

(2013) 04 CAL CK 0016

Calcutta High Court

Case No: W.P.C.T. No. 426 of 2005

Union of India and Others

APPELLANT

Vs

Asim Kumar Mondal

RESPONDENT

Date of Decision: April 8, 2013**Citation:** (2014) 1 WBLR 303**Hon'ble Judges:** Nishita Nirmal Mhatre, J; Anindita Roy Saraswati, J**Bench:** Division Bench**Advocate:** Mintu Kumar Goswami, for the Appellant; P.K. Munsii, for the Respondent

Judgement

1. The Petitioners have moved this writ petition against the decision of the Central Administrative Tribunal, Calcutta Bench in O.A. No. 408 of 1997. By the impugned order, the Tribunal had directed the Petitioners to accept and give effect to the recommendations of the Departmental Selection Committee for filling up the post of Postal Assistant within a period of three months. The brief facts giving rise to the present petition are as follows:

Recruitment Rules were framed by the Department of Posts for recruitment of Postal Assistants and Sorting Assistants in 1990. These were known as the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 (hereinafter referred to as the Recruitment Rules). The Rules were amended in 1992.

2. On 27th April, 1995 the Assistant Director of Postal Services, West Bengal Circle, Calcutta, issued a Circular for filling up the unfilled vacancies of the Departmental Quota of Postal Assistants/Sorting Assistants for the year 1995. Initially, the recruitment for Postal Assistants was to be made on the basis of 50% direct recruitment and 50% departmental candidates. Only those Extra Departmental Staff who had secured not less than 10% marks in comparison with the last candidate from the open market would be eligible for being considered for appointment as Postal Assistants/Sorting Assistants. It was also stipulated by the amendment that in

case there was an insufficient number of in-house candidates, i.e., the Extra Departmental Agents, for being recruited to the post of Postal Assistant/Sorting Assistant, then the unfilled vacancies would be offered to direct recruits, provided they fulfilled the conditions of age and other qualifications.

3. It appears that in July, 1995 the Departmental Promotion Committee (hereinafter referred to as the D.P.C.) declared that there were unfilled departmental vacancies for the year 1994 for the other castes-9 and Scheduled Caste-1. These vacancies were transferred to the year 1995 for direct recruitment.

4. Applications were invited from eligible candidates of the Extra Departmental Staff for filling up the vacancies. The D.P.C. was held on 18th January, 1996 and nine vacancies had already been transferred from the year 1994 for the direct recruits in the year 1995. It appears that the D.P.C. was held on 18th January, 1996 when the Respondent's name was recommended for appointment in the category of departmental recruits. The Superintendent of Post Offices referred the recommendation of the D.P.C. held on 18th January, 1996 to the Post Master General for approval. After receipt of the recommendation, the Post Master General did not accept the same since there were no vacancies for departmental candidates in 1995.

5. Being aggrieved by the action of the Petitioners in not giving him the promotion, despite the recommendations of the D.P.C, the Respondent preferred O.A. No. 408 of 1997 seeking appointment.

6. The Tribunal directed the Petitioners to give effect to the recommendations of the D.P.C. and to appoint the Respondent as Postal Assistant within a period of three months.

7. There can be no dispute that the Respondent's name came up for consideration only in the D.P.C. held in 1996 with respect to the vacancies of 1994. There were no vacancies for the calendar year 1994 as the Petitioners had given effect to the Recruitment Rules which provided that if there were insufficient number of departmental candidates, the vacancy should be filled up by direct recruits. Thus, the vacancies for the year 1994 were exhausted by filling in the same with the departmental candidates because there were insufficient number through the open market.

8. The learned Advocate for the Petitioners submits that the Tribunal has erred in creating a vacancy for the purposes of appointing the Respondent. He submits, by relying on the judgment of the Supreme Court in the case of [Ashwani Kumar and Others Vs. State of Bihar and Others](#), that when there are no vacancies available for a particular year, the Tribunal cannot direct the creation of a vacancy so that an employee can be given employment.

9. The Supreme Court in this judgment has held that it is axiomatic that unless there is a vacancy, there is no question of filling it up. As we have already mentioned that the vacancies for the year 1994 had been filled in when the D.P.C. met in 1996, therefore even though the DPC had recommended the Respondent's case no appointment could have been given to him when there was no vacancy for the year 1994.

10. The learned Advocate for the Petitioners also submits that the recommendation of the D.P.C. cannot be binding on the Appointing Authority. He buttresses this submission by relying on the judgment of the Supreme Court in the case of [Union of India, etc. etc. Vs. N.P. Dhamania, etc. etc.](#), The Supreme Court has opined in this judgment that the recommendations of the D.P.C. are advisory in nature and are not binding on the Appointing Authority.

11. In the present case, the Appointing Authority, being the Post Master General, has not accepted the recommendations made by the D.P.C. as there were no vacancies to be filled in and, therefore, the Respondent was not entitled to the appointment by accepting the recommendation of the D.P.C. It is clear from the order passed by the Postal Authorities that the recommendation of the D.P.C. was not accepted only because there were no vacancies for the year 1994 for which the D.P.C. had been held. Thus, the Tribunal has erred in directing the appointment of the Respondent.

12. Moreover, it is now well settled that the mere empanelment of a candidate in the select list does not give him an indefeasible right to be appointed. We have been informed that the Respondent has been appointed on 12th August, 2005 on a purely ad hoc basis subject to the outcome of the present petition.

13. Considering the facts and circumstances of the present case, in our opinion, the Tribunal has erred in allowing the application.

14. The impugned order is, thus, set aside. As the Respondent has worked since 2005, the Petitioners will consider whether they can accommodate him as a Postal Assistant when the next D.P.C. is held. The writ petition is allowed accordingly with no order as to costs.