

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Petition No.7229 of 2017

Date: 07.08.2017

Between:

G.Nagabhushanam Naidu

... Petitioner

and

The Union of India, repled by
its Secretary, Ministry of Communications
and I.T. Department,
New Delhi and 4 others.

...Respondents

**Counsel for the Petitioner : Mr. Pavan Kumar ABLN
for Mr. M.Venkanna**

**Counsel for the respondents : Mr. B.Narayana Reddy
Assistant Solicitor General**

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by dismissal of OA.No.020/099/2017 by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short 'the Tribunal'), vide order, dated 13.02.2017, the applicant therein filed this Writ Petition.

The petitioner entered the Postal Department as an extra-departmental Post Master, which was re-designated as Grameen Dak Sevak (for short "GDS"). Later, he was appointed as a regular Postman on 08-12-2015 after being successful in the departmental examination. Respondent No.2 issued notification, dated 24-06-2016, inviting applications from the GDSs for participating in Limited Departmental Competitive Examination (LDCE) to the cadre of Postal Assistants/Sorting Assistants against the vacancies of the years 2013-14. The petitioner was allowed to participate in the selection process. A final selection list was published on 03-11-2016, as per which, the petitioner was shown as selected against OC vacancy in Chittoor Division under Rank No.1 in the merit list. Respondent No.3 has declared the final result on 03-02-2017, wherein the name of the petitioner did not appear. The reason for non-selection of the petitioner was that he ceased to be a GDS on his being appointed as Postman with effect from 08-12-2015. The petitioner has approached the

Tribunal questioning non-inclusion of his name in the selection list by the respondents. The Tribunal has dismissed the said OA by holding that notification was issued by respondent No.2 inviting applications from GDSs only and that, as the petitioner ceased to be GDS, he was not eligible for being considered to the post of Postal Assistant.

At the hearing, the learned Counsel for the petitioner placed reliance on the judgments of the Supreme Court in *Union of India and another vs. Hemraj Singh Chauhan & Others*¹ and *Nirmal Chandra Bhattacharjee & Others Vs. Union of India & Others*².

In *Union of India* (1 supra), the Supreme Court held that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article-16 of the Constitution and that the guarantee of a fair consideration in matters of promotion under Article-16 virtually flows from guarantee of equality under Article-14 of the Constitution of India. Though this proposition is fairly well settled, it does not come to the aid of the petitioner for the reason that as per the afore-mentioned notification, GDSs alone are eligible to be considered for promotion to the posts of Postal

¹ CDJ 2010 SC 278

² CDJ 1990 SC 525

Assistant. Therefore, the petitioner not being an eligible employee, he cannot claim to be considered to the post of Postal Assistant as a fundamental right.

In *Nirmal Chandra Bhattacharjee* (2 supra), certain posts were restructured though vacancies therein were existing for many years. Due to such restructuring, the appellants before the Supreme Court were rendered ineligible for being considered for the said posts. In that context, the Supreme Court observed that one of the principles of service law is that any rule does not work to the prejudice of an employee who was in service prior to that date. In that case, the vacancies against which the appellants were promoted had occurred prior to restructuring of those posts and that, had the department proceeded with the selection well within the time and completed it before 1st August, 1983, the appellants would have become Ticket Collectors without any difficulty. On these facts, the Supreme Court held that the mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants.

In the instant case, the post of Postal Assistant was not restructured at any point of time. Merely because the posts of Postal Assistants were not filled up when the petitioner was working as GDS, he cannot be permitted to be treated as GDS

after he was appointed as Postman. Therefore, the judgment in ***Nirmal Chandra Bhattacharjee*** (2 supra) is of no avail to the petitioner.

For the afore-mentioned reasons, we do not find any merit in the Writ Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, interim order, dated 02.3.2017, in WPMP.No.8889 of 2017 is vacated and the said application is dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 07th August, 2017
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