
(2007) 04 JH CK 0086
In the Jharkhand High Court
Case No : L.P.A No. 63 of 2006

Ajay Chandra Dhar

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Others

RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 BLJR 1594 : (2007) 3 JCR 25

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;Permod Kohli, J

Bench : Division Bench

Advocate : Ritu Kumar, K.P. Deo and Bharat Kumar, for the Appellant; R.R. Mishra, G.P II and S.P. Roy, for State of Bihar, for the Respondent

Final Decision : Allowed

Judgement

M. Karpaga Vinayagam, C.J.—Mr. Ajay Chandra Dhar, the petitioner-appellant, filed a writ petition challenging the order, declining his selection/appointment as Deputy Collector in Bihar Administrative Service. The main ground urged by the petitioner is that he fulfilled all the qualification as well as requirements for promotion and posting as Deputy Collector and that despite recommendation of his name by the competent authority, for the selection, he was not selected.

2. The writ petition was ultimately dismissed on 16.11.2005 by the order of the learned Single Judge mainly on the reason that he obtained only 25 marks whereas the other man, above him, who has been selected, secured 291/2 marks and as such, he obtained below the cut off marks and therefore, there is no merit in the writ petition.

3. Aggrieved by this order, the petitioner-appellant has filed this L.P.A before this Court.

4. The short facts, which are relevant for disposal of this appeal, are as follows:

25% of the appointment on the post of Deputy Collector, State Administrative

Service, is done through nominations, in view of the circular. As per the circular, only those persons, who have crossed 40 years of age on 1.8.1983, 1.8.1984 and 1.8.1985, with respect to 32nd, 33rd and 34th Examinations could be nominated. Further the candidates must have undergone 12 years of service in Muffasil service, 10 years of service in Secretariat and the minimum qualification was Intermediate. Only those candidates were recommended whose service records were good and no adverse entry was made against them during the last five years.

The petitioner belongs to the category of displaced person from East Pakistan and is also a Graduate in Commerce and is in service of the State Government since 20.9.1969. The petitioner-appellant's name has also been recommended for nomination in 32nd, 33rd and 34th Competitive Examination mentioning that the appellant has fulfilled all the requisite qualification for the above selection. The Commissioner, Santhal Pargana Division, Dumka, under whom he was working, also recommended his name before the Deputy Secretary, Board of Revenue, Bihar, for 33rd and 34th Competitive Examination and forwarded the same along with the confidential reports for the years 1981-82, 1982-83, 1987-88 and 1988-89. Thereafter Selection Committee has been appointed by the Board of Revenue. They considered the candidature of 169 employees and rejected 17 employees' candidature including that of the petitioner-appellant on the ground that these persons had not fulfilled the requisite qualification and obtained the requisite marks.

The petitioner-appellant, having felt aggrieved by the fact that another candidate securing 291/2 marks has been selected, whereas he, being entitled to get 31 marks in general category, has not been selected and as such, there is discrimination, has consequently approached the Writ Court seeking for redressal of his grievance.

5. The learned Single Judge has dismissed the writ petition mainly on the ground that since the petitioner's contention that he secured 31 marks has been specifically denied and disputed by the counsel for the respondents stating that the petitioner got only 25 marks and the candidate who secured more marks than him was recommended and that disputed facts cannot be gone into in this writ petition. Hence this appeal.

6. The main ground urged in this Letters Patent Appeal by the counsel for appellant is that the learned Single Judge has never considered the criteria prescribed for the examination to find out whether all the requisite qualifications and other conditions have been fully satisfied and whether appropriate marks have been secured by the petitioner and on the other hand, simply accepting the contention of the counsel appearing for the respondents that the appellant secured lesser marks, dismissed the writ petition and as such, the order of the learned Single Judge is wrong. Arguing contra, the counsel appearing for the respondents submitted justifying the impugned order passed by the learned Single Judge.

7. We have heard the counsel for the parties.

8. In order to decide the main issue urged by the counsel for the petitioner-appellant, we have earlier directed the State of Bihar and State of Jharkhand to produce the relevant records from both the Governments including the Annual Confidential Reports of the petitioner-appellant for the relevant periods. We have perused the records and also have given our anxious consideration to the rival contentions made by the respective counsel.

9. There is no dispute in the fact that there are fixed and separate marks prescribed for the educational qualification, for experience and for assessment of marks on the basis of Annual Confidential Reports. The petitioner-appellant is admittedly a Commerce Graduate and is entitled to 3 marks. It is also not in dispute that he joined the service on 20.9.1969. The person, who has got experience for 13 to 16 years, will be entitled to 2 marks. As such, 3 marks for Graduation and 2 marks for experience for a period between 13 and 16 years have been correctly given to the petitioner-appellant. The dispute in this case is only with regard to the marks awarded to the petitioner-appellant on the basis of the confidential reports in respect of the period 1979-80 to 1988-89. As per the criteria in respect of the assessment of marks for Annual Confidential Reports, if the candidate is "Average", he would be entitled to 1 mark; if the candidate is "Good", he would be entitled to get 2 marks; if he is "Very Good", he would be entitled to 3 marks and if he is "Excellent", he would be entitled to 4 marks. In order to verify whether correct marks have been given on the basis of the assessment of marks on Annual Confidential Reports, we have compared the confidential reports and other connected papers produced both by the State of Bihar and the State of Jharkhand. On perusal of the confidential reports, we feel shocked to see that award sheet contains the marks which are not consistent with Annual Confidential Reports.

10. For better appreciation, it would be better to reproduce the award sheet, which is as follows:

Total service on 1.8.85

Educational qualification

79-80

80-81

81-82

82-83

83-84

84-85

85-86

86-87

87-88

88-89

Total Marks

Yr-M-D 15 -10-1

B.Com

V.G.

V.G.

G

G

G

G

A

A

G

G

2

3

3

3

2

2

2

2

1

1

2

2

25

The award sheet shows that for the years 1981-82, 1982-83, 1983-84 and

1984-85, he has been graded as "Good" and 2 marks have been given for each year. But the original record would show that for the years 1981-82, 1982-83, 1983-84 and 1984-85, the Initiating Officer has graded him "Very Good" and the Reviewing Officer graded him as "Excellent". Even though he is entitled to 4 marks as per the criteria, he has been awarded only 2 marks in the award sheet. Similar position is in respect to the Annual Confidential Report for the years 1984-85 and 1986-87. In the award sheet, he has been considered as "Average" and he has been awarded only 1 mark, but in this year as per the Annual Confidential Report, he was considered to be an "Excellent Officer". Instead of giving 4 marks for these years, he has been given only 1 mark for each year treating him as an "Average". When the Annual Confidential Report specifically mentioned that the petitioner-appellant is an "Excellent Person" for the year 1986-87, the award sheet shows that he has been graded only as "Average". For the years 1984-85 and 1986-87, he was graded as "Excellent" in the Annual Confidential Reports, but he has been graded as "Good" and "Average" in the award sheet. As per the Annual Confidential Reports, he should have been awarded 4 marks each for both these years. Therefore, as against 3 marks awarded for these years, he is entitled to 8 marks. Even if we ignore the discrepancy in awarding the marks for other years, with the awarding of additional 5 marks for the above mentioned two years, he secures 30 marks and becomes qualified for promotion.

11. Normally this Court would not enter into the disputed facts by taking upon its orders the duty of awarding marks to each of the items as the same is exclusively the job of the Selection Committee. As held by the Supreme Court in Maheshwar Prasad Srivastava Vs. Suresh Singh and Others, the High Court under Article 226 should hesitate to interfere with the direction of the authority so long as it is exercised bona fide. But as laid down by the Supreme Court in Income Tax Appellate Tribunal Vs. Dy. Commissioner of Income Tax (Assts.) III, Hyderabad, , when it is found that determination is not in accordance with the mandatory procedures and the same is mala fide and promoted by extraneous consideration resulting in failure of substantial justice, High Court should interfere over the said determination through judicial intervention. This Court is conscious of the guidelines given by the Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra, that in the departmental proceedings, High Court in Writ Jurisdiction may not normally interfere with findings of facts. If it is found to be based on no evidence or findings are wholly perverse and legally untenable, High Court can certainly interfere into the determination of the authorities.

12. In the present case, as indicated above, lesser marks, which are contrary to the Annual Confidential Reports, have been given in the award sheet which resulted in causing injustice to the petitioner-appellant having been made to lose the chance of getting promotion.

13. Hence, under the peculiar facts of this case and keeping in view of the fact

that the selection process was completed in the year 1990 in the Unified State of Bihar, we deem it fit to award proper marks to the petitioner-appellant on the basis of the Annual Confidential Reports to do substantial justice.

14. As indicated above, on going through the award sheet and service records, we feel agonized to see the authorities concerned have purposely awarded lessor marks in the award sheet, which is completely contrary to the service record of the petitioner-appellant. It is not a mere case of non-consideration or inadvertent mistake. It is a sheer making false entries in the award sheet. The manner, in which the petitioner-appellant has been graded as "Average" and "Good", whereas the Annual Confidential Reports show that he was graded "Very Good" and "Excellent", would clearly indicate that it was a deliberate act of some miscreants making wrong entries, contrary to Annual Confidential Reports in order to spoil the chance of the petitioner-appellant's promotion with oblique motive. This sort of practice adopted by the authorities, in our view, is quite shocking and this would completely shake the faith in the system.

15. Though the petitioner-appellant may be entitled to more marks on the basis of the entries in his Annual Confidential Reports for most of the years, we are of the view that at least for the years 1984-85 and 1986-87, the petitioner-appellant is entitled to 4 marks for each of the years as he has been graded as "Excellent". The difference between the marks awarded by the Selection Committee and his entitlement is 5 marks. By adding these 5 marks in the total 25 marks already awarded to the petitioner-appellant, he gets 30 marks, i.e. more than the last selectee who has secured 29½ marks. Therefore, the merit of the petitioner-appellant shall be determined on the basis of 30 marks and consideration shall be accorded to him for promotion.

16. In view of the long delay and injustice meted out to the petitioner-appellant by fraudulent means by some vested interest, we direct the promotion of the petitioner-appellant from the date other selectees were promoted. In this context, it is to be mentioned that this Court through interim order already directed the authorities to reserve one seat for the petitioner.

17. Therefore, it is held that the petitioner will be entitled to promotion and seniority and other consequential benefits like pay scale, increments etc. Such benefits, of course, will be allowed to him notionally and he will get monetary benefits which will be given to him from the date of this judgment.

18. For the foregoing reasons, we deem it fit to allow this appeal and set aside the impugned order of the learned Single Judge. The respondents are directed to consider the case of the petitioner-appellant for promotion and pass the consequential orders, within two months from today, in the light of our orders indicated above.

19. While parting with this case, we are constrained to express our displeasure over the act of the authorities concerned who had wontedly given lesser marks to the petitioner-appellant to spoil his chance of promotion. So the Government

concerned is directed to find out the real culprits behind the scene and deal with them suitably.

20. Let a copy of the judgment be transmitted to both the Governments immediately. The records produced by the counsel appearing for the State of Bihar be given back to him.