

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.388/99

Dated: 3.11.1999.

Bajrang D.Dandawate & Ors. -

Applicant.

Mr.D.V.Gangal with Mr.Sandeep Marne

Advocate
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr.V.S.Masurkar

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? *Yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *No*

(3) Library? *Yes*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.388/99.

Wednesday, this the 3rd day of November, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

1. Bajrang D.Dandawate,
2. M.R.Pomendkar,
3. B.G.Jambhale,
4. R.A.Shinde,
5. Mrs. P.J.Khedekar,
6. N.V.Sevekar, and
7. C.L.Vaidya.

C/o. Sandeep Marne,
Advocate, High Court,
CAT, Bar Association,
Gulestan Building,
Prescot Road, Fort,
Mumbai - 400 001.

...Applicants.

(By Advocate Mr.D.V.Gangal with
Mr.Sandeep Marne.)

Vs.

1. The Union of India, through
The Secretary,
Department of Post,
New Delhi.

2. The Chief Post Master General,
Maharashtra Circle,
Mumbai - 400 001.

...Respondents.

(By Advocate Mr.V.S.Masurkar)

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicants for quashing the Order dt. 3.3.1999 and the Notification dt. 12.1.1999 and for a direction to the respondents to publish the result of the examination conducted on 11.10.1998. We have granted an interim order vide order dt. 23.4.1999 permitting the respondents to proceed with the examination to be held on 25.4.1999, but not to publish the results. The respondents have

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filed their reply opposing the application. We have heard Mr.D.V.Gangal, counsel for the applicants and Mr.V.S.Masurkar, counsel for the Respondents. It was argued on behalf of the respondents that the application should not be admitted and interim order should be vacated. The learned counsel for the applicant argued in support of the applicants. Since the point involved is a short point and the question is about the validity of the 1998 examination or 1999 examination, we are disposing of the original application at the admission stage itself.

2. The Department conducted a limited departmental competitive examination for lower grade officials for getting promotion to the post of Postal Assistants. Many candidates appeared in the examination including the applicants which was held on 11.10.1998. But, the results have not been declared till now. In the meanwhile, the respondents issued a fresh Notification dt. 12.1.1999 for holding fresh examination for the vacancies of 1998 and 1999. Then, the respondents have issued a fresh order dt. 3.3.1999 cancelling the examination held on 11.10.1998. Being aggrieved by these orders, the applicants have approached this Tribunal. Their contention is that when the examination was held on 11.10.1998 for 1998 vacancies, the result must be published and the candidates who are successful should be promoted to the available vacancies of 1998. They are contending that the cancellation of the 1998 examination is illegal and arbitrary.

3. The respondents contention is that the 1998 examination was cancelled in view of an administrative decision taken by the department. The only reason given in the written statement for

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cancellation of the examination is that the vacancy position was not ascertained before or at the time of holding the 1998 examination. It is pointed out that the vacancy position could not be worked out due to enhancement of retirement age from 58 years to 60 years, then the vacancy position also changed in view of new 'Post Based Roster' and then there was difficulty in calculating vacancies for reserved category and this exercise of finding out the actual number of vacancies took lot of time and could be finalised only some time in February or March, 1999 and therefore the administration took a decision to cancel the examination held on 11.10.1998. Since fresh examination has now been held the interim order is affecting the administration and therefore, the respondents want the interim order to be vacated.

4. There is no allegation about any irregularity or illegality in conducting the examination held on 11.10.1998. The learned counsel for the Respondents contended that no statutory rights of the applicants are violated if the examination is cancelled. An official who participates in the examination has a legitimate expectation that results would be announced and if successful he would be promoted; though the administration has a right to cancel the examination, it cannot cancel it arbitrarily or without any justifiable reason viz. if there is any irregularity or illegality in holding the examination or any malpractices in conducting the examination or some valid reason, the department has every right to cancel the examination. But, the only reason offered in the reply and pressed before us by the learned counsel for the respondents is that since calculation of vacancies was not done at the appropriate time and calculation of vacancy took lot of time, the administration has decided to



cancel the examination. We are not able to understand or appreciate the respondents stand as to why there was necessity for cancelling the examination if there was delay in calculation of vacancies. We can appreciate that respondents can delay the announcement of results till the vacancy position is ascertained, but there is no necessity to cancel the examination itself. For example, the respondents stand is that vacancy position was not ascertained and it was crystalised some time in February or March, 1999. Then, the results could have been published in March or April, 1999 without cancelling the 1998 examination. Therefore, in our view, the reasons which are given by the respondents for cancelling the examination is wholly irrelevant and arbitrary and has no nexus to the publication of the results. The respondents action would have been fully justified in withholding the result or delaying publication of the result till the vacancy position was ascertained. But, the fact that there was delay in calculation of vacancy is definitely not a ground for cancellation of examination once for all.

5. In this connection, we may refer to some of the decisions which were pressed into service by the learned counsel for the applicants.

In 1989 SCC (L&S) 243 (Kum. Anamica Mishra & Anr. Vs. U.P. Public Service Commission, Allahabad and Ors.), ~~in this case~~ a written test was held by the Public Service Commission for filling up certain posts. After the examination, the results were announced. The list of successful candidates was prepared. But, it appears there was improper feeding up of the results to the Computer and as a result failed candidates were declared passed and successful candidates had been declared failed. When

the Public Service Commission came to know about this mistake, they cancelled the entire examination itself. Some of the candidates who were affected by it filed a Writ Petition in the High Court which came to be dismissed. Then the matter was taken up in the Supreme Court. It was pointed out by the Apex Court that there is no allegation about irregularity or illegality of the examination and therefore there was no necessity to cancel the examination itself. The mistake has crept in at the stage of feeding the marks to the Computer and therefore there was no necessity to cancel the examination, but it would be proper that correct result should be published. Therefore, the Supreme Court gave a direction, by setting aside the order of cancellation of the examination, that the respondents should take steps for calling candidates for the interview on the basis of the result of the written examination and take appropriate action. The Supreme Court, however, noted that in the meanwhile there was a delay of four years and the Public Service Commission was directed to be careful in future. But, as far as we are concerned, there is no such delay at all, since the applicants have approached this Tribunal within a month after the ~~results of the~~ examination was cancelled by the Administration.

In 1992 SC SLJ 406 (Dr. P.K. Jaiswal Vs. Ms. Debi Mukherjee & Ors.), the question was as to when there is a right for ^{Selection} selection is crystallised. That was a case where Government had sent a requisition to the UPSC for some selection and before interview can take place, the requisition was recalled. The candidate questioned the action of the Government. The Supreme Court pointed out that since no interview had taken place the right of the candidate has not been crystallised and

therefore he cannot approach a Court or a Tribunal to protect his right. This is a Judgment which is ^{an} answer to the contention ^{of} the respondents that no right of the applicant has been violated in cancelling the examination. When the candidates have appeared in the examination, they have every right to know their result in the examination and then a possible promotion. The applicants right stands crystallised on their appearing in the examination. Therefore, the respondents are duty-bound to declare the results of the examination, once the examination has been held, of course this is without prejudice to the right of the administration to cancel the examination if there was some illegality or irregularity or malpractices in conducting the examination, which are none in this case. As far as the question of vacancies are concerned, the observation of the Supreme Court in the case reported in 1992 SCC (L&S) 999 (Union of India and Others Vs. Ishwar Singh Khatri and Ors. would be relevant. That was a case where, in the recruitment process 654 vacancies had been notified, but 1492 selected candidates were empanelled. The department filled up the notified vacancies, but no action was taken regarding remaining candidates. Then, the Supreme Court gave a direction that when the panel has been prepared it should be operated till the time of its expiry. Similarly, in the present case, even if the respondents took some more time to calculate the vacancy position, as soon as vacancy position was settled, they could have published the result of the examination depending upon the number of vacancies available for the year 1998. The delay in calculation of vacancies is not at all a ground for cancelling the 1998 examination.

6. The learned counsel for the respondents also brought to

our notice the meeting proceedings which took place on 26.2.1999 where the concerned committee took a decision to cancel the 1998 examination only on one ground viz. that vacancies had not been worked out on the date of examination or even subsequently. Then the respondents counsel placed before us a circular dt. 9.4.1974 from the Director General of Post and Telegraphs addressed to all Circles. It only says that vacancies should be calculated before the examination as far as possible. The circular impressed on all the Circles that vacancies should be prepared as far as possible before the examination. It does not say that if the vacancy position is not ascertained, then the examination should be cancelled. We can understand a case where one can postpone the examination if vacancies are not ascertained. We can understand the position of delaying the publication of results on the ground that vacancy position is not finalised, but once examination has been held, there is no reason to cancel the examination only on the ground that vacancies were not ascertained. Therefore, in our view, the stand of the administration cannot be upheld.

7. At least by February or March, 1999, the administration came to know as to how many vacancies were available for the year 1998. On that basis, the results of the examination held on 11.10.1998 could have been declared and promotion could have been given effect to. Therefore, the administration was not right in cancelling the examination of 1998 by the impugned order dt.3.3.1999.

8. As far as the applicants' grievance regarding fresh notification dt. 12.1.1999, it is partly valid. There is no difficult to the administration to hold a fresh examination for

1999 vacancies. Even if there is unfilled posts of 1998 after the results of the examination held on 11.10.1998 was declared, the administration can fill up those posts by the result of the new examination. If, as a result of 11.10.1998 examination all the posts of 1998 are filled, then nothing remains to be done regarding vacancies of 1998. Therefore, the fresh examination held on 26.4.1999 should be confined only to 1999 vacancies. If all posts of 1998 are not filled up inspite of declaration of results of the examination held on 11.10.1998, then the unfilled posts of 1998 vacancies can also be filled up by the result of the examination held on 26.4.1999.

We must also make it clear that the respondents ~~are~~ ^{are} duty-bound to make appointments as per the reservation policy and 'Post Based Roster' as pointed out in the reply. We are only concerned with the question of cancellation of the notification. How the posts are to be filled up and how reservation is to be operated is left to the department to act according to rules.

9. In the result, the application is allowed with the following directions:

1. The order dt. 3.3.1999 cancelling the examination held on 11.10.1998 is hereby quashed.
2. The respondents are directed to declare the results of the examination held on 11.10.1998 and take follow up action to fill up 1998 vacancies on the basis of the results as per rules within a period of three months from the date of receipt of copy of this order. If, however, any of the the vacancies of 1998 are unfilled inspite of the publication of the result of

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11.10.1998 examination, then then those unfilled posts of 1998 can be filled up by the result of the 1999 examination.

3. The interim order granted by this Tribunal in respect of proposed examination held on 25.4.1999 (which is stated to have actually held on 27.6.1999) is hereby vacated. We hereby declare that the results of the examination held on 27.6.1999 can be used for filling up 1999 vacancies and also unfilled posts of 1998 vacancies.

4. In the circumstances of the case, there will be no order as to costs.



(B.N. BAHADUR)

MEMBER(A)



(R.G. VAIDYANATHA)

VICE-CHAIRMAN

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