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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3591/2016

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Reserved on: 29th November, 2016

Date of Decision: 22nd February, 2017

SATISH KUMAR MEENA

..... Petitioner

Through

Mr.Bhakti Vardhan Singh and
Mr.Amit Kumar Pathak, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms.Rajdipa Behura, Advocate with
Ms. Garima Singh Yadav, Mr. Hilomon Kani and
Ms. Kriti Handa, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The petitioner in this writ petition impugns the order dated 22nd January, 2016, whereby OA No. 592/2013 filed by him has been dismissed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) holding that he was not eligible for appointment as Inspector of Posts since he had been promoted as Postmaster Grade-I.

2. The Tribunal in the impugned order has referred to the decision of the Delhi High Court in W.P. (C) No. 4833/2014, *Union of India v. Virender Kumar Dahiya* decided on 28th August, 2014 and also the

decision dated 11th December, 2014 in W.P. (C) No.1564/2013, **Jawahar Singh v. Union of India and Ors**, but did not follow and adhere to the ratio laid down therein. The Tribunal preferred to follow the decision of the Karnataka High Court dated 10th June, 2013 in W.P. (C) No. 35449-35450/2012, **Sri Rananath S M & Anr. v. Union of India & Anr**, wherein a contrary view has been expressed. The reasoning of the Tribunal is that executive rules/instructions as per Article 73 of the Constitution were binding and should be followed.

3. The petitioner joined the service of Indian Posts as Postal Assistant in Auraiya Head Post Office under Etawah Division on 18th May, 2005.

4. On 12th June, 2011, the petitioner appeared in a Limited Departmental Competitive Examination for promotion to the cadre of Postmaster Grade-I. Results were declared on 30th June, 2011, but the petitioner's result was withheld. The petitioner made representations against withholding of his result and the result was finally declared on 16th November, 2011. The petitioner was declared as selected with the remarks 'selected against one withheld OC vacancy'.

5. By letter dated 7th December, 2011, the petitioner's posting order in the cadre of Postmaster Grade-I was issued. He was allocated to Agra Division. By letter dated 12th December, 2011, the petitioner declined his

promotion to the post of Postmaster Grade-I. However, this request was not accepted by the respondents and in these circumstances, the petitioner assumed charge as Postmaster Grade-I on 31st December, 2011 at Bah Post Office in Agra Division.

6. By another notification dated 14th July, 2011, the respondents had invited eligible employees to appear in the Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts. The petitioner being eligible had appeared in the said examination on 15th and 16th October, 2011. However, as complaints were received in respect of Paper-III held on 16th October, 2011, a re-examination of Paper-III was held on 29th January, 2012, i.e. after the petitioner had joined the post of Postmaster Grade-I. The petitioner was permitted and allowed to sit for Paper III examination held on 29th January, 2012, after specific permission was granted by the respondents. Subsequently, the petitioner's result was withheld on the ground that he had been promoted as Postmaster Grade-I and those who were appointed as Postmaster Grade-I were not eligible for promotion to the post of Inspector of Posts on the basis of the policy decision communicated by the letter dated 30th August, 2011 issued by the respondents.

7. It is an accepted and admitted fact that promotion by way of Limited

Departmental Competitive Examination to the cadre of Postmaster Grade-I and cadre of Inspector of Posts were governed by the Recruitment Rules framed under the proviso to Article 309 of the Constitution.

8. The Ministry of Communication and Information Technology in exercise of the powers conferred by the proviso to Article 309 of the Constitution, had notified the Department of Posts, Inspectors of Posts Recruitment Rules 2001, regulating the method of recruitment to the post of Inspectors of Posts. The 2001 Rules were superseded vide notification dated 01.02.2013. The new Rules were applicable from the date of publication. Therefore, at the time when the Limited Departmental Competitive Examination was held in October, 2011, the 2001 Recruitment Rules were applicable. Lest there be any confusion, the relevant Rules from the Department of Posts, Inspectors of Posts Recruitment Rules 2001 have been extracted below:-

“3. Method of recruitment, age limit and qualifications etc.-

The method of recruitment, age limit, qualification and the scale of Pay attached thereto shall be as specified in columns (5) to (14) of the said Schedule

4. Disqualification. – No person, –

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who, having a spouse living, has entered into or contracted a marriage with any person, shall be eligible for appointment to any of the said post

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for doing so, exempt any person from the operation of this rule.

Name of post	Number of posts	Classification	Scale of pay	Whether selection by merit or selection-cum-seniority or non-selection	Age limit for direct recruits	Whether benefit of added years of service admissible under rule 30 of the Central Civil Service (Pension) Rules, 1972
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1	2	3	4	5	6	7
Inspectors of Posts	2187* (2001) *Subject to variation dependent on workload	General Central Service, Group 'B' Non Gazetted, Ministerial	Rs. 5500-175-9000	Non-applicable	18-27 years	Not applicable

Education and other qualification required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees	Period of probations if any	Method of recruitment whether by direct recruitment or by promotion or by Deputation or Absorption and percentage of the posts to be filled by various methods.
8	9	10	11

Degree of a recognised university or equivalent	Qualification—No Age—not exceeding 40 years for appearing at the Limited Departmental Competitive Examination, relaxation by 5 years for Scheduled Caste/Scheduled Tribe Officers	Two Years	(i) 33.34 per cent direct recruitment through Staff Selection Commission, and (ii) 66.66 per cent promotion through Limited Departmental Competitive Examination
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In case of recruitment by Promotion/Deputation/Absorption grades from which Promotion/Deputation/Absorption to be made	If a Departmental Promotion Committee exists, what is its composition	Circumstances in which U.P.S.C. To be consulted in making recruitment
12	13	14
Promotion through Limited Departmental Competitive Examination (a) Not less than five years regular service in the grade of Postal/Sorting Assistants, Lower Selection Grade Officials, Stenographers in - - Post Offices, Railway Mail Service, or - Postal/Railway Mail Service, Divisional Offices, Circle Office, or -Foreign Post, or - Returned Letter Offices, or -Postal Store Depots, or -Saving Bank Control Organisation, or -Internal Check Organisation of the Circle	Group 'B' Departmental Promotion Committee (for considering confirmation)	Consultation with Union Public Service Commission not necessary
(b) (i) Not less than five years regular service in Postal Accounts Office in the grade of (a) Stenographers, or (b) Junior Accountants Provided that they may opt for appearing in the Inspector of Posts line in case of selection while appearing in the Inspectors Examination	1 Post Master General/Director of Postal Services – Chairman	

(ii) Not less than Nine years regular service in the grade of Lower Division Clerks in Postal Accounts Office Provided that they may opt for appearing in the Inspector of Posts line in case of selection while appearing in the Inspectors Examination	2 Two Group 'A' officers nominated by the Chief Postmaster General, amongst them one should be in the grade of Director – Members
Note 1: A candidate is allowed a maximum of four chances to appear in the Departmental Examination Provided that the candidate, who secure more than 70 per cent aggregate marks in fourth chance may be allowed/one more chance as a special case Provided further that a candidate belonging to Scheduled Caste/Scheduled Tribe may subject to his eligibility be allowed a maximum of six chances to appear in the said Examination Provided further also that the said Scheduled Caste/Scheduled Tribe candidate shall, if he is successful at the said Examination in his fifth or sixth chance, be entitled to be appointed only to a post reserved for Scheduled Castes or Scheduled Tribes, as the case may be	3 Officer belonging to Scheduled Caste/ Scheduled Tribe of appropriate status nominated by the Chief Postmaster General – Member
Note 2: Candidate who are serving or having served in Army Postal Service may be given such concessions in regard to age limit, maximum number of chances to appear in the Departmental Examination for appointment in those posts on obtaining the minimum qualifying marks as may be decided by the Central Government, from time to time.	
Note 3: Syllabus for the Limited Departmental Competitive Examination and the percentage of marks required for qualifying the said examination shall be as decided by the department from time to time.	

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Rule 3 stipulated that the method of recruitment, age limit, qualifications

and other matters relating to the said post was specified in columns 5 to 14 of the Schedule. The Schedule, in column 11, had stipulated that 66.66% of vacancies would be filled up by promotion through Limited Competitive Departmental Examination. Perusal of the Schedule indicates that candidates not exceeding 40 years of age and having a degree from a recognized university or equivalent and not less than five years of regular service in the grade of Postal/Sorting Assistant, Lower Selection Grade Official, Stenographers etc. were eligible.

9. The Ministry of Communication and Information Technology vide notification dated 09.09.2010 had similarly enacted recruitment rules for the posts of Senior Postmaster Group-B Gazetted, Postmaster Grade III and II - Group B non-Gazetted and Postmaster Grade – I Group C non-Gazetted, which are reproduced below:-

“3. Method of recruitment, age limit, qualifications etc.- The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns 5 to 14 of the Schedule

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5. Disqualification. – No person, –

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to any of the said post

Provided that the Central Government may, if satisfied

that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for doing so, exempt any person from the operation of this rule.

Name of Post	No. of posts	Classification	Pay Band and Grade Pay/Scale of pay	Whether selection of post or non-selection post	Whether benefit of added years of service admissible	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees
1	2	3	4	5	6	7	8	9
Postmaster Grade -I	2097 (2010)* *Subject to variation dependent on workload	General Central Service Group 'C' (Non-Gazetted-Ministerial)	Rs. 5200-20200 (PB-1) Grade Pay Rs. 2800/-	Selection	Not applicable	Not applicable	Not applicable	Not applicable

Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/ deputation/absorption, from which promotion/deputation/absorption to be made	If a Departmental Promotion Committee exists, what is its composition.	Circumstances in which Union Public Service Commission to be consulted in making recruitment
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10	11	12	13	14
Two Years	Promotion through a Limited Departmental Competitive Examination. Initial Constitution Officers who are holding the post in Lower Selection Grade in PB-1 of Rs. 5200-20200 + Grade Pay Rs. 2800/- (Pre-revised Rs. 4500-7000) in regular basis on Post Offices shall be given an option to apply for appointment as Postmaster Grade-1 at the commencement of these rules under the initial constitution. A Screening Committee constituting of the following shall assess the suitability of officers who apply for the appointment as Postmaster Grade-I at the commencement of these rules,- 1. Director of Postal Services (Headquarters) - Chairperson 2. Two officers of the level of Senior Time Scale/ Junior Time Scale or equivalent of the Department-Members	By promotion through Limited Departmental Competitive Examination, from amongst the Postal Assistants working in Post Offices in the pay band-1 and Grade Pay/Scale of Pay of Rs. 5200-20200 + Grade Pay Rs. 2400/- with five years of regular service in the grade. Note 1: The scheme of the examination shall be as per the administrative instructions issued by the Department from time to time Note 2: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service. Note 3: For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to 1.1.2006 (the date from which the revised pay structure based on the 6th Central Pay Commission recommendations has been extended) shall be deemed to be service rendered in the corresponding pay/pay scale	Departmental Promotion Committee consisting of- 1. Director of Postal Services (Headquarters) - Chairperson 2. Two officers of the level of Senior Time Scale/Junior Time Scale or equivalent of the Department-Members	Consultation with UPSC not necessary.

		extended based on the recommendations of the Pay Commission		
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10. The notified Recruitment Rules do not contain any stipulation or condition that an employee, who has appeared and cleared the Limited Departmental Competitive Examination for promotion and appointment to the post of Postmaster Grade-I, would not be eligible and precluded from appearing in the Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts. Pertinently, by notification dated 14th July, 2011 the respondents had invited applications for the Limited Departmental Competitive Examination for the post of Inspector of Posts to be held on 3rd and 4th September, 2011 (which were eventually held on 15th and 16th October, 2011 and on 29th January, 2012) also did not stipulate or specify that candidates who had appeared for the departmental examination for the post of Postmaster Grade-I would be barred from appearing for the departmental examination for Inspector of Posts.

11. Referring to the Rule position, the High Court of Delhi in ***Virender Kumar Dahiya*** (supra), had observed:-

“5. This Court has considered the submissions. What is not disputed in this case is that on the relevant dates for determination of eligibility, i.e. 12th May, 2011 and 30th June, 2011 – in respect of the post of Postmaster Grade-I and

Inspector of Posts respectively, the respondent applicant was indeed eligible for applying for both the posts. It is also not disputed that he did so. It is an entirely fortuitous circumstance that the department decided to hold the selection process of LDCE in respect of the Postmaster Grade-I earlier than that of Inspector of Posts. Being a meritorious candidate, the respondent applicant was selected as Postmaster Grade-I. However, this fortuitous circumstance is now being used against him to prevent his legitimate claim for competing in respect of the post of Inspector of Posts, which concededly, carries higher pay. We notice that the CAT had relied upon the judgment of the Supreme Court in *State of Uttar Pradesh* 2003 (1) SC SLJ 56 and *Mills Douglas Michael and Ors. v. UOI and Ors.* JT 1996 (4) SC 189, where the Court had held that the eligibility of candidate for a post has to be determined with reference to the date of advertisement or notification. The stand of the petitioner, to say the least, appears to be absurd and opposed to reason. It seeks to suppress merit and kill the motivation of its employees to excel and compete. In these circumstances, and having regard to the conspectus of facts in this case, this Court is of the opinion that the directions contained in the impugned order are fair and reasonable and do not call for interference. The writ petition is accordingly dismissed”.

12. Similarly, in *Jawahar Singh* (supra) the Delhi High Court has held:-

“7. The facts of the present case are closely parallel to that of *Virender Kumar Dahiya* (supra). So far as the distinction sought to be made by the respondent – that the petitioner underwent the training, is concerned, the Court is of the view that these details cannot make any radical difference. If the period of training i.e. four weeks is taken into account, the distinction is really insignificant. The Petitioner wan (sic. was) not put to notice that if he accepts appointment as Post Master I, he would stand disqualified from being appointed as Inspector of Posts, even though, he was eligible to apply for the said post when he did”.

13. Learned counsel for the respondents, on the other hand has relied on judgment of the High Court of Karnataka dated 10th June, 2013 in W.P.(C) Nos. 35449-35450/2012, *Sri Rananath S M & Anr. v. Union of India & Anr* wherein reliance was placed on the OM/notification dated 28.12.2011 whereby candidates who had cleared the Limited Departmental Competitive Examination for the post of Postmaster Grade-I were appointed to the said posts. The relevant clause of appointment notification dated 28th December, 2011 was as under:-

“2. Their further career progression will be in the hierarchy in the Postmaster cadre only as per the provisions in the Recruitment Rules and not in the General Line.”

Referring to the said notification, the High Court of Karnataka has held:-

“11. On the other hand, submission of Sri Pramod, learned standing counsel for the respondents is that these posts were created for the first time in the year 2010 only to provide career progression and by limited departmental examination only to the in service candidates and it was not governed by any method of recruitment, but an incentive examination offer made to the candidates in the year 2010; that assuming that the recruitment rules prevail over the executive orders/instructions as the recruitment rules, 2001 prevails over the executive orders, the rules as prevailed at the relevant time, did not contemplate the post of ‘Post Master Grade-I’ or the post of ‘Inspector of Posts’ and therefore the rules are not applicable.

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14. We find that the posts are not governed at the time of the offer being made to them by any recruitment rules and they being permitted to write the examination by the Department

based only on executive decision, creating the posts. The grievance of the petitioners insofar as non consideration or non appointment to the post of 'Inspector of Posts' and the disqualification being not as contemplated under rule-3 of the rules is concerned, it is under the rules framed as in 2013. Assuming these rules govern such appointments, it was not in vogue at the time of the petitioners writing the examination."

14. The Tribunal, in Paragraph 4 of the impugned order dater 22nd January, 2016 has referred to the respondents' letter dated 9th August, 2011 which was a clarification issued by the Department of Posts to Heads of Circles/ Chief Postmaster Generals regarding declination of promotion and appointment to those already posted as Postmaster Grade-I after having successfully cleared the departmental examination held on 12.06.2011. It was stipulated that a candidate may decline appointment after successfully clearing the departmental examination but before he is actually appointed as Postmaster Grade-I. This letter dated 9th August, 2011 is not on record and therefore we are unable to make any comment or observation regarding its applicability.

15. The respondents in fact rely upon letter dated 30th August, 2011 which is extracted *in extenso* lest there be any confusion:

"Qualification for Appearing in IPO Exam for Postmaster Grade I
Officials
30 August 2011

No. 4-29/2011 SPB.II
Government of India
Ministry of Communication & IT
Department of Posts
Dak Bhawan, Sansad Marg
New Delhi, Dated 24th August, 2011
To
The Chief Postmaster General
Uttar Pradesh Circle
Lucknow-226001.

Subject: Inspector of Posts Departmental Examination. Eligibility of officials qualified in Departmental Postmaster Grade I Examination Reg.

Sir,

I am directed to refer to Circle Officer letter No. Reett/ M- 20/ IPOs Exam-2011/3. Dated 11.08.2011 on the above mentioned subject and to say that candidates who qualified the Departmental Postmaster Grade-I Examination and the officials who are undergoing training for Postmaster Grade I may be permitted to appear in the Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts (IPO) to be held on 3-4 September, 2011, if these officials are not yet appointed as Postmaster Grade I.

Yours faithfully,

Sd/-

(D K Chanda)

Section Officer (SPB.II)

Copy to all Heads of Postal Circles/ Postmasters General

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16. In the beginning itself, we observe that we are bound by the decisions of the Coordinate Bench of this Court. Even otherwise, we respectfully agree with the reasoning given in *Virender Kumar Dahiya* (supra) and *Jawahar Singh* (supra). The decision in *Sri Ranganath S.M.* (supra), we

respectfully opine, does not notice that recruitment/appointment to the cadre of Inspector of Posts was governed by Recruitment Rules enacted in 2001. Similarly, appointment/selection to the cadre of Postmaster Grade-I was governed by Recruitment Rules enacted and enforced since 2010. The two Rules prescribe the eligibility requirements, which were/are statutory. In such circumstances, the executive instructions could not have created and enacted a disqualification and barred the petitioner from seeking appointment in the cadre of Inspector of Posts. This would amount to introducing a new condition and adding a qualification which was not there in the Recruitment Rules. This bar or condition cannot be imposed by way of executive instructions, so as to supplant the Recruitment Rules.

17. The petitioner had also appeared in the Limited Departmental Competitive Examination for promotion to the post of Postmaster, Grade-I, which was held on 12th June, 2011 and the result of which in the case of the petitioner was initially withheld and were subsequently declared on 16th November, 2011. At that time, the petitioner was selected with the remarks 'selected against withheld OC vacancy'. The petitioner was subsequently issued posting order in the cadre of Postmaster, Grade-I and allocated Agra Division vide letter dated 7th December, 2011. The petitioner declined the said promotion to the post of Post Master, Grade-I on 12th December, 2011.

Concurrently, the petitioner being eligible had appeared in the Limited Departmental Competitive Examination for the post of Inspector of Posts, in October, 2011. If the results for promotion to the cadre of Inspector of Posts had been declared in time and re-examination of Paper III was not held, the present situation would not have arisen. Results of the Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts were declared belatedly on 4th April, 2012, for re-examination of paper III was conducted on 29th January, 2012. These were fortuitous and unforeseen factors, over which the petitioner had no control. It is pertinent that the petitioner was granted permission by the respondents and was allowed to appear in Paper-III held on 29th January, 2012.

18. It is correct that the matters relating to creation or abolition of posts, prescription of qualifications, stipulation of selection criteria etc. fall within the Executive domain and cannot be substituted by judicial dictum. Nevertheless, the said executive actions or the delegated legislation must meet the test and should be in conformity with, Articles 14 and 16 of the Constitution. Courts exercise the power of judicial review, when the authorities have acted arbitrarily and the constitutional right of equality, including equal opportunity, has been violated. Statutory Rules framed under the proviso to Article 309 provide and ensure transparent and uniform

treatment. They prevent any abuse or discrimination from creeping into matters relating to of employment and service conditions. In the present case, we have statutory Recruitment Rules framed in exercise of the power conferred under the proviso to Article 309 of the Constitution. The petitioner was eligible and qualified as per the Rules prevailing at the time when he had appeared in the Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts held in October, 2011. He had not incurred any disqualification, as per the said Rules. Pertinently, the respondents had themselves, vide letter dated 30th August, 2011, had averred that candidates who had qualified the Departmental Examination for Postmaster, Grade-I including those who were undergoing training for appointment to the said post, would be permitted to appear in the Limited Departmental Competitive Examination for promotion to the cadre of Inspector of Posts, if they had not already been appointed as Postmaster Grade-I. This was fair and just in the given facts. The letter did not stipulate that appointment as Postmaster Grade-I, post the examination, would result in disqualification.

19. The Karnataka High Court's decision has proceeded on a factually incorrect premise that there were no Recruitment Rules in position when the Limited Departmental Competitive Examination for promotion to the grade

of Inspector of Posts was held and the rules were only notified for the first time with effect from 1st February, 2013. It is in this context that primacy was give to the executive instructions, which had stipulated that even if a candidate has qualified and was eligible for promotion to the cadre of Inspector of Posts, he would be disqualified if he had secured and been appointed to the post of Postmaster, Grade-I.

20. The executive policy decision in the present case is not only contrary to the Recruitment Rules, but fails to take into account relevant facts. In the present case, the results for selection to the posts of Inspector of Posts were delayed for administrative reasons. This delay was not factored and considered before the letter dated 11th July, 2012 was issued to the petitioner informing him that he was not eligible for promotion as Inspector of Posts as he had been promoted and appointed as Postmaster Grade-I. The fortuitous circumstances beyond the control of the candidates as per the policy decision would bestow and confer right to appointment as Inspectors of Posts to candidates lower in the order of merit and disqualify the petitioner and others higher in the order of merit. It is in this context the question of invidious discrimination would arise. We are unable to understand the reasoning and ground to bar or prohibit the petitioner by creating this fetter for selection/appointment, and even though they had

permitted the petitioner to appear in Paper No. III for the post of Inspector of Posts on 29.01.2012. The oscillation demonstrates that the respondents were themselves confused and uncertain. However, instead of being fair, and giving the meritorious candidates a chance, they have denied and deprived the petitioner his right to appointment, even after being selected.

21. Considering all the circumstances, for the foregoing reasons the petition is allowed. The petitioner's case for appointment as Inspector of Posts will be considered according to merit position in the selection process. He would not be treated as disqualified as he was appointed as Postmaster Grade-I. If selected, the petitioner's appointment will be with effect from the date on which his immediate junior was appointed. However, only notional benefit of pay fixation and all others consequential benefits including seniority shall be given, but not the arrears of salary. The consequential and necessary orders shall be issued by the respondents within a period of six weeks from the date a copy of this order is received. No orders as to costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

FEBRUARY 22, 2017/b

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