

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 01.02.2017

CWP No.618 of 2017

Jagat Bahadur

...Petitioner

Vs.

Parasar Bharti & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Suresh Kumar Yadav, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J.

A vacancy arose in the cadre of Mali in All India Radio (AIR), Chandigarh when Budh Ram retired on 31.03.1998. The process was initiated by the Station Director, AIR, Chandigarh to fill the post as per Standing Instructions of the Government of India. The Employment Exchange, Chandigarh was requested by letter dated 25.06.1998 to sponsor the names of eligible candidates for the post of Mali. The names of 16 candidates were received on 10.07.1998 from the Exchange. After the interviews were conducted, the name of the petitioner was recommended for the post. He was asked to fill up the Attestation Form vide office letter dated 16.07.1998 and his case was sent to the District Magistrate, UT, Chandigarh for police verification of character and antecedents. The petitioner was informed in writing of his selection as Mali vide letter dated 16.07.1998 (Annex P-3) but appointment was not offered by an appointment letter.

In the meantime, office of the Station Director, AIR, Chandigarh received Directorate Instructions vide letter dated 02.07.1998 (Annex P-4) that there is a complete ban on direct recruitment in Prasar

Bharati. This communication compelled the office to stop further action in filling up the post. The Regional Employment Exchange was informed vide office letter dated 21.09.1998 not to strike off the name of the petitioner from the Registration Rolls and his name may be sponsored to other Departments where recruitments are pending or in the offing. As letter of appointment was not issued to the petitioner it could not be said that an indefeasible right to appointment had come into existence by mere act of selection.

Feeling aggrieved, the petitioner served a legal notice dated 24.12.1998 (Annex P-6) on the respondent-authorities, which was responded to vide letter dated 21.01.1999 (Annex P-7) citing ban on fresh recruitment as reason why the selection did not fructify in appointment. The chapter remained closed till the petitioner on learning from secret sources that the ban on creation of posts and filling of vacancies was lifted when O.M. dated 02.07.1998 was withdrawn. The petitioner says that this fact was not known to him throughout till he received a reply to his request under the Right to Information Act, 2005 to supply him information regarding the lifting of the ban. The information was received on 14.03.2016 from the respondent office when Annex P-5 came into his possession. Upon this, the petitioner wrote a representation to the respondents vide Speed Post on 23.03.2016 to appoint him and take him on duty. Meanwhile, the representation of the petitioner addressed to the Station Director, AIR, Chandigarh requesting appointment (Annex P-9) was forwarded to the Director General, AIR, New Delhi for advice. The advice received after examination of the case at the level of the Directorate to supply reason why appointment could not be offered to the petitioner is contained in the impugned letter. The reason assigned was that the selection was made on 06.07.1998 during the currency of the ban and,

therefore, the selection of the petitioner was unauthorized. The Employment Exchange had been informed accordingly. It is not known, whether the Employment Exchange informed the petitioner that his name had been revived on the Registration Rolls as that might have helped in determining whether the petitioner had knowledge constructive, real or actual of the changed position. It is, therefore, argued that the cause of action accrued to the petitioner for the first time in 2016 when he received the impugned letter and the question of delay and laches does not arise. The petitioner has approached this Court against the impugned order dated 31.08.2016, which refuses appointment because the selection was during ban and it was, therefore, unauthorized.

It is argued by the learned counsel for the petitioner that the respondents concealed the fact of lifting of the ban from him and the Station Office thereby practiced deceit on the petitioner and frustrated his claim to appointment after the ban was lifted vide O.M. dated 06.01.1999. It is further argued that the selection was in accordance with law and on open merit where 16 candidates were interviewed for one post and the petitioner was successful. Had somebody not informed him in January, 2016 about the lifting of the ban, he may still have been in the dark of his legal rights. The sore issue canvassed which has harmed the petitioner is that when the respondent – Prasar Bharti addressed letter dated 18/20.01.1999 to the petitioner's Advocate, who had served a legal notice, informing of the ban being lifted soon after his name was recommended for appointment there was no mention of the hurdle cleared in the said communication signed by the Station Officer, AIR, Chandigarh about the lifting of the ban and, therefore, a trick was played with him. It was the duty of the respondents to

have acted in accordance with law following the lifting of the ban on 06.01.1999.

Having considered the contentions of the learned counsel for the petitioner, this Court is of opinion that a selection process initiated to recruit a regular Mali on the establishment of the All India Radio, Chandigarh could not have been started or concluded if there was ban imposed against recruitment awaiting final decision on the staffing strength of the establishment. The ban was imposed on 02.07.1998 vide Annex P-4 while the petitioner was selected and informed of the selection on 16.07.1998. If this was so, then I find nothing illegal or unreasonable in the impugned order dated 31.08.2016 treating the selection as unauthorized. Subsequent lifting of the ban would not cure the defect of an unauthorized selection, which process could not have been undertaken during the period of the ban unless the Director General had permitted such course to be followed and to keep rights open for future settlement after the staffing pattern and cadre review had taken place and number of posts including those of Malis determined as functional required to be filled. Moreover, mere selection does not give rise to a vested and accrued right to appointment.

To the extent the petitioner asserts that the lifting of the ban on 06.01.1999 was informed belatedly in response to his legal notice tendered by the Station Officer, AIR, Chandigarh on 18/20.01.1999 may be a deficiency, but at the same time it is also not known whether O.M. dated 06.01.1999 was available to the authority when he wrote the letter dated 18/20.01.1999. Even assuming that the petitioner was informed of the decision of lifting of the ban through the letter dated 18.01.1999 (Annex P-7), even then it would have brought him no relief by way of appointment

since the obstacle of a selection having been made during the period of ban would not legitimize the selection. Therefore, to my mind, it matters little that the petitioner was kept in the dark.

Moreover the post being public post, it is not enough to make recruitment restricted to the Employment Exchange without calling candidates from the open market after wide publicity to the all eligible candidates to apply. The obligation to consider every qualified candidate is implicit in the equal opportunity right. Only then could such a selection have been accepted as a selection in conformity with the principles in Articles 14 & 16 of the Constitution. In Excise Superintendent Vs. K.B.N. Visweshwara Rao & others, JT 1996 (9) SC 738, the Supreme Court had observed that restricting competition to the Employment Exchange is not sufficient compliance of the principles of equal opportunity. The Apex Court observed in Para.6 as follows:

“Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange.

Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for

selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.”

Admittedly, the competition was restricted to 16 candidates, whose names were sponsored by the Employment Exchange. It is not obligatory to appoint only persons sponsored by the Employment Exchange, See: Union of India & others Vs. N. Hargopal & others, AIR 1987 SC 1227, a ruling followed in *Visweshwara* (supra).

After a lapse of 18 years, the selection would be viewed as nothing, but rendered as infructuous and defunct. For these reasons, I find insufficient ground to interfere in this matter and would dismiss the petition. However, the dismissal of this writ petition in *limine* would not preclude the petitioner, in case he is still working with the All India Radio, to press his claims on the administrative side of the Directorate General, Prasar Bharti, All India Radio, New Delhi since the impugned letter dated 31.08.2016 was not conveyed directly to the petitioner to take effect as legally binding despite long lapse of time, since the All India Radio, Chandigarh was advised to inform him accordingly. There is no further communication placed on record from Head Office, AIR, Chandigarh to the petitioner rejecting his case, and therefore, this request is issued so that the petitioner “does not spend the rest of his life cursing his luck”, a phrase used by the petitioner in Para.19 of the petition.

The reason for rejection deserves at least ought to have been communicated to the petitioner, for the reason that the impugned letter was issued to the Chandigarh Office and indirectly received by him through the Right to Information Act on request to supply it.

However, this suggestion is not to be construed as a mandamus or an expression of the opinion of the Court to suit a particular end. It is only to fulfill the demands of natural justice, the right to receive an adverse order but does not create a cause of action or availability of a legal remedy when conveyed as it is.

01.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*