

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/426/2017

Date of decision: 24.12.2018

...

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

...

Jatinder Kumar S/o Balvir Chand, aged 26 years (Group-D), R/o B-25, MCH-70, Rahimpur Near Kataria House, Fatehgarh Road, Hoshiarpur.

**... APPLICANT
VERSUS**

1. Union of India through its Secretary, Ministry of Communication and IT Department of Posts, New Delhi.
2. The Chief Postmaster General Punjab Circle, Sector-17, Chandigarh.
3. The Senior Superintendent of Post Office, Hoshiarpur Division, Hoshiarpur, District Hoshiarpur.
4. The Inspector Posts, West Sub-Division, Hoshiarpur, District Hoshiarpur.

... RESPONDENTS

PRESENT: Sh. Arun Takhi, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER (Oral)

...

SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant seeking the following relief:-

"8(i) to issue a direction to the respondents to appoint applicant on the post of Gramin Dak Sewak Male Deliverer (GDS MD), Manguwal Nari, PO, District Hoshiarpur from the due date and issue him appointment letter immediately without any further delay as the applicant is the most meritorious candidate amongst all the candidates and as a result thereof all attendant benefits including arrears of salary along with interest @12% p.a. may kindly be ordered to be paid on the delayed payment from due date till its realization."

2. Facts are not in dispute.
3. The applicant, who belong to SC category in State of Punjab, and is registered in Employment Exchange & he is 12th pass, applied for the post of Gramin Dak Sewak Male Deliverer (GDS MD), Manguwal Nari, PO, District Hoshiarpur. After a positive act of selection, when respondents declared result, his name was shown at serial no.1 in order of merit. A mischief was played by submitting an application in the name of the applicant indicating that he is not interested to join duty because he is going abroad. When applicant did not hear anything from the respondents for a long time, he moved application to know about status of selection then he came to know that a person namely Jasvir Singh S/o Sodhi Ram has been offered appointment as applicant had already refused to joint on post. When matter was taken up with respondents they replied to his legal notice vide letter dated 27.02.2017, that recruitment entire selection has been cancelled and since rules for the post of GDS have been changed, fresh selection will be done for the post.
4. Learned counsel for the applicant submitted that applicant never submitted any application refusing to join post, rather he was waiting for outcome of selection but when he came to know that his right has been taken away by the respondents by appointing a person at sr. no.2 in the merit list, he served legal notice, which was replied by the respondents stating that they had conducted an inquiry and found that Sh. Jasvir Singh has wrongly been offered appointment hence

they have cancelled the entire selection. It has also been indicated therein that rules for the post of GDS have since been changed, therefore, they have decided to re-advertise the post, which as per learned counsel for the applicant is bad in law. He submitted that once the applicant has already been selected then for fault of the respondents, his right cannot be taken away and modified rules cannot be applied retrospectively.

5. Sh. Ram Lal Gupta, learned counsel for the respondents submitted that they have rejected claim of the applicant by replying to legal notice stating that based upon inquiry they have found that instead of offering appointment to applicant, Sh. Jasvir Singh was offered appointment and a mischief was played and unwillingness to join post was shown on behalf of the applicant. He submitted that before filing the O.A. rules governing the post has been changed therefore, the respondents are re-notifying the vacancy by applying new rules but they will also consider the candidature of other persons, who had applied earlier.
6. The plea of the respondents is liable to be set aside because once the applicant has been selected for the said post but could not be offered appointment due to some mischief then he cannot be punished for fault of the respondents. Admittedly, applicant was at serial no.1 of the merit list but was not offered appointment, that will not take away his right on the ground that selection has been cancelled and rules have now been modified. It is settled proposition of law that

appointments are governed by rules present at the time of notifying of vacancies.

7. Reliance in this regard is placed on judgment dated 18.02.2015 of the Apex Court in the case of **M. Surender Reddy vs. Govt. of Andhra Pradesh & Ors.** (Civil Appeal Nos.5099 with 5100 and 5101 of 2006), **N.C. Singha(ex. Mayor) Vs. Director General Armed Forces**, 1972 Vol.4 SCC 765 and on the case of **K.C. Arora (Ex. Capt.) Vs. State of Haryana**, 1984 Vol.3 SCC 281 which still holds the field in which the Lordships have relied upon judgment in the case **State of Gujraj Vs. Raman Lal Keshav Lal Soni**, 1983 Vol 2 SCC 33. Relevant para of this judgment reads as under:-

"The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking onto account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in *BS. Yadav and others etc. v. State of Haryana and others etc.*(1) Chandrachud CJ., speaking for the Court, "Since the Governor exercises the legislative power under the proviso to Art. 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate, must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case". Today's equals cannot be made unequal by saying that they were unequal twenty years ago and

we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tempered with that way law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws."

8. Considering above, we quash the impugned order and direct the respondents to offer appointment to the applicant forthwith. No costs.

(P. GOPINATH)
MEMBER (A)

Date: 24.12.2018.

Place: Chandigarh.

'KR'

(SANJEEV KAUSHIK)
MEMBER (J)

