

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 592/2013

Reserved on : 15.01.2016

Pronounced on : 22.01.2016

HON'BLE MR. A.K. BHARDWAJ, MEMBER (J)

HON'BLE MR. P.K. BASU, MEMBER (A)

Satish Kumar Meena,
S/o Shri Suwa Lal Meena,
Aged about 33 years,
Post Master Grade-I BAH
Agra, (U.P.)-283104.

.. Applicant

(By Advocate : Mrs. Rani Chhabra with Ms. Priyanka Sony)

Versus

1. Union of India through
The Secretary,
Ministry of Communication & IT,
Department of Posts,
Dak Bhawan, New Delhi.

2. Chief Post Master General,
Uttar Pradesh Circle,
Lucknow-226001.

3. Post Master General,
Agra Region,
Agra-282001.

.. Respondents

(By Advocate : Shri R.C. Gautam)

ORDER

By Hon'ble Mr. P.K. Basu

The applicant was appointed as Postal Assistant in Auraiya Head Post Office under Etawah Division. He appeared in Limited Departmental Competitive Examination (LDCE) for promotion to the

cadre of Post Master Grade-1 held on 12.06.2011. The results were declared on 30.06.2011. However, the result of the applicant was not declared. The applicant made representations on 05.07.2011 and 02.08.2011 for declaration of his results.

2. In the meantime, on 14.07.2011, respondents issued notification for conducting LDCE for promotion to the cadre of Inspector of Posts (IPO) to be held on 03.09.2011 and 04.09.2011. The respondents vide letter dated 30.08.2011 directed that candidates, who qualified the Departmental Post Master Grade-1 Examination and the officials who are undergoing the training of Post Master Grade-1 may be permitted to appear in the LDCE for IPO provided these officers are not appointed as Post Master Grade-1.

3. The applicant appeared in these Examination for IPO held on 15.10.2011 and 16.10.2011. On 16.11.2011, revised result of LDCE for promotion to the cadre of Post Master Grade-1 held on 12.06.2011 was declared in which the applicant was declared as selected candidate. The applicant was issued appointment order dated 07.12.2011 and posted as SPM Bah SO in Agra Division in the cadre of Post Master Grade-1.

4. After receiving the said letter dated 07.12.2011, the applicant vide letter dated 12.12.2011 requested for declining his promotion

to the post of Post Master Grade-1 but was informed vide letter dated 13.12.2011 that the declination of appointment of Post Master Grade-1 can be accepted only if the same is received before issue of letter of appointment. It was intimated to the applicant that the application for declination was submitted only after issue of posting order and, therefore, cannot be accepted after issue of appointment order in the light of respondents' letter dated 09.08.2011 which was a clarification by Department of Posts to all Heads of Circles/Chief Postmaster General. This was on the subject of declining promotion to PM Grade-1 by the officials declared successful in PM Grade-1 LDCE held on 12.06.2011 wherein it was clarified that declination of appointment by the candidate to the post of Post Master Grade-1 after passing the departmental examination, **but before his appointment**, may be accepted. The applicant assumed charge of Post Master Grade-1 at Bah Sub Office in Agra Division on 31.12.2011.

5. The respondents vide their communication dated 06.01.2012 notified conduct of re-examination in Paper-III of LDCE for promotion to the post of IPO on 29.01.2012. At that time, the applicant was undergoing training for PM Grade-1 at PTC Saharanpur. Hence, he was given special leave to appear in the re-examination for IPO to be held on 29.01.2012. The result of examination for promotion to the post of IPO was declared on

04.04.2012 but the result of the applicant was not declared with the remark "Post Master Grade-1 qualified & working".

6. The applicant made representation and also filed RTI application for communicating his marks vide letter dated 01.06.2012. The respondents intimated to the applicant that before declaration of result of IPO Examination, 2011, the competent authority has decided that the candidates who appeared in IPO Examination, 2011 and got promotion as PM Grade-1 and are appointed as PM Grade-1 are not eligible for promotion as Inspector of Post. Further, it was notified vide letter dated 11.07.2012 that marks obtained by the candidates, such as the applicant, cannot be displayed/communicated. Being aggrieved, the applicant has filed this O.A. seeking the following relief(s):

"(a) to quash/set aside the decision of the Respondents making the applicants ineligible on the post of Inspector of Post due to his holding post of Post Master Grade-1;

(b) to quash the order dated 13.12.2011 refusing the request of the applicant declining promotion to Post Master Grade-1;

(c) to direct the Respondents to declare the result of the applicant to the LDCE for the post of Inspector and promote him on the same on his finding successful; and

(d) pass such other or further order/s as Your Lordships may deem fit and proper."

7. The applicant has sought the above relief on the following grounds :

(i) that the decision taken by the respondents making the Post Master Grade-1 ineligible for promotion to the post of Inspector of Post is unreasonable and violates the fundamental rights guaranteed to the applicant under Articles 14 & 16 of the Constitution.

(ii) There is nothing in the Recruitment Rules, which deprive a person holding the post of Post Master Grade-1 to become eligible for the post of IPO.

(iii) The applicant was very much eligible at the time of appearing in the IPO Examination and, therefore, declaration of result of an eligible candidate is mandatory and non-declaration is illegal, unjustified and violates the fundamental rights guaranteed to the applicant under Articles 14 & 16 of the Constitution.

(iv) The action of the respondents is totally unfair and it is well settled law that requirement of fairness implies that even an administrative authority must not act arbitrarily or capriciously and must not come to a conclusion which is perverse or is such that no reasonable person properly informed could arrive at. Thus, the impugned orders and action of the respondents stands vitiated.

(v) Once a wrong has been committed with the applicant, remedy has to be there and his rights cannot be snatched. It has been held that a party cannot be rendered remediless as there can be no dispute to settle legal proposition that if there is a wrong there must be a remedy as held in *Rameshwar Lal Vs. Municipal Council, Tonk*, (1996) 6 SCC 100 and *Smt. Jatan Kanwar Golchha Vs. Golchha Properties Pvt. Ltd.*, AIR 1971 SC 374. Once a beneficial promotional avenue is available to the applicant, he cannot be forced to accept a less favourable appointment on a technical reason which is not even available in his case.

(vi) The applicant had sent request for declination of his promotion which was erroneously rejected. Rejection/refusal to the request of the applicant who is unwilling to accept promotion is illegal, discriminatory and against the law.

8. The learned counsel for the applicant also relied on the judgment of Hon'ble High Court of Delhi dated 11.12.2014 in *W.P.(C) No.1564/2013 Jawahar Singh Vs. Union of India and Ors.* In that matter, the petitioner had applied and participated in the process for recruitment to the post of Grade of Post Master Grade-1 in June, 2012 and the facts of that case, as summarised in the judgment, are as follows:

“2. The relevant facts are that the petitioner had applied and participated in the process for recruitment to the grade of Post Master-I in June, 2012. At that time, he was also eligible

to apply for the grade of Inspector of Posts. Concededly, there is a difference of status in two posts, and the latter concededly carries pay scale and grade pay which is higher to that of Post Master-I.

3. At the time he applied for the second post i.e. Inspector of Posts, he was eligible to do so. The Department of Posts declared the result in respect of the former post i.e. Post Master-I earlier and consequently, the petitioner joined the training. Since he succeeded in the selection process for the post of Inspector of Posts, the petitioner requested that his case be considered for appointment to the said post. The Department of Posts, however, declined his request to be appointed as Inspector of Posts. He, therefore, approached the Tribunal. The respondent/UOI was able to successfully contend that, though, at the time of applying for the post of Inspector in September, 2012, the petitioner was eligible, but the factum that he underwent training for the post of Post Master-I disqualified him to the appointment under the grade of Inspector of Posts.”

Hon’ble High Court relying on a decision of the High Court in **Union of India Vs. Virender Kumar Dahiya** in W.P. (C) No.4833/2014 decided on 28.08.2014 allowed the Writ Petition with a direction that the petitioner shall be declared to be appointed as Inspector of Posts according to merit in the selection process which he successfully cleared and with effect from the date on which others were appointed. However, only notional benefit of pay fixation and all other consequential benefits shall be given but not the arrears of salary.

9. Per contra, the learned counsel for the respondents states that in the order dated 09.08.2011 issued by the Department of Posts to all the Chief Postmaster General, it had clearly been stated that declination of appointment by the candidate to the post of Post

Master Grade-1 can be accepted after passing the Departmental Examination, **but before his appointment.**

10. The learned counsel also relied on order of Bangalore Bench of this Tribunal dated 19.07.2012 in O.A. No.198/2012 and batch. The facts of the case are summarised in para 3 of the judgment, which is quoted below:

“3. The applicants presently working as Postmaster Grade-1 (PM for short) joined as Postal Assistant during 2004-2005. The respondent department introduced a separate cadre for Postmaster in Grade-I, II and III and Senior Postmaster to ensure the services of professionally qualified, trained and meritorious officials to head the key Post Offices (Annexure A1, A2 and A3). The applicants appeared for the examination held on 12.6.2011, were declared successful and joined as Postmaster Grade I in December, 2011. In the meantime, Limited Departmental Competitive Examination for selection to the post of Inspector of Post Offices (IP for short) was announced for filling up of 20 vacancies. Since the eligibility criterion is 5 years of regular service in Postal Assistant cadre, applicants appeared for the examination held in October, 2011. However, when the results were announced in April, 2012 their results were withheld. They were intimated vide Annexure A5 impugned order that there is no provision in the recruitment rules of IP cadre to allow the officials appointed to PM cadre in terms of recruitment rules for the post of PM Grade-I to appear in the departmental examination for the IPO cadre. Therefore, their result in IP Departmental Examination was withheld. The applicants aver that appointment to the post of IP is more beneficial to them as the career prospects is better than that in the cadre of PM. Therefore, they contend that denial of an opportunity to get into the IP cadre if selected is contrary to public policy and not tenable in law.”

The O.A. was dismissed relying on the order of Cuttack Bench of CAT in O.A. No.640/2011 dealing with an identical issue as also on the decision of Hon'ble Supreme Court in the case of **Union of**

India Vs. Pushparani and others, (2008) 9 SCC 242, wherein it was held that :

“matters relating to creation/abolition of posts formation/restructuring of cadres, sources/mode of recruitment, prescription of qualifications, selection criteria, evaluation of service records are matters which fall in employers domain. Judicial Review comes into play only if state action is contrary to constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.”

The Tribunal further noted as follows:

“6. The applicants were permitted to appear for the IP examination as on the date of notification of IP examination the applicants were Postal Assistants and hence technically they were eligible to sit for the IP examination. Moreover, Respondent-1 has clarified that if candidates who are selected and are undergoing training for PM Grade I declined their promotion to PM Grade I post they can appear for the IP examination. But those who have been selected for the post of PM Grade I and have joined the post are not to be permitted to appear for the examination. In our considered opinion the respondents cannot be faulted for not declaring the results of IP examination in respect of the applicants as the applicants have moved from the cadre of Postal Assistant to the PM Grade I cadre. Undisputedly, PM Grade I is not the feeder cadre for Inspector of Posts. The applicants belong to the PM cadre. In the Annexure A1 order of the respondents the position is clarified under para-6(iii). It is extracted below:

“In the event of their appointment as Postmaster, their further career progression will be in the hierarchy in the Postmaster Cadre only as per the provisions in the relevant Recruitment Rules and not in the General Line. The promotional avenues for officials who opted for Postmaster Gr.I were clearly spelt out in Para 5 of the said order”.

11. The order of the Tribunal was challenged in the Hon'ble High Court of Karnataka at Bangalore and vide order dated 10.06.2013, the Writ Petition (C) No.35449-35450/2012 was dismissed. In this

respect, para 15 of the judgment is significant, which is quoted below:

“15. In the circumstances, we are of the view that the situation is purely governed by the offer made to them as per the administrative decisions and the conditions imposed therein. Condition clearly stipulated that if once they exercised the option to pursue their career in the cadre of ‘Post Master Grade-I’, they will not be permitted to opt out of the same. Petitioners had opted being aware of the condition and have been working as such. When they cannot opt out and cannot seek or aspire for being appointed to the post of ‘Inspector of Posts’, the announcement of the result is an idle exercise even assuming as per the direction of the Tribunal, results had been announced and their marks were known, the condition comes in the way of their appointment to the post of ‘Inspector of Posts’.

12. It is, therefore, contended by the learned counsel for the respondents that in view of the order of Bangalore Bench of CAT as upheld by the Hon’ble High Court of Karnataka at Bangalore, the present case is fit to be dismissed.

13. Heard the learned counsel and perused the pleadings on record as well as the judgments cited by both the sides.

14. As pointed out by Bangalore Bench of this Tribunal in O.A. No.198/2012 and batch, the Hon’ble Supreme Court has settled the law in **Pushparani** (supra) as quoted above that judicial Review comes into play only if state action is contrary to constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides. Otherwise, how a cadre will be restructured and what would be the mode of recruitment procedure etc. clearly falls in the

employers' domain. In this case, there are two streams, one the Post Master stream and the other is the General Line of Inspector of Post. After joining as Postal Assistant, they can either choose the Post Master stream or the IPO stream. Opportunity is given to each Postal Assistant for both. However, once a Postal Assistant chooses and joins as Post Master Grade-1, he is not allowed to jump streams. This appears perfectly logical as otherwise there would be administrative chaos. In the instant case, both the exams happened more or less together and the applicant qualified within a few months of each other. Let us imagine a situation when a Postal Assistant got selection as Post Master Grade-1 in 2011 and then, in case applicants logic is accepted, he is permitted in 2015 to appear in IPO Examination, in that situation, both the cadres will be in a state of constant flux. Therefore, in our opinion, the decision of the respondents not to permit a Postal Assistant to switch to IPO post, once he joined in the Post Master Grade-1 post is absolutely logical for cadre management and, as pointed out earlier, in the domain of the executive on how they will manage their cadre. We have no cause for interfering.

15. As regards the judgments, we have two judgments, one of the Hon'ble High Court of Karnataka at Bangalore, in which the Hon'ble High Court has held that the situation is purely governed by the offer given to them as per the administrative decisions and the

conditions imposed therein. The condition clearly stipulates that if once they exercised the option to pursue their career in the cadre of 'Post Master Grade-I', they will not be permitted to opt out of the same. In such a situation, declaration of results of IPO is an idle exercise. The Writ Petition was dismissed. In that case, the applicants after passing of examination for the post of Post Master Grade-1 were sent for two months training prior to appointment and after completing the same, they were appointed to the post of Post Master Grade-1 as on 28.12.2011. In Writ Petition(C) No.1564/2013, the facts are slightly different, as the applicant in that case had only undergone training, whereas letter dated 09.08.2011 clearly states that after he is appointed, declination cannot be accepted. Therefore, we are of the view that judgment in Writ Petition (C) No.1564/2013 differs on facts and circumstances and would not apply in the present case. Whereas facts of Writ Petition No. 35449-35450/2012 are similar to the one in the present case, in the sense that in both the cases, the applicants, i.e. Postal Assistants, qualified for the post of Post Master Grade-1, were sent for training and after completing the same, joined the post of Post Master Grade-1.

16. In any case, ultimately, it is the law settled by the Hon'ble Supreme Court which has to prevail and, as already discussed earlier, the Supreme Court has clearly laid down the law in

Pushparani (supra) and since in this case, we do not find any action contrary to the Constitutional or Statutory provisions which is apparently arbitrary or vitiated by mala fides, we are restrained from interfering in this matter.

17. The O.A., therefore, does not succeed and the same is dismissed. No costs.

(P.K. BASU)
Member (A)

(A.K. BHARDWAJ)
Member (J)

/Jyoti/