

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/332/2018
M.A. No.60/882/2018

Date of decision: 06.07.2018

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).

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Kintam aged 22 years S/o Subash R/o Village Sutana, District Panipat.
(Group D).

... APPLICANT

VERSUS

1. Union of India through Secretary to Govt. of India, the Ministry of Communication and Information Technology, Sanchar Bhawan, Department of Post.
2. Chief Post Master General, Postal Circle-Haryana Ambala, Haryana.
3. The Assistant Superintendent Posts, Sub Division-Panipat, District Panipat, Haryana.
4. The Senior Superintendent of Post Office, Karnal Division, District Karnal, Haryana.
5. Vishal S/o Kishan R/o village Rajakheri, District Panipat, Haryana.
6. Phool Singh, Assistant Superintendent Post, Regional Office, Gurugram, Haryana.

... RESPONDENTS

PRESENT: Sh. Sandeep Malik, counsel for the applicant.

Sh. Ram Lal Gupta, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. M.A. No.60/882/2018 has been filed for vacation of ex-party stay granted on 19.03.2018 in the pending O.A. which is listed on 01.08.2018. Notice on M.A. was issued on 30.05.2018 for today. Learned counsel appearing on behalf of non-applicant submitted

that since pleadings are complete in the O.A., therefore, instead of taking up this application, main matter may be decided by preponing the same, which is not opposed by counsel opposite side.

2. Accordingly, on the joint request of parties prayer is accepted. The main O.A. listed for 01.08.2018 is pre-poned for today.
3. We have heard learned counsel for the parties.
4. By way of present O.A., the applicant assails order dated 01.03.2018 (Annexure A-4) and show cause notice (Annexure A-3).
5. Facts which led to filing of this O.A. are that respondent no.3 issued an advertisement notifying one post of GDS/MD/C Rajakheri vide notification dated 14.03.2016. In response to that, respondents received 9 applications out of which 3 were summarily rejected and rest were taken into consideration. As per averments made in the O.A., the applicant secured 66% marks and the person who secured higher marks i.e. Vishal, belonging to BC category secured 77.83% marks and Pardeep Kumar also of that Category belongs to BC category secured 72.33% marks but their candidature was rejected because they were not having community certificate at that time and applicant being next candidate in merit was appointed. However, on 19.01.2018 the applicant was served with a show-cause notice and was asked to file reply to it. Thereafter vide impugned order dated 01.03.2018, respondents have terminated service of the applicant, which is under challenge before this Court.
6. The respondents have resisted the claim of the applicant by filing written statement, wherein they have submitted that candidature of person, who secured higher marks than the applicant i.e. Vishal

was wrongly rejected. Thereafter, on the basis of instructions of nodal Ministry DoPT dated 08.10.2015, the case of Vishal, was reconsidered and it was decided that his candidature had wrongly been rejected. Therefore the respondents initiated process to offer him appointment. Since there is only one vacancy, therefore, they have passed order terminating service of the applicant, to make way for meritorious candidate.

7. We have heard learned counsel for the parties, who also argued on similar lines.
8. It is not disputed that applicant is not a person, who stood first in the merit list. Perusal of Annexure A-7 (P-31), which is a list of applications received by the respondents for the post of GDS/MD/C, makes it clear that Vishal S/o Krishan Lal, secured 77.83% marks but his candidature was rejected as he did not possess OBC certificate and the applicant who was at serial no.5 by securing 66% marks was only offered appointment. Subsequent to that, Vishal (Respondent no.5) approached this Tribunal by filing O.A. No.60/1037/2017, in which vide order dated 05.09.2017, it was directed that any appointment shall be subject to final out-come of that O.A. Later on in the matter of Vishal, a statement was suffered by the respondents that his case will be considered in the light of DoPT OM dated 08.10.2015, which governs the field. The same being relevant is reproduced as under:-

"3. Instances have been brought of the notice of this Department that despite the aforesaid instructions, the appointments of the candidates belonging to SC/ST/OBC communities are with-held/ delayed due to pending caste certificates verification.

4. It is therefore, reiterated that in the situation where a candidate belonging to a Scheduled Caste, Scheduled Tribe and

Other Backward Classes is unable to produce a certificate from any of the prescribed authorities, he/she may be appointed provisionally on the basis of whatever prima-facie proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time and if there is genuine difficulty in his/her obtaining a certificate, the appointing authority should itself verify his/her claim through the District Magistrate concerned.”

The OM makes it clear that if a candidate belonging to SC/ST/OBC, is unable to produce certificate from any of the prescribed authority, then he/she may be appointed provisionally to enable him to produce, in support of his/her claim subject to furnishing the prescribed certificate within a reasonable time. Since the respondents had not followed mandate of this OM at the first instance and subsequently woke up and became intelligent by considering the case of Vishal, who was higher in merit, therefore, the applicant who is lower in merit than him has no case, at all.

9. Therefore, we find no reason to interfere in the impugned order. Accordingly, the O.A. is dismissed. M.A. No.60/882/2018 also stands disposed of accordingly.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 06.07.2018.

Place: Chandigarh.

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