SUPREME COURT OF INDIA **REPORTABLE**

Bench: Bela M. Trivedi and Dipankar Datta, JJ.

Date of Decision: 11 October, 2023

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS……../2023
[ARISING OUT of SLP (CIVIL) DIARY NO. 21319/2022]

UNION OF INDIA **…APPELLANT**

VS.

UZAIR IMRAN & ORS. **…RESPONDENTS**

Sections, Acts, Rules, and Article:

Section 19, 14 of the Administrative Tribunals Act, 1985

Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990

Rule 1(2) of the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment (Amendment) Rules, 1991

Article 14, 16, 309 of the Constitution of India

Order XLVII Rule 1 of the Code of Civil Procedure, 1908

Subject: Service Law - Eligibility for Public Employment - Disqualification based on educational qualification - Arbitrariness in selection process - Violation of principles of natural justice.

Headnotes:

Administrative and Service Law – Eligibility for Public Employment – Disqualification based on educational qualification – Conflict in interpretation of educational certificate – Applicant declared ineligible after participating in the selection process – Duty of the employer to provide a rational and justifiable reason for rejection – Failure to seek clarification from issuing authority – Arbitrarily depriving the applicant of selection – Violation of principles of natural justice. [Para 16-20]

Employment – Offer of Appointment – Direction to offer appointment to disqualified applicant – Creation of supernumerary post if no vacancy exists – Confirmation in service upon satisfactory probation – No entitlement to arrears of salary or seniority – Computation of retiral benefits based on last pay drawn. [Para 21]

Costs – Parties to bear their own costs. [Para 22]

Referred Cases:

- Malik Mazhar Sultan v. U.P. Public Service Commission (2006) 9 SCC 507
- Ashish Kumar v. State of Uttar Pradesh (2018) 3 SCC 55

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. The challenge in this appeal by the Union of India ("appellant", hereafter) is to the judgment and order dated 4th April, 2017 passed by the High Court of Judicature at Allahabad, Lucknow Bench ("High Court", hereafter) dismissing a Writ Petition[1] of the appellant as well as the judgment and order dated 10th December, 2021 of the High Court dismissing its Review Application[2]. By the judgment and order dated 4th April, 2017, the High Court

affirmed the judgment and order dated 6th May, 1999 passed by the Central Administrative Tribunal ("Tribunal", hereafter) allowing an Original Application[3] under section 19 read with section 14 of the Administrative Tribunals Act, 1985 as well as a subsequent order dated 30th May, 2000 dismissing a Review Application[4].

3. At the outset, it is relevant to underline that the present appeal is confined to consideration of the relief granted by the Tribunal, since upheld by the High Court, to Ankur Gupta ("the third respondent", hereafter), the sole

[1] No. 1822 of 2000
[2] C.M. Application No.105840 of 2017
[3] Original Application No.384 of 1996
[4] Review Application No.7 of 1999

contesting party, as the other respondents are not interested in the service any longer, according to the information presented to us from the Bar.

4. The factual matrix of the appeal, culled out from the records, is as follows:

a. The President of India *vide* a Notification dated 27th December, 1990, framed the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 ("1990 Rules", hereafter). The Schedule to the 1990 Rules outlined the educational qualifications required for the post of Postal Assistants and Sorting Assistants for direct recruits as *"10+2 standard or 12th class pass of recognised University/ Board of School Education/Board of Secondary Education"*. The 1990 Rules stood amended by the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment (Amendment) Rules 1991 ("Amendment Rules", hereafter) *vide* a Notification dated 31st January, 1992. As a result of the amendment in the Schedule to the

1990 Rules, candidates who had pursued their intermediate education in "vocational stream" were excluded from being considered for the post of Postal Assistants and Sorting Assistants.

b. This being the position of the recruitment rules, the Superintendent of Post Office, Kheri *vide* a letter dated 17th April, 1995 requisitioned from the District Employment Officer, Lakhimpur Kheri a list of eligible candidates for the purpose of recruitment of 10 (ten) Postal Assistants in Lakhimpur Kheri postal division for the year 1995. According to the requisition, the candidates were required to have qualified in the intermediate examination from the Uttar Pradesh Intermediate Education Council, Allahabad or equivalent. Apart from such requisition, applications were also invited through an advertisement dated 12th June, 1995.

c. All the respondents herein, among other candidates, took the written, typing, aptitude and computer tests and attended the interview which were conducted as a part of the selection process. A merit list was notified *vide* a Notification dated 22nd November, 1995 on the basis of marks obtained by the participating candidates. The names of the respondents figured quite high in the merit list, following which all of them were attached to the Kheri Post Office for 15 days pre-induction training starting from 15th March, 1996. The same was to be followed by a long-term training. However, the Chief Post Master General sent a letter dated 22nd March, 1996 to various Postmasters General. Referring to letters dated 31st January, 1991 and 5th January, 19965 (sic) regarding recognition of educational qualification of 10+2/Intermediate from the vocational stream for direct recruitment, it was conveyed that certificates issued by the Board of High School and Intermediate Education should be admitted unless "these are marked as vocational stream or vocational". This resulted in holding back of the respondents, who were not sent for long-term training. This triggered the instant

litigation.

d. Dissatisfied with the aforesaid letter dated 22nd March, 1996, the respondents approached the Tribunal contesting the legality thereof. Since they had already succeeded in clearing the prescribed

examinations, consequent to which their names figured in the merit list, it was prayed that the appellant be directed to send the respondents for the long-term training and consequently, be appointed as Postal

Assistants in Lakhimpur Kheri. The Tribunal, *vide* order dated 6th May, 1999, decided in favour of the respondents. The relevant part of the order is extracted hereunder:

> "4. […] The column of educational qualification provides that a candidate who passed the Intermediate Examination of Board of secondary Education or equivalent. Copy, as published in the Newspaper, on 12.6.95 Annexure A-1 to the O.A. shows that the educational qualification required was Intermediate (10+2) Examination passed. Thus neither, in the communication (Annexure R-1) sent to the Employment Exchange Lakhimpur Kheri or in the advertisement given in the Newspaper (Annexure A-1 to the O.A.) there was mention that the candidates who cleared the Intermediate (10+2) examination with 'vocational subject' would not be eligible. In view thereof, all the 4 applicants fulfilled educational qualification as published in the newspaper. advertisement and as mentioned in the communication sent to the Employment Exchange for sponsoring the names.
> ***
> 6. In view of the discussions made above, the respondents are directed to send the applicants for further required training and on completion thereof, and other formalities, to appoint the applicants as Postal Assistants. The seniority of the applicants would not be affected by reason of their subsequent appointment and they would get their seniority as may be admissible in the rules, as if they were sent for training along with their juniors."

e. Aggrieved thereby, the appellant preferred a Review Application before the Tribunal which dismissed it *vide* order dated 30th May, 2000 with an observation that the grounds for review under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 ("CPC", hereafter) are very limited, and the appellant has failed to raise any substantial ground for review.

f. Questioning the aforesaid judgment and order of the Tribunal, the appellant approached the High Court praying that the same be setaside.

g. The High Court, *vide* the impugned judgement dated 4th April, 2017, upheld the orders of the Tribunal reasoning that no amendment in the 1990 Rules had been effected and that the letter dated 22nd March, 1996 was only an executive order/clarificatory instruction which could not have amended the 1990 Rules; hence, denial of appointment to the third respondent (alongside other respondents impleaded therein) based solely on such letter was unwarranted. Finding no manifest error in the impugned judgment and order of the Tribunal, the High Court dismissed the Writ Petition.

h. After dismissal of the Writ Petition, the appellant preferred a Review Application before the High Court. *Vide* order dated 10th December, 2021, the High Court dismissed the review application observing that a court exercising review jurisdiction under section 114 of the CPC read with Order XLVII Rule 1 thereof has a very narrow and limited scope to interfere and that the judgment and order under review did not suffer from any mistake or error apparent on the face of the record warranting interference.

5. Ms. Bhati, learned Additional Solicitor General appearing on behalf of the appellant, while taking exception to the impugned judgments and orders raised the following contentions:

a. The Amendment Rules were already on record as Annexure 7 to the Writ Petition filed before the High Court. As the Amendment Rules had not been taken note of by the High Court during arguments, the judgment and order dated 4th April, 2017 suffered from an error apparent on the face of the record which necessitated the Review Application. In this light, she submitted that the Review Application urged a substantial ground within the framework of Order XLVII of the CPC which, unfortunately, the High Court failed to consider. Dismissal of the Review Application, in the circumstances, was manifestly erroneous.

b. As the Amendment Rules had come into force prior to the commencement of the present selection process in 1995, it was imperative that the educational qualifications for appointment on the posts of Postal Assistants conformed to the amended Schedule, i.e., 10+2 standard or 12th class pass from a recognized University or Board, excluding vocational streams; consequently, selection of any candidate possessing vocational qualification would stand incompatible with the

amended Schedule and any appointment in breach of the 1990 Rules, as amended, would be *void ab initio*.

c. The third respondent fell short of the prescribed eligibility qualifications for being directly recruited, as specified in the relevant recruitment rules and as a sequel thereto, his selection was by mistake which the appellant had/has a right to rectify. Since the third respondent was sought to be disqualified not based on any executive order but based on a true and proper interpretation of recruitment rules framed under Article 309 of the Constitution, the High Court committed grave error in not interfering with the direction of the Tribunal to appoint the applicants before it.

6. Resting on the aforesaid submissions, Ms. Bhati prayed that the orders under challenge be set aside and the original application before the Tribunal dismissed.

7. Mr. Mishra, learned counsel appearing on behalf of the third respondent while supporting the impugned judgments and orders, advanced the following submissions:

a. Concurrent findings returned by the Tribunal and the High Court should not be interfered with as the letter dated 22nd March, 1996, through which the words “excluding vocational streams”, were made the basis of depriving the third respondent of an appointment is nothing but an executive order.

b. Rule 1(2) of the Amendment Rules itself provided that the amendment would be enforced after publication of the same in the official gazette and there is no gazette publication in respect of said rules till date.

c. The name of the third respondent was sponsored by the District

Employment Officer in view of the requisition made by the appellant. Through the letter dated 17th April, 1995, the appellant had explicitly stated that the educational requirement for Postal Assistant will be intermediate education from a recognised board. It was neither mentioned in the advertisement nor in the aforesaid letter that candidates with "vocational streams" would be excluded. As such, the third respondent had fulfilled the requisite criteria; and denying him an appointment is against the settled law that rules of the game cannot be changed during the recruitment process.

d. Even otherwise, the certificate of the third respondent issued by the Board of High School and Intermediate Education, Uttar Pradesh ("said Board", hereafter) on 24th July, 1991 clearly manifests that he was a student of the 'Regular' stream and could not have been disqualified on the ground that he had pursued education at the 10+2 level in the vocational stream.

8. Asserting that the impugned judgments and orders are free from legal infirmities and stressing on the concurrent findings recorded therein, Mr. Mishra submitted that the appeal is devoid of any merit and, consequently, warrants outright dismissal.

9. We have heard counsel for the parties and perused the materials on record.

10. The submission of Mr. Mishra that the Amendment Rules were not published in the official gazette is without any substance. It appears that the Amendment Rules were duly published in the Gazette of India dated 15th February, 1992, a copy whereof has been produced by Ms. Bhati. She is, therefore, right in her contention that the Amendment Rules became operational on and from 15th February, 1992, much before the process for recruitment had commenced.

11. It is true that neither in the letter dated 17th April, 1995 requisitioning names of eligible candidates from the Employment Exchange nor in the advertisement dated 12th June, 1995 inviting applications from eligible candidates was it mentioned that the candidates clearing the requisite examination conducted by a recognized University or Board through vocational stream would stand excluded. However, nothing much turns on it. Law is well-settled that if qualifications mentioned in an advertisement inviting applications are at variance with statutorily prescribed qualifications, it is the latter that would prevail. Profitable reference in this connection may be made to the decisions of this Court in **Malik Mazhar Sultan v. U.P. Public Service Commission**[5] and **Ashish Kumar v. State of Uttar Pradesh**[6].

12. It is observed that the Tribunal or the High Court did not have the occasion to advert to the certificate issued in favour of the third respondent and proceeded to decide the Original Application, the Writ Petition and the Review Applications

without any reference to the Amendment Rules because of inept handling of the case by the appellant. We are in agreement with Ms. Bhati that at least the High Court, having regard to the disclosure of the Amendment Rules in the Writ Petition as well as the ground urged in the Review Application, was clearly wrong in not rectifying the error which was apparent on the face of the record.

13. However, the aforesaid observations of ours do not advance the cause of the appellant in view of the contention advanced on behalf of the third respondent referring to the certificate which was issued to him by the said

[5] (2006) 9 SCC 507
[6] (2018) 3 SCC 55

Board. Such certificate enumerates the subjects which he read during his intermediate education. Out of a total of four subjects, two of them (Hindi and English) are described as vocational subjects. Importantly, the certificate which is partly in vernacular also bears at its foot the remark 'Regular' in English. It has been contended on behalf of the third respondent that 'Regular' in the certificate signifies regular stream and not vocational stream.

14. Normally, it is not the function of the court to determine equivalence of two qualifications and/or to scrutinise a particular certificate and say, on the basis of its appreciation thereof, that the holder thereof satisfies the eligibility criteria and, thus, is qualified for appointment. It is entirely the prerogative of the employer, after applications are received from interested candidates or names of registered candidates are sponsored by the Employment Exchanges for public employment, to decide whether any such candidate intending to participate in the selection process is eligible in terms of the statutorily prescribed rules for appointment and also as to whether he ought to be allowed to enter the zone of consideration, i.e., to participate in the selection process. It is only when evidence of a sterling quality is produced before the court which, without much argument or deep scrutiny, tilts the balance in favour of one party that the court could decide either way based on acceptance of such evidence.

15. Notwithstanding this settled legal position, the stage when ineligibility is cited for not offering employment also assumes importance. It is indeed indisputable that none has any legal right to claim public employment. In terms of Article 16 of the Constitution, a candidate has only a right to be considered therefor. Once a candidate is declared ineligible to participate in the selection process at the threshold and if he still wishes to participate in the process perceiving that his candidature has been arbitrarily rejected, it

is for him to work out his remedy in accordance with law. However, if the candidature is not rejected at the threshold and the candidate is allowed to participate in the selection process and ultimately his name figures in the merit list - though such candidate has no indefeasible right to claim appointment - he does have a limited right of being accorded fair and non discriminatory treatment. Given the stages of the process that the candidate has successfully crossed, he may not have a vested right of appointment but a reasonable expectation of being appointed having regard to his position in the merit list could arise. The employer, if it is a State within the meaning of Article 12 of the Constitution, would have no authority to act in an arbitrary manner and throw the candidate out from the range of appointment, as distinguished from the zone of consideration, without rhyme or reason. The employer-State being bound by Article 14 of the Constitution, the law places an obligation, nay duty, on such an employer to provide some justification by way of reason. If plausible justification is provided, the courts would be loath to question the justification but the justification must be such that it is rational and justifiable, and not whimsical or capricious, warranting non-interference.

16. In the facts of the present case, the stage of declaration of ineligibility seems to us to turn the tide in favour of the third respondent. If the appellant had declared the third respondent as ineligible based on the appellant's appreciation of the educational qualification of the third respondent at the threshold, the situation would have entirely been different. However, it was not at the threshold that the third respondent was considered ineligible. As the factual narrative would reveal, the appellant had considered the third respondent eligible, allowed him to take part in the various tests in connection with the selection process, interviewed him, placed his name quite high in the merit list, and thereafter sent him for 15 days' pre-induction

training starting from 15th March, 1996. It was after a week that the letter dated 22nd March, 1996 was issued which resulted in ouster of the third respondent from the range of appointment.

17. There is little doubt that the decision to treat the third respondent as ineligible was based on the certificate; however, there is no gainsaying that the certificate produced by the third respondent in support of his claim that he had qualified in the relevant examination and, thus, was eligible to be considered for appointment, did leave room for two views. It is settled law that unfettered discretion, unaccountable approach and arbitrariness in State action are antithesis to Article 14; and, particularly when two views could possibly emerge looking at the certificate of educational qualification placed by the third respondent, with both views not being wholly unworthy of acceptance, fairness in administrative procedure demanded that the appellant ought to have given reason, howsoever brief, as to why it preferred to consider the third respondent to have succeeded in the relevant examination through “vocational stream”, thereby attracting ineligibility, without considering the effect of the remark ‘Regular’ at the foot of the certificate. The contents of the letter dated 22nd March, 1996, which sounded the death knell for the third respondent, is clearly suggestive of a general direction given to the addressee Postmasters General; they were not called upon to scrutinise each certificate on its merits. As such, there was no individual rejection but a general rejection without applying one’s mind to the contents of the certificate. It was, thus, highly improper for the appellant to reject the candidature of the third respondent outright in the absence of a proper appreciation of the certificate.

18. Even if it is assumed that the certificate was duly looked into, we are inclined to the view on facts (given the contents of the certificate produced by the

third respondent and in the absence of conclusive information as to the nature of education imparted to the third respondent at the intermediate level) that the appellant ought to have, in the least, requested for a clarification from the said Board as to whether the third respondent could be treated to have cleared the intermediate examination of 1991 in “vocational stream” or in the category of

‘Regular’ and, thus, was (in)eligible to compete for appointment in terms of the 1990 Rules, as amended. It was not within the province of the appellant to scrutinise the certificate of the third respondent with an approach of “one eye open, one eyed closed” and declare that his intermediate education was in a “vocational stream”, overlooking or ignoring that the self-same certificate bore the remark ‘Regular’. The determination of the appellant, in the present case, undoubtedly hinged on its scarce knowledge of the nature of the third respondent’s education, evincing that his exclusion was not on the basis of a valid and proper reason and was, decidedly, arbitrary.

19. The principle that if two views are reasonably possible on a given set of facts and that the courts would stay away from interference and not substitute its view for the view taken by the employer, may not apply in a case of the present nature where the conflicting views could be resolved by a mere reference to the certificate issuing authority to clarify what the certificate connoted. After all, the future of a prospective appointee called for an approach consistent with the preambular promise of securing justice and equality of opportunity, which the appellant failed to secure.

20. The third respondent, in our view, has been discriminated against and arbitrarily deprived of the fruit of selection. At this distance of time, it would not be worthwhile to order a remand particularly when the appellant is responsible for the lis being prolonged in excess of two decades. There has been utter carelessness on its part in not producing the Amendment Rules

and the gazette notification before the Tribunal. The third respondent, therefore, cannot suffer for such carelessness and has to be given what is due to him. At the same time, we cannot overlook that by passage of time, the third respondent has crossed the maximum age for entry into public employment. He is 50 years old now and the age of superannuation is reported to be 60 years. In such a situation, we propose to dispose of this appeal by making appropriate directions in exercise of our power to do complete justice between the parties under Article 142 of the Constitution.

21. Accordingly, it is directed that:

(i) The third respondent shall be offered appointment, initially on probation, by the appellant on a post of Postal Assistant (for which he was selected) within a month from date;

(ii) If no post is vacant, a supernumerary post shall be created;

(iii) Subject to satisfactory completion of the period of probation, the third respondent shall be confirmed in service;

(iv) Should service rendered during probation be considered not satisfactory, the appellant will be entitled to proceed in accordance with law;

(v) Having not actually worked, the third respondent shall neither be entitled to arrears of salary nor shall he be entitled to claim seniority from the date of appointment of other candidates who participated in the recruitment process of 1995;

(vi) Since the third respondent, if confirmed after successful period of probationary service, would have less than 10 years' service to his credit and consequently would fall short of qualifying service for pension and other retiral benefits, the appellant shall treat him to have been notionally appointed on the date the last of the selected candidates was appointed pursuant to the process of 1995 only for the purpose of release of such benefits in accordance with law; and

(vii) In such case, his retiral benefits shall be computed based on the last pay drawn by him while in service.

(viii) These directions will not be applicable to any respondent, other than the third respondent.

22. With the above directions, the appeal stands disposed of together with pending applications, if any. Parties shall, however, bear their own costs.