

13.08.2025
(D/L-4+5)
Ct. No.4
(B.K.N.)

W.P.C.T. 247 of 2023

Arun Kumar Roy
Vs.
Union of India & Others

With

W.P.C.T. 246 of 2023

Gopal Chandra Bej
Vs.
Union of India & Others

Mr. Pratip Kr. Chatterjee, Sr. Adv.,
Mr. Mihir Kundu,
Ms. Maitrayee Chatterjee

...for the Petitioners

Mr. Pramod Kr. Drolia,
Ms. Sarda Sha

...for the Respondents/U.O.I.
in W.P.C.T. 247 of 2023

Mr. Sahasrangshu Bhattacharjee,
Ms. Indrani Chakraborty

...for the Respondents/U.O.I.
in W.P.C.T. 246 of 2023

1. Supplementary affidavit filed by the petitioner is taken on record.
2. The applicant/petitioner's father died in harness on 18.01.1998. It is the case of the applicant/petitioner that he was approved for an appointment on compassionate ground as a Postal Assistant way back in 2001. It is the petitioner's case that thereafter he was appointed as a Gramin Dak Sevak (GDS) on 28.04.2003. This appointment was given on compassionate grounds which he has accepted with objection. The petitioner while accepting such

appointment raised a specific objection that since he was earlier approved for being appointed as a Postal Assistant he should be given an appointment as Postal Assistant and acceptance of the compassionate appointment as GDS cannot in any way be taken to be relinquishment of the petitioner's claim for appointment as a Postal Assistant.

3. Having accepted the appointment in the year 2003 the petitioner approached the Tribunal by filing of an Original Application. The Original Application was registered and numbered as O.A. No. 820 of 2011, and O.A. No. 819 in respect of petitioner of W.P.C.T. No. 246 of 2023. Before the Tribunal the respondent authorities placed on record some office memorandum and communications to submit that the authorities could only offer appointment on compassionate grounds to the limited extent of 5 per cent of the existing vacancies. Since as per law derived from various earlier judgments, the compassionate appointment being in exception to the rule, the authorities could not compromise on the efficiency of the institution by offering compassionate appointment against vacancies beyond and in excess of 5% of the total vacancies. The authorities as per the communications placed on record in the Original Application were thus faced with a circumstance where the waiting list for benefit of compassionate

appointment was mounting and as a result depriving the persons who were already approved for appointment on compassionate ground. Since the compassionate appointment is to tide over the sudden crisis arising from the loss of the bread earner. It was considered prudent by the authorities to offer appointment as GDS also, since such vacancies were in abundance. The authorities, therefore, took a policy decision to offer compassionate appointment also as GDS but subject to a consent being given by the person waiting in queue for compassionate appointment.

4. The Tribunal has taken into consideration the grounds raised by the authorities as well as the assertion made by the applicant/petitioner that though vacancies existed in the permanent establishment they were offered appointment as GDS. The Tribunal was not inclined to go into the issues whether vacancies existed more than a decade back when the applicant/petitioner had accepted appointment and, therefore, disposed of the Original Application. While disposing of the Original Application on 02.05.2016 the Tribunal was pleased to direct as follows:

“7. Hence, we are deciding this case in the following manner:-

That the appointment given to the applicant as GDS shall be deemed to be in accordance with law unless it is demonstrated by them that in relevant year the *vacancies were available and those vacancies may be filled by way of*

compassionate appointment in terms of the aforesaid letters of the Govt. of India issued both by DOP&T as well as the Postal authority. In case vacancies in terms of aforesaid letter referred hereinabove would be available at the relevant year to be filed by candidates seeking appointment on compassionate ground their claim may be considered for regular post.

8. In terms of the aforesaid direction all the three O.A.s are disposed of. There shall be no order as to costs.”

5. Under the circumstances the applicant/petitioner filed a representation dated 14.03.2017. In the representation, the petitioner has specifically asserted that in the year 2002 four vacancies have been created under the exempted category and only two were filled up leaving two vacancies. In 2003 further four vacancies were created. Thereafter it is asserted that four vacancies existed in the year 2003. Despite such vacancy position the petitioner was not offered appointment against the post of Postal Assistant in the permanent establishment.
6. Having made the representation, when the same did not evince any response from the respondents they proceeded to file the second Original Application (O.A. No. 1724 of 2017 and O.A. No. 1726 of 2017 in respect of the petitioner of W.P.C.T. No. 246 of 2023). These Original Applications were disposed of on 08.06.2018. The Tribunal while disposing of the Original Application accepted the prayer made by the applicant/petitioner to submit a copy of the Original Application with a direction that the same be treated

as a representation to be considered and disposed of within a stipulated period by a reasoned and speaking order. Such direction of the Tribunal has led to passing of the order by the Chief Post Master General, West Bengal Circle, Kolkata on 17.09.2018 rejecting the claim of the applicant/petitioners.

7. It is the specific stand of the respondents in the order that all vacancies of compassionate appointment quota were filled up at that time and, therefore, the applicants/petitioners were appointed against a GDS post in the year 2003 that also subject to furnishing of an undertaking that he would not claim any further appointment.
8. The learned advocate for the applicants/petitioners submits that the Tribunal has failed to consider that the petitioners had clearly specified the number of existing vacancies in their representation. Since the vacancies were existing and such information had been obtained under the Right to Information Act, the findings of the authorities based on which they have disposed of the representation is therefore unsustainable.
9. The other submission advanced on behalf of the applicants/petitioners is that the order is passed in violation of principles of natural justice. If the petitioners would have been given an opportunity of

hearing they could have demonstrated existence of vacancies.

10. The learned advocate for the respondents on the other hand submits that the representation has been disposed of in terms of the orders passed by the Tribunal in O.A. 1724 of 2017. The authorities have clearly stated that no vacancy whatsoever was existing.
11. Considering the rival submissions we first deal with the submissions of the petitioners' counsel that the order is passed without giving an opportunity of hearing. The alleged violation of natural justice in the present case in our opinion is not sustainable. It is settled proposition in law that natural justice cannot be applied as a straight jacket formula to each and every circumstance.
12. In the present case it was the assertion of the applicants/petitioners that they would disclose existence of vacancies. Relying upon the applicants'/petitioners' submission the Tribunal directed the authorities to dispose of their claim for appointment against the post of Postal Assistant treating their Original Applications as a representation. Neither the petitioner claimed, nor the Tribunal directed for granting any personal hearing to the writ petitioners and, therefore, no such right can be claimed by the applicants/petitioners to an opportunity of hearing.

13. The other aspect of the matter is that the issue regarding existence or nonexistence of vacancies is a disputed issue of fact. The petitioners have alleged existence of certain number of vacancies, noted above, in their representation. Despite repeated queries made to the learned advocate for the petitioners. They, however have not been able to show as to on what basis/material the petitioners in their application have asserted existence of two vacancies in 2002 and four vacancies in 2003. A baseless assertion has been made that the vacancy position has been obtained by the petitioners from the Postal Division, West Bengal Circle from time to time. Based on such self serving and baseless assertion they have approached the authorities. It would also be relevant to take into consideration that petitioners have raised such a claim by way of a representation dated 05.12.2010 submitted about seven (7) years after accepting appointment as GDS vide order of appointment dated 28.04.2003. The authorities have in unequivocal terms stated in the representation disposing of their claim that there was no vacancy in existence whatsoever at the relevant time.
14. We, therefore, do not find any infirmity in the authorities' order dated 17.09.2018 which was impugned before the Tribunal in the Original Application.

15. The petitioners have not been able to make out any case for interference with the reasoned and speaking order passed by the authorities.
16. The writ petition is dismissed.
17. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)