

Court No. - 24

Case :- SERVICE BENCH No. - 316 of 2003

Petitioner :- Union Of India Through Secy. Posts New Delhi And Others

Respondent :- Neeraj Kumar Vaisya And Another

Counsel for Petitioner :- Q.H.Rizvi,R.K.Singh

Counsel for Respondent :- R.S.. Gupta,V.L. Singh

Hon'ble Rajiv Sharma,J.

Hon'ble Rakesh Srivastava,J.

Case called out.

None responds on behalf of the respondents nor there is any request for passing over or adjournment of the case.

Heard Mr. R.K. Singh, learned Counsel for the appellants and perused the record.

The instant writ petition has been filed against the judgment and order dated 24.5.2002 passed by the Central Administrative Tribunal in Original Application No. 217 of 2002 : Neeraj Kumar Vaisya Vs. Union of India & others, whereby the Tribunal, while disposing of the original application, directed the writ petitioners that in case the applicant/respondents accepts the order of appointment of Gram Dak Sevak (EDDA), his option for appointment in the regular Group 'D' cadre of postman should remain intact and as and when a vacancy arises in the regular group 'D' cadre of Postman and as and when the applicant's turn in the waiting list comes, the applicant should be given appointment in the group 'D' cadre.

The respondent No.1 was appointed on compassionate ground on the post of Group 'D' cadre in the Faizabad Division. In the said letter of appointment, it was provided that respondent No.1 should give his willingness for the post of Group 'D' cadre of Gram Dak Sevak within fifteen days and in case the offer of appointment as Gram Dak Sevak was not accepted by the respondent No.1 within fifteen days, it will be presumed that the respondent No.1 is not willing to work as Gram Dak Sevak and the approval of his appointment in the Group 'D' Cadre on compassionate ground will be cancelled. Feeling aggrieved by the terms

and conditions of the appointment letter, the respondent No.1 approached the Central Administrative Tribunal by filing Original Application No. 217 of 2002. The Tribunal, after hearing the parties and perusing the record, disposed of the original application, vide judgment and order dated 24.5.2002, which is impugned in the instant writ petition, with the directions, as enumerated hereinabove.

Mr. R.K. Singh, learned Counsel for the petitioners submits that the Tribunal, while passing the impugned order, has not taken into consideration the submissions of the petitioners that only 5% of the vacancies can be filled up directly in the regular Group 'C' and 'D' cadres under compassionate appointments and there was a long waiting list of the candidates approved for appointment on compassionate ground and as such, the appointment of the respondent No.1 was not presently possible in the regular Group 'D' cadre, therefore, he was offered appointment in the Gramin Dak Sewak cadre. Therefore, the Tribunal has exceeded its jurisdiction by directing the petitioners to keep intact the claim of the respondent No.1 in the regular Group 'D' cadre of Postman and to maintain the waiting list although the same was discontinued w.e.f. 8.2.2001. His submission that approval dated 29.7.1999 for appointment of the respondent No.1 on compassionate ground was with a condition that the appointment letter will be issued on the availability of the vacancy against the post to be filled on the ground of compassionate appointment. Therefore, the Tribunal erred in passing the impugned order.

Having heard learned counsel for the petitioners and perused the record, we are of the view that the Tribunal, while passing the impugned order, ignored the fact that the department is governed by the instructions issued by the Nodal Ministry i.e. Ministry of Personnel, Department of Personnel & Training. The ceiling of 5% of the direct recruitment vacancies on compassionate appointment has been fixed in pursuance of the orders of the Hon'ble Supreme Court and appointment of candidates beyond this would be a clear violation of the orders of the Hon'ble Supreme Court as well as the instructions of the Nodal Ministry. Further, the claim of the respondent No.1 for appointment in the regular Group 'D' cadre of Postman was already stalled in view of the fact that the same was discontinued w.e.f. 8.2.2001. Therefore, the Tribunal erred in directing the writ petitioners to maintain the wait list and to keep intact the option of the respondent No.1 for appointment in the regular Group 'D' cadre even after the acceptance of the Gramin Dak Sewak

Cadre by him.

Considering the peculiar facts and circumstances of the case, we modify the impugned judgment and order dated 24.5.2002 passed by the Tribunal only to the extent that the writ petitioners will not keep intact the option of the respondent No.1 for appointment in the regular Group 'D' cadre if the respondent No.1 accepts the offer of appointment of Gramin Dak Sewak Cadre.

The writ petition is allowed partly in above terms.

Order Date :- 19.11.2014

Ajit/-

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Section Officer

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High Court, Lucknow Bench

Lucknow