.B.N. Visweshwara Rao, (1996) 6 SCC 216,** wherein the Apex Court had held as under:-

"It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

6. The above would however permit the authorities to have the applications called for through other modes, in addition to sponsorship through employment exchange. But, in that event all others would have adequate opportunity to apply for. In fact, the choice is left to the employer even to insist or



otherwise for sponsorship, as could be seen in a later judgment which has reference to the above cited judgment. In the case of **Jaswant Singh v. State of M.P., (2002) 9 SCC 700** the Apex Court has held,

3. The Collector, on a finding that the prescribed procedure for appointment had not been followed, cancelled the order of appointment. The prescribed procedure is supposed to be calling for the candidates from the employment exchange. Against the said order of the Collector, the High Court was moved, but being unsuccessful there, this appeal is before us.

4. Mr Mishra, learned Senior Counsel appearing for the appellants, raised two contentions in assailing the legality of the order of cancellation passed by the Collector: (1) **in view of the two judgments of this Court in Union of India v. N. Hargopal and Excise Supdt., Malkapatnam, Krishna Distt., A.P. v. K.B.N. Visweshwara Rao the conclusion of the Collector was erroneous that the prescribed procedure had not been followed merely because the candidates had not been sponsored by the employment exchange,** and (2) that there has been failure on the part of the Collector in complying with the mandatory provisions of Section 83(2) of the Panchayat Adhiniyam, 1981, that vitiates the order of cancellation.

5. The learned counsel for the respondent, on the other hand, contended that even though no opportunity of hearing was given to the appellants, but no different result would have ensued, even if opportunity would have been given, inasmuch as the procedure had not been followed by the Panchayat in making the recruitment in question.

6. In view of the order we propose to pass, we do not want to go into the first contention of the learned counsel, as in our opinion, **it would be for the Collector to examine the same and to come to a conclusion on that aspect.** So far as the second contention of the learned counsel is concerned, the same is unassailable. Under the provisions of Section 83 of the Panchayat Adhiniyam, 1981, as per sub-section (2) of Section 83, no order under sub-section (1) could

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be made to the prejudice of a party
inasmuch as such party has not been
given an opportunity of being heard.
(Emphasis supplied)

7. It is not the case where the appointment had been given and later on, on the basis of the fact that there has been no sponsorship that the appointment had been cancelled. When the order of the Postal Department is specific about the sponsorship and when well before the examination, the candidature of the applicant had been cancelled, no vested right of the applicant can be said to have been infringed. In fact equality clause has not been affected inasmuch as the candidature of the two individuals who are in the same position (not having been sponsored by the Employment Exchange) had been cancelled. Hence no hostile discrimination can be attributed.

8. Viewed from any angle, the applicant could not make out any case. Hence, the OA fails and is dismissed. However, there would be no order as to cost.



MEMBER-A



MEMBER-J

GIRISH/-