

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/617/2012

Order reserved on 01.10.2021

DATE OF ORDER: 08.10.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Chakra Veer Singh S/o Shri Yadram, by caste Jat, aged about 37 years, R/o Shiv Nagar, Bharatpur, presently working as P.A./PMU in charge, Divisional Office, Bharatpur.

....Applicant

Shri C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Post, Dak Bhawan, Sansad Marg New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur-7.
3. Superintendent of Post Offices, Bharatpur Dn., Bharatpur.

.... Respondents

Shri Lalit Mohan Bhardwaj, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"8.1 That by a suitable writ/order or the direction the impugned order vide Annexure A/1 dated 6/8/2012 be quashed and set aside.

8.2 That the applicant be allowed to appear in the exam of Inspector Post Offices which is being conducted on 8/9/2012 and 9/9/2012 and the result of the applicant be declared with the other candidates.

8.3 Any other relief which the Hon'ble bench deems fit."

2. (a) The brief facts of the case, as stated by the applicant, are that he has been working as a Postal Assistant in the department of Posts. He was eligible to appear in the exam for the post of Inspector Post Office (IPO) to be held on 08.09.2012 and 09.09.2012, but as per Annexure A/1 order dated 06.08.2012, he was declared as ineligible to appear in the said IPO examination 2012.

(b) Thereafter, this Tribunal vide its order dated 05.09.2012 provisionally allowed the Applicant to appear in the IPO Examination 2012 to be held on 08.09.2012 and 09.09.2012 and the result was to be kept in sealed cover.

(c) It is further stated by the Applicant that though he has passed the exam but yet he has not been appointed on the ground that he has an adverse

entry in the ACR. Applicant further states that as per Condition No. 7 of the letter dated 07.06.2012 (Annexure A/4) regarding conducting of LDCE for promotion to the cadre of Inspector Posts (66.66%) Departmental quota for the year 2012 is as under:

- i) No disciplinary action is pending or contemplated against the applicant;
- ii) No punishment is current against the applicant;
- iii) No adverse entry in the APAR/ACR in the last five years;

The Nodal Officers have to verify and ensure that the candidates having any of the above infirmities should not be permitted even on provisional basis.

(d) The Applicant further stated that in his case as no disciplinary proceeding is against him, nor any adverse entry against him nor any punishment is against him and none is communicated to him, therefore, he has to be treated as eligible for appearing in the LDCE examination to the cadre of Inspector Posts under (66%) departmental quota for the year 2012.

3. Respondents filed their reply and stated that the Department had issued notification dated 07.06.2012 for conducting LDCE exam for promotion to the cadre

of Inspector Posts 2012. Applicant did not fulfil the conditions mentioned under Para 7 of the Notification as there were adverse entries in his APARs of last 05 years as he was awarded punishment vide Memo dated 24.07.2006 (Annexure R/2) and Memo dated 25.04.2007 (Annexure R/3), thus, competent authority did not recommend the case of the applicant for appearing in the said examination. Therefore, action of the Respondents was as per relevant circular/instructions. Respondents further state that the Applicant has not challenged the conditions of the Notification. It is further stated that mere providing OMR Sheet to the Applicant does not confer any right to the Applicant to appear in the examination. But as per the interim directions of this Tribunal dated 05.09.2012, the Applicant was permitted provisionally to appear in the IPO Examination 2012 and result was kept in sealed cover and it was held by the Tribunal that the same shall not be declared without seeking prior permission of this Tribunal and the same shall be subject to the final outcome of the OA. It is further stated that Applicant has not exhausted departmental remedies available and, therefore, present O.A. deserves to be dismissed. It is also made clear that as

the action of the Respondents is just and proper, the present O.A. deserves to be dismissed and the interim relief dated 05.09.2012 be vacated.

4. The applicant has filed a rejoinder denying the contentions of the respondents and has stated that as OMR Sheet has been given to the applicant, it is clear that the applicant is fit to appear in the IPO Exam 2012. It is further stated that no adverse entry has been communicated to the applicant and there is no adverse remark in his APAR/ACR. As per punishment order dated 24.07.2006 for three months have been counted within the period of last five years and the same is not a current punishment. Also as per punishment order dated 25.04.2007, though punishment was awarded by the disciplinary authority for two years as the said punishment was not grave, the same was reduced to six months i.e. from 01.05.2007 to 31.10.2007. He further stated that as per the judgment of the Hon'ble Apex Court in the case of **Dev Dutt vs. Union of India & Ors.**, (Civil Appeal No. 7631/2002), decided on 12.05.2008, the applicant fulfils all the eligibility conditions to appear

in the IPO Exam 2012. Thus, the present O.A. deserves to be allowed.

5. We have heard learned counsels for the parties at length and examined the pleadings brought on record including the order of Hon'ble High Court of Rajasthan, Jaipur Bench dated 24.08.2016 passed in DB CWP No. 11536/2014, wherein the Hon'ble High Court has remanded the matter back to this Tribunal with a right to the applicant to produce relevant documents before the Tribunal and that the respondents should give a response on these points and then the matter be heard afresh in accordance with law.

6. Thus, as per the Hon'ble High Court directions, two issues were required to be discussed namely:-

(i) Circular dated 10.12.2015 issued by the Assistant Director General (DE) Govt. of India, Ministry of Communication and IT, Dept. of Posts, New Delhi, in continuation of OM No. 21/5/70-Estt.(A) dated 15th May 1971, according to which, as in the case of promotion of a govt. servant, who has been awarded the penalty of censure, the penalty of recovery from his pay of

the loss caused by him to government or of withholding his increments, the same would not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of penalty.

(ii) As per RTI application made by Applicant on 28.08.2014, he has come to know that as many as 35 persons, having civil penalty of stoppage of annual grade increment as also censure for a period of six months within the previous five years, were permitted to appear in the written examination for promotion.

7. Accordingly, the applicant has produced several orders of different Divisions received under Right to Information dated 28.08.2014 from Annexure MA/3 Page 17 & at MA/4 till Page 63 mentioning names of employees who were either punished with 'censure' or 'with stoppage of increment' but were allowed to appear in the examination. He has also produced at Annexure MA/5, Circular No. A-34020/08/2015-DE dated 10.12.2015 pertaining to the issue of non permitting officials in departmental examinations who

are awarded punishment of censure or against whom disciplinary proceedings are pending /contemplated. As per the said Circular, it is clarified that so far as the eligibility of a Govt. servant who has been awarded the penalty of censure, to appear at a departmental/promotional examination is concerned, the same principles would apply, viz, that he cannot, merely because of the penalty of censure, be debarred from appearing at such an examination. In case, however, the rules of such an examination lay down that only those eligible persons can be allowed to appear at the examination who are considered fit for the purpose, the fitness of an eligible candidate, who has been awarded the penalty of censure, to appear at the examination has to be considered on the basis of an overall assessment of his service record and not merely on the basis of the penalty of censure.

8. The Respondents have filed an Additional reply and stated that the Department of Posts had issued a Notification No. A-34012/7/2012-DE dated 07.06.2012 for conducting LDCE Examination for promotion to the cadre of Inspector of Posts for the year 2012. In the aforesaid notification, it was clearly stipulated that

SPB-I, Section letter No. 7-14/2011/SPB-II dated 9th March 2011 has issued revised instructions on the syllabus and pattern of examination. As per para No. 7 of the said notification, the competent authority has to ensure and certify following conditions before recommending the application of the official for appearing in LDCE Examination, which are as under:

- i) No disciplinary action is pending or contemplated against the applicant;
- ii) No punishment is current against the applicant;
- iii) No adverse entry in the APAR/ACR in the last five years;

Accordingly, while issuing the Notification, it was stipulated that the nodal officer has to verify and ensure that the candidates having any of the above infirmities should not be permitted even on provisional basis.

It was further stated that the Applicant was formally not allowed to appear in the said exam, 2012, but it was only after interim directions of this Tribunal dated 05.09.2012, the Applicant was allowed to appear in the IPO Exam 2012. But it is clear that as per rules, Applicant was not permitted to appear in the said examination due to adverse entry in his APAR/ACR of last 05 years. Therefore, his case was

not considered by the competent authority for permission to appear in the said exam of IPO 2012 as per Postal Directorate Memo No. A-34012/2012-DE dated 07.06.2012.

9. We have also seen that the Circular dated 10.12.2015 is having prospective effect and the said Circular cannot be made applicable pertaining to the IPO Examination 2012 and as such retrospective effect cannot be given to the instructions which have come subsequently and the same are also not applicable to him. Pertaining to the second query that several other persons in other divisions having penalty of censure / stoppage of increment were allowed to appear but Applicant was not allowed to appear cannot be accepted for simple reason that if a wrong is committed, the same should be followed and the same also cannot be a ground for the applicant to appear when he was not eligible for the said exam. In spite of all these documents which were submitted after hearing and final disposal of the case for the first time before the Hon'ble High Court and thereafter, after considering these documents/ statements, we are of the opinion that the same cannot be a ground to the

Applicant to raise the same afresh when he was allowed to provisionally appear in the examination and he is not fit as per rules and this Tribunal in its order dated 30.05.2014 had arrived at a finding at para 9 and 10 and, accordingly, the O.A. was dismissed being devoid of any merit. It is also to be noted that the result of the said examination was perused by the Tribunal which was placed before them in a sealed cover and it was directed not to declare the result till the disposal of the O.A. It is also seen that the basic prayer of the applicant was that he be permitted to appear in the IPO examination 2012, which was allowed by this Tribunal and, thus, the same does not survive. Also from the perusal of Annexure A/1 order dated 06.08.2012, it is clear that not only the applicant but similar other persons having similar punishments were not allowed to appear in the IPO Examination 2012, so there was also no case of any discrimination made to the applicant. Thus, we are of the opinion that the issues raised by the applicant afresh as per directions of the Hon'ble High Court are considered and we do not find any illegality in the action of the respondents as the same were just and proper.

10. In the light of the observations made herein above, we, therefore, have no hesitation to observe that the present Original Application deserves to be dismissed being devoid of merits and the impugned order Annexure A/1 dated 06.08.2012, being just and proper does not deserve any interference. Accordingly, the Original Application is dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

/nlk/