

(2024) 03 CAT CK 0013

Central Administrative Tribunal Ernakulam Bench, Ernakulam

Case No: Miscellaneous Application No. 180, 188 Of Of 2024 In Original Application No.
180, 00604, 2023

Union Of India, Rep. By The
Secretary (Posts), Ministry Of
Communications And IT,
Department Of Posts, Dak
Bhawan, Sansad Marg, New
Delhi-110001 & Others

APPELLANT

Vs

Sankar. N.S, S/O N. Sivan & Ors.

RESPONDENT

Date of Decision: March 7, 2024

Hon'ble Judges: K. Haripal, Member (J); K.V. Eapen, Member A

Bench: Division Bench

Advocate: O.M. Shalina, Leela R

Final Decision: Disposed Of

Judgement

K. Haripal, Member J

1. This is a verified petition filed by the respondents in the Original Application seeking to vacate the interim order passed by this Tribunal on 21.12.2023 staying further seniority promotions in the 75% quota through DPC. This Original Application was filed by the counter petitioners in the M.A./four applicants joining together seeking to set aside Annexure-A1 order dated 21.11.2023 cancelling the LDC examination conducted on 04.06.2023 and issuing fresh notification, Annexure-A2 and to direct the 5th respondent to publish the result of the test conducted on 04.06.2023 etc.

2. Applicants are aspirants of Postal Service Group-B post by promotion in the 25% quota. It is the common case that the Postal Service Group-B posts are filled by promotion 75% selection through DPC and the remaining 25% through LDCE. Even within 25%, as per Annexure-A3 Recruitment Rules 19% of the total posts shall be filled up on the basis of a departmental competitive examination from amongst

Inspectors of Post Offices and Inspectors of Post Offices and Inspectors of Railway Mail Service with 5 years regular service in the grade and the remaining 6% to be filled up on the basis of the same departmental examination from amongst clerical line officials working in Post Offices/Divisional offices with five years regular service in the lower selection grade and above. The applicants had competed in the said 6%.

3. The grievance of the applicant is that from 2017 onwards, the 25% quota is not being filled up, notifications issued are cancelled on a regular basis, there is willful delay on the part of the department in filling up the 25%. On the other hand, the remaining 75% through DPC is being filled up unabated, thereby the interests of aspirants who are aspiring to get promotion through the 19% or 6% are being hampered. It is pointed out through Annexures-A4, A5, A6, A8, A12 etc. that the vacancies from 2021, 2022 and 2023 even though were regularly notified, either the notification was cancelled at the very beginning itself or it was being rescheduled. At last, Annexure-A6 notification was issued on 26.09.2022 intended to conduct the examination on 12.02.2023. Thereafter, through Annexure-A9 the date of examination was postponed to 21.05.2023. It was again postponed to 04.06.2023 through Annexure-A12. The applicants had participated in the test. Referring to the answer key published by the respondents they claim that they had fared well in the examination. But through Annexure-A1 the test was cancelled in an arbitrary manner, which proved that the respondents are not keen in filling up the 25% quota. On the other hand, it is pointed out that while these LDC Examinations are being cancelled, 75% quota is being filled up on a regular basis. They have pointed out that at first a panel of 116 persons was approved and all were promoted; then 110 persons were promoted as shown in Annexure-A7 and again Annexure-A11 indicates that 249 persons were promoted. That means, the respondents are protecting the interests of those who seek promotion through 75% DPC quota only whereas a step motherly attitude is being shown against aspirants of 19% or 6% as the case may be. That was how they approached this Tribunal seeking the above stated reliefs:

4. At the time of admitting the O.A. on 21.12.2023, we had stayed further seniority promotions in the 75% quota through DPC till a reply statement is filed. However we had made clear that this order will not stand on the way of proceeding with selection process notified through Annexure-A2 notification dated 21.11.2023.

5. The respondents have filed reply. According to them, it so happened that the notification was published without incorporating paragraph 3.1.2 of the DoPT OM dated 31.12.2010 touching junior-senior clause which reads thus:

“Where juniors who have completed their qualifying/ eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/ eligibility service by more than half of such qualifying/ eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the

next higher grade along with their juniors who have already completed such qualifying/ eligibility service."

They have submitted that such a clause was not incorporated in the notification, against which representations were received prior to and subsequent to the date of test. On the other hand, some of the divisions had already granted relaxation on their own, whereas some others did not give any such relaxation. Thus that led to inequality and it is observed that the equal chances were not available to everyone and natural justice demanded that department may not go ahead with the aforesaid process and that prompted them to issue Annexure-A1 cancelling the test. They also pointed out that the notification itself contained a clause reserving the right of the competent authority to cancel the notification/examination.

6. The applicant filed a rejoinder. Documents were also produced.

7. We heard Smt.R.Leela, the learned counsel for the applicants and Smt. O.M.Shalina, the learned Senior Central

8. It is very clear that LDCE vacancies are not being filled up from 2017 onwards. The documents produced by the applicants clearly indicate that notifications had been issued from 2021 onwards on a regular basis as of rite, but it were promptly recalled or cancelled. The 2021 examination was scheduled on 23.01.2022, but it was not held. The 2021, 2022 vacancies were notified with date of examination scheduled on 06.11.2022, which was cancelled due to administrative reasons. As rightly pointed out by the learned counsel for the applicants, Annexure-A6 notification propounded to conduct the examination on 12.02.2023. Later the date of test was postponed to 21.05.2023, which was again postponed to 04.06.2023. The test was held, finally on 04.06.2023 and the applicants had participated in the test. They claim that they had fared well in the test. Then through Annexure-A1 notification dated 21.11.2023 the test was cancelled on administrative reasons. Simultaneously fresh notification has been issued as evident from Annexure-A2.

9. The applicants now want the result of the test to be published and they provisionally promoted. On the other hand, according to the respondents, the earlier notification had been issued without incorporating the relevant provision regarding the junior-senior clause in the OM issued by the DoPT. Thereafter, numerous representations were received by them before and after the test and they felt that they could not give a level playing field for all the candidates and in that sense, the process was apparently vitiated.

10. The respondents have also mentioned about cases filed in other Tribunals also but the details of such cases are not available. Even though mention was made about an order of the Jaipur Bench, from Annexure-A16 it is very clear that no order of stay was passed by that Bench. But on a direction to consider and resolve the issue, the competent authority was keeping the process in abeyance.

11. Now, on account of the interim order passed by this Tribunal, it is pointed out that a stalemate has been created whereunder promotions cannot be effected through the DPC. According to the learned Senior Central Government Standing Counsel, because of the non-conduct of the selection process 25% promotion is not being done. On account of the interim order 75% quota also is unable to be filled up, that has caused considerable difficulties to the department. The public interest is affected and therefore, such an order is sought to be vacated. Reference has also been made about an interim order passed by this Tribunal in O.A.387/2018, that by the Annexure-A17 order of the Hon'ble High Court, the result was directed to be published provisionally, subject to the outcome of the said O.A. Even though the matter was taken up before the Hon'ble Supreme Court, Annexure-R1(a) order shows that the Supreme Court dismissed the SLP. But that does not relate to the subject matter in dispute.

12. However, from the order of the Supreme Court it is very clear that the Apex Court does not approve stalling such process of promotions, which would affect the working of public services. At the same time, at this incipient stage, we are unable to form an opinion on the legality or correctness of the stand taken by the respondents in issuing Annexure-A1 cancelling the test conducted on 04.06.2023. That can be done only after detailed consideration of the arguments and documents produced by the parties. Now the pleadings are complete and the O.A. can be posted for final hearing. At the same time, we feel that if the respondents are allowed to proceed with the DPC promotion, subject to the outcome of the O.A., that would not hamper the interests of the applicant.

13. When heard, the learned counsel for the applicants submitted that since rota quota rules are applicable, what is important is the date of promotion and assuming charge in the promoted post. If the case of the applicants are not considered and their chances of promotion through LDCE is abnormally delayed, that would ultimately hamper their interests and will give undue advantage to the promotees in 75% quota. We have no doubt that there is substance in the argument of the applicants. At the same time, indefinite stalling of promotion is not in the interest of public services. Therefore, we are modifying the interim order to make it clear that, promotions, if any, made in the 75% quota shall be subject to the result of the Original Application. The interim order stands modified accordingly.

The M.A. is disposed of as above.

(Dated, this the 7th March, 2024)