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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO.22/2004

Date of decision: 24.5.2004

Surendra Kumar aggarwal Petitioner

Mr. S.K. Malik... Advocate for the Petitioner

Versus

Union of India and Others Respondents.

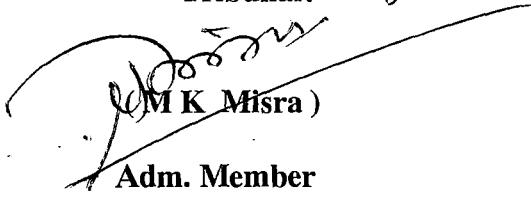
Mr. Vinit Mathur.... Advocate for Respondents.

CORAM:

Hon'ble Mr. J.k. Kaushik, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *No*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*


(M K Misra)

Adm. Member


(J.K. Kaushik)

Judicial Member.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 22/2004

DATE OF DECISION: 24.5.2004

**Hon'ble Mr. J. K. Kaushik, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member**

Surendra Kumar Aggarwal S/o Shri Vijay Kumar Agarwal,
aged about 20.5 years R/o G-6 Civil Lines, Srigananagar,
Distt. Srigananagar (Raj)

(By Advocate Mr.S.K.Malik, for applicant)

...Applicant.

versus

1. Union of India through the Secretary,
Ministry of Communication,
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi.
2. Principal, Chief Post Master General,
Rajasthan Circle, Jaipur (Raj)
3. Post Master General, Western Region,
Jodhpur (Rajasthan)
4. Superintendent of Post Offices,
Srigananagar Distt. Srigananagar (Raj).

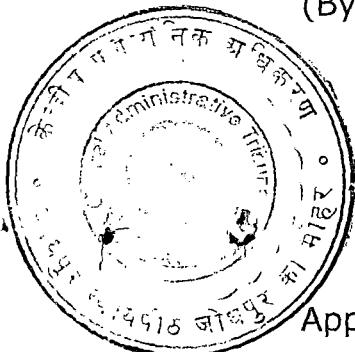
(By Advocate Mr. Vinit Mathur, for respondents)

.....Respondents.

ORDER

BY J. K. KAUSHIK, JUDICIAL MEMBER:

Shri Surender Kumar Agarwal has filed this Original Application under section 19 of Administrative Tribunals Act, 1985, and has inter alia, prayed for seeking a direction to the respondents to offer appointment for the post of Postal Assistant, to the applicant, from the date other selected candidates have been given appointment, amongst other reliefs.



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2. With the consent of the learned counsel for both the parties, we heard the arguments for final disposal at the admission stage keeping in view the urgency of the matter and have carefully considered the pleadings and records of the same.

3. Filtering out the unnecessary details, the indubitable material facts, as deduced from the pleadings of the parties are that the applicant possesses the qualification of Bachelor in Commerce. He has been awarded the Certificate of National Scholarship Scheme and passed the foundation Examination of Chartered Accountant. He got an opportunity to undertake a selection to the post of Postal Assistant, which was conducted for empanelling one candidate against an unreserved vacancy for the year 2001, in the Post Office at Sriganganager, in pursuance with a notification and after fulfilling the requisite formalities. The selection consisted of a written test, computer type and viva voce test. He was placed at SI No. 2 on the panel as per him in the merit.

4. The further facts are that one Shri Dheeraj Kumar, who is placed at SI No. 1 of the merit, has not joined on the said post of Postal Assistant despite the offer of appointment and numerous reminders for joining on the same. The applicant got a notice for demand of justice asking the respondents to give him the offer of appointment; he being the 2nd person in the waiting list. But the same post has been advertised again alongwith the vacancies for



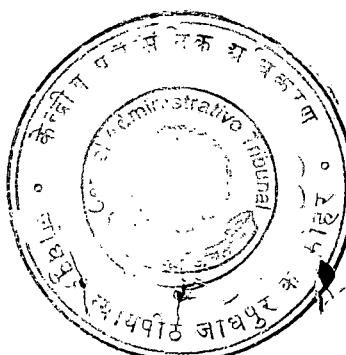
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the year 2002 vide Notification dated 31.12.2003. The applicant has adduced Numbers of grounds in support of the claim.

5. As regards the variances, the respondents have averred that there is no provision of drawing any waiting list and there being only one vacancy, Shri Dheeraj Kumar having highest marks was placed at Sl. No. 1 of the merit. However, he has not accepted the offer and the respondents had no option except to take recourse to fresh advertisement since there is no provision under the Recruitment Rules to appoint the second person in the merit. There is also no provision of preparing any waiting list. The grounds enunciated in the Original Application have been generally denied.

6. The learned counsel for the applicant has reiterated the facts and grounds narrated in the pleadings of the applicant. He has placed heavy reliance on the decision of the Supreme Court in case of **Shankarsan Dash Vs. Union of India AIR 1991 SC 1612** and has contended that the State does not have the licence of acting in an arbitrary manner. In the present case, the State intends to fill up the vacancy and positive steps and consistently being taken, therefore, it is not the case where the respondents have taken a decision not to fill up the post. Thus, the applicant ought to have been given offer of appointment and his case is squarely covered by the ratio laid down in the aforesaid judgement.

[Signature]

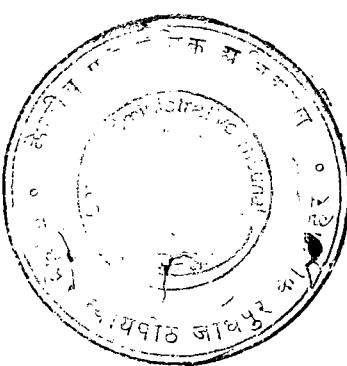


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7. Per contra, the learned counsel for the respondents have strenuously opposed the contentions raised by the learned counsel for the applicant and reiterated the defence of the respondents as noticed above. He has submitted that recently similar issue has been adjudicated by Hon'ble the Supreme Court in case of **Bihar State Electricity Board Vs. Suresh Prakash AIR 2004 SC 1724** and the relief was refused in the same. Thus, no fault can be fastened with the action of the respondents in re-notifying the vacant post and have not committed any illegality.

8. We have considered the rival contentions raised on behalf of the both the parties. As far as the factual aspect of the matter is concerned, there is no dispute. It is true that there was only one unreserved vacancy for which one Shri Dheeraj Kumar was empanelled. Shri Dheeraj Kumar has not accepted the offer. The said post is sought to be filled in; in other words there is no decision for not filling up the same. There is no rule for preparing/maintaining a waiting list.

9. Before advertiring to the crux of the matter, we would examine the applicability or otherwise of the decisions relied upon by the parties. As regards the case of **Shankarsan** (supra), relied upon by the learned counsel for the applicant is concerned, the question that fell for determination was, as to whether a candidate whose name appears in the select list on the basis of a competitive examination, acquires a right of appointment in



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Government service in an existing or a future vacancy. Their Lordships of Supreme Court answered the question by a Constitution Bench in the following words:-

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies had to be taken bona fide for appropriate any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

The learned counsel for the applicant has laid a heavy emphasis on the later part of the aforesaid verdict and we are required to examine his submission that the Government intended to fill up the post and once the applicant is 2nd person as per the merit he ought to have been given offer of appointment.

10. On the other hand the learned counsel for the respondents has placed reliance on the judgement in **Bihar Electricity Board's case (supra)**. In the said case their Lordships of Supreme court has held that posts falling vacant as the selected candidate did not join, cannot be filled up by candidates who qualified but was not placed on the panel since the successful candidate does not get an indefeasible right to be appointed. In the said case a penal was prepared for 22 vacancies and 18 candidates whose were on the panel did not turned up, the



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candidates on the merit at Sl. No. 23, 24 and so on protested the matter with a prayer that they should have been given appointment against the vacancies on which the empanelled candidates did not turned up. The Apex Court relied upon the decision in Constitution Bench judgement in **Shankarsan's** case (supra) and did no accede to the prayer made therein.

11. Incidentally, the same judgement has been relied upon by both the parties i.e. the **Shankarsan's** case has been directly relied upon by the learned counsel for the applicant and the judgement relied upon by the learned counsel for the respondents is based on same **Shankarsan's** case. We are required to carry out an incisive analysis study. The basic facts of the case of Bihar **State Electricity Board**, have been already enunciated above and that case is of two Judges Bench. However, the identical issue was under examination there.

12. As regards the **Shankarsan's** case supra is concerned, there is no quarrel regarding the law laid down therein. But the situation therein was quite different and the same can be evident from a perusal of para 4 of the judgement which reads as under:-

"4. The case of the appellant is that since ultimately several vacancies in the general category of the IPS remained unfilled, he was entitled to be appointed in one of them, and the authorities were not right in rejecting his representation. It has been contended that after calculating the number of vacancies in the IPS, it was announced that appointments would be made in 54 vacancies of general category, and steps for recruitment were accordingly taken. The appellant along with others appeared at the elaborate test held for the purpose and he was found qualified for the appointment. In that situation

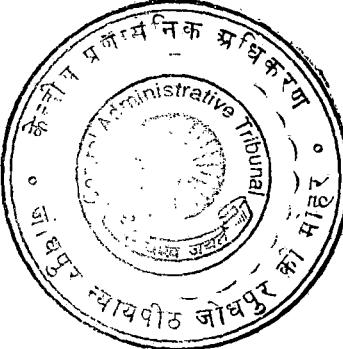


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the respondent could not refuse to fill up the vacancies and proceed to appoint the appellant in the Police Services Group 'B'. It has been argued that the correct procedure in similar situation was followed with respect to the reserved category and the three vacancies arising in identical situation were filled up from the candidates selected for DANIP Service, and there was no justification to refuse similar benefit to the appellant in the general category."

13. The mere perusal of the above para would reveal that the facts of this instant case are quite different from the said case and we also do not find any irregularity or arbitrariness in the action of respondents in as much as they have neither disregarded the comparative merit nor shown any unfairness. On the other hand as indicated above the issue involved in the instant case was directly in issue in **Bihar State Electricity Boards'** case and has been settled by the Apex in unequivocal terms and does not remain res integra. We are not required to examine the concept of waiting list since it is no one's case any such provision was in existence under the rules in force.

14. In the circumspect of the aforesaid discussion, we come to an inescapable conclusion that the Original Application sans merits and substance and the same stands dismissed accordingly. However, the parties are directed to bear their respective costs


(M K Misra)

Administrative Member


(J K Kaushik)

Judicial Member

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