PETITIONER:
JAHAR SINGH

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 13/09/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. J.

Special Leave granted. Heard the learned counsel for the parties.

At all material times the appellant was - and still is - an employee of the Savings Bank Control Organization (SBCO), Uttar Pradesh Circle, under the Ministry of Communications, Department of Posts, New Delhi. In May, 1992 while working in the Agra Head Post Office he appeared in the examination held for appointment of Accountants in the Post Office (PO) and Railway Mail Services (RMS); and the Senior Superintendent of Post Officers, Agra Division, Agra vide his letter No. 82/Exam/PO and RMS/Accountant/92 dated November 30, 1992 informed him that he had qualified for that post. The appellant, however, did not get any appointment to the post of Accountant in spite of his such qualification and, on the contrary, on August 26, 1993, he received a copy of letter dated July 23, 1993 sent by Shri A.K. Kaushal, an Assistant Director General in the office of the Director General (Posts), New Delhi, to Shri Jagadamba Singh ADOS (Rectt.) attached to the office of the Chief Post Master General, U.P. Circle, intimating him that as he (the appellant was working in SBCO as an LDC (Lower Division Clerk) he was not eligible to appear for the PO and RMS Accountant examination and his candidature may be canceled immediately. Since this letter has an important bearing on this appeal we quote the same in extenso :-

"A.K. KAUSHAL
ASST. DIR. GENL. (SPN)
141-230/92-SPB-II 23.7.93
Dear Shri Singh,

Please refer to your d.o. letter no. Rectt./M-67/May-92/3 dated 4.5.93 regarding posting of Shri Jahar Singh, SBCO Agra H.P.O as Accountant.

2. The water has been examined.

Since Shri Jahar Singh was working in SBCO as LDC he was not eligible to appear for the PO & RMS Accountant Exam as per rules. The candidature of Shri Jahar Singh may be canceled immediately and he cannot, therefore, be considered for appointment as an Accountant.

With best wishes,

Yours sincerely

(A.K. KAUSHAL)

Shri Jadamba Singh,
A.D.O.S. (Rectt.)
O/o the Chief Postmaster General,
U.P. Circle,
LUCKNOW

Copy to :

1. The PMG Agra Region, Agra.
2. Shri Jahar Singh, PA (SBCO) Agra H.P.O with reference to his letter dated 28.3.1993 addressed to Member (D), Department of Posts, Dal Bhavan, New Delhi.

(A.K. KAUSHAL)
Asstt. Director General (SPN)"

(emphasis supplied)

Against such cancellation of his candidature the appellant made representation to the Director General of Posts, New Delhi which was rejected. He then filed an original application in the Central Administrative Tribunal. (CAT) Allahabad Bench wherein he asserted that though his initial appointment in 1983 was an LDC in SBCO, since August 1, 1991 he was working there as Personal Assistant (PA) and the permission that was granted to him to appear in the examination for appointments as an Accountant was unqualified - and not provisional. He, therefore, submitted that the respondents were not justified in rejecting his claim for appointment to that post after his success in the examination.

In contesting the application the respondents reiterated that the appellant was working as an LDC at the time he appeared for the examination. The other contention that was raised on their behalf was that even the PAs of SBCO acquired an identity of its own after it (SBCO) was reorganized with effect from August 1, 1991 with a different and distinct channel of promotion which did not entitle them to become Accountants in PO and RMS under the extant Rules.

In disposing of the application the Tribunal observed though from the admitted facts of the case it was apparent that the appellant was allowed to appear in the examination for appointment as an Accountant by mistake as he belonged to as separate cadre, the respondents were not justified in canceling his candidature as he was a bona fide candidate and there was no lapse on his part. It further observed that no rules or circulars were brought to its notice which empowered the respondents to cancel his candidature. Accordingly, the Tribunal set aside the order dated July 23, 1993 canceling the candidature of the appellant as Accountant and all orders made pursuant thereto. Inspire thereof, the Tribunal did not grant the relief sought for by the appellant on the ground that he had become ineligible for promotion to the post of Accountant by virtue of separation of cadres of Assistants of SBCO from those PO and RMS. Dissatisfied with the above order the appellant filed a review application contending that after having quashed the order of cancellation of his candidature the Tribunal was not justified in refusing him the consequential relief of being appointed as Accountant in PO and RMS. The Tribunal, however, rejected the application observing that even a defective reasoning of an order could not be made the basis for setting aside the same in review. Hence this appeal at the instance of the appellant.

Besides, reiterating the contentions raised before the Tribunal Mr. Murlidharan, the learned submitted, relying upon the averments made by the appellant in the supplementary affidavit he filed in this Court, that in the contention of the respondents that PAs of SBCO were not eligible for appointment to the post of Accountants in PO and RMS was patently untrue for in the following year (1993) also PAs of SBCO were permitted to appear in the examination held for the above post. In opposing the above contentions Mr. Choudhary, the learned Senior Counsel appearing for the respondents, assailed the finding of the Tribunal that the appellant was not entitled to the post of Accountant in the PO and RMS, as SBCO has a distinct identity and separate of promotion.

To appreciate the respective contentions of the parties we have carefully gone through the entire materials on record and the only conclusion we draw therefrom is that the respondents have taken different and contradictory stands only to forestall the claim of the appellant and Shri Kaushal, who was filed affidavits on their behalf, has made patently incorrect and untrue statements therein .

From a cursory glance of the letter dated July 23, 1993 written by Sri kaushal (reproduced earlier) it is apparent that the only ground that was canvassed by the respondents to cancel the candidature of the appellant was that he was working in SBCO as LDC. In the affidavit that Shri Kaushal filed in this Court on December 9, 1995, while opposing the special leave petition of the appellant, he reiterated.

> "He (the appellant) wrongly mentioned in his application (obviously referring to his application seeking permission to appear in the examination) that he was Postal Assistant and inadvertently he was allowed to sit in the examination . When it was realised that the permission given to him was contrary to the rules it was rightly canceled and naturally he was not entitled to any consequential benefits."

That the above stand of the respondent, as put forward through the affidavit of Shri Kaushal, is unfounded will be apparent, first from the letter dated July 23, 1993 itself wherein, while indication that a copy of the letter was being forwarded to the appellant his designation was shown as PA (SBCO) Agra HPO - and not LDC - and secondly, from the following statement made by Shri Kaushal in paragraph 3 of his affidavit filed in this Court in March 29, 1996.

> "It is submitted that the petitioner Sri Jahar Singh is a Postal Assistant in Savings Bank Control Organization ...."

Since the post the appellant was holding was made the sole basis for canceling his candidature as the letter dated July 23, 1993 clearly demonstrates the above discussion of ours would have been sufficient to allow this appeal but as later on the respondents took the organisational ineligibility of the appellant to appear in the examination as a further ground for such cancellation we advert to the same. In canvassing this ground it has been stated by Shri Kaushal in the affidavit on December 9, 1995 as under :

> "It is further submitted that according to Rule 273 of Postal Manual Vol. IV Postal Assistants and Sorting Assistants, Railway Mail Service are eligible for appearing in the examination of Post Office and Railway Mail Service Accountants. The petitioner belongs to Saving Bank Control Organization Unit of Post Office and thus he was not entitled to appear in the said examination held in May, 1992. The petitioner (the appellant) was inadvertently permitted because on his application form he had written his designation as Postal Assistant, SBCO."

Apart from the above Rule, reliance has also been placed on a circular dated July 26, 1991 issued by the Assistant Director General, Government of India, Ministry of Communications, Department of Posts, which refers to the proposed reorganisation of the SBCO with effect from August 1, 1991 and particular emphasis laid on Para (viii) thereof which reads that "Consequent upon reorganisation, the distinct identity of the SBCO will be maintained and Postal Assistants (SBCO) will not be interchangeable with the Postal Assistants of the Post Office."

The above additional ground of the respondents so far it seeks to justify the cancellation of the candidature of the appellant as an Accountant even after he was given permission to appear in the examination in which he came successful is also without any substance. The averment in the above quoted paragraph that the permission was 'inadvertently' granted because the appellant had wrote in his application form that his designation was P.A., SCBO is patently incorrect for on the showing of the respondents (as discussed earlier) the appellant was holding that post. Besides, in spite of the above Rules and Circular, two PAs of SBCO, Auriya Office, namely, Satya Prakash and H.C. Ram were permitted to appear in the PO and RMS examination held in the year 1993 for appointment of Accountants as will be evident from the supplementary affidavit filed by the appellant on February 23, 1996. It is pertinent to mention here that in the affidavit that Shri Kaushal filed later on March 29, 1996, he did not dispute the above assertion of the appellant, nor give any explanation as to why such permission was granted to them in spite of above Rules and Circular.

For the foregoing discussion we quash the impugned order dated July 23, 1993 and direct the respondents to grant all the benefits which the appellant would be entitled to consequent upon his having been declared successful in the examination held on May 22, 1996. The appeal is thus allowed with costs, quantified at Rs. 5,000/-