
(2011) 01 AHC CK 0356

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46902 of 2000

Superintendent of Posts, Banda and Others

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 130 FLR 479

Hon'ble Judges : S.P. Mehrotra, J;Pankaj Mithal, J

Bench : Division Bench

Advocate : Anoop K. Srivastava, S.N. Srivastava and Subodh Kumar, for the Appellant; W.H. Khan and J.H. Khan, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Pankaj Mithal, JJ.—The Superintendent of Posts, Banda, Post Master General, Kanpur and the Union of India through Secretary, Ministry of Communication have together joined to file this Writ Petition challenging the order of the Central Administrative Tribunal, Allahabad Bench dated 5.2.1997 allowing original application No. 546 of 1992 and the consequential order 31.7.2000 rejecting the review application thereof. Post Mater General, Kanpur on 5.8.1991 notified vacancies to the posts of Postman and village Postman to be filled up division wise from the Extra Departmental Agents (in short EDAs) working in the divisions. On its basis Superintendent of Posts, Banda vide letter dated 24.5.1991 notified that the examination for promotion to the post of Postman and village Postman from amongst the EDAs would be held on 18.8.1991. Fourteen EDAs including respondents No. 2 to 6 applied and appeared in the examination. The result of the examination of other divisions was announced but that of the candidates of Banda division was withheld. Subsequently, Superintendent of Posts, Banda vide letter dated 24.1.1992 declared that the examination of the Banda Division has been cancelled by the Chief Post Master General, Lucknow.

2. The aforesaid cancellation was challenged by the respondents No. 2 to 6 by

filing original application No. 546 of 1992 before the Central Administrative Tribunal, Allahabad and a prayer was made for declaration of the result before the next promotional examination and to appoint them on the vacant posts of Postman of Kanpur Head Post Office.

3. The Central Administrative Tribunal vide impugned order dated 5.2.1997 allowed the application and directed for declaration of the result of the EDAs of Banda Division held on 18.8.1991 with further direction that the successful candidates thereof be posted against the 17 vacancies of Kanpur Head Post Office as per the Rules and to accord them seniority along with the other candidates promoted on the basis of the said examination but refused payment of salary to them for the period prior to their joining.

4. It is admitted factual position that examination for promotion of EDAs working at Banda on the posts of Postman and village Postman were notified and held on 18.8.1991 along with that of other divisions of the region. The vacancies were notified division wise and there was no vacancy of the post of Postman and village Postman in Banda Division. Out of the 20 vacancies of Kanpur Head Post Office 17 remained vacant whereas 9 out of 40 vacancies remained vacant at Kanpur City after the examination. However, 9 vacant posts of Kanpur City were later filled up by the EDAs of Aligarh Division qualifying the examination.

5. In view of the aforesaid facts and circumstances, the issue before the Tribunal was as to whether on the remaining 17 vacancies of the Postman at Kanpur Head Post Office, the EDAs of Banda Division qualifying the aforesaid examination could be appointed by promotion. The said issue was answered by the Tribunal in favour of respondents No. 2 to 6 and against the petitioners.

6. The basic submission of Shri Subodh Kumar, learned Counsel for the petitioners is that EDAs of Banda Division which is of a lower status can not be promoted to fill up vacancies of postman of a Group "A" post office.

7. The revised Rules as circulated vide letter dated 7.4.1989 of the Department of Post Office specifically lays down that the vacancies remaining unfilled shall be thrown open to the EDAs of the postal Division located at the same station and if necessary to the EDAs in the Region.

The aforesaid Rule is reproduced herein below:--

In Group A Post Offices if sufficient EDAs cannot be recruited from that office, the vacancies shall be thrown open to all EDAs of the Postal Division located at the same station. If there are still some vacancies left, such vacancies will be thrown open to the ED Agents in the region.

8. The Rule quoted above is clear enough and it provides for the manner of filling up of vacancies of group A Post Offices. The aforesaid Rule provides that the vacancies of one post office even that of Group A Post Office if remaining unfilled, can be filled up by the successful EDAs of the postal Divisions of the Region. In other words, it specifically provides for filling up of vacancies of Group A Post

Office from amongst the qualifying/successful EDAs of the division or of the Region. It is not in dispute that Banda Division though a separate Division happens to be within the Kanpur Region. It means the successful EDAs's of the Banda Division were also eligible for appointment as Postman at Kanpur Head Post Office, which happened to be a Group A Post Office, if the vacancies remain unfilled.

9. During the course of hearing Shri Subodh Kumar, learned Counsel for the petitioners in all fairness produced the copy of the letter dated 24.5.1991 of the Superintendent of Posts, Banda notifying the examination for the EDAs of Banda Division to be held simultaneously with that of other Divisions of the Region. This Court being a Court of record has taken the above letter on record and has treated it to be part of it. The said letter clearly states as under:--

10. A perusal of the aforesaid letter in unequivocal terms permit the EDAs of Banda Division to take the promotional examination with the EDAs of other Divisions of the Region with the stipulation that if the vacancies of the other Divisions remained unfilled, they would be adjusted by promotion against them. Thus, it was a conscious decision to permit the EDAs of the Banda Division to sit in the examination despite the fact there were no vacancies at Banda.

11. No contrary Rule was shown and produced before us. Since the 17 vacancies at Kanpur Head Post Office were not filled up from the local candidates through the promotional examination held on 18.8.1991 or from the successful candidates of any other Division, the successful candidates of the said examination of the Banda Division became entitle to be considered as per the above Rule.

12. The ground that no vacancies of Postman/village Postman in Banda Division were notified is not sufficient to cancel the result of the Banda Division. The promotional examination was conducted on regional basis fully knowing that there were no vacancies in Banda Division. The EDAs of Banda Division were permitted to appear for the examination obviously for the reason that if successful, they would be accommodated and promoted against the vacancies of the other divisions remaining unfilled. This is also evident from the letter of the Superintendent of posts, Banda dated 24.5.1991. Accordingly, there appears to be no valid ground for cancelling the examination held on 8.8.1991 of the EDAs of the Banda Division. The order cancelling the examination of the Banda Division is totally devoid of reasons. It assigns no reason for its cancellation. Therefore, it can not be sustained in law on this ground also.

13. In the above view of the matter, the Tribunal rightly set aside the order cancelling the examination dated 18.8.1991 of the Banda Division and directed to fill up the vacant posts of Kanpur Head Post Office from amongst the successful candidates of the Banda Division.

14. The next submission of Sri Subodh Kumar is that the unfilled 17 vacancies of Kanpur Head Post Office have been filled up and as such successful EDAs of

Banda Division can not be appointed.

15. The perusal of the impugned order of the Tribunal reveals that no such fact was brought to its notice and it was only by way of review that it was contended for the first time that the said vacancies are no longer available. The review application was rejected on the ground that there is no error apparent on the face of the record when the said facts were not pleaded and brought to the notice of the Tribunal earlier. In addition, we find that the aforesaid vacancies were not actually filled up by promotion of EDAs either working at Head Post Office Kanpur or in the division or of the Region but by transfer, recruitment on compassionate basis and some by surplus staff of some other divisions. In case there were surplus employees in some other division or dependants of employees dying in harness waiting for appointments, they ought to have been taken care of and adjusted before notifying the vacancies. The vacancies notified and remaining unfilled could not have been filled up by transferring employees from some where else or by absorption of such surplus staff of other division or by making compassionate appointments when the candidates of other divisions who have qualified the promotional examination and were entitled to be appointed on the said posts, were available.

16. Moreover, these vacancies were filled up during the pendency of the original application before the Tribunal obviously with the purpose to defeat the claim of selected candidates of the Banda Division. The filling up of such vacancies during pendency of the original application is against the analogy of doctrine of lis-pendens. Accordingly, such action can not be allowed to stand in law as it would amount to permitting authorities to cover up their own wrong doings.

17. The last submission of Shri Subodh Kumar, learned Counsel for the petitioner is that the respondents No. 2 to 6 have no vested right to be appointed even if selected and as such the Tribunal was not justified in issuing directions for their appointment.

18. It is true that no right accrues to a person to claim appointment on mere selection as has been laid down by the Apex Court in a catena of decisions including *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, *State of A.P. and Others Vs. D. Dastagiri and Others*, and *Ludhiana Central Co-operative Bank Ltd. Vs. Amrik Singh and Others*, as cited. However, the said principle would not be applicable with full vigour in the facts of the present case. In *Ludhiana Central Co-operative Bank Limited (Supra)* itself it has been observed that the appointing authority can not be permitted to act on its whims and to pick candidates of its choice from the select panel. The relevant observation of the Supreme Court in the above case is reproduced herein for the sake of convenience:-

The appointment authority can not afford to ignore individual claims at its whims or fancy, in operating such a panel or making appointments on the basis of panel, by merely "pick and choose" of candidates.

19. The selected candidates may not have a vested right to claim appointment and the appointing authority may have the power to cancel the selection, but it can not at the same time be permitted to adopt the policy of "pick and choose" by giving effect to part of the select list or panel. In other words, the selection process has to be implemented/cancelled as a whole unless valid reasons for part implementation/cancellation are assigned but it would certainly not allow the appointing authority an arbitrary discretion in the matter of appointment from the select panel.

20. In the instant case the entire selection process was not cancelled. Undisputedly, one common selection examination was held on 10.8.1991. The result of the EDAs of certain divisions was declared and given effect to and that of the Banda Division alone was cancelled by a non speaking order without assigning any reasons. Thus, giving sufficient handle to the appointing authority in making appointment on the vacancies remaining unfilled at its own choice to the disadvantage of the candidates of the Banda Division who were permitted to take the examination knowing fully well that there were no vacancies of the promotional post in the Division.

21. It may be pertinent to note that though the select candidates may not be having vested right of appointment, nonetheless where the Tribunal/Court finds that the cancellation of the selection process/examination was illegal, it does not preclude the Tribunal/Court from making good the damage done by directing appointments of the successful candidates.

In *Munna Roy Vs. Union of India (UOI) and Others*, , the Supreme Court directed for the appointment of the select candidate inspite of the fact that the candidate was not having any right to seek such appointment.

22. In the case of *S. Renuka and others (supra)*, the Supreme Court denied appointment to the select candidate only on the ground that any direction for such appointment would result in 100% reservation for women and would further amount to creation of ex-cadre post not sanctioned by the Government. This is not the situation in the present case. The vacancies have remained unfilled which under law were required to be filled up by considering the successful candidates of the other Divisions including Banda.

23. There is yet another reason which could be assigned for justifying the direction given by the Tribunal. The Tribunal while allowing the original application and quashing the order cancelling the examination of the Banda Division directed for consideration of the successful candidates only for the purposes of appointment. No specific direction for appointment in favour of the claimants respondents No. 2 to 6 was issued. Such a direction is consequential and of a general nature. In the absence of such direction, the purpose of quashing the order itself would have been rendered meaningless. The refusal to grant such a consequential relief would have frustrated the purpose of challenging the action of the appointing authority. In view of the aforesaid facts

and circumstances, we are of the considered opinion that the order of Tribunal impugned in the Writ Petition suffers from no illegality and as such no case for interference with it in exercise of extra-ordinary writ jurisdiction is made out.

Petition lacks merit and is dismissed with no orders as to costs.