

(2010) 09 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No's. 1576, 1580, 1582 and 1586 of 2010

Director, Postal Services, Senior Superintendent of Post
Offices, Mofussil Division, Post Master General and Union of
India (UOI) APPELLANT

Vs

Sanjay Chandurkar
 Assistant Superintendent of Post
Offices, North Sub-Division, Senior Superintendent of Post
Offices, Nagpur Mofussil Division and Union of India (UOI) Vs RESPONDENT
Vilas Pardhi and Shrawan Bapusa Salam
 Director,
Postal Services, Senior Superintendent of Post Offices,
Nagpur Mofussil Division, Sub Divisional Inspector (Post),
Gondia Sub Division and Union of India (UOI) Vs Umesh
Pritamlal Yede
 Union of India (UOI) and Senior
Superintendent of Post Offices, Mofussil Division Vs Manoj
Bansod

Date of Decision : 17-09-2010

Acts Referred:

Gramin Dak Sevak (Conduct and Employment) Rules, 2001 — Rule 4(3)

Citation : (2011) 1 ALLMR 165 : (2011) 2 MhLj 65

Hon'ble Judges : S.A. Bobde, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.S. Sundaram, for the Appellant; Parkhi and P.N. Shende, in Writ
Petition Nos. 1575, 1576, 1578, 1580, 1584 and 1588/2010 and A.S.
Chandurkar, Parkhi and P.N. Shende, in Writ Petition Nos. 1577, 1582, 1583,
1586, 1587, 1589, 2071, 2072 and 2073/2010, for the Respondent

Judgement

A.B. Chaudhari, J.—Heard. Rule. Rule returnable forthwith. Heard finally by
consent of the learned Counsel for the rival parties.

2. All these writ petitions, filed by the Director Postal Services, Nagpur and
others, arose out of the common judgment dated 9.10.2009, passed by the
Central Administrative Tribunal, Mumbai, Camp at Nagpur, by which the Original
Applications filed by the respective respondents in these writ petitions were
allowed in terms of paragraph No. 8 of the Original Applications, meaning

thereby that the Central Administrative Tribunal directed reinstatement with payment of T.R.C.A. from the date of termination till date of reinstatement and continuity of service.

3. In support of the writ petitions, the learned Counsel for the petitioners made the following submissions.

(1) Gramin Dak Sevak (Conduct and Employment) Rules, 2001 are statutory in character and the Tribunal erred in treating the same as mere departmental instructions.

(2) Rule 4(C)(3) of the said Rules empower the superior authority to call for the records for appointments of G.D.S., if there is a material irregularity or illegality in the matter of recruitment and the Director of Postal Services being the superior authority over the appointing authority, the appointments were rightly reviewed and having noticed material irregularity after compliance of principles of natural justice, the services of the respondents were terminated.

(3) The Tribunal committed an error in holding that there was no violation of the Rules in the matter of criteria for selection inasmuch as preference was required to be given in accordance with the higher percentage of marks as per examination in all the cases and that being so the candidates having higher marks were not appointed and therefore, there was violation of the Rule regarding recruitment and therefore, Reviewing Authority had a power to correct the said error the same being material irregularity.

(4) The Tribunal should not have decided all the Original Applications together since the facts and circumstances were different in different cases.

(5) The decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Bikash Kuanar, . relied upon by the Tribunal, was not applicable, as the facts in the said case were clearly distinguishable. In the said decision itself the Supreme Court held that if the mistake is committed in passing the order, the same may be rectified.

(6) The Tribunal committed an error in observing in paragraph No. 18 of its judgment that the submission regarding abolition of posts made before it was oral and no documents were filed before the Tribunal in support of the said submission. In fact, according to the learned Counsel for the petitioners as now disclosed in the additional affidavit of Ramesh Abhiman Bhavate, dated 16.8.2010, filed before this Court vide paragraph No. 9 thereof documents, namely, communication dated 11.8.2003 circulated by letter dated 12.09.2003 (Document No. 7) were filed in Original Application No. 2249/2004, filed by Shyamrao Damdu Taiwade and had sought permission to file those documents, showing abolition of posts. Therefore, the Tribunal erred in not considering the said documents in correct perspective and in the alternative, the learned Counsel prayed for remand of the matters to the Tribunal for reconsideration.

4. The learned Counsel for the petitioners filed vigilance report dated 1.9.2004

along with the said additional affidavit in this Court and urged that the vigilance report clearly shows the material irregularity in the appointments, namely, that in some cases candidates having more marks were not preferred, as required. According to him, though the said vigilance report is filed before this Court for the first time so also the other documents regarding abolition of posts, the matters are required to be sent back to the Tribunal for consideration thereof. The petitioner - Department has taken action against the erring officer, who had made appointments with material irregularity and some of them have punished, which is evident from the documents filed with the affidavit.

5. Per contra, the learned Counsel for the respondents appearing in various writ petitions made the following submissions.

(1) The question regarding termination of service being common in all the cases and all the appointments being made in the month of September, 2003 and the termination also having being made after about one-and-a-half - two years, the Tribunal committed no wrong in deciding the question of law by the common judgment and order.

(2) The additional affidavit dated 16.8.2010 filed in this Court is liable to be rejected since the same amounts to filing new evidence before this Court, which is wholly impermissible in the writ jurisdiction.

(3) Submission regarding abolition of posts is wholly misplaced and inasmuch as that was never a ground for termination of services of the respondents in the show-cause-notice that was served on them and therefore, the said new ground could not be allowed to be taken up for the first time in the writ petitions in this Court. The only ground on which the show-cause-notice was issued to the respondents was that the candidates having more marks than them were not given preference. According to the learned Counsel for the respondents that could not be a ground in the absence of any allegation of bias or favouritism and the employees having rendered service for one-and-a-half - two years, there was no pleading before the Tribunal about the abolition of posts nor any documents were filed pertaining to the respondents regarding abolition of posts. At any rate, the Tribunal has observed that abolition of posts was hardly relevant since the employees would be governed by the restructuring and the Tribunal was only required to decide whether the termination was legal or not.

6. The learned Counsel for the respondents-employees heavily relied upon the decision in the case of Union of India (UOI) and Others Vs. Bikash Kuanar, .

7. We have gone through the judgment of the Central Administrative Tribunal, which in our opinion, is in necessary details. We have already gone through the pleadings of the parties before the Tribunal so also additional affidavit dated 16.8.2010, filed in this Court for the first time, along with documents and vigilance report etc..

8. Looking to the nature of controversy that was to be decided by the Tribunal,

we do not find any error with the Tribunal in deciding all the Original Applications together since the common questions were involved before it in all the Original Applications and therefore, we find no substance in the submission made by the learned Counsel for the petitioners that the Tribunal should have decided the cases separately.

9. Without entering into controversy as to whether the said Rules of 2001 are statutory in nature, we upon perusal of the entire record find that there was no material irregularity or illegality on the part of the Appointing Authority in making appointments of the respondents as per the recruitment rules. The only objection of the Reviewing Authority and the learned Counsel for the petitioners before us to the appointments has been that those candidates who were having more percentage of marks were not given preference and that is why there is a material irregularity in the matter of appointments so also the violation of the recruitment rules. This is the only ground that has been raised in the vigilance report, departmental communications and in the pleadings set up before the Tribunal as well as this Court. There is no other ground for objecting the appointments except this. The ground regarding abolition of posts was never raised before the Tribunal in the pleadings and the same seems to have been raised orally before the Tribunal. We deal with the said aspect little later.

10. Now taking into consideration the said objection on facts, at the outset, we find that marks obtained in the matriculation examination was not the only criteria for making the appointments. On the contrary, apart from the marks in the matriculation examination a very important criteria was that the candidate should have agricultural land/independent property in his name and should have proper source of income so also residence at the same village, where the post office is located. Secondly, the rule regarding preference to higher percentage of marks cannot be read to mean that those having higher percentage of marks were mandatorily required to be selected or appointed. The use of the very word "preference" does not make it mandatory on the part of the Appointing Authority to appoint a candidate, having higher percentage of marks in matriculation examination and therefore, we find that there was no violation of rule on the part of the Appointing Authority in the matter of recruitment as alleged by the petitioners.

11. Looking to the factual data, which has been considered by the Tribunal and in our opinion rightly, the difference of percentage of marks in most of the cases is marginal. Since we have held that there is no violation of rule regarding recruitment on the part of the Appointing Authority, even if, some candidates with less percentage of marks were selected and appointed, no illegality much less material irregularity could be said to have been committed by the Authority. It is important to note that there is no allegation at all about bias or favouritism by the petitioners even in the vigilance report or in the pleadings set up before the Tribunal or this Court. In the wake of these facts and the discussion made by us above, we find that the decision of the Supreme Court in the case of Union of

India and Ors. (supra) is aptly applicable in the facts of the case and it would be proper to quote paragraph Nos. 12 to 16 from the said judgment, which read thus:

12. The matter relating to appointment or recruitment of EDDA is not governed by any statute but by departmental instructions. It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the record, a rectification thereof is permissible without giving any hearing to the aggrieved party.

13. The respondent was recruited not only on the basis of marks obtained by him in the matriculation examination but also upon consideration of various other criteria necessary therefor. He filed all necessary and requisite documents. The candidature of all the candidates has been considered on their own merits. Only because one Pitamber Majhi had obtained higher marks in the matriculation examination, the same by itself should not have been a ground for cancelling the order of recruitment passed in favour of respondent.

14. When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice. In this view of the matter, we are of the opinion that the said Pitamber Majhi by reason of higher marks obtained by him in the matriculation examination also cannot be said to be a better candidate than the respondent herein. In this view of the matter, we do not find any fault with the impugned judgment of the High Court.

15. The Division Bench of the High Court, in our considered view, correctly applied the law, which has been crystallised in a number of decisions of this Court.

16. Indisputably, the respondent has fulfilled all the essential terms and conditions for the appointment to the said post. The respondent alone had submitted all necessary and required documents before the date prescribed by the appellants. It may also be pertinent to mention that at the time of selection the respondent was the only one who had the experience of working continuously on the said post for a period of one-and-a-half years. Perhaps, all these factors cumulatively persuaded the authorities concerned to select the respondent to the said post.

12. The submission made on behalf of the petitioners about abolition of posts of the respondents-employees is liable to be rejected for the reasons more than one. In the first place, in the pleadings, which were filed before the Tribunal, no

such plea was at all raised in the Original Applications. The said plea appears to have been set up for the first time before the Tribunal in arguments. The Tribunal in that regard observed thus in its impugned judgment. We quote the relevant portion from paragraph No. 18 as under:

18. Lastly, in this connection, it is also pertinent to note that the submission regarding abolition of post has been taken by the respondents orally and in the same breath it was submitted that restructuring of the whole cadre of GDS was underway. The respondents have not pointed out that the termination of the services of the applicants was due to abolition of posts held by them or because of restructuring of the cadre of GDS. The respondents have also not given the circumstances leading to the abolition of posts, if any. Even the so called policy decision to abolish the posts has not been placed on record. It is the admitted factual position that the said abolition of posts, if any, was not one of the grounds for termination of the services of the applicants in question. As such, apparently there is no co-relation between the abolition of the post and termination of the services of the applicants....

13. We have no reason to disbelieve what the Tribunal has observed in paragraph No. 18 merely because the learned Counsel for the petitioners states that documents were filed before the Tribunal. We, however, gave opportunity to the learned Counsel for the petitioners to file those documents before us. The learned Counsel for the petitioners filed additional affidavit dated 16.8.2010 with vigilance report and other documents. In paragraph No. 9 of the additional affidavit, it is stated as under:

9. It is submitted, the case of Shyamrao Damdu Taiwade, Original Application No. 2249 of 2004, which was also jointly heard by the Tribunal on 17/9/2009 along with 6 Original Applications, the petitioner herein had filed documents by seeking permission to file documents with respect to the letters issued by the Department of Posts so as to revamp Rural Postal Network as well as imposition of ban in filling up the GDS posts. These documents were filed in the above Original Applications so as to support the contention of the petitioner about abolition of posts as well as re-structuring of the cadre as well as ban imposed. Copy of the communication dated 11th August, 2003 as issued by the Department of Post which was circulated by letter dated 12th September, 2003 from the office of Postmaster General, Nagpur Region, Nagpur is herewith annexed as Document No. 7.

14. From the reading of paragraph No. 9 of the additional affidavit, it is clear that the documents were said to have been filed in Original Application No. 2249/2004 only and there is no statement that the petitioners had obtained any order on the application for permission to file those documents. Ignoring all this, we decided to go through these documents, which were collectively filed as document No. 7. Document No. 7 is a communication dated 11.8.2003 and another dated 12.9.2003. These two documents filed as document No. 7 nowhere show the abolition of any post but shows that proposal to revamp rural

postal network is likely to be taken up. There is nothing more in these documents and therefore, contention raised by the learned Counsel for the petitioners about these documents showing abolition of posts will have to be rejected.

15. Upon perusal of the additional affidavit, we find that some documents regarding abolition of posts have been mentioned in paragraph No. 8 of the additional affidavit and these documents are filed before this Court for the first time as document Nos. 4, 5 and 6. It is not claimed in this paragraph No. 8 that these documents Nos. 4, 5 and 6 were ever filed before the Tribunal. We were therefore not required to consider this fresh material before this Court for the first time but even then due to insistence of the learned Counsel for the petitioners, we went through all these documents Nos. 4, 5 and 6 and we find that these documents dated 20.09.2004, 26.12.2005 and 18.4.2006 indicate abolition of 34, 10 and 12 posts of G.D.S. respectively at the places shown in the annexure thereof. As a matter of fact, after filing these documents, it was the duty of the learned Counsel for the petitioners to relate these documents to the respondents-employees but no such attempt was made and these documents were just casually filed on the record. We, however, have gone through these documents and compared them with the names etc. respondents-employees and we find from these documents that except Malegaon B.O., G.D.S., M.D. Saoner S.O. under letter dated 18.4.2006 (Document No. 6) relating to Sanjay Govindraoji Chandurkar, no other posts held by the other respondents are shown to have been abolished. At any rate, the post of this Sanjay Govindraoji Chandurkar shown to have been abolished is w.e.f. 30.4.2006.

16. Physical verification carried out by us thus shows that the posts held by the respondents were never abolished. Thus, even on merits the contention regarding abolition of posts advanced by the learned Counsel for the petitioners is without any merit. At any rate, even in the case of Sanjay Govindraoji Chandurkar, whose post is shown to have been abolished after his termination, the Tribunal has taken care to observe that he would be governed by restructuring and therefore, we find no reason to interfere with the well reasoned judgment made by the Tribunal. Since the respondents-employees have been unjustifiably kept out of employment at least during the pendency of these writ petitions, the petitioners having obtained stay from this Court and in the light of the above discussion, we find this to be a fit case, where cost is required to be imposed on the petitioners. In the result, we pass the following order.

ORDER

(i) Writ Petitions are dismissed with costs of Rs. 5,000/- (Rupees Five Thousand Only) payable by the petitioners to each of the respondents within a period of eight weeks from today.

(ii) The petitioners shall comply with the order of the Tribunal within a period of eight weeks from today and upon failure to comply the said order, the petitioners

will have to pay the TR.C.A. thereafter.

Advocate Shri R.S. Sundaram for the petitioners prays for stay of this judgment. As the matter concerns employment in rural area, request is rejected.