

(2018) 12 CAT CK 0025

In the Central Administrative Tribunal

Case No : Original Application No. 60, 1146 Of 2017

Inderjeet Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0025

Hon'ble Judges : Sanjeev Kaushik, J;P. Gopinath, J

Bench : Division Bench

Advocate : R.S. Dadwal, Yogesh Putney

Judgement

1. Applicant are before this Tribunal, by way of the present O.A., challenging the order dated 20.01.2016 (Annexure A-1), whereby respondents, while cancelling the entire result of written suitability test for promotion to the post of Senior Clerk, have reverted back them to the posts of Clerks.

2. Before this Court, there is no material dispute qua the facts.

3. Applicants entered into service as clerk in the year 2007 and 2008. Next promotion is to the post of Senior Clerk (Commercial) with pay scale of Rs.5200-20200+Grade Pay of Rs.2800/-, for which under the rule formation, a written suitability test is to be conducted. There are 9 posts of Senior Clerks and only 7 Clerks including the applicants were eligible and called for suitability test conducted on 31.10.2015, vide communication dated 22.09.2015. Result of the test was declared on 02.11.2015 where two applicants were declared successful. Based upon the result, vide order dated 09.11.2015, the applicants were promoted to the posts of Senior Clerks which they joined. However, vide impugned order dated 20.01.2016, respondents have passed order of reversion to lower post, as they have cancelled the entire result itself, against which the applicants are before this Court.

4. Solitary ground, taken by the applicants, is that reversion order has been passed in violation of principles of natural justice. To elaborate his submission,

learned counsel for the applicants submitted that once applicants have been promoted to higher post of Senior Clerk based on suitability test, then without putting them on notice, respondents cannot pass impugned order. Therefore, it is argued that the impugned order is liable to be set aside. To buttress his plea, learned counsel also placed reliance on following judgments:-

- i. B.D. Gupta vs. State of Haryana reported as 1973 (3) SCC 149.
- ii. Harmesh Chander vs. State of Punjab, reported as 2003(3) SCT 147.
- iii. Kasturi Lal Kashyap vs. State of Punjab, reported as 2002(6) SLR 131.
- iv. Balwant Singh Kataria vs. State of Haryana, reported as 1997 (3) SCT 475.
- v. Hemraj vs. Bhakra Beas Manager Board, 2002 (4) SCT 892.

4. Per contra, respondents have filed written statement resisting the claim of the applicants, wherein they have submitted that after examination, they received representation from some of the unsuccessful candidates with regard to not following procedure laid down for conducting the test. After due deliberation, a decision has been taken to cancel the entire result and accordingly order of reversion of the applicants, who were declared successful in the examination, has been passed.

5. In support of the above plea, Sh. Yogesh Putney, learned counsel for the respondents submitted that once entire result has been cancelled, then there is no need to follow principles of natural justice as it would be a useless formality. Moreover, any individual's right has not been taken away and a uniform decision was taken by the respondents to cancel result of examination, which was held contrary to the instructions to correct an error that had been crept in, which is permissible. To support his plea, he relied upon the following judgments:-

- i. Union of India and others vs. O. Chakradhar, reported as 2002 (4) RSJ 469.
- ii. Jagdish Prajapat vs. the State of Rajasthan and others, 1998 (2) ATJ 286.
- iii. Anand Prakash vs. State of Punjab, reported as 2005 (4) RSJ 749.
- iv. Chandigarh Administration vs. Narang Singh, JT 1997 (3) SC 536.

6. We have given our thoughtful consideration to the entire matter with able assistance of learned counsel for the respective parties and have also perused the judgments cited by each side.

7. The solitary plea, raised by learned counsel for the applicants, is of violation of principles of natural justice. Facts, as narrated above, make it clear that a conscious decision has been taken by the respondents with regard to cancellation of result after representation made by some of the unsuccessful candidates on the ground that the authorities have not followed instructions issued by Govt. of India as indicated in Annexure R-5 para 6, which read as under:-

"6. Questions regarding official language policy and Rules should also be set up in departmental test, which includes technical and non-technical examinations also, conducted for group 'C' posts, for promotion from group 'C' to group 'B' posts and in limited departmental competitive tests conducted for filling up the vacancies group 'B'. In order to judge the professional ability of the employee for this purpose, 10% marks out of total prescribed marks should be prescribed for Official Language Policy and Rules, and these questions should be set up in consultation with the Mukhya Rajbhasha Adhikari."

8. As narrated above, since respondents had not reserved/allocated 10% marks, out of total prescribed marks, for official language, therefore, considering it to be serious lapse on their part, the competent authority decided to annul the entire selection. Consequentially, the promotion order was also cancelled and applicants were reverted. There is no malice alleged by the applicants or use of any arbitrary exercise of power by the respondents, therefore, the view taken by the respondents cannot be said to be bad in law. Once entire selection has been cancelled, then there is no need to issue a show-cause notice before taking action as it would be merely an empty or useless formality in this case as end result would remain the same. It is a well settled law that authorities are at liberty to fill up or not fill up vacancies. Mere empanelment does not create a right for a candidate to seek appointment to a published post. In this case a conscious decision has been taken to cancel entire selection and we do not find any illegality in same. For this, we place reliance on the decisions in the cases of SHANKARAN DASH VS. UNION OF INDIA, 1991 (3) SCC, 47; STATE OF MADHYA PRADESH VS. SANJAY KUMAR PATHAK (2008) 1 SCC (L&S) 207 and S. S. BALU & ANOTHER V. STATE OF KERALA & OTHERS, (2009) 1 SCC (L&S), 388. In these cases, it has been clearly held that selected candidates do not have a legally enforceable right to be appointed to a post.

9. Accordingly, the O.A. is dismissed, in so far as challenge to cancellation of selection and withdrawal of promotion orders is concerned.

10. At this stage, learned counsel for the applicant submitted that respondents may initiated recovery of the amounts which they have already paid to the applicants while working as Senior Clerk (Commercial), therefore, they be directed not to recover the said amount because firstly there is no misrepresentation on their part and, secondly applicants are Group 'C' employees and their case is covered by judgment in the case of State of Punjab and others vs. Rafiq Masih (white washer), reported as 2015 (4) SCC 334.

11. Learned counsel for the respondents submitted that there is no move by the respondents for recovery of the said amount.

12. Considering above, there is no cause of action in favour of the applicant. However, if respondents decide to recover the amount, then they cannot do it or stopped from doing it in terms of decision in the case of Rafiq Masih (supra).