

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No.981 of 2012

Dated: This the 01st day of August 2018.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Sada Nand S/o Late Shri Hari Krishna Prasad R/o Quarter No. 65, P & T, Colony, Maqbool Alam Road, Varanasi 221002.
2. Ravi Kumar S/o Late Shri Shankar Lal, R/o 197, Ganeshganj, Orai, District Jalaun 285001.

. . . Applicants

By Adv: Shri Rakesh Verma

V E R S U S

1. Union of India through its Secretary, Ministry of Communication & Information Technology, (Department of Post), Dak Bhawan, Sansad Marg, New Delhi 110116.
2. Director General of Post Offices, Dak Bhawan, Sansad Marg, New Delhi 110116.
3. Chief Post Master General, U.P. Circle, Lucknow 226001.
4. Shri Netra Pal Singh, working as Inspector of Post Offices, Allahabad.
5. Shri Ashok Singh Meena, working as Inspector of Post Offices, Gorakhpur Region, Gorakhpur.

. . . Respondents

By Adv: Shri D.S. Shukla

O R D E R

By Hon'ble Rakesh Sagar Jain, MEMBER (J)

1. The present O.A. has been filed to challenge the result of the Departmental Examination for selection to the post of Inspector of Post Offices

for the year 2011 and the promotion of respondents No. 4 and 5 made in pursuance of the said examination.

2. As per the applicants, they completing more than 5 years regular service as Postal Assistants, are eligible for being considered for promotion to the post of Inspector of Post Offices under Limited Departmental Competitive Examination quota (LDCE). Respondent No. 2, without indicating category-wise vacancy, vide letter dated 16.3.2011 invited applications for appearing in LDCE, 2011 for the vacancies of the year 2010.

3. The exam was to be held on 6th and 7th of August 2011, which vide letter dated 14.7.2011 extended to 3rd and 4th of September, 2011 and the cutoff date for determining the eligibility of candidate was 30.06.2011 and thereafter the exam was postponed to 15th and 16th October, 2011.

4. Respondent No. 2 vide letter dated 22.9.2011 notified 5 vacancies for U.P. out of which 3 were earmarked for ordinary category and two were earmarked for Scheduled caste category. The applicants belong to schedule caste community. Applicants competed in the exam and respondents vide dated 4.4.2012 declared the result wherein respondents No. 4 (General category) and 5 (Schedule Tribe category) were declared successful and promoted.

5. The result for U.P. (Annexure - A1) was declared as below:-

	OC	ST	ST	Total
No of vacancy	1	-	2	3
No of candidate selected	1	-	1	2
No of vacancy				1

Selected candidates:

Netrapal Singh General category
 Ashok Singh Meena ST category

As per vacancy position in letter dated 22.9.2011 (Annexure-A6), there were 3 vacancies in Other category and 2 in SC category.

6. The applicant No. 1 had secured 660 marks and stood third in the merit of SC category whereas applicant No.2 secured 738 marks and stood 2nd in merit in SC category and 6th in ordinary category whereas Manu Bhai Sah of SC category stood 1st in SC category and 2nd in other category. Since said Manu Bhai Sah got selected on merit basis and not on category basis, applicant No. 1 and 2 having 3rd and 2nd position stood qualified and should have been appointed and promoted against SC category.

7. As per the applicants, vacancy position as Annexure-A6 dated 22.9.2011 (Pre-examination) and result (Annexure- A1) shows a discrepancy in the vacancies category wise:

	OC	SC	ST	Total
Vacancies Annexure A6	3	2	-	5
Dated 22.9.2011				
Vacancies Annexure A1	1	-	2	3
Dated 04.04.2012				

8. Applicants' case is that selection is to be done as per the terms and conditions of the notification and there cannot be any alteration in number of

post and eligibility criteria after the last date of submission of application forms by the candidates and all the vacancies notified under categories cannot be inter-changed after the notification of recruitment/ selection. In the examination notification in the year 2011, post of 2 SC category to which the applicants belong were notified whereas in year 2012, the same were altered to 2 ST category.

9. It is the further case of applicants that they are allowed limited attempts to avail of LDCE and had they known there were no vacancies for SC category, they would not have availed of the opportunity to sit in the examination and referred to condition 'terms of chances' in Examination for promotion to the cadre of Inspector post (Annexure-A3).

10. Hence the instant application seeking the relief of quashing the result of Inspector of Post Offices examination, 2011 and promotion of respondent No. 4 and 5; to declare the result afresh and to promote the applicants; and to direct the respondents to hold fresh LDCE for post of Inspector of post offices for the year 2011 after inviting fresh application.

11. In reply, in their counter affidavit, the respondents have averred that due to a typographical mistake, inadvertently, 2 posts reserved for ST were shown as SC and the mistake on being detected was rectified, much before the

conduct of the examination by correcting the position and reflecting that there are 2 posts of ST category and not of SC category. Be it noted that at present we are concerned with the ST/SC category seats only. Even so, in general category, the number of post available had been reduced and so, it could cause no prejudice to anyone.

12. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record.

13. Admittedly, the 2 posts reserved for ST were shown as SC which mistake was corrected by reflecting that there are 2 posts of ST category and not of SC category. It's nobody's case that there has been illegality or malafide in reflecting the wrong figures earlier on and later on corrected to benefit some persons. Therefore, it was an administrative mistake which was rectified in time.

14. No doubt, the situation would have been different, if the applications had been sought from the public at large being an indeterminate number of applicants who could have applied for the posts, had it been advertised that there are two post of ST category instead of SC category, a large number of persons belonging to ST category would have been in a position to apply for the ST posts. In such a case, the entire advertisement, examination, procedure etc. would have been vitiated by this alteration.

15. In the present case, the posts are to be filed by promotion in pursuance of an examination for which there would be definite number of officers belonging to ST category who would apply for the said post. Therefore, if these officers of ST category were prejudiced by the incorrect notification, they would be the only persons who could challenge the alteration and challenge the result of the examination but none of the effected persons, if any, have thrown a challenge to the alteration or the result of the examination, as such, the result and the subsequent promotion of respondent No. 4 and 5 cannot be challenged by the applicants herein and applicants' reliance on Arup Das v/s State of Assam, (2012) 2 SCC (L&S) 24 is entirely misplaced.

16. The question also arises whether ineligible candidate/s (applicants) have the *locus standi* to challenge the selection of selected candidates. This was considered by Hon'ble the Supreme Court in the following decisions:-

In Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33, Hon'ble the Supreme Court considered a similar issue and observed as under:-

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general

rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds.----- -In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi." (Emphasis added)

In *Anand Sharadchandra Oka v. University of Mumbai*, AIR 2008 SC 1289, a similar view was taken by Hon'ble the Supreme Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

In *A. Subhash Babu v. State of A. P.*, AIR 2011 SC 3031, Hon'ble the Supreme Court held as under:

"25....The expression aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

In Ravi Yashwant Bhoir v. District Collector, Raigad & Ors. (2012) 4 SCC 407, Hon'ble the Supreme Court held as under:

"58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be *injuria* or a legal grievance

which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

60.Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

A similar view has been re-iterated by this Court in K. Manjusree v. State of Andhra Pradesh & Anr., (2008) 3 SCC 512, wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non-maintainability, alone."

In Ayaaubkhan Noorkhan Pathan V. State of Maharashtra and others (2013) 4 Supreme Court Cases 465, Hon'ble the Supreme Court has considered in extenso the scope and ambit of a "person interested" and "locus standi". The following passages are apposite.

"Person aggrieved :

9. It is a settled legal proposition that a stranger cannot be permitted to meddle

in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784)."

17. It is now well settled that ineligible candidate cannot challenge the selection of selected candidate

18. In the instant case, the applicants are ineligible to apply for the promotional examination since they do not fulfill the criteria for filing application for taking the LDCE, as they do not belong to the ST category and therefore, their challenge to the LDCE and the selection of respondent No. 4 and 5 for promotion is disallowed.

19. However, there remains the dispute put forth by the applicants that they are allowed limited attempts to avail of LDCE and had they known there were no vacancies for SC category, they would not have availed of the opportunity to sit in the examination and referred to condition 'terms of chances' enumerated in Examination for promotion to the cadre of Inspector post (Annexure-A3) wherein there is a tap on the number of attempts an officer is allowed to take in the LDCE.

20. The question raised by applicants certainly raises a valid dispute which requires to be adjudicated upon. Surely, had the applicants known that they are ineligible to apply to take the exam, they would not have filed applications to take part in the examination. The applicants cannot be allowed to suffer for the administrative fault of the respondents. Therefore, we direct that appearing in the examination shall not be counted

towards the number of attempts applicants are entitled to in terms of the concerned rules.

21. Accordingly, in view of the reasons, the present O.A. is disposed off in terms of aforementioned directions. In circumstances of the case, parties are left to bear their own costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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