

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(1.)

CWP No.13592 of 2014 (O&M)
Date of Decision:- 31.03.2015.

Union of India and another

.....Petitioners

Versus

Munish Kumar and others

.....Respondents

(2.)

CWP No.23147 of 2014 (O&M)

Union of India and others

.....Petitioners

Versus

Dharamvir and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Namit Kumar, Advocate for the petitioners.

Mr. Aman Arora, Advocate for respondent No.1 in
CWP No.13592 of 2014.

Mr. Rohit Sharma, Advocate for respondent No.2 in
CWP No.13592 of 2014.

Mr. Rajesh Gurah, Advocate for respondent No.2 in
CWP No.23147 of 2014.

P.B. BAJANTHRI, J.

1.) In both the writ petitions, Union of India through Postal Department is the petitioner who is aggrieved by the order of the CAT dated 20.03.2014 passed in OA No.1466/HR/2012 and order dated 29.05.2014 passed in OA No.884/HR/2013.

2.) The petitioner by two separate advertisements proceeded to recruit Branch Dak Pal (Branch Postman). In both the matters, issue involved is Rule 3-A of the Gramin Dak Sewak (Conduct and Engagement) Rules, 2011. Extract of Rule 3(d) and Rule 3-A are reproduced herein:-

3 (d) "Gramin Dak Sevak" means-

- (i) a Gramin Dak Sevak Branch Postmaster;
- (ii) a Gramin Dak Sevak Mail Deliver;
- (iii) a Gramin Dak Sevak Mail Carrier;
- (iv) a Gramin Dak Sevak Mail Packer;
- (v) a Gramin Dak Sevak Stamp Vendor.

"3-A. Terms & Conditions of Engagement.

(iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family."

3.) Para 3.2 of the petitioner's circular dated 17.09.2003 is also relevant and it reads as follows:-

"3.2 As GDS is a part-time employee, a candidate applying for the post of any category of GDS will have to supplement his income from other

employment sources to as to have adequate means of livelihood to support himself and his family. A certificate to this effect will have to be obtained from the candidate before he/she is given an appointment letter.”

4.) The question for consideration in these petitions is whether the aforesaid conditions imposed for recruitment to the post of Branch Postman are valid and sustainable?

5.) The petitioner in the process of selection to the post of Branch Postman relying on the aforesaid conditions rejected the claim of the applicants before the Tribunal even though they were more merited than the selected candidates in the matric qualification (Education qualification). In other words, on the sole ground that respondent No.1 in both the petitions did not fulfill the aforesaid conditions, their candidature was not considered and the candidates lower in merit, namely, Ms. Suman Rani and Shri Dharamvir were preferred.

6.) The CAT, in OA No.1466/HR/2012 relates to first petition passed the following order:-

“In view of foregoing discussion, this OA is partly allowed by setting aside the impugned order vide which respondent no.3 was appointed as Branch Postman, Fatehgarh Tumbi. Respondents no.1 & 2 are directed to advertise this post afresh and appoint a person in accordance with law, rules, regulations on this matter. No costs.”

7.) Insofar as second petition, CAT, in OA No.884/HR/2013 passed the following order:-

“In this light of the matter, we are of the view that the applicant cannot be nonsuited. It would be incumbent for the official respondents to duly consider his claim. The official respondents are directed to bring the consideration as indicated in Annexure A-5 to its logical conclusion within two months from the date of receipt of a copy of this Order through a speaking order.

The O.A. is disposed of with the above direction. No order as to costs.”

8.) The petitioners' counsel vehemently contended that the conditions imposed for the purpose of selection and appointment to the post of Branch Postman and equivalent posts is in order and it is a policy decision of the Government. In order to sustain the decision of the petitioner in selecting private respondents before the CAT, the statement of merit list prepared by them is reproduced herein:-

Sr. No.	Name of the candidate	DOB	% of marks	Remarks
1.	Munish Kumar S/o Shyam Lal Applicant/respondent No.1.	13.01.1992	381/600- 63.50%	As per notification dated 02.12.2011, (R-1) the candidate should have some adequate independent source of income but the candidate has submitted a declaration that he has no source of income with him. Hence, his name was not been considered.
2.	Ravinder Kumar S/o Sh. Mam Chand	06.02.1990	379/600- 63.17%	The candidate has attached his father's cast certificate (R-3) and Declaration of NIL income (R-4), hence his name was not considered.

3.	Suman Rani	10.02.1993	364/600- 60.67%	Joined on 11.12.2012 (A/N) (R-5)
4.	Narinder Kumar S/o Sh. Dilbagh	01.05.1991	362/600- 60.33%	-
5.	Vinod Kumar S/o Sh. Raj Kumar	11.09.1990	344/600- 57.33	-

Extract of Merit

1.	Iswar Singh, Respondent No.2	64.80%
2.	Dharamvir, Applicant/Respondent No.1.	65.33%

9.) It is relevant to reproduce the conditions in the advertisement dated 02.12.2011:

(xi) Educational Qualification:-

(a) The candidate must have matric or equivalent examination for the post of GDSBPM. No advantage of higher education will be given.

(b) For the post of other GDS, middle pass is necessary but priority will be given to matric pass.

(xii) The Candidate must have adequate mean of independent income other than the admissible pay and allowances. In this regard, he will submit a declaration in the prescribed form before appointment.

10.) The petitioners' counsel further made a reference to decision of the Full Bench of CAT, Bangalore in **2003(1) H. Lakshmana and others Vs. The Superintendent of Post Offices, Bellary and others**, wherein The Tribunal held as follows in para 18 and 19:-

18. *It may not be permissible to debar a citizen from*

being considered for appointment to an office under the State solely on the basis of his income or property-holding. Since the employment under the State is really conceived to serve the people (that it may also be a source of livelihood is secondary) no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16. On this ground alone, the said clause in the office Memorandum dated May 25, 1991 fails and is accordingly declared as such.” (Emphasis added)

In other words, it is not permissible to debar a citizen from being considered to a civil post and it would violate Articles 14 and 16 of the Constitution.

19. *The result would be that we have no hesitation in concluding that the condition so imposed pertaining to adequate means of livelihood in the circular of 6.12.1993 must be held to be invalid. We hold accordingly. As a necessary consequence, the answer would be as under:-*

“Possessing of adequate means of livelihood in terms of Circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the abovesaid post.”

11.) The petitioners' counsel relied on the decision of the Division Bench of this Court reported in **2014(3) S.C.T. 240 (Union of India and others Vs. Rajbir Singh and others)**. In the aforesaid

decision, it is held as follows:-

“We are, thus, only inclined to modify the impugned order to the extent that it is granted the EDBPM post to Rajbir Singh without the concerned authorities finally determining the merit. Since considerable water has flown, the only requirement at the present stage would be to determine the merit inter se the two candidates before us determining whether Suresh Kumar would continue in the post of EDBPM or whether the candidature of Rajbir Singh is more meritorious on the parameters of the concerned authorities, the qualification being capable of being complied with after inter se merit is decided.”

12.) The petitioners' counsel, thus, defended the selection with reference to conditions stated in Circular read with Rules, 2011 as according to him these conditions are reasonable, fair and just and have been set down in larger public interest.

13.) Per contra, respondents counsels vehemently submitted that respondent No.1, namely, the applicants before CAT are more merited than the selected candidates with reference to martic examination and insisting for the conditions, mentioned in para 3.2 of the circular read with Rule 3-A of Rules, 2011 are nothing to do with the post of Branch Postman or equivalent posts even if it is a part time post.

14.) The crux of the matter in imposing or insisting the condition is that a candidate applying for the post of any category of GDS will have to supplement his income from other employment sources so as to have adequate means of livelihood to support himself and his family and to that extent, a certificate will have to be obtained from the candidate before he or she is given an appointment letter and so also Rule 3-A of Rules, 2011, a Sewak shall have to give an undertaking that he has other sources of income besides allowances paid are to be paid by the Government for adequate means of livelihood for himself and his family. Both the conditions are contrary to Articles 14 and 16 (1) of the Constitution of India. If a candidate is required to fulfill the aforesaid conditions, then it amounts to discrimination among the eligible candidates e.g. an 'X' candidate who has secured more marks and is higher in merit but if he does not have other sources of income or other employment sources or any additional income, he has been made ineligible by virtue of the above said eligibility condition. At the same time, it is to be noted that basic qualification is pass in matric examination, therefore, merit in the matric examination should be taken into consideration and if any social reservation policy the same shall have to be adhered. Consequently, the offending conditions are per-se arbitrary and contrary to Articles 14 and 16 (1) of the Constitution. On the other hand, if "Y" candidate if he has secured certain percentage of marks and in addition to that if he fulfills the aforesaid

conditions and given preference to such of those candidates amounts to ignoring the merit consideration. The object of selection and appointment to a public post, merit is the sole criteria. The other conditions which are stipulated are nothing to do with the post. Therefore, giving preferential treatment to those candidates who fulfill the condition as 3-A of the Rules, 2011 is highly arbitrary.

15.) At this juncture it is relevant to quote the decision of the Apex Court rendered in **State of Karnataka Vs. Umadevi (2006) 4 SCC 1** wherein it is held as follows:-

2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme.

11. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the

instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, rules or regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, rules and regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

41. In the earlier decision in Indra Sawhney Vs. Union of India B.P. Jeevan Reddy, J. speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant (sic exalted) position of Articles 14 and 16 of the Constitution in the scheme of things. His Lordship stated: (SCC pp. 633-34, paras 644-45).

16.) The rule/circular or a policy decision of the State thus, has to pass the test of Articles 14 and 16 of the Constitution. It must be free from the vice of arbitrariness and confirm to the well settled

principles, both positive and negative, underlying Article 14 and 16.

17.) We are also of the view that the rule making authority while imposing the conditions for eligibility viz. 3-A of Rules, 2011 read with para 3.2 of the circular dated 17.09.2003 was expected to act for a purpose and for that end ought to have applied correct tests taking into account relevant factors and disregard irrelevant factors while insisting for these conditions with reference to Article 14 and 16 of Constitution of India. Thus we are inclined to read down the following portion of the Rule 3-A of Rule, 2011 and 3.2 of Circular dated 17.09.2003.

“3-A. Terms & Conditions of Engagement.

(iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family.”

“3.2 As GDS is a part-time employee, a candidate applying for the post of any category of GDS will have to supplement his income from other employment sources to as to have adequate means of livelihood to support himself and his family. A certificate to this effect will have to be obtained from the candidate before he/she is given an appointment letter.”

18.) In view of our decision above, we direct the official respondents to reconsider the non-selected respondents for

selection and appointment to post in question, such consideration shall be done within two months from this day. Accordingly, the petitions are disposed of.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

March 31, 2015.

sandeep sethi