

**CENTRAL ADMINISTRATIVE TRIBUNAL
PERINCIPAL BENCH**

OA No. 2241/2003

New Delhi this the 8th day of December, 2005

**Hon'ble Mr. V.K.Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)**

1. Murlidhar Andhopia,
S/o Late Shri Kehm Singh,
EDBPM, Aurangabad, Mathura
R/o Village & P.O. Aurangabad,
Mathura, U.P.
2. Biri Singh,
S/o Shri Dan Singh,
Extra Departmental Stamp Vender,
P.O. Mathura City, Mathura,
R/o Vill. & P.O. Junsuthi,
Mathura, U.P.
3. Radha Govind,
W/o Late Shri Ram Murti Sharma,
Extra Departmental Packer,
P.O. Roberts Line, Mathura,
R/o Opp. F.C.I. Godown, Patel Nagar,
Mathura, U.P.

...Applicants.

(By Advocate Shri Sant Lal)

VERSUS

1. Union of India through the Secretary,
Ministry of Communication,
Dept. of Posts,
New Delhi.
2. The Post Master General,
Agra Region,
Pratappura, Agra, UP.
3. The Sr. Superintendent of Post Offices,
Mathura Division,
Civil Lines, Mathura.

...Respondents.

(By Advocate Shri N.S. Mehta)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A. filed by three applicants, order dated 21.05.2003 is sought to be quashed whereby their representation was rejected by a speaking order. They have further sought direction to the respondents to correctly assess the vacancies available by the end of December, 1998 in Agra Regional for the posts



of Postman and to promote the applicants as they were declared successful in examination held on 20.12.1998 with all consequential benefits.

2. It is submitted by the applicants that all the applicants were working at Mathura in different capacities and were eligible for taking the examination of Postman so they appeared in examination on 20.12.1998 in Mathura Division. They scored 115, 114 and 104 out of 150 marks yet were not promoted as Postman due to irregular appointment of 4 candidates of 1997 examination of other division in Mathura Division vide order dated 12.2.1999.

3. It is submitted by the applicants that panel of waiting list expires after one year, therefore, those persons could not have been appointed in Mathura Division in 1999 after applicants had taken the examination in 1998. They have further submitted that respondents ought to have announced the vacancies before taking the examination in 1998, clarifying the respective quota, which was not done, therefore, selection of 1998 gets vitiated. Moreover, before declaring applicants' result, 4 persons were allotted to Mathura division from other divisions, which is wrong as those vacancies should have been included in 1998 vacancies. In case those 4 vacancies are added in 1998, they get entitled to be promoted. They have further submitted that the order dated 12.2.1999 was challenged by Shri Bishambar Singh and Anr. in O.A. No. 1998/99, which was allowed by Tribunal on 2.11.2000 by observing as under:

"In view of the above findings, we hold that the application succeeds and is accordingly allowed. The order posting on transfer to Bulandshahar, three candidates from outside divisions of 1997 examination for filling up the vacancies of 1998, for which exams were held in December, 1998, is quashed. The respondents are directed to correctly workout, notify and consider the case of the applicants for appointment against those posts, on the basis of their performance in the examination conducted in December, 1998, in accordance with the rules and instructions governing reservation applicable, if any. We also award to the applicants costs for this OA quantified at Rs.3,000/-".

Applicants gave representation dated 6.7.1999 but their claim was rejected vide order dated 16.9.1999. They challenged it by filing O.A. No. 1665/99 which was disposed of on 22.12.2000 as follows:

"This O.A. is disposed of in the background of that order dated 25.5.2000 with a direction that in the event applicants make a self-contained representation in this regard respondents should examine the claims of the present applicants for being appointed in



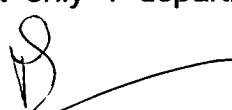
another Division in accordance with rules and instructions under intimation to applicants as expeditiously as possible thereafter. No costs."

Applicants gave representation dated 29.1.2001 but that has also been rejected vide orders dated 16.5.2001 and 21.5.2003. Applicants have submitted that their case is fully covered by the judgment dated 2.11.2000 in O.A.1998/99, therefore, they be given the same relief, specially when judgment dated 2.11.2000 has been upheld by Hon'ble High Court vide their order dated 26.2.2001.

4. O.A. is opposed by official and private respondents both. They have explained that as per notification dated 6.7.1989, procedure for filling the post of Postman is;

- (a) 50% by promotion of Group 'D' officials after passing the prescribed examination failing which by EDAs on the basis of merit in the examination;
- (b) 25% from EDAs on the basis of length of service;
- (c) 25% from EDAs on the basis of merit in the prescribed examination.

It further prescribes that if sufficient number of EDAs are not recruited from a Division, the vacancies shall be thrown open to all the EDAs of the postal divisions failing in the zone of Regional Director. With this background, they have explained, an examination was held in Mathura Division on 23.11.1997 for 6 vacancies, however, only one departmental candidate qualified. None from EDAs could qualify in the result declared on 12.2.1998. Keeping in view the explanation in RRs, result of surplus candidates (qualified) of other divisions were declared vide memo dated 12.2.1999 out of which 4 were allotted to Mathura, 2 vacancies of OC still remained unfilled. They were carried to next year on 20.12.1998. OBC vacancy was to be filled on compassionate grounds so that was not to be filled by departmental examination. Thus in 1998, there were 4 vacancies for departmental quota out of which 3 were for OC and 1 was for SC. In EDA quota, there were 2 vacancies, 1 in OC and 1 in OBC. Applicants appeared for these vacancies. Result of 1998 examination was declared on 15.3.1999. In this result only 1 departmental candidate of OC



community could qualify as such remaining 2 OC, 1 SC vacancies of departmental quota were also filled from EDAs as per their merit, apart from 1 OC vacancy of EDA quota. They have admitted that last candidate who was approved in OC category had also got 115 marks as that of Murlidhar Andhopia applicant No.1 but date of entry of applicant was 25.9.1991 while Shri Ram Krishan Rajput had entered the department on 27.1.1986. He was thus senior to applicant No.1 thus Shri Ram Krishan Rajput was recommended for promotion. For this purpose they have relied on Annexure R-2.

5. Their representation was decided by PMG vide letter dated 16.3.2001 as per instructions dated 7.4.1989. Even CPMG decided their representation on 21.5.2001 (Annexure R-10). They have thus submitted there is no illegality or irregularity committed by respondents. They have prayed that the O.A. may be dismissed.

6. Private respondents have also filed reply. They have opposed maintainability of O.A. itself on the ground that it is barred by limitation as they were promoted in 1999 and were confirmed also as Postman w.e.f. 1.10.2001 (Annexure R-4). Moreover the judgment relied upon by applicants has already been held to be bad in law in Writ Petition Nos. 2899/2003 and 6971/2003 filed by Shri Satish Chandra and Shri Pooran Chand who were terminated pursuant to orders dated 2.11.2000 passed in OA No. 1998/1999, therefore, OA is devoid of any merit. They have also submitted that since they were allotted the vacancies of 1997, it could not have affected the vacancies of 1998. Since applicants had appeared against the vacancies of 1998, no prejudice can be said to have been caused to the applicants as they were allotted Mathura division in accordance with rules.

7. We have heard both the counsel and perused the pleadings as well. The first contention submitted by counsel for the applicants is that vacancies ought to have been declared before commencing the examination and since vacancies were not declared before conducting the examination, it would vitiate the entire selection. Admittedly no objection to this effect was raised by the applicants when applicants undertook the examination. We had asked counsel for the

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applicants to show us the document by which examination was notified but he had not even annexed the notification or the letter pursuant to which they appeared in the examination. It is thus clear that neither any objection was taken by them nor any notification/letter has been challenged by them. It is settled law that one who appears in examination and is not selected cannot be allowed to turn around and challenge the procedure adopted for selection later on (2000(3) AISLJ SC 30 **Suneeta Aggarwal Vs. State of Haryana and Ors.** and AISLJ 2002 (3) SC 89 **Chandra Prakash Tiwari and Ors. Vs. Shakuntala Shukla and Ors.**).

8. In this case if applicants felt that vacancies should have been declared before the examination, they ought to have raised this objection at that stage and insisted to be informed the number of vacancies. No such effort was made by the applicants. Now that their names do not figure in the final result, they are trying to challenge the procedure adopted by respondents in not declaring the vacancies in advance. According to law laid down by Hon'ble Supreme Court in above judgments, applicants cannot be allowed to raise this objection at this stage. Therefore, this contention is rejected..

9. Learned counsel for the applicants next argued that persons of other divisions could not have been allotted to Mathura Division from 1997 examination and vacancies of 1997 should have been added in 1998 examination. Perusal of Recruitment Rules, however, shows that post of Postman is to be filled 50% by promotion from Group 'D' employees who have put in 3 years of service, failing which by EDAs on the basis of their merit in the departmental examination and 50% from EDAs of the recruiting division or unit. This is further bifurcated viz., 25% from EDAs on the basis of their seniority in service and subject to passing the departmental examination, failing which by EDAs on the basis of merit in the departmental examination and 25% from amongst the EDAs on the basis of their merit in the departmental examination. It is further clarified that,

"3. If the vacancies remained unfilled by EDAs of the recruiting division, such vacancies may be filled by the EDAs of the postal division falling in the zone of Regional Directors;

(4) If the vacancies remained unfilled by EDAs of the recruiting unit, such vacancies may be filled by EDAs of the postal divisions



located at the same station. Vacancies remaining unfilled will be thrown open to Extra Departmental Agents in the region".

Thus, the procedure adopted by respondents of allotting the vacancies of 1997 to the selected EDAs of other Division in the region is very much in consonance with the explanations given in recruitment rules itself. In fact, respondents have explained that in 1997, there were 6 vacancies in the Mathura Division, 4 OC, 1 SC, 1 ST in departmental quota and 2 were in EDAs Quota 1 for OC and 1 for SC but when result was declared only 1 departmental candidate qualified. No one qualified from EDAs. Keeping in view the clarification of RRs, the result of qualified EDAs of other divisions but under the same region was declared vide Memo. dated 12.2.1999 and 4 persons were allotted to Mathura as they could not be absorbed in their divisions due to want of vacancies. Therefore, those persons were rightly allotted against the vacancies of 1997. By no stretch of imagination, can it be said that by filling the vacancies of 1997 any right of applicants has been infringed because they appeared for vacancies of 1998. This is the conclusion drawn by Hon'ble High Court also in Writ Petition Nos. 2899/2003 and 6971/2003.

"We find that Tribunal had misdirected itself both while allowing Bishamber Singh's OA No.1998/99 and by dismissing petitioner's OAs. Because it had failed to notice that these petitioners were selected candidates in reference to vacancies of 1997 whereas Bishamber Singh was a selected candidate for vacancies of 1998. Moreover, official respondents were competent to allot surplus candidates in case of unfilled vacancies of that year in other Divisions which they had justifiably done. Therefore, it was not a case where Bishamber Singh's right of appointment which he had against the 1998 vacancy was being taken away by filling up a 1997 vacancy through surplus candidates like petitioners.

10. From the above it is clear that even Hon'ble High Court was of the view that the persons were who were allotted in other divisions vide order dated 12.2.1999 were selectees of 1997 while persons like applicants had been selected for 1998 vacancies. It was also held that official respondents were competent to allot surplus candidates in case of unfilled vacancies of that year in other divisions, which they had justifiably done. This aspect thus stands concluded already by Hon'ble High Court, which is binding on us and we fully agree with the views expressed by Hon'ble High Court.



11. Counsel for the applicants next contended that since OA 1998/1999 filed by Bishamber Singh was upheld by Hon'ble High Court, therefore, we are bound by it and applicants are entitled to get the same relief as given in OA 1998/1999. However, it is seen that judgment dated 2.11.2000 passed in OA 1998/1999 was first challenged by official respondents by filing Writ Petition No. 1275/2001. The said Writ Petition was dismissed in limine on 26.2.2001 without dealing with the points raised by official respondents on merits whereas when the same judgment dated 2.11.2000 passed in OA No.1998/1999 and orders dated 4.2.2002 and 9.8.2002 passed in OAs 2401/2001 and OA 2402/2001 were challenged by private respondents by filing Writ Petition No. 2899 and 6971/2003, Hon'ble High Court passed a detailed judgment dealing with all aspects of the matter and vide judgment dated 23.8.2004 categorically observed as follows:

"We find that Tribunal had misdirected itself both while allowing Bishamber Singh's OA No.1998/99 and by dismissing petitioner's OAs. Because it had failed to notice that these petitioners were selected candidates in reference to vacancies of 1997 whereas Bishamber Singh was a selected candidate for vacancies of 1998. Moreover, official respondents were competent to allot surplus candidates in case of unfilled vacancies of that year in other Divisions which they had justifiably done. Therefore, it was not a case where Bishamber Singh's right of appointment which he had against the 1998 vacancy was being taken away by filling up a 1997 vacancy through surplus candidates like petitioners.

Moreover, while giving subsequent judgment dated 23.8.2004, the order passed by Tribunal in OA 1998/1999 has also been quashed. In our view since earlier order dated 26.2.2001 was passed in limine while subsequent judgment is a detailed judgment, therefore, subsequent judgment must be followed. We are supported in our this view by Hon'ble Supreme Court in the case of Union of India Vs. Jaipal Singh reported in 2004 SCC (L&S) 12 wherein it was held as under:

"...we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefore it operates as a binding precedent as well".



It is also settled law that if there are two decisions of Hon'ble Supreme Court on question of law rendered by equal number of judges, later judgment must be followed. Following the above principle, we hold that the subsequent judgment dated 23.8.2004 would have precedential value and binding effect.

12. In view of above discussion, we are satisfied that neither the directions as given in OA 1998/1999 can be given to the applicants herein nor any other relief can be given to them. The OA is accordingly dismissed. No order as to costs.

29/12/05

(Mrs. Meera Chhibber)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice Chairman (A)

'SRD'