
(2013) 02 CAL CK 0040
In the Calcutta High Court
Case No : WPCT No. 623 of 2012

Sunil Kumar Sammadar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 02 CAL CK 0040

Hon'ble Judges : Shukla Kabir Sinha, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Judgement

Ashim Kumar Banerjee, J.—These petitions would involve identical question of fact and law. Hence I dispose of them by this common judgment and order. All three applicants were Extra Departmental Agents (EDA) in the postal department. The applicant Sunil Kumar Samadder was appointed as Branch Post Master with effect from January 28, 1993. The applicant Anil Kumar was appointed as EDA with effect from March 3, 1997. The applicant Sukumar Das was appointed as Branch Post Master at Swadeshnagar in Betapur sub post office with effect from April 12, 2000. As per the Recruitment Rule the EDAs were entitled to be absorbed in regular post after qualifying in the departmental examination that was held from time to time. As per Recruitment Rules, before commencement of the departmental examination the Division Superintendent would announce the vacancy in the respective quota along with break down for the respective communities.

2. The list of EDA to be selected on the basis of length of service in one half of the respective quota should also be circulated in advance.

3. The unfilled vacancies of the quota for selection on the basis of service will be added to the respective quota.

4. The candidates started appearing in the departmental examination from time to time. Ultimately they were successful in 2006 and 2007. On October 16, 2009 the authority published the result as communicated by the Director, Postal

Service to the Post Master, Port Blair. The contents of the letter are quoted below:

1. The departmental quota of vacancies of postman cadre in respect of this division for the above period has been shown as "Nil" vide C.O. letter No. Rectt/X-16/2006/Vac dated 07.09.2009.

2. In accordance with the above the following officials of this division have secured qualifying marks and have been declared successful as well as surplus candidates:

(a) Shri Sunil Kumar Samaddar GDS BPM Ramnagar (2006)

(b) Shri S. Jumra Rao GDS SPM R.R. Station (2006)

(c) Shri P. Anil Kumar GDS MD Shadipur (2006)

(d) Shri Atanu Bhattacharjee GDS DA Aberdeen Bazar (2007)

(e) Shri Sukumar Das GDS BPM Swadeshnagar (2007)

5. From the contents quoted above, it would appear, all the three applicants were duly selected. Sunil and Anil were selected for 2006 whereas Sukumar was selected for 2007. The authority however, did not give any such posting on the peculiar plea, for the relevant year, there was no vacancy. They would rely upon the notification dated September 7, 2009 wherein the authority declared the vacancy in the respective zone where Andaman was shown to have nil vacancy. It would appear from said notification, the departmental vacancy in 2006 as well as 2007 in Andaman was nil. The authority would thus contend, although the petitioners were successful, they could not be given any appointment in absence of availability of vacancy in the station. In such circumstances their names were forwarded for consideration in other station where they could not come as per merit.

6. The Tribunal accepted the stand of the authority and dismissed the application. Hence, the petitioner approached us by filing the petitions.

7. Mrs. Shyamali Ganguly learned counsel appearing for the petitioners would contend as follows:

(i) Once the petitioners cleared the departmental examination they must be accommodated in the vacancies for which the examination was held.

(ii) As per the Recruitment Rules the vacancy must be declared well ahead of the examination. In the instant case, the declaration was made long after the examination that would not be permissible as per Recruitment Rules.

(iii) Although the department would contend, there was no vacancy, one Shanti Ranjan Sarkar was accommodated in the 2005 vacancy ignoring the claim of the successful candidates in the departmental examination. Shri. Sarkar was appointed as Postman in the existing vacancy posted with effect from December 5, 2009. He was accommodated in the OC category for the year 2005.

8. Elaborating her argument Mrs. Ganguly would contend, the authority, to cover up their misdeed, were trying to take shelter to the purported declaration of vacancy for the year 2007 and 2008 that was nothing but a fabricated document. Referring to the affidavits filed by administration, Mrs. Ganguly would contend, the authority annexed the Annual Direct Recruitment plan that would have no relevance in the present case. The authority was obliged to follow the Recruitment Rules.

9. Per Contra, Mr. B.K. Das learned counsel appearing for the authority would rely upon clause 2.4 of the Office Memorandum dated May 16, 2001 to show, once the vacancy was not available for sufficient candidates their name would automatically be sent to the Surplus Cell for being considered in other zone. None of the petitioners could succeed on merit in the other zone despite their names being sent there for.

10. Mr. Das relied on the decision in the case Hardev Singh Vs. Union of India (UOI) and Another, . He would rely on paragraph 24, 25 and 26 of the report where the Apex court observed, in absence of any allegation of mala fide, the assessment of the Board as regard to the appellant's performance could not be looked into. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules, the respondents ought to follow the same.

11. We have considered the rival contentions. We have carefully perused the relevant Recruitment Rules quoted supra. It is the duty of the authority to declare the vacancies well ahead of the departmental examination. There might be a situation, more candidates would qualify for the post than the actual vacancy. In such event the surplus staff could be referred to other zone for consideration. In the instance case, the authority would contend, there was nil vacancy in 2006 and 2007. Once there was nil vacancy the authority should have made it known to the candidates before the commencement of the departmental examination, they would not be considered in the zone in absence of vacancy. The authority, in fact, did not declare the vacancy at all. They did so much after holding of the examination. The conduct of the authority is deplorable.

12. The matter may be viewed from another angle. If there was no vacancy in 2005 where Shanti Ranjan Sarkar could be accommodated in 2009, how the authority could declare 2006 and 2007 having nil vacancy? The authority declared the result of the departmental examination on October 16, 2009. The examination was held much prior thereto. The result shows, the examination was held for the vacancy for the period 2006 and 2007. The nil vacancy was declared on September 7, 2009 just few days prior to the declaration of the result and much after holding of the examination. When there was nil vacancy, question of holding the examination for the year marking the vacancy for the period 2006 and 2007 could not arise at all. The authority, in our view, had committed gross illegality that, in our view, Tribunal omitted to notice. We would have accepted their contention, had there been shortage of vacancy found after declaration of

the result. That question would not be germane when there was no vacancy at all as claimed by the authority.

13. The Tribunal applications succeed. Judgment and order is set aside. The petitions are allowed.

14. The authority are directed to recruit all the three applicants within the zone within one year from the date of communication of this order. Needless to say, they would not be asked to sit for any other examination or undergo any departmental test. Till then, the existing arrangement would continue and their present status as EDA would not be disturbed. WPCT 623, 625 and 627 of 2012 are disposed of without any order as to costs.