

Item- 20-24	23-06-2021	WP.CT 5 of 2020
		Union of India & Ors.
		Versus
sg	Ct. 16	Pradip Biswas
		With
		WP.CT 6 of 2020
		Union of India & Ors.
		Versus
		Sumita Shit
		With
		WP.CT 7 of 2020
		Union of India & Ors.
		Versus
		Sujata Koley (Saha)
		With
		WP.CT 8 of 2020
		Union of India & Ors.
		Versus
		Tapashi Das (Saha)
		With
		WP.CT 9 of 2020
		Union of India & Ors.
		Versus
		Sanjib Sarkar
		(Through Video Conference)

Mr. Debapriya Gupta, Adv.
Mr. Arijit Majumdar
...for the petitioners

Mr. Arpa Chakraborty, Adv.
Mr. Ujjal Ray, Adv.
...for the respondents

Since common questions of law and facts are involved in

all the five matters, by consent of parties, these matters are taken up together and disposed of by this common order.

The writ petitions are directed against a common order dated 22nd February, 2019 by which eight original applications filed under Section 19 of the Central Administrative Tribunal Act were disposed of. Since identical facts have been pleaded and common issues have been raised, the matters were taken up analogously and disposed of by the learned Tribunal by the said common order. The applicants before the learned Tribunal have prayed for setting aside of the Office Order dated 24th August, 2016 issued by the Assistant Superintendent of Post Offices of the respective Divisions whereby the applicants were relieved from their services.

The learned Tribunal allowed the said application and directed the authorities to allow the applicants to continue on the basis of their selection made in 1998 as allowed to one Jayanta Kumar Pal, the applicant in O.A. No. 1091 of 1999. The facts that are necessary for the present purpose are stated below.

The applicants were appointed as Extra Departmental Agent (hereinafter referred to as 'EDA') after due selection by a competent authority and the applicants have joined their respective posts in the year 1998. The respondent authorities, however, in 1999 decided to cancel their appointment on the ground of alleged irregularity in the matter of their selection, alleged to have been committed by the recruiting authority, Sri Ashok Kumar Maity, Assistant Superintendent of Post Offices. The cancellation order was issued on 20th August, 1999. Pradip

Biswas on 30th August, 1999 approached the learned Tribunal in O.A. 1107 of 1999. The Tribunal restrained the respondents from issuing any final order on the basis of a show cause notice dated 27th August, 1999 and finally disposed of the said original application with the following directions:

“6. Regarding show cause notice dated 27.8.99, we find that that has been issued after filing of this case and after taking decision of cancellation of appointment of the applicant. We are of the view that the respondents cannot cure this defect as pointed out above, by issuing subsequent notice of show cause to the applicant and others concerned because denial of reasonable opportunity of being heard to the applicant and others under the rules of Principles of Natural Justice affects the Article 14 of the Constitution. So, such notice of show cause dated 27.8.99 is also not sustainable under the rules and is liable to be quashed. Accordingly, the show cause notice dated 27.8.99 is hereby set aside.

7. The respondent authorities may take necessary action in this matter as per the extant rules after giving proper opportunity of being heard to the applicant if there is no post to accommodate the applicant on the basis of the alleged selection. But if the post in question is available in the department, the applicant shall be regularized as per rules. Accordingly, the application is allowed after setting aside the impugned order dated 20.8.99 and the notice of show cause dated 27.8.99. Liberty is given to the applicant to approach this Tribunal afresh if he is aggrieved by the decision of the authorities concerned. Both these observations, the application is disposed of at the stage of admission without any order as to costs.”

Similarly, some of the applicants also filed their respective applications seeking similar reliefs. The order passed in O.A.

No. 1091 of 1999 by the learned Tribunal in the matter of Jayanta Kumar Pal who was similarly placed as that of Pradip Biswas and other applicants was challenged before this Court in WPCT 64 of 2002. The Hon'ble High Court by an order dated 28th March, 2021 modified the order of the learned Tribunal in the following manner:

“..... and even the learned Tribunal was justified to quash the subsequent show-cause notice dated 27th August, 1999 being a show-cause notice asking the present petitioner and other persons concerned as to why for irregular appointments due to illegality in conducting the selection process their appointments should not be cancelled, was also set aside, on the reasoning that this show-cause notice was issued during pendency of hearing of the original application before the learned Tribunal and also on the reasoning that once the appointment was set aside by Review Committee, there was no scope to issue show-cause notice asking as to why appointment should not be cancelled, committed irregularity by not granting any liberty to Union of India to proceed in accordance with law on that issue of illegal selection process. The writ petitioner is aggrieved for that as it has power of proceed de novo.

Having regard to the impugned order and the submission made by the parties, we are of the view that the order of learned Tribunal should be modified to this extent that the writ petitioner will be at liberty to proceed denovo against the concerned appointees against whom vigilance report has been filed pointing illegality in selection process in accordance with law, by giving proper opportunity of hearing, show-cause etc. to the respondent appointees.

All the writ applications are allowed to that extent.

The application being CAN 9600 of 2010 filed by the respondent no.1 stands rejected as subject matter contended

in this application, was not the subject matter of lis, before the learned Tribunal below.

Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.”

In terms of the aforesaid directions, the show cause notices were issued and their appointments were set aside by the Review Committee. In the fact of Sujata Koley (Saha), who is the respndent in WPCT 7 of 2020, the respondents found her recruiutment to be void ab-initio and while terminating her service as provisional postman the respondent had issue the impugned order on 24th August, 2016. The ground for her termination and also the termination of the other applicants are similar and captured in the following paragraphs:

As per Memo no B1-54/Gr D/Selection/N/Ch-II dated 04-08-1998 of the Sr Supdt of Post Offices, North Kolkata Division, 13 EDAs of North Kolkata Division were selected for appointment to the cadre of Gr ‘D’. Consequent on promotion of such EDAs to Gr ‘D’, vacancies in 13 ED posts under recruiting/appointing sub units occurred. Shri A K Maity, the then ASPOs, North Kolkata 1st Sub Division, holding joint charge of the ASPOs, North Kolkata 2nd Sub Division, notified vacancy of 9 ED posts as hereunder:

<i>Name of the Recruiting Unit</i>	<i>Particulars of Vacant ED Posts</i>	<i>Date of vacancy occurring</i>	<i>Vacancy Reserved for</i>
<i>ASPOs. North Kolkata 1st Sub Division</i>	<i>ED Packer, Belgachia Road PO</i>	<i>17-08-1998</i>	<i>SC</i>
	<i>ED Packer, Kalakar Street PO</i>	<i>17-08-1998</i>	<i>OC</i>
	<i>ED Packer, Kalakar Street PO</i>	<i>17-08-1998</i>	<i>SC</i>
	<i>EDSV, Ghughudanga PO</i>	<i>17-08-1998</i>	<i>SC</i>
	<i>EDSV, Belgachia PO</i>	<i>17-08-1998</i>	<i>OC</i>
	<i>ED Packer, Jawpur PO</i>	<i>08-08-1998</i>	<i>SC</i>
<i>ASPOs, North Kolkata 2nd Sub-Division</i>	<i>EDSV, Sinthee PO</i>	<i>14-08-1998</i>	<i>SC</i>
	<i>EDSV, Indian Research PO</i>	<i>17-08-1998</i>	<i>OBC</i>
	<i>ED Packer, Cossipore HO</i>	<i>17-08-1998</i>	<i>OC</i>

It was observed that there was shortfall of representation of SC & OBC communities in ED posts at the point of time of vacancies occurring and processing selection/appointment of EDAs in each sub unit against which vacancies notified/candidates selected were as under:

<i>Name of the Sub Unit</i>	<i>Shortfall of Representation</i>	<i>Vacancies Notified for</i>	<i>Candidates selected/appointed</i>
<i>1st Sub Division</i>	<i>SC 10</i>	<i>OC:2</i>	<i>OC:2</i>
	<i>OBC:10</i>	<i>SC4</i>	<i>SC:4</i>
<i>2nd Sub Division</i>	<i>SC:5</i>	<i>OC:1</i>	<i>OC:1</i>
	<i>OBC:3</i>	<i>OBC:1</i>	<i>OBC:1</i>
		<i>SC:1</i>	<i>SC:1</i>

It is clear from the discussion above that calculation of shortfall of representation of reserved communities in ED posts of respective sub units as a whole unit-wise was not made correctly. As a result, vacancies notified did not conform to the overall representation of SC & OBC communities as prescribed by the Govt. of India. This was in violation of the DG, P & T letter No’ 43-117/80-Pen dated 08-10-1980.”

The issues raised primarily before the learned Tribunal were that since the original applicants before the learned Tribunal were in no way responsible for any illegality or irregularity in the matter of appointment and they were subsequently promoted provisionally during their long tenure of employment which spanned over 20 years, their services could not be terminated. It was further urged before the learned Tribunal that the order of the Hon’ble Division Bench in the earlier proceeding has been misconstrued as there is no vigilance

report against the present appointees concerning their roles in the matter of procuring appointment. The respondents, however, contended before the learned Tribunal that the exercise undertaken by the present petitioners was in consonance with the order passed by the Hon'ble Division Bench and by a reasoned order, the services of the said applicants were terminated.

The learned Counsel for the petitioners have reiterated the submission made before the learned Tribunal and submitted that the applicants are all back-door entrants and by reason of the illegal appointment, they cannot claim continuance in service. It is submitted that in the matter of public employment, the guidelines are required to be followed and in the event anyone has entered the service not in accordance or in consonance with the rules and regulations, they cannot claim any equity. It is submitted that the order of the Hon'ble Division Bench makes it clear that a fresh exercise is to be undertaken with regard to the irregular appointment and the writ petitioners were given liberty to proceed de-novo against the concerned appointees.

We are afraid that the interpretation given by the learned Counsel appearing on behalf of the petitioners was not what the order actually states. In fact, we have quoted the relevant observations made in the order while modifying the earlier order of the learned Tribunal. The order unmistakably states that the de-novo enquiry should be against the concerned appointees against whom vigilance report has been filed pointing illegality in selection process in accordance with law. A coordinate Bench before whom the applications were initially moved by an order dated 14th February, 2020 and 28th February, 2020 directed the

present petitioners to file an affidavit enclosing the vigilance report in order to ascertain if any of the individual original applicants had any role to play in the matter of their appointment. The report has been filed before us. The explicit status of the report does not indicate any role played by the individual appointees in the process. The vigilance report does not indicate any role played by the individual selectees or their involvement in the matter of recruitment. The order of the Hon'ble Division Bench dated 28th February, 2011 has been accepted by the writ petitioners. The writ petitioners cannot travel beyond the said order. The said order is conclusive in between the parties to the proceeding. The said issue has already attained finality and cannot be reopened being hit by the principles of resjudicata. The explanations given now based on the vigilance report are the same which were not accepted by the earlier Division Bench or by the Tribunal. The scope of enquiry of the Tribunal is limited to the extent of ascertaining whether the concerned appointees had any role to play in procuring illegal appointment. It is clear from the record that they were all selected through a process and thereafter they were promoted provisionally after they became successful in the departmental examination. Moreover, we find that the Postal Department Circulars dated 18th May, 1979 and 30th December, 1999 explicitly state that efforts should be made to give alternative employment to EDA who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge, they had put in not less than three years' continued approved service. In view of the fact that they have been appointed through a process in which they had

no role to play and subsequently on the basis of their performance in the departmental examination they are provisionally promoted, we are of the view that the order passed by the learned Tribunal does not suffer from any illegality. The learned Tribunal has meticulously recorded the facts and dealt with the issue in the manner which is expected to be done by a Tribunal. Findings of the said Tribunal are in paragraphs 9, 10 and 11 which are reproduced hereinbelow:

“9. We notice that the impugned order vividly demonstrates that the shortfall in representation of SC and OBC in the first Sub-Division was 10 each whereas vacancies were notified for OC as 2 and for SC as 4 against which 2 OC and 4 SC candidates were selected. Therefore against 4 SC vacancies notified, 4 SC candidates were selected. Again, in regard to second Sub-Division, as against the shortfall of 5 SC and 3 OBC, 1 OC, 1 OBC and 1 SC were selected. Therefore, irrefutably and indubitably, only against SC notified vacancies, the present SC candidates were selected. Therefore, palpably and without any iota of doubt, the selection of OC candidates against the vacancies, which ought to have been reserved and notified for SC and OBC, could only be termed as illegal or irregular. Since all the present applicants belong to the SC and OBC community their appointments could not have been set aside on the ground that the department had failed to act in terms of the guidelines to make good the shortfall in representation of the SC and OBC in the appointments. The Respondents could have segregated the 3 OC appointees and allowed the applicants to reap the fruits of their appointments, in view of the fact that neither they had any role to play in the erroneous notification nor in regard to a wrong quantification of the shortfall or wrong distribution of reserved vacancies against each category. In view of such, it cannot be said that they have illegally enjoyed the years of their service, as the Respondents have alleged.

10. In our considered opinion, the Respondents have gone haywire while misinterpreting the tenor of the decision of the Hon'ble High Court in proceeding de novo against the applicants in absence of any vigilance report against them. Although show cause notices were issued to them and opportunity of hearing was also afforded, it was evidently a futile exercise undertaken by the Respondents while misdirecting themselves.

11. Therefore, for the ends of justice, and in view of the fact that the present applicants, who belong to SC and OBC categories, have already rendered 20 years of service and some of them have even earned promotion as Postman, although on provisional basis, we quash the order issued on 24.08.2016, impugned in the present O.A., and direct the authorities to allow them to continue on the basis of their selection made in 1998 as allowed to one Jayanta Kumar Pal, the applicant in O.A. No. 1091/1999."

From the aforesaid observations and also as borne out from records that all the present applicants belong to SC and OBC community and their appointments could not have been set aside on the ground that the department had failed to act in terms of the guideline to make good the shortfall in representation of the SC and OBC in the appointments. Moreover, one of the applicants namely, Jayanta Kumar Pal, was allowed to continue on the basis the of the same selection process that was made in the year 1998. On the basis of the Circular dated 18th May, 1979 and 30th December, 1999 and the order passed by the Hon'ble Division Bench on 28th March, 2011, we are of the opinion that since there is no adverse vigilance report against the present petitioners, the conclusion arrived at by the learned Tribunal on the basis of the materials on record and as captured in paragraph

nos. 9, 10 and 11 which do not suffer from any infirmity, there is no reason to interfere with the order passed by the learned Tribunal.

The writ petitions accordingly stand dismissed. However, there shall be no order as to costs.

The affidavit filed in terms of the order dated 28th February, 2020 in all the matters are taken on record.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)