

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-22644-2015

Date of decision: 05.12.2016

Jasvir Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Dhawal Bhandari, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of Certiorari for quashing the impugned order dated 12.08.2015 (Annexure P-4) passed by respondent No. 7-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal') whereby the Original Application No. 060/00902/2014 filed by the petitioner was dismissed and also the order/letters dated 17.09.2014 (Annexures A-7 and A-8) vide which appointment of the petitioner as Postman was cancelled and respondent No. 6 was appointed in his place without giving any reason and affording an opportunity of hearing to the petitioner. Further a writ of Mandamus has been sought directing respondents No. 1 to 5 to promote the petitioner to the post of village Postman on regular basis from the due date with all consequential benefits.

2. Put pithily, the petitioner had been working as Gram Dak Sevak

(GDS)/MD Kriana VPO Musapur District Jalandhar since 19.08.1997. On 28.06.2014 and 29.06.2014, respondents No. 1 to 5 conducted competitive examination to fill up the unfilled vacancies of Postman Cadre (restricted to Grameen Dak Sevaks-GDS). The petitioner appeared and qualified the said exam and was selected in the list of surplus qualified candidates eligible for appointment as Postman. Consequently, respondent No. 4 issued letter No.B-2/10/exam/GDS/2014 dated 18.07.2014 (Annexure A-1) to the petitioner to send his willingness for the division of his choice along with his category latest by 23.07.2014. Accordingly, vide letter dated 23.04.2014 (Annexure A-2), the petitioner had submitted his willingness. Thereafter, the petitioner send reminders dated 02.08.2014 and 30.08.2014 (Annexures A-3 and A-4, respectively) to respondent No. 4 with a request to accept his willingness. Pursuant thereto, respondent No. 3 issued appointment letter No. Rectt./2-16/2014 dated 04.09.2014 (Annexure A-5) to the petitioner showing his name at serial No. 8 and allotted him Chandigarh Division. However, vide letter No. Rectt./2-16/2014 dated 12.09.2014 (Annexure A-6) issued by respondent No. 3, appointment letter of the petitioner (Annexure A-5) was ordered to be kept in abeyance till further orders, without giving any reason, whatsoever with a copy of it to the petitioner. Thereafter, the petitioner was shocked and surprised on receipt of letters dated 17.09.2014 (Annexures A-7 and A-8) from respondent No. 3 showing the name of the respondent No. 6-Mehma Singh, to be appointed as Postman in place of the petitioner. Hence, the petitioner made a detailed representation dated 25.09.2014 (Annexure A-9) to respondent No. 3 to consider his matter afresh and to provide him justice, but to no avail. Feeling dissatisfied, the petitioner had approached the

Tribunal by filing OA No. 060/00902/2014 (Annexure P-1 Colly). After due contest, the said original application was dismissed by the Tribunal vide impugned order dated 12.08.2015 (Annexure P-4). Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the impugned letters Annexures A-7 and A-8 issued by respondent No. 3 deleting the name of the petitioner from the select list and placing the name of respondent No. 6 in his place, without giving any reason and affording an opportunity of hearing to the petitioner are illegal, arbitrary and against the principles of natural justice. The learned Tribunal had also lost sight of the fact that even if there was some mistake in showing the name of the petitioner at serial No. 8 in the appointment letter (Annexure A-5) in place of respondent No. 6, in that eventuality also, the petitioner should have been given an opportunity of hearing keeping in view the principles of natural justice. In support of his contentions, learned counsel for the petitioner has placed reliance upon **Shekhar Ghosh Vs. Union of India and another, 2007 (1) SCC 331.**

4. After hearing learned counsel for the petitioner and going through the impugned order Annexure P-4 passed by the Tribunal, we do not find any merit in the present writ petition.

5. Undisputedly, the petitioner is aggrieved against the selection of respondent No. 6, who had subsequently been selected after the deletion of name of the petitioner earlier shown at serial No. 8 of the select list for the post of Postman, in pursuance to the competitive exam (restricted to the category Grameen Dak Sevaks-GDS) held on 28.06.2014 and 29.06.2014.

Admittedly, the petitioner belonged to Jalandhar Division, whereas

respondent No. 6 was of Bathinda Division. The impugned order Annexure P-4 passed by the Tribunal shows that the controversy crept in on account of some clerical mistake. In fact, out of 103 vacancies, only 41 were filled up and resultantly 62 remained unfilled which were thrown open to be filled from GDS of neighbouring divisions. The Bathinda Division, where respondent No. 6 was working vide its letter dated 11.08.2014 intimated that no candidate was available with them and, thus, information was sent as 'NIL' ignoring the fact that respondent No. 6 was already available. Hence, the name of the petitioner was empanelled for appointment. However, before issuance of appointment letters to the candidates, Bathinda Division raised an objection vide letter dated 10.09.2014 indicating that they were having two surplus qualified candidates of SC Category having secured higher marks than the last candidate in the select list and that the earlier information sent by them vide letter dated 11.08.2014 was incorrect. On scrutiny, it was found that Bathinda Division had given wrong information and as such memo dated 04.09.2014 (Annexure A-5) was ordered to be cancelled with a direction to make fresh empanelment list. Accordingly, the name of respondent No. 6 was included in the selection list. The petitioner had secured only 47 marks which were lower than Mohinder Singh, who had secured 48 marks. There were 10 surplus qualified candidates of SC, Category, who have qualified as per relaxed qualifying marks applicable to SC but due to vacancy constraints only four unfilled vacancies of SC were filled up as per their merit position. The respondents have also initiated action against the concerned official for sending wrong information.

6. From the above factual position, it is apparent on the record that there was an administrative error while showing the name of the

petitioner at serial No. 8 in the memo dated 04.09.2014 (Annexure A-5). The decision of respondents No. 1 to 5 not to fill up the complete vacancies being *bona fide* cannot be challenged by the petitioner, when it has specifically come on record that even after relaxed criteria, the petitioner could not make a mark. As such, he cannot ask for appointment once it is found that his empanelment was based on an administrative error or lapse. More so, by this time, it is well settled that administrative errors can always be corrected at any time without giving an opportunity to show-cause to the aggrieved person, in case, the order has not been carried out or it has not resulted in accruing any legal right. In the instant case, since no legal right had accrued in favour of the petitioner in the absence of implementation of any order which favoured the petitioner, non-issuance of show-cause notice or affording an opportunity of hearing to the petitioner before rejecting his selection and appointment of respondent No. 6 in our mind is not violation of principles of natural justice. The facts and circumstances of **Shekhar Ghosh's case (supra)** relied upon by learned counsel for the petitioner are distinguishable from the facts of present case and thus, no benefit whatsoever of the same can be given to the petitioner.

7. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

December 05, 2016
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No