

(2025) 02 BOM CK 0754

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition Nos. 11873, 13255 Of 2021

Sagar Sontakke And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Administrative Tribunal Act, 1985 — Section 19

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5

Citation : (2025) 02 BOM CK 0754

Hon'ble Judges : Mangesh S. Patil, J; Prafulla S. Khubalkar, J

Bench : Division Bench

Advocate : P. S. Talekar, P. R. Katneshwarkar, Rahil S. Kazi, S.S. Deve

Final Decision : Dismissed

Judgement

Mangesh S. Patil, J

1. The issue involved in these petitions is as to whether the employees, who have been selected under the same selection process but were appointed at different times can claim the seniority according to the select list and can claim as appointed on the date, the first appointment was made, irrespective of the delay in making the appointments.

2. The issue arises in the backdrop of following factual scenario:

The respondents i.e. the Department of Indian Postal Service-respondent no. 2 to 4 published an advertisement for recruitment to 1701 posts of postman-mail guard (PM-MG) and 730 posts of multi tasking staff (MTS). Along with several aspirants, the petitioners also appeared at the examination and selection lists were prepared. The petitioners were given appointment after document verification and medical examination.

3. On 25.11.2016, the respondents cancelled the entire selection process on some complaints. Some candidates filed Writ Petition No. 12117/2016 (Prakash

Bhagaji Wani and others Vs. Union of India and others) and connected matters. By the judgment and order dated 03.05.2019 the decision dated 25.11.2016 of cancellation of the entire process was struck down. Directions were issued to verify involvement of individual petitioners in the matter of alleged suspicious circumstances, irregularities or malpractices, as was discussed in the judgment. Those who were already appointed, were directed to be reinstated and were entitled to have 50% of back wages and those who were still to be appointed were directed to be considered and were subsequently appointed.

4. The decision in the matter of Prakash Bhagaji Wani (supra) was challenged before the Supreme Court but the Special Leave Petition was dismissed.

5. Simultaneously, few other candidates put up a similar challenge to the decision regarding cancellation of process by filing Original Applications before the Central Administrative Tribunal in Original Application No. 805/2016 and connected matters. The tribunal disposed of the original applications in terms of the order passed in the matter of Prakash Bhagaji Wani (supra).

6. Respondent nos. 2 to 4 conducted enquiries into the eligibility of candidates and segregated those, who were not found to have indulged in any malpractice etc. Accordingly, in all 341 candidates were given appointments with 50% back wages, on 27.1.2019, including the petitioners. Even thereafter from time to time few more appointments were given between 10.02.2021 and 25.02.2021.

7. Subsequently, respondent nos. 2 to 4 published an advertisement for limited departmental competitive examination (LDC) for recruitment to the cadre of Postal Assistants/Sorting Assistants in postal divisions and units (including postal store depot) RMS and MNS for departmental quota of vacancy for the year 2021, on 13.09.2021. By moving an application on 04.10.2021, the petitioners sought permission to participate in the departmental examination. However, by the impugned communication dated 08.10.2021 the request for regularization with effect from 2016 was turned down and even they were refused permission to participate. A list of eligible candidates, who could appear for the limited departmental examination was published on 20.10.2021. Finding that their names were not appearing in the list, the petitions have been filed.

8. Ms. Talekar, the learned advocate for the petitioners would submit that there was no fault on the part of the petitioners for their delayed appointments. It is pursuant to some malpractices that the selection process was cancelled. This Court had quashed and set aside the cancellation and had directed individual cases to be examined and had given directions for the appointments of the untainted candidates like the petitioners. Accordingly, the exercise was undertaken. Appointment orders were issued and as directed by this Court even 50% of the arrears were paid. She would, therefore, submit that since the petitioners were not at fault in delaying the appointments, they cannot be deprived of deriving the benefit of claiming a deemed date of appointment from the date the select list was prepared or first appointment was made. If that is

considered to be the date of their appointment for the limited purpose of counting of service, the petitioners would be eligible, as they would be completing the requisite minimum service to make them eligible to appear at the limited departmental examination. She would submit that though it is only such of the petitioners/candidates, who were already appointed but were terminated, were entitled to claim 50% of back wages on their reinstatement as per the order of this Court in the matter of Prakash Bhagaji Wani (supra), since they all have been appointed through the same selection process, no distinction could have been made on the ground that some of the petitioners were still to be appointed.

9. Ms. Talekar would submit that it is trite law that the seniority of the candidates inter se from the same selection process has to be maintained even if some of the candidates are appointed at a later point of time. She would refer to the decisions in the matters of (1) C. Jayachandran Vs. State of Kerala and others; (2020) 5 Supreme Court Cases, 230, (2) Balwant Singh Narwal and others Vs. State of Haryana and others; (2008) 7 SCC 728, (3) Pilla Sitaram Patrudu and others Vs. Union of India and others; (1996) 8 SCC 637. She also relied upon judgments of Gujarat and Patna High Courts in Dipakbhai Pralhadbhai Chaudhary Vs. State of Gujarat and two others (in R/Special Civil Application No. 15434/2017) decided on 26.03.2019 and Ganpati Singh Vs. The State of Bihar and others (in Civil Writ Jurisdiction Case No. 663/2010) respectively.

10. Mr. Katneshwarkar, learned Senior Advocate holding for the petitioners from Writ Petition No. 13255/2021 made the submissions on similar lines as were addressed by Ms. Talekar.

11. It is necessary to note at this juncture that unlike the petitioners from Writ Petition No. 11873/2021, additionally, the petitioners in Writ Petition No. 13255/2021 have further prayed for grant of 50% of back wages, as was granted to some of the candidates. In the matter of Prakash Bhagaji Wani (supra) and connected matters, two petitioners from Writ Petition No. 9910/2017 were granted such 50% of back wages, since they were already appointed but were terminated and were directed to be reinstated within two months with 50% of back wages. None of the other petitioners from that group was granted 50% of back wages while granting them the relief of being appointed after scrutiny of their involvement in the malpractices, which was the genesis for respondent nos. 2 to 4 to cancel the entire recruitment process.

12. Mr. Katneshwarkar, additionally, relied upon the decision in the matter of Government of NCT of Delhi and others Vs. Sh. Rakesh Beniwal and others (Writ Petition (C) 7423/2013) decided on 04.08.2014, wherein in similar set of facts, setting aside the decision to cancel the selection process, wherein the original applicants before the Administrative Tribunal were given appointments after seven years, were held entitled to not only the appointments relating back to the date of appointment of other candidates who were junior to them but were also held entitled to and directed to be paid 50% of the back wages.

13. Respondent nos. 2 to 4 have filed separate affidavits in both these petitions but are same in verbatim. In consonance with the stand being taken in these replies, learned advocate Mr. Deve for respondents submitted that indeed the recruitment process was undertaken for the vacancies as mentioned in these petitions. The process was outsourced to a private entity M/s. Manipal Technology Limited. For Postman/Mail guard (PM/MG), the examination was conducted on 29.03.2015 and for MTS it was conducted on 03.05.2015. The outsourcing agency handed over the results to the respondents on 21.03.2016. Pre-appointment formalities were completed by the respective divisions/units across the country. 1680 PM, 21 MG and 733 as MTS were selected. After reports, as indicated in the affidavit in reply, it was found that due to several mistakes and discrepancies committed by the outsourced agency, the decision was taken to cancel the entire recruitment process on 25.11.2016. The candidates who were appointed provisionally were terminated by resorting to Rule 5 of CCS (Temporary Service) Rules. Several candidates had approached the High Court and the Central Administrative Tribunal. As is mentioned in the matter of Prakash Bhagaji Wani (supra) the High Court set aside the decision to cancel the entire selection process and issued directions. Pursuant to such directions an exercise was undertaken, segregating the tainted candidates involved in different kind of misdeeds. Only 342 candidates who were terminated were reinstated with 50% back wages. He would also refer to part of the affidavit in reply expressly mentioning that after reinstatement these 342 candidates were extended consequential benefits of counting of qualifying service for increments, seniority, and the departmental examination, MACP, retiral benefits. However, rest of the untainted candidates were appointed after the exercise was undertaken. There was no question of their reinstatement and cannot be granted any benefit of counting of service for any purpose.

14. However, Mr. Deve would raise a preliminary objection to the petitioners invoking the jurisdiction of this Court under Article 226 of the Constitution of India without exhausting the efficacious alternate remedy of approaching the Central Administrative Tribunal and prayed that for this reason alone, the petitions be dismissed.

15. As regards the merits of the petitioners' claim, Mr. Deve would submit that in order to enable PM/MG for the promotion to the post of Postal Assistants/Sorting Assistants in postal divisions/units etc., the eligibility criteria provided for in the recruitment rules notified in GSR 411 (E) dated 21.05.2015 and circulated to all the divisions is, an experience of three years in the regular service of PM and MG and regular service of five years of MTS. The petitioners were appointed only in the year 2021 and were not eligible for appearing at the limited departmental competitive examination of 2021 and no fault can be found in holding the petitioners as ineligible. He would thus pray to dismiss the petitions.

16. We have considered the rival submissions and perused the papers. We have also carefully gone through the decisions cited at the bar. As can be gathered,

there has not been a material dispute as regards the facts are concerned.

17. A common recruitment process for the posts notified was conducted. Some of the candidates were even appointed but they were terminated on the premise that a vigilance enquiry was conducted and objectively the decision was taken to cancel the entire recruitment process. Some candidates, who were not appointed and couple of candidates who were terminated had approached this Court in the matter of Prakash Bhagaji Wani (supra). The writ petitions were disposed of with following directions:

"1. All the Writ Petitions are allowed. The order of cancellation of the entire examination is set aside to the extent of the petitioners herein.

2. The respondents are directed to verify again, whether there are any suspicious circumstances and irregularities in case of the petitioners herein and if no such suspicious circumstances, irregularities or malpractices are found as discussed in the judgment, the selection of the petitioners be restored and further process shall be completed within a period of two months.

3. As far as the petitioners in Writ Petition No. 9910 of 2017 are concerned, the respondents shall verify their record as well and if no suspicious circumstances or malpractices as discussed in the judgment are noted in their individual cases, their appointments shall be restored within a period of two months with 50% back wages.

4. In the facts and circumstances, we do not want to take any cognizance of the contempt. Hence, the Contempt Petition No. 663 of 2017 is dismissed.

5. We anticipate the request for stay of this order. Since we are granting time of two months for verification and giving effect to this order, no separate time is required to be given for obtaining stay order from the superior Court.

6. Rule is made absolute in the above terms with no order as to costs.

7. Pending civil applications, if any, stand disposed of."

18. Admittedly, some of the candidates, who had approached the Central Administrative Tribunal, were also held to be entitled to have the same reliefs as per the decision of this Court in the matter of Prakash Bhagaji Wani (supra).

19. There is also no dispute about the fact that according to the recruitment rules for promotion through limited departmental competitive examination, the eligibility criteria provides completion of three years' service in the grade of PM and MG and five years of MTS. Admittedly, the petitioners were appointed in the year 2021 and have not completed the requisite experience in the grade. For this reason they have been prevented from appearing at the limited departmental competitive examination. Their request for regularization of the service has also been turned down. This is the genesis for these petitions.

20. The issue has been addressed by the Supreme Court as well as the High

Courts in variety of matters and the common thread that can be culled down from catena of judgments cited at the bar is to the effect that all the candidates from the same selection process appointed on different dates would maintain their seniority in accordance with the select list, particularly when the delay in appointments is not attributable to the candidates.

21. With respect, according to us, judgment of the division bench of Delhi and Haryana High Court in the matter of Government of NCT of Delhi Vs. Sh. Ramesh Benniwal (supra), authored by Justice S. Ravindra Bhat (as his Lordship then was) meticulously culls down the principles by referring to several earlier decisions, some of which have been cited before us. The following observations encapsulates the whole gamut of the dispute in hand :

"16. The appointment of the respondent/applicants took place 7 years after the examination was conducted. Their juniors were naturally eligible for promotion having completed the requisite qualifying period. However they-for no fault of their own-were retained in the same grade as a consequence of their late appointment. The right of equality before law spelt out by Article 14 of the Constitution of India dictates that all individuals must be treated equally before law. If the respondents are denied promotion on the ground that they are still serving their probation period as a consequence of their appointment in 2009, the same cannot be said to be fair treatment of all the employees by the petitioners. In the present case, the rule requiring fulfilment of qualifying service is not an immutable condition, incapable of being relieved. The Office Memoranda quoted by the Tribunal, and extracts reproduced above, disclose that promotions can given to seniors whose claims are unjustly ignored, to start with. Therefore, this Court finds no infirmity with the direction to grant promotion to the applicant/ respondents. Point No (b).

19. The Supreme Court has deliberated upon the said FR and its implications in circumstances where an employee was kept away from working in a particular position in these terms in Union of India v. K.V. Janki Raman AIR 1991 SC 2010 :

"We are not much impressed by the contention advanced on behalf of the authorities. The normal rule of 'no work no pay is not applicable to cases such as the present one where the employee although he is willing to work is kept (away) by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

23. The respondents have spent a majority of the 12 years waiting on results and the procedure of being appointed to Grade II (DASS), and have been endlessly litigating the issue. Instead of pursuing their employment and working for a livelihood in earnest, the respondents who were at the threshold of starting a new life are stuck in the middle still litigating for a promotion, when they have merely followed the instruction of the petitioners. The GNCTD cannot disregard

the suffering endured by the respondents. A perusal of matters surrounding disputes against the petitioners have unearthed a similar matter decided by this court in *The Chief Secretary & Ors. v. Kuldeep Singh & Anr.* [W/P. (C) No. 8910 of 2009 decided on 24.11.2011]. The stark delays in the processing of the application of the respondent by the same petitioners in the present writ has been evidently highlighted therein. This court held;

"8. In this background, admittedly, the delay in offering the appointment to the respondent no. 1 rests squarely on the petitioner's organization and the respondent no. 1 herein cannot be faulted for the same. In fact the appointment letter would not have been issued but for the fact that the respondent no.1 approached the Principal Bench of the Central Administrative Tribunal by way of a petition under Section 19 of the Administrative Tribunal Act, 1985 resulting in the pronouncement dated 2 nd April, 2009.

15. Given the facts and circumstances noticed above, interests of justice merit that the respondent in any case would be entitled to the consequential financial benefits.

17. The respondent no.1 has been given due seniority. It is accordingly directed that the respondent no.1 would be entitled to increment from the same date w.e.f. 1st April, 2009.

In case the respondent no.1 is entitled to any other financial benefits as a result of this increment, the petitioner shall compute the same and effectuate the same as well."

[emphasis added]

26. The delay in appointment and the consequential denial of benefits is the direct corollary of the inaction of the petitioners; consequently, they cannot take advantage of their own delays in declaring results and issuing appointment letters to deny promotion to the respondents. The Supreme Court has observed in this regard in the matter of *Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur*, 1988 SCC (L&S) 1754.

"But here the appellant has been deprived of his promotion without any fault of his. High Court said that it might be sad state of affairs that the name of the appellant was not considered for promotion till he retired. High Court may feel anguish but it gives no comfort to the appellant. At least for future such an unfortunate thing should not happen to any other officer similarly situated. This malaise which abysmally afflicts any service when there is recruitment from different sources when there is recruitment from different sources crops up in the one form or the other with great disadvantage of one or the other. But then service is not constituted merely for the benefit of the officers in the service but with a certain purpose in view and in the present case for dispensing justice to the public at large."

[emphasis added]

27. The circumstances surrounding the present matter reflect a casual and indifferent attitude on part of the petitioners, which borders on being callous. The respondents have had to, in the interregnum, not only go through the ignominy of working under their juniors, but also, despite admittedly being senior to them, still continue to draw lesser pay. In the economic scenario prevailing in the country, where prices of even essential commodities have gone skyrocketing, not from year to year or month to month, but from day to day, the respondents have had to manage his affairs with a far lower pay packet than they might have got on the promotional post."

It is to be noted that the state Government had approached the High Court being aggrieved by the decision of the Central Administrative Tribunal.

22. Though the facts are obviously peculiar and different, C. Jayachandran (supra) also lays down a similar principle and right of a candidate to seek deemed date of appointment. In view of such trite legal position, there is no escape from the conclusion that since admittedly the delay in petitioners' appointments had occasioned without anything attributable to them, it would be violative of Article 14 to deprive them the benefit which has been derived by the candidates from the same recruitment process.

23. As a corollary, particularly when, admittedly, some candidates who were already appointed but were terminated and were directed to be reinstated with 50% back wages, it would be anomalous to treat the petitioners differently. It would be arbitrary as well.

24. True it is that admittedly, the recruitment rules provide for eligibility criteria as mentioned herein above experience of 3/5 years of PM/MG and MTS respectively and the petitioners having been appointed after lapse of 4-5 years of publication of the select list, only in the year 2021, they would not be having the requisite experience. In our considered view, it would be a service attribute emanating from their right to seek employment from the date they were selected. They cannot be put to any disadvantage for failure of the respondents in appointing them, may be for bona fide reasons, when their decision to cancel the selection process has been struck down by this Court in the matter of Prakash Bhagaji Wani (supra). Pertinently that decision was rendered on 03.05.2019, and unsuccessful attempt of the respondents in challenging that decision and further allowing couple of years from the direction of this High Court to be wasted before the petitioners were appointed, is an additional reason for their delayed appointments. For the lapse on the part of the respondents, the petitioners cannot be made to suffer.

25. True it is that the candidates from the same selection process, who are otherwise eligible to appear at limited departmental competitive examination having put in requisite number of service and are ready to appear at the examination are not before us. However, in our considered view, merely declaring the petitioners to be entitled to have a deemed date of appointment

when the other candidates from the same recruitment process were appointed, absence of those who have already been appointed and eligible to appear at the limited departmental competitive examination cannot be said to be necessary parties. It is not a matter of estoppel. To repeat, for no fault of petitioners, their appointments were delayed and therefore they are entitled to a deemed date of appointment. It is only consequentially that they would become eligible for counting of the service for all attributes of service including the eligibility criteria provided by the recruitment rules for appearing at the limited departmental competitive examination.

26. At the same time, as has been mentioned herein above, the petitioners from Writ Petition No. 11873/2021 have not claimed any back wages but the petitioners from Writ Petition No. 13255/2021 are claiming even the back wages. In our considered view, they are seeking to derive the benefit obtained by the petitioners from the group of petitions in the matter of Prakash Bhagaji Wani (supra). However, they being the fence sitters, who could have filed the writ petitions but had waited for the decision of this Court and still have been able to derive the benefit of getting the appointment, in our considered view, are not entitled to any back wages, albeit like all other petitioners they are entitled to have a deemed date of promotion from the date the juniors to them from the same select list were appointed. As a corollary, commensurate with their such deemed date of appointment, they would be entitled to counting of their service for the purpose of calculating the experience provided for in the eligibility criteria under the recruitment rules for promotion through limited departmental competitive examination.

27. Writ Petition No. 11873/2021 is allowed.

28. Writ Petition No. 13255/2021 is partly allowed.

29. It is declared that all these petitioners from both the petitions are entitled to counting of their service treating them to have been appointed together with all the other candidates from the same selection process, maintaining their inter se seniority for counting of service for pensionary purposes and all other incidental benefits including for counting experience for appearing at the limited departmental competitive examination.

30. Claim of the petitioners from Writ Petition No. 13255/2021 for back wages is dismissed.