
(2008) 03 AHC CK 0110
In the Allahabad High Court
Case No : Writ Petition No.624 (SB) of 2002

Ajit Kumar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Citation : (2008) 03 AHC CK 0110

Hon'ble Judges : U.K.Dhaon, J and Devi Prasad Singh, J

Final Decision : Allowed

Judgement

1. Heard Sri Sudeep Seth, learned counsel for the petitioner and Sri Sharad Kumar Srivastava, the learned Central Government Counsel for the opposite parties.

2. The instant writ petition arises from the judgment and order dated 27.9.2001 passed by the Central Administrative Tribunal in Original Application No.168 of 1996 preferred by the petitioner and three other applicants and the order dated 11.2.2002 passed by the Central Administrative Tribunal on the Review Application preferred by the petitioner.

3. The brief facts of the case are that the names were requisitioned by the Superintendent of Post offices for filling the vacancies in clerical cadre on the post of Postal Assistant. The name of the petitioner along with others was sent by employment Exchange, Sitapur to the Department concerned. A written test and typing test was held and thereafter the petitioner was declared successful in the said written test in accordance with order dated 23.11.1995 passed by the Superintendent of Post Offices, Sitapur. Since appointment to the petitioner and three others was not given, a joint Original Application was moved by the petitioner and three others before the Central Administrative Tribunal, Lucknow Bench Lucknow, which was registered as Original Application No.168 of 1996. By the impugned judgment and order dated 27.9.2001 the Original Application in respect to the three applicants was allowed by the Central Administrative Tribunal on the ground that there were three vacancies and no relief was granted

to the petitioner who was lowest in merit for want of any vacancy. The petitioner thereafter filed a Review Petition stating inter alia that Sri Rishi Saran Jaiswal has already joined in Collectorate, Sitapur on 22.7.1996 in pursuance of the order dated 21.7.1996 and as such in the vacancy the petitioner may be accommodated. The said Review Petition was dismissed by the order dated 11.2.2002.

4. The learned counsel for the petitioner submits that admittedly on 27.9.2001 there were three vacancies available due to nonjoining by selected candidates and against those three vacancies Sri Rishi Saran Jaiswal had already joined in the Collectorate, sitapur on 22.7.1996 and as such the Central Administrative Tribunal ought to have allowed the Review Petition preferred by the petitioner. He further submits that Sri Rishi Saran Jaiswal was applicant No.3 in the Original Application No.168 of 1996 preferred by the petitioner and others and in the vacancy caused due to nonjoining by Sri Rishi Saran Jaiswal the petitioner is entitled for appointment.

5. Sri Sharad Kumar Srivastava, the learned Central Government Counsel appearing on behalf of the opposite parties has fairly conceded that Sri Rishi Saran Jaiswal was working on 27.9.2001 in the Collectorate, Sitapur in pursuance of the order dated 21.7.1996. He has also fairly conceded that when the Original application preferred by the petitioner and others was allowed in respect to Sri Rajesh Kumar Shukla, Sri Anurag Johri and Sri Rishi Saran Jaiswal three vacancies were available and no relief to the petitioner was granted by the Central Administrative Tribunal for want of vacancies.

6. Sri Sharad Kumar Srivastava, learned counsel for the opposite parties further submits that there is no illegality in the orders passed by the Central Administrative Tribunal and the vacancy has exhausted.

7. We have considered the submissions made by the learned counsel for the parties and gone through the record.

8. It is admitted case of the parties that in the written examination which was held for appointment on the post of Postal Assistant, the name of the petitioner was in the select list prepared by the Department. It is also admitted case of the parties that on 27.9.2001 when the Original Application preferred by the petitioner and three others was allowed in respect to the three applicants there were three vacancies available in the Department. It is also admitted case of the parties that Sri Rishi Saran Jaiswal who was applicant No.3 in Original Application No.168 of 1996 is working in the Collectorate, Sitapur since 22.7.1996 in pursuance of the order dated 21.7.1996. The Central Administrative Tribunal has not granted any relief to the petitioner for want of any vacancy. Admittedly a vacancy was there as Sri Rishi Saran Jaiswal who was working in the Collectorate, Sitapur never submitted his joining in compliance of the judgment and order dated 27.9.2001 passed by the Central Administrative Tribunal. The Central Administrative Tribunal ought to have allowed the Review Petition

preferred by the petitioner as at that time also a vacancy was there. In the case of State of U.P. v. Ram Swarup Saroi, reported in (2000) 3 SCC Page 699 Hon"ble the Supreme Court has held that the list of selected candidates for appointment remains valid during the pendency to the litigation.

9. In the result, the writ petition succeeds and is hereby allowed. The impugned order dated 11.2.2002 passed by the Central Administrative Tribunal in the Review Petition preferred by the petitioner is hereby set aside. The judgment and order dated 27.9.2001 passed by the Central Administrative Tribunal is modified to the extent that in place of Sri Rishi Saran Jaiswal, offer of appointment shall be given to the petitioner on the post of Postal Assistant. There shall be no order as to costs.

(Petition allowed)