

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2850/2014
(arising out of SLP(civil) No. 14241 of 2013)

Union of India & Anr.Appellants

Vs.

Malay MallickRespondent

O R D E R

1. Leave granted.

2. The respondent herein was appointed against a leave vacancy when one Rabi Kundu a permanent employee of the Tollygunj Post Office went on leave. He was engaged in 1991 as a substitute ED Packer/Mail Peon. In that capacity, the respondent had worked from 1991 to 1995 in different spells in South Kolkata Division. He worked in 1991 for 184 day, 1992 for 261 days, 1993 for 361 days, 1994 for 362 days and in 1995 for 244 days up to 31.3.1995. In the year 1995, the respondent claimed absorption in a regular post in the said Department with the appellant. When the request of the respondent rejected, he approached Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Kolkata Bench by filing O.A. No.1051/1995. The plea of the respondent that he was entitled to be absorbed in a suitable post found favour with the Tribunal. However, at the same time the Tribunal was informed by the appellant herein that there were many similarly situated persons like the respondent who were working with the appellant and the case of the respondent could not be taken up as a standalone case and he was not entitled to jump the queue either. Further, it was pointed out that absorption would be possible only when there are suitable posts available. Accepting this position, as explained by the appellant, while holding that the respondent was entitled to be regularized and absorbed in a suitable post, it was made subject to two riders: viz. availability of vacancy and that his case would be considered along with similarly situated persons. This becomes clear from the following direction given by the Tribunal in its order dated 5.2.1997:

"regularize the services of the petitioner and offer him absorption in a suitable post subject to availability of vacancy after considering his case along with other similar circumstanced persons, if any, and also subject to eligibility but absence of nomination by any Employment Exchange shall not be regarded as a disqualification."

3. Thereafter, the respondent filed a Contempt Petition No.125 (Civil) of 1997 for non-compliance of the order passed by the Tribunal on 5.2.1997 in OA No. 10151 of 1995. The department complied with the order dated 5.2.1997 and the respondent was appointed to the post of GDSMP on 3.3.1998 since he fulfilled the educational qualifications required for that post.

4. The respondent reported for the post of GDSMP on 30.3.1998 and was placed at the bottom of GDS seniority list at that time.

5. Again, the respondent filed another OA in the Tribunal bearing O.A.No. 622/1999 seeking promotion to Postman cadre on the plea that he has worked as unapproved Postman in different spells against leave vacancy not exceeding 90 days at a stretch.

6. The Tribunal in its order dated 23.2.2005 in OA No.622 of 1999 mentioned that "we are satisfied that the respondents have duly considered his case in the light of the directions which was given by this bench of the directions which was given by this bench of the Tribunal as noticed above. But since he does not fulfill the requisite conditions of experience of five years regular service on the post of EDBPM, he could not be blessed with an appointment. Therefore, no fault can be found with the action of the respondents; rather they fully complied with the order." With these

observations, the Tribunal dismissed the OA of the respondent.

7. Being aggrieved and dissatisfied, the respondent filed the Writ Petition bearing WPCT No.316 of 2006. His prayer was to direct the authorities to appoint him, in terms of the judgment and order dated 5.2.1997 passed in OA No.1051 of 1995, in a regular Class III/Gr.D Post of the Postal Department.

8. The High Court by its impugned judgment dated 29.3.2012, has set aside the order of the Tribunal and directed the appellant authorities to appoint the respondent in terms of the Tribunal's order dated 5.2.1997 passed in OA No.1051 of 1995, in a regular Group D post of the Postal Department with effect from the date when the first vacancy occurred after 5.2.1997. At the same time, prayer of the respondent for promotion to Group C Post automatically after his absorption in the regular cadre is rejected.

9. Against the direction contained in the impugned order dated 29.3.2012 to the effect that the respondent be appointed in a regular Group D post in the Postal Department with effect from the date when the first vacancy occurred after 5.2.1997, is questioned by the appellant in the present proceedings.

10. We have heard the learned counsel for the parties at length and have gone through the record. The order of the Tribunal giving direction to the appellant to appoint the respondent in terms of earlier order dated 5.2.1997 passed by the Tribunal cannot be faulted with. Learned counsel for the respondent is justified in his submission to this extent. We may record that against the order dated 5.2.1997 passed by the Tribunal in the first round of litigation, the appellant had filed Writ Petition challenging that order. However, that Writ Petition was dismissed. No further challenge to that order was laid and thus the said order of the Tribunal dated 5.2.1997 has attained finality. It is for this reason, we hold that in the impugned order direction of the High Court to the appellant to appoint the respondent in terms of order dated 5.2.1997 is without blemish.

11. Having said so, we find that while giving this direction the High Court has not kept itself within the confines of the orders dated 5.2.1997 passed by the Tribunal. It becomes apparent when we read the manner in which direction is couched by the High Court in the impugned order. For this purpose we reproduce the relevant portion hereinbelow:

"We, therefore, set aside the order impugned in this Writ application and direct the respondent authorities to appoint the writ petitioner, in terms of the judgment and order dated February 5, 1997 passed in Original Application No.1051 of 1995, in a regular group-D post of the Postal Department forthwith with effect from the date when the first vacancy occurred after February 5, 1997."

12. We have already extracted above the direction of the Tribunal contained in its order dated 5.2.1997. As pointed out therein, the order of the Tribunal was that respondent be absorbed in a suitable post and it was made subject to: (1) availability of vacancy; and (2) after considering his case along with other similarly circumstanced persons.

13. However, in the impugned order the High Court has, even while stating that the appellant authorities should give appointment to the respondent in terms of judgment and order dated February 5, 1997, eclipsed the aforesaid conditions clearly stipulated in that very order dated 5.2.1997 by adding a mandate to the effect that the respondent is to be regularized with effect from the date when the first vacancy occurred after February 5, 1997. Thus, in this manner, the respondent is allowed to steal march over other persons who are seniors to the respondent and waiting in queue. No doubt the respondent is to be regularized, however, it can be only when his turn as per seniority matures and it cannot be against first vacancy occurring after February 5, 1997. We, therefore, delete the portion of the direction contained in the impugned order which states "forthwith w.e.f. the date when the first vacancy occurred after 5th February 1997." We, further, clarify that the other portion of the impugned order namely directing the appellant to appoint the respondent strictly in terms of earlier order dated February 5, 1997 passed by the Tribunal in OA

No.1051/1995 in a regular Group-D post of the Postal Department shall remain intact and as soon as turn of the respondent matures in accordance with the seniority, he shall be regularized against the vacancy occurring at that time.

14. The appeal is partly allowed to the aforesaid extent. No costs.

.....J.
(Dr. B.S. Chauhan)

.....J.
(A.K. Sikri)

New Delhi,
Dt. 21st February 2014

ITEM NO.50

Court No.4

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14241/2013

(From the judgement and order dated 29/03/2012 in WPST No.316/2006 of The
HIGH COURT OF CALCUTTA)

UNION OF INDIA & ANR.

Petitioner(s)

VERSUS

MALAY MALLICK

Respondent(s)

(With prayer for interim relief and office report)

Date: 21/02/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s)

Mr. Mohan Jain, ASG
Mr. Prabhat Kumar, Adv.
Mr. M. Khairati, Adv.
Mr. D.S. Mahra, Adv.

For Respondent(s)

Mr. Pijush K. Roy, Adv.
Ms. Kakali Roy, Adv.
Mr. Rajan K.Chourasia, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is partly allowed in terms of the signed order.
No costs.

	(DEEPAK MANSUKHANI)		(M.S. NEGI)	
	Court Master		Assistant Registrar	

(Signed order is placed on the file)