

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

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No. O.A. 1055 of 2015

Date of order: 17.7.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Prosenjit Das,  
Son of Sri Pijush Kanti Das,  
Working as Postal Assistant, MMS,  
Asansol, Residing at 47, Sukantapally,  
P.O. Agarpara,  
Kolkata - 700 109.

Applicant

VERSUS -

1. Union of India  
Through the Secretary,  
Ministry of Communication,  
Dak Bhawan,  
New Delhi - 110 001.

2. The Chief Post Master General,  
West Bengal Circle,  
Yogayog Bhawan,  
Kolkata - 700 012.

3. The ADPS (Rectt),  
West Bengal Circle,  
Yogayog Bhawan,  
Kolkata - 700 012.

4. The Senior Manager,  
Mail Motor Service,  
Kolkata - 700 010.

... Respondents

For the Applicant : Mr. N. Roy, Counsel

For the Respondents : None

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## ORDER

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

The applicant has approached this Tribunal in the second stage litigation praying for the following relief:-

- “(a) To issue direction upon the respondent to give the promotion for the post of PA and SA to the applicant forthwith.
- (b) To issue further direction upon the respondent to give the applicant for the post PA/SA in RMS Division with effect from 2011 where the LGO Examination conducted in the year 2010. According to the applicant's qualifying marks in the said examination which was held in 2010.
- (c) To issue further direction upon the respondent to give promotion for the post of PA and SA where the applicant's qualifying marks in the LGO Exam 2010.
- (d) To issue further direction upon the respondents to give promotion in the year 2001 for the post of PA and SA cadre with all consequential promotional benefit forthwith.
- (e) Any other order or orders as the learned Tribunal deem fit and proper.
- (f) To produce connected departmental record at the time of hearing.”

2. Heard Ld. Counsel for the applicant, examined pleadings and documents on record. None represented the respondents.

3. The applicant's submissions, as articulated through his Ld. Counsel, is that, the applicant had appeared before the LGO examination conducted by the respondent authorities on 10.10.2010 and that he had obtained qualifying marks in the said examination as evidenced from the results published on 5.11.2011. The respondent authorities, however, did not consider his candidature on purported grounds of non-availability of vacancies. That other candidates in similar position, however, had been promoted to the post of PA & SA and the applicant's case was not considered without any valid reasons. Hence, aggrieved by the non-action of the respondent authorities, the applicant has moved the Tribunal.

4. The respondents, per contra, have argued that in the LGO examination, 2010, there were no vacancies of MMS, Kolkata and, accordingly, the candidates of MMS, Kolkata were not issued with any hall permit. The applicant, however, who was a T.S. Driver, MMS, Kolkata approached the Tribunal in O.A. No. 2109 of 2010 and the

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Tribunal vide its order dated 8.10.2010 allowed the applicant to appear in the said exam. Although the applicant obtained qualifying marks in the said examination, on account of non-availability of vacancies in MMS Kolkata, the applicant was not promoted. Thereafter his case was referred to the headquarters wherefrom it was intimated that, as the syllabus of exam in PA/SA in MMS, RMS and Postal are different, the candidates have to be considered for the Division/Unit to which they belong.

The applicant, however, had appeared in the LGO (Other Wing) Exam held on 21.7.2013 against departmental quota vacancy for the year 2013 and having been successful in the said exam for promotion to the PA cadre, was posted as PA in MMS Asansol and is continuing in the said post since 26.2.2014. Hence, according to the respondents, the applicant's prayer for posting as surplus qualified candidate in RMS/Postal Wing from 2010 is rendered infructuous.

The respondents have also controverted the claim of the applicant that certain other candidates have been promoted despite being declared surplus. According to the respondents, the names of the candidates mentioned in Para 4.12 does not lend a suitable comparison to the applicant as because those candidates had appeared in the 2007 LGO examination and that the candidate name in Para 4.09 had appeared in the 2009 examination. The syllabus and recruitment rules, however, were changed w.e.f. LGO exam, 2010 in which the applicant had participated under the orders of the Tribunal. Accordingly, the applicant's claim does not deserve any consideration.

5. We find from the pleadings that the respondents have reiterated their views vide communication dated 8.11.2010 (Annexure A-5 to the O.A.), 27.8.2012 (Annexure A-13 to the O.A.), 5.8.2013 (Annexure A-12

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to the O.A.) and 5.12.2014 (Annexure A-11 to the O.A.), and have consistently held that as there were no vacancies, the applicant could not have been engaged in MMS, Kolkata despite his participation and qualification in the same. The respondents have also clarified that the respondents have not issued any hall ticket, but the respondents had allowed him to appear in compliance to the directions of the Tribunal.

It is axiomatic that unless there is a vacancy, there is no question of filling it up.

The Hon'ble Apex Court, in **Himachal Road Transport Corpn. V. Parveen Kumari (1996) 4 SCC 560**, ruled that without existence of posts or vacancies in such posts, the question of recruitment could not arise.

In **Official Liquidator v. Dayanand (2008) 10 SCC 1**, it was held that a Court cannot direct the employer to create posts to be filled up by particular mode of recruitment. A similar view was held in **Chander Hass [Divl. Manager Aravali Golf Club v. Chander Hass (2008) 1 SCC 683]**.

In **State of Rajasthan v. Hitendra Kumar Bhatt (1997) 6 SCC 574**, the Court ruled that an ineligible person cannot claim to continue in service merely because he was called to an interview under interim orders of the court and was provisionally selected.

Hence, when the respondents have repeatedly submitted that there are no available vacancies in MMS, Kolkata, it is not within the scope of the Tribunal to direct creation of a vacancy to accommodate the applicant therein even if he had participated in the LGO examination under orders of the Tribunal.

As the Tribunal's directions in O.A. No. 2109 of 2010 dated 8.10.2010 have not been produced before us, it could not be ascertained

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as to whether the matter of non-availability of vacancies was brought to the notice of the Tribunal at the material point of time when the Tribunal had issued the interim order.

6. Hence, we find that the applicant's plea has no merit and deserves to be dismissed. There will be no orders on costs.

(Dr. Nandita Chatterjee)  
Administrative Member

SP

(Bidisha Banerjee)  
Judicial Member

