

(2018) 04 PAT CK 0086

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13773 Of 2017

Aditya Narayan Roy

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21

Citation : (2018) 2 PLJR 587

Hon'ble Judges : Ajay Kumar Tripathi, J;Nilu Agrawal, J

Bench : Division Bench

Advocate : Y. V. Gir, Ashok Kumar, Sumit Kumar Jha, P. K. Verma, Mankeshwar Tiwari, Kaushal Kishore Jha, S. D. Sanjay, Amish Kumar, P. K. Shahi, Binod Kumar

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J

Petitioner is assailing the order, dated 11.07.2017, passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 165 of 2015. The

following reliefs were prayed for:

â?? i) For quashing the order dated 11.07.2017 passed in OA No. 050/00165/2015 with MA/050/00143/17 and MA/050/00145/17 passed by the

Central Administrative Tribunal, Patna Bench, Patna (Annexure â?" 18), whereby and whereunder the application filed by the petitioner for giving a

direction to the State Level Screening Committee to recommend the petitionerâ??s name to the U.P.S.C. for appointment to the Indian

Administrative Service for the vacancy year 2014 in terms of the statutory rules, regulations and guidelines on the subject and against part of the order

of appointment of respondent no. 8 by the respondent no. 1 dated 22.01.2015 (Annexure â?" 10) has not been considered and the OA application has

been dismissed.

ii) For quashing the appointment order of respondent no. 8 as contained in (Annexure â?" 10) as being illegal, arbitrary, mala fide and bad in law.

iii) For giving a direction to the respondent no. 5 and 6 to recommend the name of this petitioner to the Department of G.A.D. and further to direct the

GAD to recommend the name of the petitioner to the U.P.S.C. and U.P.S.C. may be directed to conduct a fresh SCM for this petitioner for

appointment to IAS for selection year 2014 in non SCS category strictly keeping in view the rules and guidelines on the subject and giving due

weightage to the ACRs of the petitioner.

iv) For giving a direction to issue order of appointment to IAS in case the recommendation of the selection committee are in his favour along with all

consequential benefits arising as a result of such appointment as also costs of the application.

v) Any other relief / reliefs which this Hon'ble Court may deem fit and proper.â??

2. Petitioner belongs to the Bihar Agriculture Service and comes under Non-State Civil Services. He was compelled to file an O.A. application when

his name was not recommended by the State of Bihar to the U.P.S.C. for appointment in the cadre of I.A.S for the selection year 2014. His

submission is that neither the Department of Agriculture has been fair and objective in not recommending his name amongst the list of eligible

candidates, nor there has been a fair and objective assessment of his claim for consideration by the State Screening Committee. In fact, the sequence

of events would show that there was an effort made at every level to nudge him out from the zone of consideration with the object of accommodating

two other persons from the Bihar Agriculture Service, namely, Shri Baidyanath Yadav and Shri Ram Prakash Sahni.

3. A process was initiated for selection to the post of I.A.S. from Non-State Civil Services category. Recommendations were invited from various

departments. We are concerned with the Department of Agriculture, since the petitioner as well as the private-respondent nos. 8 and 9, all belong to

the Agriculture Department.

4. Prior to this exercise, it is significant to note that in the previous year, petitionerâ??s name was recommended as only candidate from the

Department of Agriculture, but despite recommendations at the State level, since

the meeting for the year in question could not be held in time by the U.P.S.C., that exercise of recommendation was frustrated and remained in limbo.

5. When the exercise for the year 2014 was initiated by the Department of Agriculture, the Committee set up in the Agriculture Department did not recommend his name. They recommended the name of two private-respondents. It emerges from the notings that the primary reason why his name was not recommended is said to be that his name was earlier recommended. There is no clarity as such emerging from the Department of Agriculture as to why petitioner's name was not considered, when the factual position was that the earlier recommendation remained a recommendation, because no decision was taken on the recommended name for the said year and, therefore, that exercise remained a futile exercise. There is further no clarity as to how the earlier recommendation came in the way of the petitioner not being considered when a fresh exercise was initiated on the basis of direction issued by the General Administration Department.

6. However, when the file traveled to the Minister for his approval and for forwarding the list of names to the State Screening Committee, it seems that the petitioner agitated his grievance and brought it to the notice of the Minister about the mischief done with him by the Agriculture Department. The Minister, therefore, directed that besides the two names of Shri Baidyanath Yadav and Shri Ram Prakash Sahni, even the name of the petitioner should be included and forwarded to the State Screening Committee. The State Screening Committee received 17 recommendations from various Departments. Out of 17 names, 10 names were recommended for consideration by the U.P.S.C. The two names from the Agriculture Department, recommended to the U.P.S.C., was that of Shri Baidyanath Yadav and Shri Ram Prakash Sahni and not that of the petitioner. The Court also notices that the name of the petitioner was a kind of add on at the third place and since only two names could be recommended from a Department, it seems the original recommendation made by the Agriculture Department of the two names only found favour with the State Screening Committee.

7. The Court called for the original records of the Agriculture Department as well as that of the General Administration Department as to how recommendation by the Agriculture Department as well as by the State Screening Committee was made. What is revealed from the original records,

some of which has also been extracted and brought on record in the present writ application, is that the State Screening Committee, headed by the Chief Secretary and other senior Officers of the State, deliberated over the so called 17 names and short-listed 10 candidates for being forwarded to the U.P.S.C. But the Minutes of the decision gives no reason as to on what parameters the seven candidates, including the present petitioner, was not recommend and further as to what was the reason and basis for recommending the proposed names, which originated from the Agriculture Department and how they were found to be more suitable than the present petitioner. So far as the details of service of the present petitioner is concerned, he too seems to be of outstanding merit. What was the basis for comparative analysis between the record of the petitioner viz a viz the two recommended candidates, cannot be culled out from the Minutes of the meeting. The Minutes have been brought on record as Annexure â?" R/3 to the writ application.

8. Since the recommendation of the State Screening Committee is absolutely silent on this aspect, therefore, the Court wanted some inputs from the State Government as to on what parameters such decisions are taken. The Court received no inputs from which indication or inference could be drawn on which the State Screening Committee based its decision.

9. Since recommendation by the State Screening Committee is of paramount importance for any government servant, who wants to be considered for appointment in the I.A.S. Cadre and since it is a dream of any non I.A.S. Officer to join the coveted service, then right of consideration in a free and fair manner is a right, which cannot be denied, especially when such decisions will have a telling effect on the future career and prospect of a government servant.

10. Any decision of such kind, therefore, must reflect as to what weighs with the decision making body, especially the State Screening Committee, for inclusion or exclusion. Since such decisions are made within public domain, therefore, the decision of the Committee should necessarily reflect the mind of the Committee, especially when such decisions become the subject matter of judicial scrutiny, where plea of irrationality or arbitrariness is raised on behalf of a candidate, who was under the zone of consideration. If the decision does not shed any light as to why certain persons have been

included and why some others have been left out, then, obviously, the allegation of irrationality, subjectivity and decision for extraneous considerations, can be easily made and at times stick too.

11. From perusal of Annexure â?" R/3, it seems that the sequence in which the names were placed by the Agriculture Department is the sequence in

which the names came to be recommend by the State Screening Committee to the U.P.S.C. The stand taken by the learned Additional Advocate

General, representing the State and the Screening Committee is that a High Power Committee took the decision and, therefore, their decision should

not be a suspect. However, when questioned closely, he fairly submitted that in absence of the reasons having been recorded in the Minutes of the

meeting, dated 22.08.2014, he cannot make any submission beyond the records.

12. In this connection, a Constitution Bench of the Hon'ble Apex Court way back in the case of Delhi Transport Corporation Vrs. D.T.C. Mazdoor

Congress, reported in [AIR 1991 SC 101] had this to say in paragraph 225 of the judgement:

â?"225. The â?"high authorityâ? theory so called has already been adverted to earlier. Beyond the self-deluding and self-asserting

righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for some time in the past. But its

unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it.â?"

13. The Hon'ble Apex Court had further this to say in paragraph 276:

â?"If an individual action is taken as per the procedure on its own facts its legality may be tested. But it would be no justification to confer

power with wide discretion on any authority without any procedure which would not meet the test of justness, fairness and reasonableness

envisaged under Arts. 14 and 21 of the Constitution. In this context it is important to emphasize that the absence of arbitrary power is the

first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when

conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions

should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should

know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a

decision taken in accordance with the rule of law. (â??See Dicey - â??Law of the Constitutionâ? - 10th Ed., Introduction cx). â??Law has

reached its finest momentsâ?, stated Douglas, J. in United States v. Wunderlich, (1951) 342 US 98, â??when it has freed man from the

unlimited discretion of some rulerâ?|â?|. Where discretion is absolute, man has always sufferedâ?. It is in this sense that the rule of law may

be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes â??means

should discretion be guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful,â? as followed

in this Court in S. G. Jaisinghani v. Union of India, (1967) 2 SCR 703: (AIR 1967 SC 1427).

14. Keeping the above principles in mind, this Court has no option but to hold that mere fact that the State Screening Committee consisted of senior

officers, which included the Chief Secretary; Chairman, Board of Revenue; the Development Commissioner; and the Principal Secretary, General

Administration Department, by itself is not a guarantee of objectivity and fairness in decision-making. Since such State Screening Committee has

absolute power to either make or mar somebodyâ??s future prospect, relating to entry of service into the coveted cadre of I.A.S., the Committee has

an obligation and duty to reflect in its Minutes the reasons why certain names have been recommended and others were not found fit for

recommendation.

15. The Court directs the State of Bihar, especially the General Administration Department that in all future meetings of such kind held by the

departmental heads as well as State Screening Committee, the Minutes must record the reasonings against the names recommend or the names held

back or rejected. This is a requirement under the administrative law as well as constitutional scheme of things. When such decisions are to be tested

before a Court of law, they must satisfy the requirement of Article 14 and 16 of the Constitution of India. Since the Court has not been enlightened as

to the reasons for such recommendation and merely taking a stand that the State Screening Committee considered the case of the petitioner and it in

its wisdom decided not to recommend him, then the hallowed composition of the committee by itself cannot act as a shield against the judicial scrutiny

when the reasons for such decision, if not the decision making, is put to test.

16. The Central Administrative Tribunal primarily seems to have got carried away by two things. One the name of the petitioner was included and

recommended to the State Screening Committee and two that since the State Screening Committee is headed by the Chief Secretary of the State,

therefore, the Courts will have no occasion to do any evaluation or sit in judgement over the same.

17. The Tribunal, therefore, has committed a serious error of law, keeping in mind that the State Government or the Screening Committee are not in a

position to give the reasons for recommendation or rejection. The law in this regard has traveled too far now to hide behind the sanctity of composition

of a Committee, which is headed or includes high officials.

18. The Court, therefore, after having gone through the records and the manner in which the decision relating to the petitioner has been taken, does

not get a happy feeling that the petitioner was given a fair consideration. In fact, efforts have been made at every stage to somehow prevent him from

being recommended. If it was not for the intervention of the Minister, his name would not even have been placed before the Screening Committee and

as we have noticed that since no reasons are emerging from the Minutes of the meeting, we do not know as to why the committee considered the first

two recommended names from the Agriculture Department alone for being forwarded to the U.P.S.C. for consideration.

19. Now a plea is taken that there was a limitation on the numbers of names, which could be recommended from a Department for consideration and

not more than two names could have been sent. Then even otherwise the name of the petitioner should have figured over and above the two

recommended names instead of showing him as the third position, since he did not suffer any infirmity by being recommended in the previous year.

The department knew fully well that only two names have to be recommend and the formality of a consideration, therefore, in relation to the name of

the petitioner by the Screening Committee seems to have been played out. If the petitioner's name had been recommended in the previous year

and for one reason or the other, the meeting of the U.P.S.C. could not be held

within the time-frame and that was the only reason why his case remained in limbo, then as a natural corollary since nothing adverse had happened or nothing adverse had been recorded against the petitioner between the last consideration and the present recommendation, his name should have figured as the first candidate in addition to whatever names the Agriculture Department wanted to forward to the State Screening Committee.

20. The whole exercise, therefore, does not instill confidence in the Court nor has the Court been satisfied by the respondent â?" State authorities in the manner in which the said decision has been taken, which could reflect fairness, objectivity and lack of any extraneous considerations for making such recommendations.

21. If this be so, the Tribunal has shied away from its responsibility by holding that any penetration into the decision making by the State Screening Committee would amount to sitting in judgement for evaluation on the merit, which was done by the concerned authority.

22. On the whole, therefore, we are of the opinion that the State Screening Committee must recommend the name of the petitioner to the U.P.S.C.

within a period of two weeks and the U.P.S.C. will thereafter consider the case of the petitioner objectively, irrespective of the previous decision to

include the private-respondents no. 8, i.e., Shri Baidyanath Yadav in the IAS cadre for the year 2014. The evaluation, so done by the U.P.S.C., will

finally decide the fate and the status of Shri Baidyanath Yadav. Inclusion of Baidyanath Yadav in the IAS cadre on the recommendation of the

U.P.S.C. will not create any right in his favour till the objective decision is taken by the U.P.S.C. on the name of the petitioner as well. For the

purpose of consideration of the name of the petitioner the post will be considered to be vacant for the year of vacancy of 2014.

23. On the recommendation of the Screening Committee of the State, the U.P.S.C. would be expected to hold an interview and evaluation of the

petitioner preferably within a period of six weeks thereof and they will communicate their decision to the authorities of the State of Bihar, accordingly.

The follow up notification will be issued thereafter.

24. The writ application stands allowed in terms of the above.

25. The impugned order, dated 11.07.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 165 of 2015 stands

quashed.

The original records are returned to the counsel for the State for their destination.