



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6124-6125 OF 2019
(Arising out of SLP (Civil) Nos.175-176 of 2019)

The Superintendent of Post Offices & Ors.Appellant(s)

Versus

Hanuman GiriRespondent(s)

J U D G M E N T

A.S. Bopanna,J.

Leave granted.

2. The appellants herein are assailing the order dated 19.07.2013 passed by the High Court of Judicature at Allahabad in Writ A.No.9549/2011. By the said order the High Court has dismissed the appeal filed by the appellants herein. The Review filed by the appellants was also dismissed through the subsequent order dated 21.08.2017. In that view, the order dated 05.10.2010

passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, ("CAT" for short) in O.A.No.888/2009 as also the Order dated 17.01.2011 passed by the CAT in Review Application No.77/2010 stands approved by the High Court. It is in that view, the appellants are before this Court assailing the above stated orders in these appeals.

3. The brief facts which are to be noted limited for consideration of these appeals are as hereunder.

4. The second appellant herein, namely, the Post Master General, Kanpur Region, Kanpur, U.P. issued a Notification dated 24.05.1991 inviting applications from Extra Departmental Delivery Agents ("Delivery Agents" for short) to appear in the examination to be considered for promotion to the post of Postman. The respondent herein and the other similarly placed Delivery Agents had appeared in the examination held on 18.08.1991. Pursuant to such Notification, the Chief Post Master General, U.P. Circle at Lucknow issued an order dated 27.07.1992 informing the Director, Postal Services,

Kanpur that the examination held on 18.08.1991 in Banda, Fatehpur and Fatehgarh Division be cancelled. Though the respondent herein did not assail the same, certain other Delivery Agents including one Shri Jagmohan Yadav, in all five applicants, challenged the said order dated 27.06.1992 cancelling the examination held for promotion, by approaching the CAT in O.A. No.546/1992. The said O.A.No.546/1992 was disposed of on 05.02.1997 wherein the CAT set aside the direction issued by the Chief Post Master General dated 27.07.1992 and directed to publish the result of all successful candidates to be promoted against 17 vacancies available in Kanpur Head Post Offices as per Rules. The Review Application bearing No.33/1997 filed by the appellants herein was dismissed through the order dated 31.07.2000. Since the order of CAT had not been complied with, the said Shri Jagmohan Yadav and four others filed Contempt Application bearing No.135/2002 before the CAT. The non-consideration of the Contempt Application in an appropriate manner by the CAT had led to the filing of the Civil Misc.Writ Petition No.12990/2004

before the High Court, by the said Shri Jagmohan Yadav and others. The said Writ Petition was allowed and the matter was remitted to the CAT for consideration afresh and in the said process the said Shri Jagmohan Yadav was promoted as a Postman.

5. The genesis of the case being such, the respondent herein also having appeared in the examination held on 18.08.1991 sought to take the benefit of the direction issued by the CAT in O.A.No.546/1992 though he was not a party therein. Accordingly he filed a representation dated 02.07.2007 and claimed for promotion as a Postman. The appellants herein did not consider the same favourably but intimated him that he was not an applicant in O.A.No.546/1992 and in that view the result in the examination held for promotion was not declared. The respondent, however, sought and obtained details of his result through an application made under the Right to Information Act, 2005 and on learning that he had obtained 127.5 marks, at the outset was of the impression that the said Shri Jagmohan Yadav who had

been promoted was less meritorious though in fact he had secured 137 marks out of 150 marks. It was further the case of the respondent that through the said marks since he was placed at Serial No.12 in the merit list and there were 17 vacancies in Kanpur Head Post Office he was entitled. Hence he sought for promotion as Postman since according to him his rank in the merit list was within the number of vacancies. The said claim of the respondent herein was repudiated by the appellants herein which resulted in respondent herein approaching the CAT in O.A. No.888/2009.

6. In the said proceedings the appellants herein opposed the claim of respondent herein. The CAT by adverting to the rival contentions, through its order dated 05.10.2010, took note of the scope of the order passed in O.A.No.546/1992 (relating to Shri Jagmohan Yadav and others) based on which the respondent herein was making a claim. Since the claim of respondent herein had been declined by the appellants on the ground that he was not the applicant in O.A.No.546/1992, the CAT by

order dated 05.02.1997 had held that the order dated 27.07.1992 passed by the Chief Post Master General, U.P. Circle for cancellation of the examination held in Banda, Fatehpur and Fathegarh Division had been quashed in its entirety. Hence, in that case since the appellants herein were directed to declare the result of the examination and give appointment to the successful candidates, the CAT was of the opinion that the results of all candidates who appeared for the examination including that of the respondent herein ought to have been announced and the promotions as Postman to the 17 vacancies in Kanpur Head Post Offices was required to be made. In that view, on noticing that the same had not been done by the appellant, the CAT directed consideration of the case of the respondent herein. The Review filed by the appellants herein against such order was also dismissed. It is also to be noted that one of the reasons which was also taken into consideration by the CAT to accept the claim of the respondent herein was that he claimed to have secured more marks than Shri

Jagmohan Yadav who had secured the promotion in the very same process that was undertaken.

7. The High Court while taking note of the contentions put forth in the writ petition has adverted to the very nature of the consideration made by the CAT as taken note hereinabove and has approved the order passed by the CAT. The Review Petition filed by the appellants herein though was dismissed, one aspect of the matter which got highlighted and clarified therein is that the claim as put forth by the respondent that he was more meritorious than Shri Jagmohan Yadav was not the correct position inasmuch as the said Shri Jagamohan Yadav had obtained 137 marks as against 127.5 marks obtained by the respondent herein. However, the High Court was of the opinion that even if that be the position, the basic consideration as made by the CAT and taken note by it in its order does not get altered. In that view the point that would remain for consideration herein is, as to whether the claim of the respondent herein that he was entitled to be promoted as

he was at Serial No.12 in the merit list and as such he would be one among the Delivery Agents to be promoted against the vacancy of 17 posts of Postman is sustainable ?

8. We have extensively heard Shri Vikramjit Banerjee learned Additional Solicitor General appearing for the appellants, Shri S.D. Singh learned counsel for the respondent and perused the appeal papers including the additional documents brought on record along with an application. We have also taken note of the objections raised by the learned counsel for the respondent contending that the documents sought to be relied upon in the instant proceedings is against the admitted factual position. However, in a matter of the present nature where the records are maintained by the employer, unless the authenticity of the said document is in doubt, there would be no impediment for this Court to take note of the documents which are brought on record in an appropriate manner.

9. On the above basis we proceed to examine the issue by taking note of all relevant material. In that regard the basic document to be taken note is the Notification dated 24.05.1991 through which the process for promotion was set in motion. The same was addressed to all Postmasters/Sub Post Masters/ Branch Post Masters; to the Assistant Superintendent Post Offices, Hamirpur and All Sub Divisional Inspectors in Banda Division. On informing about the examination to be held on 18.08.1991 it was further indicated that there is no vacancy in Postman Cadre in this Division (which is a reference to Banda Division as the said Notification is issued from Banda Division). Hence qualified candidates will have to go to other Divisions on availability of vacancy. It further states that no candidate will be posted in Banda Division in any circumstance. In our view the said instructions as contained in the Notification dated 24.05.1991 is to be kept in perspective while examining the other aspects of the matter since from the rival contentions it assumes significance and would be relevant to take note so as to conclude whether the

respondent herein should be promoted based on his rank in the merit list at Serial No.12 relating to Banda Division or as to whether the vacancy position is to be taken note in the background of the common merit list relating to the Delivery Agents of all Divisions against the 17 vacancies in Kanpur Head Post Offices. Though the learned counsel for the respondent seeks to contend that the position of the respondent being at Serial No.12 has been admitted in all earlier proceedings and the appellants cannot be allowed to resile from the said position, it would be necessary to examine as to whether the merit of the respondent at Serial No.12 relates to the common merit list of all divisions or as to whether he was at Serial No.12 of the merit list limited to Banda Division. Such consideration, in our view, is necessary as it is the only issue which is germane for the purpose of decision making herein.

10. In that background, as already taken note by us the genesis of the case being a consideration made in

O.A.No.546/1992 it would be necessary to take note of the nature of consideration made therein. In the said proceedings, the applicants therein namely, Shri Jagmohan Yadav and others while assailing the action of appellants herein had contended that the candidates of Banda Division could be posted against the unfilled vacancies of Kanpur Head Post Offices and Kanpur City Postal Division. It is no doubt true that the appellants herein in order to oppose the said contention had stated in the said proceedings that the 17 left over vacancies of Kanpur Head Post Offices which is Group-A Post Office are to be filled from Local Postal Division as per the extant rules and cannot be filled by the staff of other Divisions. The conclusion reached by the CAT after taking note of the rules is that there was no averment by the respondent that those 17 vacancies of Kanpur Head Post Offices have been filled from the other Local Divisions or any other Division. By an implication it was noted that no more selected staff was available for filling up the balance 17 vacancies from Delivery Agents of Kanpur Local Postal Division. In that circumstance, it

was held that on declaration of the result the staff of Banda Division can also be eligible to be considered for 17 vacancies of Kanpur Head Post Offices as per Rules. It was, therefore, held therein that the stand taken by the appellants herein to the effect that vacancies of Kanpur Head Post Offices cannot be filled by the staff of other Divisions than those located at Kanpur is not tenable. In that circumstance, it was directed that the results of other candidates from all Divisions is to be declared and the 17 posts are to be filled up. It was precisely held as hereunder:

“In the present case as we have held earlier, 17 vacancies of Kanpur Head Post Offices were left unfilled and the same should have been filled by successful staff of Banda Division or any other Division as applicable.”

11. Therefore, the basis on which the consideration was made subsequent thereto including promotion of Shri Jagmohan Yadav, though belatedly, was based on

the marks obtained in the merit list. On that aspect it is to be taken note that though the merit list of Fatehpur Division, Fatehgarh Division and Banda Division are separately maintained, a common merit list of Delivery Agents in respect of Kanpur Region which includes Fatehpur Division, Fatehgarh Division and Banda Division relating to the examinations conducted in the year 1991 was also maintained. As noticed, the very Notification dated 24.05.1991 indicates that though the examinations are held the qualified candidates will have to go to other Divisions on availability of vacancy as there was no vacancy of Postman in Banda Division. If that be the position in respect of the unfilled 17 vacancies of Kanpur Head Post Offices, the persons in order of merit from all Divisions including Banda Division wherein the respondent was working would be entitled to be considered based on common merit list.

12. In that situation though in the merit list of Banda Division Shri Jagmohan Yadav was at Serial No.1 and the

respondent herein was at Serial No.12, in the common merit list Shri Jagmohan Yadav was at Serial No.2 while the respondent herein was at Serial No.43. The total marks obtained by the candidates would indicate that the person at Serial No.17 in the said common merit list had obtained 131 marks and after the said candidate there are several other candidates who had obtained marks up to 128, after which the respondent having obtained 127.5 is at Serial No.43. In such situation ignoring the others, the respondent herein in any event cannot be promoted. Hence the consideration made by the CAT in favour of the respondent herein would not be justified. Though ultimately in the Review Petition before the High Court the fact that the respondent had not secured more marks than Shri Jagmohan Yadav was taken note and was clarified that even otherwise the direction issued was appropriate, we find that despite all the factors as noticed above it appears that what weighed in the mind of the CAT in O.A.No.888/2009 was a wrong assumption of the respondent being more meritorious than the candidate who was granted benefit due to the earlier orders.

13. If that be the position, the orders impugned herein are not sustainable. Therefore, the order dated 17.01.2011 passed in O.A.No.888/2009 and the order dated 17.01.2011 passed in Review Application No.77/2010 by the CAT as also the order dated 19.07.2013 passed in Writ Appeal No.9549/2011 and the order dated 21.08.2017 passed in Review Petition No.285160/2013 by the High Court of Judicature at Allahabad are set aside.

14. Accordingly, the instant appeals are allowed with no order as to costs. All pending applications also stand disposed of.

.....**J.**
(R. BANUMATHI)

.....**J.**
(A.S. BOPANNA)

New Delhi,
August 06, 2019