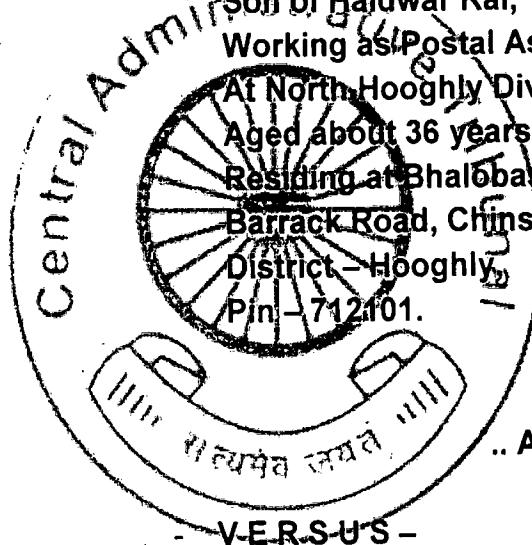


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CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATADate of order: 26<sup>th</sup> September, 2018Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

(I) O.A. No. 581 of 2013 Ms. Barnali Basak (Majumder),  
Daughter of Amal Kumar Basak,  
Aged about 42 years,  
Working as Postal Assistant,  
Bowbazar Sub-Post Office,  
Residing at 335A, Rabindra Sarani,  
Kolkata – 700 006.

(II) O.A. No. 430 of 2013 Bikash Roy,  
Son of Hajdwari Rai,  
Working as Postal Assistant  
At North Hooghly Division,  
Aged about 36 years,  
Residing at Bhalobasha Apartment,  
Barrack Road, Chinsura,  
District – Hooghly,  
Pin – 712 001.



.. Applicants  
V-E-R-S-U-S –

1. The Union of India,  
Service through the Secretary,  
Ministry of Communication,  
Department of Posts,  
Government of India,  
Dak Bhavan,  
New Delhi – 110 001.

2. The Chief Post Master General,  
West Bengal Circle,  
Yogayog Bhaban, C.R. Avenue,  
Kolkata – 700 012.

.. Respondents

*hsl*

**For the Applicant :** Mr. S.K. Dutta, Counsel (O.A. 430/13)  
Mr. N. Roy, Counsel (O.A. 581/13)

**For the Respondents :** Ms. M. Bhattacharyya, Counsel (O.A. 430/13)  
Mr. L.K. Chatterjee, Counsel (O.A. 581/2013)  
Mr. A. Mondal, Counsel

### ORDER

**Per Dr. Nandita Chatterjee, Administrative Member:**

A common order is issued to govern both these Original Applications given that common questions of law and facts arise therefrom.

In both the Original Applications, the applicants have sought to quash / set aside the decision in the communication dated 8.1.2013 of the respondent authorities wherein it was observed that sufficient unfilled vacancies were not there in any Circle to consider the qualified surplus candidates of IP Examination, 2009 of West Bengal Circle, thereby deleting the applicants from the surplus panel. Both the applicants seek directions on Respondents to give them promotional postings as an Inspector of Posts for the year 2009.

2. Heard Ld. Counsel for both sides, perused pleadings and documents on record. The respondents have filed two supplementary affidavits dated 9.7.2014 and 27.8.2018 pursuant to Tribunal's directions.

3. The facts, as gleaned from O.A. No. 581 of 2013, is that the Department of Posts had notified the Recruitment Rules in 2001 (Annexure A-1 to the O.A.) vide which 1/3<sup>rd</sup> of the post of Inspector of Posts was directed to be filled by direct recruits and balance 2/3<sup>rd</sup> by Limited Departmental Competitive Examination (LDCE).

That, thereafter, in 2007, the said respondents declared a Scheme for allotment of surplus qualified candidates, subsequently modified vide O.M. dated 20.4.2007. The relevant extracts thereof stated as follows:-

*hark*

"NO. A-34020/01/2007-DE  
Government of India  
Ministry of Communications & IT  
Department of Posts

' Dak Bhawan, Sansad Marg  
New Delhi - 110 001

Dated: 13.04.2007

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3. The matter has been examined at the Directorate and it was felt that there is a need to evolve a system, so that the surplus qualified candidates who are available over and above the selected candidates in a Circle, can be allotted to the deficient Circles. It has now been decided that in the Limited Departmental Competitive Examination of Inspector of Posts, after completion of first stage of drawing up the Circle-wise list of successful candidates (which is followed hitherto), an All India merit list, in descending order strictly based on the marks secured by the surplus, qualified candidates from all the Circles for each category will be drawn up. The number of candidates in this list shall be equal to the combined unfilled vacancies of all the Circles.



Vide O.M. dated 21.7.2011, however, the Scheme relating to allotment of surplus candidates was withdrawn effective from Inspector of Posts Examination to be held in the year 2011.

4. The applicant has stated that she was working as a Postal Assistant and, subsequently, having appeared at the examination in response to the notice for Inspector of Posts Examination, 2009, had been declared successful as a surplus candidate and was allotted Maharashtra Circle. The Directorate in its own wisdom however, re-allotted the applicant with 21 others to West Bengal Circle which was challenged before the Tribunal and the Tribunal upon holding that the said action was illegal, the respondent authorities deleted the name of the applicant as well as other surplus successful candidates of West Bengal from the said list of re-allotment and failed to revive their position as Inspector of Posts on account of reported non-availability of unfilled vacancies in any Circle.

*hph*

The applicant, further stated that, although in pursuance to directions of the Tribunal in O.A. No. 138 of 2013 dated 5.3.2013 she had represented to the competent authority, the representation was rejected vide respondent authority's order dated 30.4.2013 (Annexure A-12 to the O.A.) compelling the applicant to approach the Tribunal for redressal of her grievance.

5. Per contra, the Respondents have argued that, the Department of Posts had notified that the Inspector of Posts Examination, 2009 would be held on 4<sup>th</sup> - 6<sup>th</sup> January, 2010 and the applicant, who had participated in the same, had secured 322 aggregate marks and could not come in the zone of notified vacancies on merit.

The Directorate, after announcement of the main results, however, had initiated an exercise for allotment of surplus qualified candidates by obtaining their option and, accordingly, the applicant was allotted to Maharashtra Circle vide memo dated 30.6.2011. After issue of the said memo, the Chief Post Master General, West Bengal Circle vide his D.O. dated 22.7.2011, had intimated that, as a large number of vacancies have been created due to promotion to ASP Cadre/Retirement etc. and that, as 18 vacancies existed in the West Bengal Circle, the surplus qualified candidates belonging to West Bengal be re-allotted to his Circle so that the functioning of the Circle could be managed in a better way. Added to this, the North East Circle could not absorb seven surplus qualified candidates out of which three belonged to West Bengal. Re-allotment orders were accordingly issued on 9.8.2011. The respondents claim that such re-allotment was done with the approval of the competent authority. Thereafter, when the department notified conduct of LDCE for IP Examination, 2011 and as the vacancies filled up by the surplus qualified candidates were not declared in the same, the matter was contested in O.A. No. 845 of 2011 in which the Tribunal, having observed that re-allocation from outside against the vacancies available in West Bengal Circle as per promotional quota, was violative of recruitment rules, the respondent authorities, in pursuance to the said orders

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dated 30.9.2011, conducted an LDCE for IP Examination in West Bengal Circle in October, 2011. The results of such examination could not be declared as two O.A.s were filed bearing No. 29 of 2012 and 53 of 2012 seeking directions on restoration of vacancy position of 2010-2011 and for setting aside the respondents' order dated 25.8.2011. Both the O.A.s were dismissed and the respondents thereafter declared the withheld result of IP Examination 2011 and, while examining the matter of absorption of 22 surplus candidates of 2009 of West Bengal Circle including that of the applicant, found that there were no sufficient unfilled vacancies to accommodate the surplus candidates. Consequently, on 8.1.2013, an order was issued to drop their names from the list of surplus qualified candidates. Further, by an order dated 30.4.2013, the applicant's case had been disposed of with a reasoned and speaking order in pursuance to directions in O.A. No. 138 of 2013 filed earlier by the applicant before the Tribunal.

6.(i) To decide on the applicant's claim, the order of the respondents dated 8.1.2013, as impugned, is examined in detail. The relevant extracts of the said order is reproduced below for better understanding of the issue at hand:-

F.No. A/34018/07/2012-DE  
Government of India  
Ministry of Communications & IT  
Department of Posts  
(DE SECTION)

Dak Bhawan, Sansad Marg,  
New Delhi – 110 001  
Dated: 8<sup>th</sup> January, 2013

Chief Postmaster General,  
West Bengal Circle,  
Yogayog Bhawan,  
Kolkata – 700 012

Sub: Original Application No. 29/2012 filed by Sh. Jagannath Chatterjee and 9 others  
And O.A. No. 53/2012 filed by Ms. Srabani Basak in the Hon'ble Central  
Administrative Tribunal, Calcutta Bench, regarding absorption of surplus qualified  
candidates of IP 2009 Examination in WB circle.

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*[Signature]*

10. Consequent on the dismissal of the above two Original Applications, the Competent Authority has examined the issue of absorption of 22 surplus qualified candidates of IP examination 2009 allotted to West Bengal Circle, vide letter No. A.34013/01/2010-DE dated 9.8.2011 in the light of the judgment pronounced by the Hon'ble CAT, Calcutta Tribunal. The Hon'ble CAT clearly objected to the allotment of surplus qualified candidates of WB Circle to WB Circle, against vacancies that arose subsequently, and ordered to conduct the examination in 2011 restoring the vacancies.

11. There are no sufficient unfilled vacancies in IP examination 2009 in any circle, and similarly, there are no unfilled vacancies in IP examination 2011 for accommodating these 22 surplus qualified candidates of IP examination 2009 of West Bengal Circle. Therefore, their accommodation either in West Bengal circle, or any other Circle is not feasible. In view of the foregoing, the Competent Authority has therefore, ordered to delete the names of the following 22 surplus qualified candidates, allotted to West Bengal Circle, vide letter No. A. 34013/01/2010-DE dated 9.8.2011.

Sl. No.	Name of candidate	Roll No.	Category
1.	Bikash Roy	WB-68/IPO Exam/2009	OC
2.	Jagannath Chatterjee	WB-63/IPO Exam/2009	OC
3.	Gautam Dey	WB-48/IPO Exam/2009	OC
4.	Sanjeev Roy	WB-04/IPO Exam/2009	OC
5.	Ms. Srabani Basak	WB-39/IPO Exam/2009	OC
6.	Ananda D. Mandal	WB-18/IPO Exam/2009	OC
7.	Sanjay Bhattacharjee	WB-52/IPO Exam/2009	OC
8.	Tapan Barik	WB-45/IPO Exam/2009	OC
9.	Raju Pal Choudhary	WB-22/IPO Exam/2009	OC
10.	Bikash Ghosh	WB-90/IPO Exam/2009	OC
11.	Sudeep Mandal	WB-17/IPO Exam/2009	SC
12.	Barnali Majumder	WB-51/IPO Exam/2009	OC
xx	xxx	Xxxx	OC
xx	xxx	Xxxx	OC

2. Chief Postmaster General, West Bengal Circle is requested to intimate the decision of the Competent authority to all the candidates referred to above.

3. This issues with the approval of Competent Authority.

Yours faithfully,

-Sd/-

(K. Rameswara Rao)  
Assistant Director General (DE)"

The following is inferred from the above mentioned extracted order:-

- (a) The competent authority of the respondents has examined the issue of absorption of 22 surplus qualified candidates of IP Examination, 2009 allotted to West Bengal Circle vide letter dated 9.8.2011
- (b) The said absorption was examined in the light of the judgment pronounced by Central Administrative Tribunal, Calcutta Bench in O.A. No. 29 of 2012 and O.A. 53 of 2012.

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(c) The Tribunal had directed that the IP Examination to be conducted in 2011 after restoring the vacancies.

(d) There are no sufficient unfilled vacancies in the IP examination 2009 in any Circle and none in IP Examination 2011 which would enable accommodating the 22 surplus qualified candidates of IP Examination 2009 of West Bengal Circle and

(e) Hence, was ordered to delete the names of the 22 surplus candidates who were allotted West Bengal Circle vide letter dated 9.8.2011. The name of the applicant in the instant O.A. finds mention at Srl. No. 12 of the order and the name of the applicant in O.A. No. 430 of 2013 is at Srl. No. 1 of the said list.

(ii) Upon a reference to O.A. No. 153 of 2012, it is seen that the following relief, inter alia, had been sought for in the said Original Application:-

"(a) To issue direction upon the respondents and their men and agents to allow the applicant to join in the posting of Inspector of Posts for the year 2009 forthwith."

(a) To issue further direction upon the respondents, their men and agents to grant the date of appointment w.e.f. the date the junior in the surplus merit list got appointed in other circles."

The prayers made in the instant O.A. are also for appointment w.e.f. the date of junior in the surplus list and for directions to allow the applicant to join in the post of Inspector of Posts as qualified surplus candidates of IP Examination 2009.

These issues have been dealt with at length by the Tribunal while disposing of O.A., No. 53 of 2012 with O.A. No. 29 of 2012 and herein we rely on the "doctrine of precedence" and we reiterate our reliance on the Full Bench decision in *John Lucas v. Addl. Chief Mechanical Engineer, S.C. Ry. (1987) 3 STC 328 (Bang)(FB)* wherein it was held that the Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it

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dissents, then the matter could be referred to a Larger Bench/Full Bench and placed before the Chairman for constituting a Larger Bench so that there may not be any conflict between the two Benches. The Larger Bench has to consider the correctness of the earlier decision in disposing of the later application and the Larger Bench can overrule the view taken in the earlier judgment which will be binding on all the Benches.

In the absence of any further document or pleadings or judgment arising from specific challenge to the said decision, there is nothing to persuade us to take a view different from that decided by the Tribunal on 28.11.2012.

(iii) The applicant has advanced the following grounds in support of her claim-

- (a) That, deleting the name of the applicant from the list of surplus qualified candidates allotted vide letter dated 9.8.2011 is arbitrary, illegal, discriminatory and violative of principles of natural justice and;
- (b) That candidates who were below the applicant on merit had been allowed to be retained in their respective Circles.

On the first contention, we refer to O.A. No. 845 of 2011, wherein the Tribunal, in its order dated 30.9.2011, had categorically held that there can be no departmental policy which can violate the provisions of recruitment rules and hence had struck down the decision whereby the respondents re-allotted the surplus qualified candidates vide their order dated 9.8.2011. The Hon'ble Apex Court in ***H.C.Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, AIR 1991 SC 295*** had held that breach of the rules will result in illegality and the acts done in breach would be void. The same ratio was reiterated in ***Vasudeva Raja v. Cochin Port Trust, 1980 (1) SLR 336 and R.N. Nanjundappa v. T. Thimmaiah, AIR 1972 SC 1767***.

In ***Todarmal Jiva Jadav v. Kandla Port Trust 1992 (2) SLR 188 (Guj)***, it had been held that unfair discrimination is not confined to cases where there are arbitrary deviation from statutory rules and it is axiomatic that if the provisions

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relating to promotion are unsustained with statutory provisions, the same will be void on the general principle that the rule making authority cannot act in disregard to the provisions of statute and, as held in *M. Ramjayaram v. G.M., S.C. Ry., (1996) 8 SCC 266* a situation, where rules do not apply or where rules do not provide decisions taken for the purpose of promotion, would be dehors the rules and illegal. Hence, the action, vide which orders dated 9.8.2011 were struck down, cannot be held as illegal, arbitrary, unjust or discriminatory.

It is trite and settled law that, if the respondents vide their re-allotment order dated 9.8.2011 had transgressed the rules and had violated the principles thereby committing the act of breach of rules, the said action which cannot be upheld in any judicial decision. It is a fact that the applicants did not qualify as mainstream candidates in IP Examination 2009. As there were certain isolated vacancies in a few Circles, they were given an opportunity under the Scheme of allotment as surplus qualified candidates, notified in 2007 and later withdrawn in 2011. If the vacancies in those few Circles did not exist at the material point of time when the Tribunal had struck down the action of the respondents taken vide letter dated 9.8.2011 as dehors the rules, there is limited scope for the respondents to accommodate such surplus qualified candidates any further. It has also been conclusively decided in O.A. No. 53 of 2012 and 29 of 2012 that such surplus qualified candidates could not be accommodated in consequent vacancies. Hence, there is very little ground to direct the respondents to fill up such vacancies that do not exist. The Tribunal cannot direct creation of supernumerary posts given the Hon'ble Apex Court's decision in *Commissioner, Corporation of Madras v. Madras Corporation Teachers Mandram, (1997) 1 SCC 253*, namely, that it is a matter of policy of the authorities to create a post and that the Court or a Tribunal has no power to direct creation of a post or to prescribe the qualifications for the same.

Regarding the applicant's next claim that her junior be reverted as she was way up in the merit list, the respondents, have, in their speaking order furnished

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details of 11 senior candidates who were higher up than her on merit and who have been similarly deleted from the surplus list. Not only so, it was the re-allotment order dated 9.8.2011 that was held to be as de hors the Rules. The allotment of surplus qualified candidates' Scheme was never struck down by the Court and the said Scheme remained valid during currency of the Scheme until withdrawn in 2011. Hence, other surplus candidates allotted vide the Scheme were not affected by the Tribunal's orders in 845/2011. Hence the applicant's second contention that those below her on merit had been retained in their respective Circles is because such candidates were allotted vide a valid Scheme which was never struck down as violative of Rules.

Accordingly, the applicant's claim cannot be upheld in terms of facts or law.

(iv). At the same time, however, it is noted that the applicant had not sought the West Bengal Circle on her own and the respondents had re-allotted her out of their own accord, a decision which was later struck down by the Tribunal. As nothing has been furnished before us to prove that the order dated 30.9.2011 was overruled at a higher forum, the decision in O.A. No. 845 of 2011 had attained finality.

The applicant has stated in her representation dated 19.3.2013 (Annexed as A-11 to the O.A.) that as she is overaged she has very little scope of appearing in further promotional examination for Inspector of Posts which is a feeder post to Superintendent of Posts and hence would be deprived of moving up the career ladder. The current recruitment rules has not been furnished before us; we would however, direct the Respondents to examine if there is any scope of "power to relax" as had been provided for in para 5 of the 2001 Recruitment Rules. If such scope prevails, the respondents are directed to allow both the applicants, in relaxation of overage, to appear at subsequent examinations for the posts of Inspector of Posts. The respondents vide their supplementary affidavit dated 27.8.2018 has furnished the current vacancy position and it is

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seen that on December, 2017 there were 763 vacancies in all for Inspector of Posts and the applicants have a fair chance of being accommodated subject to their qualifying in the selection process on merit.

These orders will however, be subject to the outcome of the Writ Petitions pending, if any, in higher judicial fora.

The O.A. is disposed of accordingly. There will be no order on costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

SP

