

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3279 of 2018

- =====
1. The Union of India through the Secretary-cum-Director General, Department of Posts, Govt. of India, Dak Bhawan Sansad Marg, New Delhi.
 2. The Chief Post Master General, Bihar Circle, Patna.
 3. The Director of Postal Services, Central Region, Bihar Circle, Patna.
 4. The Assistant Director of Postal Services (Recruitment), Office of the Chief Post Master General, Bihar Circle, Patna.
 5. The Superintendent of Post Offices, Bhojpur Division, Arrah.

.... Petitioner/s

Versus

1. Shyam Bihari, Son of Shri Pati Ram Yadav, Village-Station Road, Dumraon (In Front of Maharaja Petrol Pump), Post-Dumaraon, District-Buxar.
2. Ramesh Singh, Son of Dalan Singh, Village-Nidhua. P.O.-Pasahara Via Dumaraon, Buxar.
3. Sujay KUMAR, Son of Sukhraj Singh, Village and Post-Sondhila Via Bibiganj, District-Buxar.
4. Deep Ranjan, Son of Baijnath Mishra, Resident of Kunj Bihar ki Gali, Tiwari Tola, Village and P.O.-Dumaraon, District-Buxar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Addl. S.G.
Mr. Rajesh Kumar Verma, C.G.C.

For the Respondent/s : Mr. Debanjan Choudhary, Adv.
Mr. O.M. Prakash Singh, Adv.
Mr. Anil Kumar Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 09-04-2018



Union of India is before the Court under Article 226 of the Constitution of India assailing the decision dated 19.09.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 268 of 2016. Since the O.A. application has been allowed giving a direction upon the respondents-Postal Department to consider the case of the applicant, who are private respondents for appointment against the promotion quota in a non-existent vacancy for the Bhojpur Postal Division, the impugned order is being assailed.

The private respondents are employees of the department of post and holding the post of a Postman in Bhojpur Postal Division at Ara. They are entitled to further promotion as Postal Assistants and Sorting Assistants through a limited competitive examination for which advertisement was issued and applications invited. Claim of the private respondents before the Tribunal was that they qualified in the examination and they are entitled to be promoted to the post of Postal Assistants but have not denied benefit for want of vacancies. They moved the Central Administrative Tribunal trying to establish their right for such appointment.

The Postal Department in the counter affidavit filed before the Central Administrative Tribunal in no uncertain terms took a stand in paragraph-5 of the written statement which reads as under:-

“5. That the applicants had applied for LGO



examination to be held for promotion to the cadre of postal assistant/sorting assistant for the vacancy year 2014. The said examination was held on 23.11.2014 and the result thereof was declared on 03.07.2015. But since there was no available vacancy in LGOs cadre in the year 2014, in Bhojpur Postal Division, Arrah, the applicants could not be appointed.

It is further humbly stated and submitted that the result of the said examination was declared on the basis of the announced vacancies for the concerned division. The surplus result was also announced the same day against the unfilled vacancies of the said examination.

It is further humbly stated and submitted that as per the Gazette of India, Extraordinary Part II-Section dated 03.11.2011, circulated by the Postal Directorate under 3-sub section (i) No. 601 page no. 7 (10) (a) provision as “50% of the posts by promotion through a Limited Departmental Competitive Examination failing which the unfilled vacancies shall be filled by the direct recruitment of Gramin Dak Sevaks of the recruiting division or unit on fulfilling the following condition as on 1st day of January of the year to which the vacancy (ies) pertain to, the basis of examination limited to such Gramin Dak Sevaks, and if the post still remain unfilled by the Gramin Dak Sevaks, these shall be filled by direct recruitment from amongst



other open market candidates of the same year, fulfilling the age and qualification condition.”

Copy of the circular is annexed herewith and is marked as annexure R/1 to this written statement.”

However to rebut the position of the Postal Department, the private respondents obtained certain inputs and information under Right to Information Act and they produced inputs so obtained, which has been taken note of by the Central Administrative Tribunal in paragraph-15 of the decision. Paragraph 15 is reproduced hereinbelow for the reason that the whole order of the Central Administrative Tribunal is based on the factual position noted in the said paragraph:-

“15. It is also noted that the applicants have, under RTI, obtained information as per which they have received sufficient marks to be declared successful in the said LDCE examination. Each applicant had been provided details of marks obtained in the examination which was held on 23.11.2014. It is also noticed that respondent no. 5 i.e. the Superintendent of post Offices, Bhojpur Division, Arrah had replied under RTI, vide its communication dated 27.07.2015 [Annexure A/3 series] showing the details of staff position in Bhojpur Division, which are as below:-

1	2	3
(a)	Total no. of sanctioned post of Group ‘C’	429



(b)	Total no. of retiring Group C official in 2012 & 2013	15
(c)	Total no. of Group C official in 2015 & 2016	11
(d)	Total no. of serving Group C official	370
(e)	Vacant post of Group C (Postman cadre only)	6

Learned Additional Solicitor General representing the Union of India has submitted that a serious error on fact as well as law has been committed by the Central Administrative Tribunal by taking inputs under the Right to Information Act as sacrosanct. They, in turn, take a stand that any vacancy which arose either due to retirement or death, post advertisement will accrue for future recruitments and those vacancies cannot be clubbed in the advertisement which was earlier issued for purposes of creating vacancies to be filled up at the dictates and direction of the Central Administrative Tribunal.

To reinforce what was the stand taken before the Central Administrative Tribunal with regard to vacancies, the Postal Department has annexed Annexure-1 to the writ application which is dated 30th June 2014. This Communication relates to the conduct of limited departmental examination for promotion on Lower Grade Officials to the cadre of Postal Assistants/Sorting Assistants for the year 2014 which was to be held in 21st September, 2014. The letter addressed to the Assistant Director General, Postal Department, New Delhi refers to the earlier letter dated 3rd June, 2014 which related to the vacancy position which was required to be informed, across the



country.

Annexure-1 also has an enclosure which at page-13 of the writ application and this chart shows vacancy position of the year 2014 against 50% promotional quota for the Bihar Circle. The list of postal divisions and the vacancy position are indicated therein. It also indicates the reservation which is available under the various posts and a glance at the said chart would indicate that so far as Bhojpur is concerned, no vacancy has been shown which was required to be filled up. The Court does take note of the fact that the document which has been brought on record in the writ application should have been produced before the Central Administrative Tribunal in support of what was stated in paragraph-5 of the written statement. May be the Central Administrative Tribunal did not accept a bald statement made in the written statement about the lack of vacancy but then Annexure-1 is a document which is official in nature and relates to the advertisement showing the vacancy position. Therefore, if there was a doubt as to the statement made in paragraph-5, then the Tribunal could have demanded production of certain supporting documents. As such, before negating it and accepting the information which was provided under Right to Information Act, which does not reflect the true vacancy position which existed at the time of advertisement for such promotional post proper deliberation should have been made.



The information under the R.T.I. Act is always based in the manner in which questions are formulated and information sought. I am not here to argue whether the information so provided is correct or incorrect. Even if it is held to be correct, the vacancy position, which is reflected therein, did not relate back to the advertisement because if the vacancies did not exist for Bhojpur Division then there was no occasion for appointing anybody on the basis of the applications which may have been filed on behalf of the employees of that Postal Division.

The Court would also like to opine that any vacancy which may have arisen subsequently after the advertisement cannot be included as part of the recruitment exercise because those vacancies will be utilized for future recruitment and to that extent, the Central Administrative Tribunal seems to have erred in giving direction to consider the case of the private respondents for their appointment under the promotional quota relying solely on the R.T.I. Information.

We are satisfied that the vacancy position, which was communicated to the headquarters of the Postal Department at New Delhi, which formed the basis for issuance of advertisement and the conduct of the departmental examination, has significance and relevance for such appointment. The Central Administrative Tribunal cannot force the department to fill up vacancies which were not



available at the time of advertisement.

A case is made out, therefore, to interfere with the order dated 19.09.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 268 of 2016. The impugned order stands quashed.

The vacancies, which have been shown to have arisen in RTI, will be utilized for future exercise, as and when it is held.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Devendra/Arjun

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.4.2018
Transmission Date	NA

