

(2008) 12 CAL CK 0054
In the Calcutta High Court
Case No : W.P.C.T. No. 251 of 2008

A and N Administration and Others

APPELLANT

Vs

K. Raja Sekhar and Another

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Citation : (2009) 120 FLR 874

Hon'ble Judges : Pranab Kumar Deb, J; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : S.K. Mandal, for the Appellant; Roshan George, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The Court: The four respondents in O.A.No.60/AN/2007 are the petitioners in this writ petition dated November 04, 2008. It has been taken out assailing the order of the Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair dated May 19, 2008. The tribunal directed the authorities to consider the question of promoting the two applicants in the original application to the post of Forest Guard with effect from the date they completed regular service of three years. The authorities were directed to give all consequential benefits except back wages.

2. The relevant part of the order of the tribunal is as follows:

"In that view of the matter there is merit in the contention of the respondents that the eligibility condition relating to the "regular" status of the mazdoor was not fulfilled by the applicants. However, it is to be noted that the applicants have completed three years of service, after regularisation, in the year 2005 and 2006 respectively. As the applicants were found otherwise fit for promotion in the year 1997 by a duly constituted Selection Committee, there is a need to consider them for promotion with effect from the date they fulfilled requirement of three years regular service. Such a consideration is also warranted by virtue of the fact that the applicants were invited to participate in the selection process and were

found fit for promotion by the Selection Committee."

3. In 1996 the authorities initiated a recruitment process for filling 13 vacancies for the post of Forest Protection Force by promotion. At that date promotion to the post was to be given in terms of the Andaman and Nicobar, Forest Department, Forest Protection Force Recruitment Rules, 1987. The method of recruitment, age limits, qualifications, etc. specified in columns 6 to 15 of the Schedule to the Rules provided, inter alia, that in case of recruitment by promotion the candidates should be from literate regular mazdoor with minimum service of three years. K.Raja Sekhar and V. Chandra Sekhar, the two persons who filed the original application before the tribunal, were among the candidates for the post. On July 02, 1997 the selection committee prepared the merit list. While name of Raja Sekhar was put under serial No.6 of the merit list, name of Chandra Sekhar was put under serial No.10. At the date the merit list was prepared neither of them was regular mazdoor. They were working as mazdoor with temporary status. In view of the fifth central pay commission report higher educational qualification was prescribed for the post. Under the circumstances, in 1999 the competent authority cancelled the list dated July 02, 1997 and decided to make recruitment by promotion on the basis of the new recruitment rules. Feeling aggrieved, 13 candidates including Raja Sekhar and Chandra Sekhar moved the tribunal by filing O.A.No.57/AN/2000, which was disposed of by an order dated September 08, 2003 directing the authorities to fill the 13 vacancies by appointing candidates named in the list dated July 02, 1997. Accordingly, the authorities filled 12 vacancies. Raja Sekhar and Chandra Sekhar were not appointed on the ground that they were not eligible. Feeling aggrieved, they took out the original application that was disposed of by the impugned order.

4. Mr Mandal, counsel for the authorities, has submitted that though at the relevant date both Raja Sekhar and Chandra Sekhar were not eligible to be considered for promotion, the tribunal directed the authorities to appoint them by promotion on the ground that both of them, having subsequently acquired the necessary status of regular mazdoor, became eligible in terms of the 1987 rules. According to Mr Mandal, subsequent acquisition of eligibility by Raja Sekhar and Chandra Sekhar could not make them eligible to be considered for the post at the cut off date mentioned in the 1996 employment notice initiating the selection process, or at the date the merit list was prepared by the selection committee.

5. Mr Geroje, counsel for Raja Sekhar and Chandra Sekhar has strenuously argued that before filing of the original application out of which the present writ petition has arisen, the authorities never raised the question that Raja Sekhar and Chandra Sekhar were not eligible for the post. He has said that the authorities were always aware of the fact that both Raja Sekhar and Chandra Sekhar were working as mazdoor with temporary status, and that finding both of them suitable the selection committee put their names on the list of select candidates. According to him, the order made by the tribunal is fully lawful and justified.

6. We are of the view that on the facts of the case the tribunal should not have directed the authorities to consider the question of appointing Raja Sekhar and Chandra Sekhar to the post in question by promotion. From the order it is apparent that the tribunal itself noticed the fact that both Raja Sekhar and Chandra Sekhar were not eligible for the post on or before July 02, 1,997 when the merit list was prepared. At that date they were working as mazdoor with temporary status. They acquired the status of regular mazdoor on June 28, 2002 and April 17, 2003 respectively, and completed service of three years as such only in 2005 and 2006. Hence we are unable to see how the tribunal could hold that having subsequently acquired the status of regular mazdoor and served as such for three years, they could satisfy the eligibility condition for participating in the selection process initiated in 1996.

7. They were required to be eligible at the cut off date mentioned in the employment notice issued in 1996. Their subsequent acquisition of eligibility for the post could not be used for wiping out their ineligibility at the relevant date. It is quite possible that in 2005 and 2006 when they completed service of three years as regular mazdoor, and thus became eligible for the post in terms of old rules, many similarly situated mazdoors also became eligible for the post. Any vacancy existing at these dates could not be filled without initiating a recruitment process according to applicable rules. Vacancies occurring from the date the new rules came into force could be filled only according to them. In our view, the order of the tribunal is clearly violative of the recruitment rules.

8. For these reasons, we allow the writ petition. The order of the tribunal dated May 19, 2008 is hereby set aside, and O.A. No.60/AN/2007 is hereby dismissed. There shall be no order for costs.

Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of records by the section concerned.