

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**ORIGINAL APPLICATION NO.200/00749/2011**

Jabalpur, this Monday, the 25th day of February, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Harish Kumar Mahawar S/o Shri Banwari Lal Mahawar, Aged about
38 Yrs. Working as Investing Inspector, O/o Chief Post Master
General, Chhattisgarh Circle, Raipur Pin Code-492001-**APPLICANT**
(By Advocate – Shri M.N.Banerjee)

Versus

- 1.** Union of India represented by the Director General (Posts),
Ministry of Communications & I.T. Department of Posts,
Dak Bhawan, Sansad Marg New Delhi-110116
 - 2.** Dy. Director General (Personnel)
O/o Director General (Posts), Ministry of Communications & I.T.
Department of Posts, Dak Bhawan, Sansad Marg New Delhi-110116
 - 3.** Dy. Director General (Establishment)
O/o Director General (Posts) Ministry of Communications & I.T.
Department of Posts, Dak Bhawan, Sansad Marg New Delhi-110116
 - 4.** Dy. Director General (Recruitment and Vigilance)
O/o Director General posts Ministry of Communications & I.T.
Department of Posts, Dak Bhawan, Sansad Marg New Delhi-110116
 - 5.** The Assistant Director General (DE)
O/o Director General (Posts) Ministry of Communications & I.T.
Department of Posts, Dak Bhawan, Sansad Marg New Delhi-110116
 - 6.** The Chief Post Master General Chhattisgarh Circle,
Raipur (C.G.)-492001
 - 7.** Union of India through the Secretary (Posts)
Ministry of Communications, I.T. Department, Dak Bhawan,
Sansad Marg New Delhi-110116
- RESPONDENTS**
(By Advocate – Shri S.K.Mishra)

(Date of reserving the order:21.02.2019)

ORDER**By Navin Tandon, AM.-**

The applicant is aggrieved by his non-empanelment in the panel prepared by the respondents after holding Postal Services Group B (for brevity 'PS Gr. B') Examination, 2011 because of incorrect calculation of vacancies.

2. The applicant has submitted as under:-

2.1 He was working in the cadre of Inspector of Posts since 20.11.2003 and was eligible to appear in PS Gr.B Examination as having completed more than 5 years of service.

2.2 A circular dated 06.04.2011 (Annexure A-3) was issued for conducting the PS Gr.B Examination, and announced the date of examination to be 15.05.2011.

2.3 He applied for the said selection.

2.4 In respect of the very same examination, the Chandigarh Bench of this Tribunal disposed of Original Application No. 399/P.B/11 (All India Association of IPASP & others Vs. Union of India and others) vide order dated 26.05.2011 (Annexure A-5) on the undertaking given by the Senior Central Government Standing Counsel to the effect that "the vacancy position shall be worked out qua the total sanctioned strength and not the number of vacancies available at a given point of time".

2.5 Instead of calculating correct available vacancies, the department hurriedly announced the vacancies on 27.05.2011 just a day before the date of examination.

2.6 He has obtained 5th rank in all India merit list in the above examination.

3. The applicant has prayed for the following reliefs:-

“(8)(1) Respondents be kindly commanded to promote applicant as in Group “B” post w.e.f. the date of result of the exam and pay all consequential monetary benefits in the alternate.

(2) Respondents be kindly commanded to recast the vacancy position for the post of PSS Group “B” for 19% IP line quota to be filled through limited departmental competitive examination after considering the factual position of death of employees, on deputation for long period and employees having refused promotion and therefore the promotion list be suitably modified.

(3) Any other order/orders, relief/reliefs, which this Hon’ble Court deems fit and proper, may kindly be passed.

(4) Award cost of the original application to be applicant.”.

4. The respondents have stated as under:-

4.1 In compliance of above order dated 26.06.2011 passed by Chandigarh Bench of the Tribunal, the vacancy position for aforesaid examination was recalculated and it was re-notified vide notification dated 27.05.2011

4.2 The applicant could not be selected as he did not figure in the merit list against the vacancies announced. Vacancies have been recalculated as per extant norms, rules and regulations.

4.3 There is no provision for preparation of extended panel in respect of PS Gr.B examination for promotion to PS Gr.B.

5. In his rejoinder the applicant has submitted as under:-

5.1 During pendency of this Original Application, the applicant was selected after having successfully passed limited departmental examination and was promoted in PSS Gr.B cadre vide order dated 06.09.2012 and posted as Assistant Director in the Office of the Chief Post Master General, Chhattisgarh Circle from 17.09.2012.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. The learned counsel for the applicant has contended that vacancies arisen on account of deputation for more than one year have not been taken into account. Similarly, the respondents have also not calculated other vacancies like death, refusal etc. which had arisen in that year.

8. Whereas learned counsel for the respondents submitted that names of officers who are on deputation to APS exist in the roster of PS Gr.B in the Department of Posts, as there is no certainty that these officers will remain in APS on deputation for the period beyond one year. The averments of the applicant regarding the method of calculation of vacancies are based on conjectures and have no valid ground.

9. In the instant case we find that the applicant had participated in the selection process. The vacancies were notified on 27.05.2011. The examination was held on 29.05.2011 and the result was declared on 23.06.2011. The applicant challenged the calculation of vacancies, only after declaration of the result, vide his letter dated 07.07.2011 (Annexure A-8). Thus, it appears that only when the applicant found himself to be unsuccessful, he challenged the selection on the ground of wrong calculation of vacancies.

10. The Hon'ble Supreme Court in the matters of **Pradeep Kumar Rai Vs. Dinesh Kumar Pandey**, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274, has held thus :

“(17). Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 and K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395)”

11. The applicant cannot approbate and reprobate at the same time as held by the Hon'ble Supreme Court in the aforementioned case. Either he

should not have participated in the examination and challenged the procedure or he should have challenged it immediately after the examination. He cannot challenge it after declaration of result, where he found himself not included in the list of successful candidates. In this view of the matter, we do not find any merit in this Original Application.

12. In the result, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

rkv