

Ramphal Vs. the Union of India and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-28-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

Appeal No. : OA-880 of 2011 & MA-429 of 2012

Appellant : Ramphal

Respondent : The Union of India and Others

Advocate for Pet/Ap. : For the Applicant: R.P. Sharma, Advocate. For the Respondents: B.K. Berera, Advocate.

Judgement :

DR. A.K. MISHRA, MEMBER (A)

1. The applicant is working as Gramin Dak Sevak (GDS) Mail Deliverer (MD) at Shalimar Bagh Post Office of Delhi Postal Circle. He appeared in the Limited Departmental Competitive Examination (LDCE) for appointment on the post of Postman/Village Postman in Delhi Circle held on 27.08.2006. According to Recruitment Rules (RRs), 50% of the vacancies are to be filled up by way of LDCE from among GDSs. The applicant belongs to unreserved category and there were two vacancies meant for such category in the unit for which he applied. According to his merit, he could not be selected for any of the two vacancies. As per departmental instructions, his name was to be circulated for consideration in other

units of the Postal Circle where suitable candidates were not available.

2. It is the grievance of the applicant that although his name was sent for circulation, yet it was not recommended on the ground that there was sanction for prosecution of a criminal case which was filed against him. He has come to know subsequently by obtaining information under Right to Information Act that candidates who had secured less mark than him have been appointed in other units of the Circle, but his case was ignored. He was discharged on 03.02.2010 from the criminal case filed under FIR No. 169/2004 u/s 419/420/468/471/120-B IPC. Thereafter, he made a representation dated 16.06.2010 to the Sr. Supdt. of Post Offices, Delhi North Division, Delhi-54 stating that in view of the order of Criminal Court discharging him, his withheld result should be declared. When there was no response, he filed one more representation on 21.10.2010 to the Chief Post Master General

(CPMG) who is the Head of the Department of Delhi Circle. Even this representation has not been disposed of; hence the present O.A.

3. The prayer of the applicant is to call for the records of the examination held on 27.08.2006 and to direct the respondents to appoint him as Postman in Delhi Circle w.e.f. the date candidates less meritorious than him have been appointed and pay all consequential benefits.

4. The respondents have stated that though the name of the applicant was included in the list of surplus qualified candidates, following observation was made by the Sr. Supdt. of Post Offices, Delhi North Division in his case:-

“Name of the candidate shown at Sl. No. 7 is not recommended as the sanction for prosecution against Sh. Ram Phal in the competent court under the provision of Section 197 of Code of Criminal Procedure, 1973 was issued vide this office letter no. F-1/VII-3/06-07 dated 11-09-06.”

5. Admittedly, the department had given a sanction for prosecution of the applicant in a Criminal Court. Therefore, it was necessary to make a mention of the character and antecedents of the candidates whose names were being sent in the

list of surplus qualified candidates. It is also claimed that as per Rue-3 of Volume-IV (Chapter I of Post and Telegraph Manual IV), no one can be employed in the Department who is not in a position to furnish satisfactory references. In view of the pending criminal prosecution against the applicant, his name could not have been positively recommended.

5.1 It is also the admitted position that there were only two vacancies in the unit for which the applicant had applied and he was not selected according to merit. His application could not be recommended without mention of specific criminal case pending against him. It is the contention of the respondents that even if he was within merit, he could not have been appointed under those circumstances.

6. Learned counsel for the applicant submits that since others who are less meritorious than the applicant have been appointed in other units of the Circle, the applicant has a legitimate grievance which needs to be redressed. It is not the case of the respondents that the applicant was ultimately convicted in any criminal case; rather he was discharged from all the allegations brought against him in the aforesaid FIR. At the worst, his case could have been kept under sealed cover to be opened after the criminal case was finally disposed of.

7. Learned counsel for the respondents submits that it is not the case of DPC; rather of direct recruitment to the post of Postman under LDCE. All the posts have since been filled up and the rights of the candidates who have been given appointments have since crystallized. There was legitimate justification for not considering the case of the applicant because of the antecedents.

8. We heard counsel of both the parties and perused the record.

9. Undoubtedly, it is a case of appointment to the post of Postman. According to RRs, 50% of the vacancies are to be filled up by way of promotion from Group-D employees and remaining 50% which are for direct recruitment from outsiders are to be filled up from amongst GDSs. Of this 50%, 50% of the ear-marked vacancies (25% of overall vacancies) are to be filled up on the basis of merit in the examination limited to GDSs. The applicant had appeared in one of such examination. On the basis of merit, he could not be selected for the unreserved

vacancies in the unit where he was working. However, his name was sent under the surplus qualified list but with the observation about his involvement in a criminal case. We do not find anything wrong in the action of the Sr. Supdt. of Post Office who forwarded his name with those observations. It is also not disputed that all the vacancies which were advertised in that year have since been filled up and the candidates who have been appointed against those vacancies have acquired legitimate rights which cannot be interfered with now. The prayer of the applicant is for declaration of results whereas the facts are that the results have been declared long since and his name could not be included in the list of successful candidates. It is also not disputed that there was a criminal case against him at the time when the surplus list was circulated to other units of the Postal Circle. The applicant has not challenged his non-selection at that point of time, on his own admission, on the ground that there was a criminal case against him. He started making representations only after he was discharged from the criminal case. Now that all the vacancies pertaining to that year have been filled up, we find that this O.A., filed now, has become infructuous. The request of the learned counsel for applicant to consider his case against vacancies which have arisen in subsequent years is, on the face of it, not maintainable. For these reasons, we do not see any merit in this application, which is accordingly dismissed. No costs.

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