

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.060/00902/2014

Orders pronounced on: 12.08.2015
(Orders reserved on: 6.8.2015)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)

Jasvir Singh son of Sh. Gurnam Singh, VPO Musapur, Distt. Shaheed
Bhagat Singh Nagar, Punjab.

Applicant

Versus

1. Union of India through its Secretary-cum-Director General,
Ministry of Communication & Information Technology, Department
of Posts, Sansad Marg, New Delhi-110001.
2. The Chief Post Master General, Punjab Circle, Department of Posts,
Sandesh Bhawan, Sector 17-E, Chndigarh-160017.
3. The Assistant Post Master General, Punjab Circle, Department of
Posts, Sandesh Bhawan, Sector 17-E, Chandiarh-160017.
4. Senior Superintendent of Post Offices, Jalandhar Division,
Jalandhar.
5. Senior Superintendent Post Offices, Bathinda Division, Bathinda.
6. Mehma Singh GDS BPM Bibiwala Bathinda, District Bathinda.

Respondents

Present: Mr. Narinder Sharma, Advocate, for the applicant.
Mr. Darshan Gupta, proxy counsel for
Ms. Mohinder Gupta, counsel for Respondents No.1to5.
Mr. R.P. Singh, Counsel for Respondent No. 6.

14A

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. This Original Application has been initiated to summon the record relating to selection of GDS/Postman and quash the order dated 17.9.2014 (A-7 and A-8) vide which the name of the applicant has been de-panelled and in his place respondent no. 6 has been selected and offered appointment and to direct the respondents to offer him appointment from due date with all the consequential benefits.
2. Skipping the superfluities, the facts relevant for decision of this case are that the respondents conducted a competitive examination restricted to the category of Gramin Dak Sevaks of the recruiting Division on 29.6.2014 for filling up 50% of the vacancies in Postman cadre for the year 2014. The applicant who belongs to Jalandhar Division and respondent no. 6 who is of Bhatinda Division too appeared in the examination. The performance of candidates in the examination was not upto mark including applicant and respondent no. 6 who could not secure merit in their own division. Out of 103 vacancies, only 41 were filled up and resultant 62 remained unfilled, which were thrown open to be filled from GDS of neighbouring Divisions. The information with regard to details of Gramin Dak Sevaks though qualified but could not secure merit in their own

division as called for and it transpired that there were 12 such candidates. Bathinda Division vide letter dated 11.8.2014 intimated that no candidate was available with them and thus information sent was as "NIL" ignoring that respondent no. 6 was already there. Thus, the name of applicant was empanelled for appointment vide memo dated 4.9.2014 (A-5).

3. Before issuance of appointment letters to candidates, Bhatinda Division raised an objection vide letter dated 10.9.2014 (R-4) indicating that they are having two surplus qualified candidates of SC category having secured higher marks than the last candidate in the select list and that earlier information sent by them vide letter dated 11.8.2014 was incorrect.
4. In any case, in view of error having come to the notice of the authorities, memo dated 12.9.2014 was issued stating that earlier Memo empanelling name of applicant be not given effect to. It was found to be correct that the Bhatinda Division had given a wrong information and as such memo dated 4.9.2014 was ordered to be cancelled vide memo dated 17.9.2014 (A-8) and fresh empanelment list was issued in which name of respondent no. 6 has been included. The applicant has secured only 47 marks which are lower than Sh. Mohinder Singh, who has secured 48 marks. There are 10 surplus qualified candidates of SC category who have qualified as per relaxed

16A

qualifying marks applicable to SC but due to vacancy constrains only four unfilled vacancies of SC were filled up as per their merit position. The respondents have initiated action against the concerned official for sending wrong information.

5. The claim of the applicant is that the impugned orders are non-speaking and as such cannot be sustained in the eyes of law. No reasons have been offered for depanelment of the applicant and the impugned orders are without application of mind. Even if an administrative error is to be correct, the opportunity of hearing has to be provided to the affected party. The applicant had reasonable expectation of getting appointment but his hopes have been dashed by illegal action of respondents. The representation filed by the applicant should have been considered and responded to by the authorities.
6. We have heard learned counsel for the parties at length and examined the material on the file.
7. The plea in short taken by the learned counsel for the applicant is that the applicant acquired a right on his empanelment for appointment and withdrawal thereof cannot be made without any basis and at least without following the principles of natural justice. The plea, we are afraid, cannot be accepted on its face value in view of the settled law on the issue. The settled law on the subject is that even an empanelled candidate has no

1
1

17A

indefeasible legal right to appointment. In the case of **Shankarsan Dash vs UOI**, (1991) 3 SCC 47, the Hon'ble Apex Court has held that "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 acquire any right to the post 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 license of acting upon arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons.". In this case it has come on record that even after relaxed criteria the applicant could not make a mark and as such he cannot ask for appointment once it is found that his empanelment was based on an administrative error or lapse only which has since been corrected.

8. In the case of **State of UP & Ors vs Raj Kumar Sharma & Ors** (2006) 3 SCC 330, the Hon'ble Supreme Court has reiterated that "Mere inclusion of a candidate's name in the list does not confer any right to be selected, even if some of the

vacancies remained unfilled and the candidates cannot claim that they have been given a hostile discrimination. Similar view has been taken in **Jitendra Kumar & Ors vs State of Haryana** 2008 (1) SCC (L&S) 428 and **Subha B. Nair & Ors vs State of Kerala & Ors** 2008 (2) SCC (L&S) 409.

9. . It is also well settled law that an administrative error can always be corrected in view of **Ram Awadh Prasad v. Union of India**, SCJ 1987 (3) CAT 48, where it was held that "it is well accepted maxim of law that an administrative error can always be corrected; this can be done without giving opportunity to show cause etc., if the order has not been carried out or it has not resulted in accruing any legal right". In so far as plea of violation of principles of natural justice is concerned, it may be mentioned here that in the case of **S.K. Kapoor v. Jag Mohan**, AIR 1981 SC 136, the Hon'ble Supreme Court has observed that where on admitted or undisputed fact, only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue the writ to compel the observance of the principles of natural justice as it would amount to issuing a futile writ.". In this case, we are of the view, that non-following of principles of natural justice has not caused any prejudice to the applicant as he has got ample

opportunity to present his side of the case even before this Tribunal but could not succeed.

10. In view of the admitted position of the case that it was only an administrative error which paved way for empanelment of applicant and upon correction thereof the respondent no. 6 has been empanelled in place of applicant and considering the same in the light of the law discussed above, we do not find any merit in the instant Original Application which is dismissed leaving the parties to bear their own costs.



(SANJEEV KAUSHIK)
MEMBER (J)



(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh
Dated: 12.8.2015

HC*