
(2006) 12 PAT CK 0078
In the Patna High Court
Case No : CWJC No. 9336 of 2004

Anil Kumar @ Anil Kumar Mehta

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Citation : (2007) 4 PLJR 349

Hon'ble Judges : Narayan Roy, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, Ritesh Kumar No. 1, Ram Vinay Sharma and Ravi Kumar, for the Appellant; Sanjay Kumar for Respondent Nos. 1 to 4, M/s Jayant Kumar Karn and Hemant Kumar Karn, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. The petitioner is aggrieved by the order dated 20th July, 2004 passed by Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the CAT) in O.A. No. 240 of 2000. The grievance of the petitioner is that the CAT has illegally set aside his appointment from the post of Extra Departmental Branch Post Master (for short "EDBPM") of Kedali Patti in the Saharsa Postal Division and respondent No. 5 has been ordered to be appointed to the same said post.

2. Respondent No. 5 i.e. Neelam Devi moved CAT, Patna Bench; Patna challenging the appointment of the present petitioner, who was appointed to the post of EDBPM ignoring her rightful claim. She claimed that as her name was not sponsored by the employment exchange even though she was registered in the employment exchange, she had to apply directly to the postal authorities and she was asked to appear for verification of her documents on 28.1.2000. Despite all her documents being in place as well as the fact that she had secured the highest marks amongst all the candidates in matriculation and she was the fittest candidate for appointment but still her case for appointment was illegally ignored by the respondents. She states that she had secured 574 out of 900 marks in

matriculation as against 549 out of 900 marks obtained by the present petitioner and that alone was sufficient to appoint her as EDBPM.

3. The official respondents filed the written statement and admitted the position that Neelam Devi was first in the merit list amongst all the candidates but since she failed to submit documents relating to the landed property in her exclusive name, mutation order and up-to-date rent receipts, her claim had to be ignored and the present petitioner came to be appointed since he fulfilled all the criteria. The present petitioner also filed his written statement and reiterated the position that Neelam Devi had not submitted the necessary papers regarding the property including mutation order and rent receipts, which was mandatory condition as laid down in Note-1 below Rule 284" of P&T Manual, Volume-IV. The petitioner also raised doubts over the marks-sheet submitted by her.

4. The CAT after going through the contention of the parties went into the issue whether the rejection of the candidature of respondent No. 5 (in the present writ application) on the ground of non-submission of document of landed property, mutation orders and rent receipts is a valid ground or not. The Tribunal after going through the records recorded in its order that the Circle Officer of Nauhatta had given a certificate dated 21.1.2000 that the applicant i.e., Neelam Devi was having peaceful possession over one acre of land, but her name could not be recorded in the revenue records because of the intervening Assembly Elections in the year 2000. The CAT further held that the applicant had submitted a registered gift-deed for the land dated 11.11.1999 as a proof of possession of land/property in her name. The Tribunal further went into the fact that in any case since a Full Bench of Central Administrative Tribunal at Bangalore in the year 2002 had held that the condition imposed pertaining to possession of adequate means of livelihood including land in the name of the applicant in circular of 6.12.1993 was ultra vires and, therefore, the insistence of the Department on production of land and property in the name of applicant was not an absolute or a preferential condition to be considered by the respondent authorities for appointment on the post of EDBPM. Based on the order delivered by the Full Bench of Central Administrative Tribunal at Bangalore, the Tribunal set aside the appointment of present petitioner and directed appointment of respondent No. 5, i.e. Neelam Devi to the said post. It is this order of the Tribunal which has compelled respondent No. 5, i.e. the present petitioner to move the High Court in the present writ application.

5. The petitioner has submitted before this Court that the order of the Tribunal setting aside his appointment after more than four years of satisfactory service was both erroneous on fact as well as in law. He contends that in terms of the advertisement dated 13.10.1999, the candidates had to submit their application with necessary documents by 11.11.1999. The advertisement is Annexure-1 to the writ application. Possession of land in the name of the candidate was a must and the candidate had to produce the concerned documents regarding ownership alongwith mutation order as well as current revenue receipts. Admittedly,

11.11.1999 was the last date fixed for the advertisement for submission of application. Respondent No. 5 in support of possession of land produced registered gift-deed dated 11.11.1999 at the time of verification on 28.1.2000. It is the contention of the petitioner that if respondent No. 5 had acquired right by virtue of a gift-deed dated 11.11.1999 then obviously she was not eligible on the date she had submitted her application. The petitioner submitted that the Court should take judicial notice of the fact that no registered document at the relevant time was ever made available the same day, to the person as invariably the concerned registry take many a months to copy the document and issue the proof and the registered document.

6. He further submits that reliance on the Full Bench decision of Central Administrative Tribunal at Bangalore, which had struck down the requirement of possession of adequate means of livelihood as invalid is also misplaced because the appointment relates to the year 1999 and the order of Full Bench came in the year 2002. The order of the Full Bench, if at all, can only relate to cases of future appointment and it cannot negate the conditions of the advertisement as contained in Annexure-1, which was issued in the year 1999. The order of the Full Bench of Central Administrative Tribunal at Bangalore cannot have retrospective effect but will always be prospective in nature.

7. It is not in dispute that the advertisement for the appointment as contained in Annexure-1 was issued as far back as on 13.10.1999 and the process of appointment was completed in January, 2000. At the relevant time all the conditions indicated in the advertisement were very much in order and fulfillment of those requirements was a must for appointment to the post of EDBPM. If production of land records alongwith mutation order and current rent receipts was a pre-condition for qualifying for consideration for appointment in addition to marks obtained in matriculation then it had to be fulfilled by the candidates concerned. The validity of the appointment in question will have to be tested within the parameters or conditions of the advertisement issued by the respondents. The same cannot be found fault with or its requirement cannot be wished away merely on the ground that at a subsequent stage, to be precise, in the year 2002, a Tribunal's order had struck down one of the conditions indicated in the advertisement. The Tribunal has obviously erred by applying the judgment of the Full Bench of Central Administrative Tribunal of Bangalore, which at best could be prospective in nature and could not relate back to an appointment made prior to the order passed by the Full Bench of Central Administrative Tribunal at Bangalore. Reliance by the Tribunal on the order of the Full Bench to set aside the appointment of the petitioner was obviously an error of law.

8. It is not in dispute that the petitioner fulfilled all the criteria and produced all the relevant documents in support of his claim regarding land etc. The striking down of that condition by the Full Bench in the year 2002 cannot be utilised to bestow benefits upon respondent No. 5 i.e. Neelam Devi. This Court also has

doubts with regard to the fact that respondent No. 5 was supposed to be in possession of the registered gift-deed dated 11.11.1999. This obviously was not possible since the last date for submission of the application was also 11.11.1999, therefore, obviously on the date of the application respondent No. 5 did not have in hand a document supporting her claim about possession of land in her name nor did she have the necessary mutation order and current rent receipt, which she any way accepts that she could not produce due to ensuing Assembly election. That being the position private respondent No. 5, therefore, did not fulfill the criteria laid down in Annexure-1 i.e. the advertisement.

9. In view of the above factual and legal matrix stated above this Court is of the opinion that the order of the Tribunal dated 20.7.2004 passed in O.A. No. 240 of 2000 cannot be sustained and the same is accordingly quashed. This writ application is allowed without costs.