
(2008) 08 OHC CK 0066
In the Orissa High Court

Arun Kumar Ray

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Citation : (2008) 106 CLT 729

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Mahanty, J.—In the present writ application the Petitioner-Arun Kumar Ray has sought to challenge, an Order Dated 28.9.2000 passed by the Central Administrative Tribunal Cuttack Bench, Cuttack in O.A. No. 626 of 1998 dismissing the Petitioner's application seeking a direction to the Opposite Parties to issue an appointment order in favour to the Petitioner to the post of Field Assistant in the general category.

2. Shorn of unnecessary detail as would be evident from the pleadings of this case, the Petitioner had applied in the year 1994 for being considered for appointment to the post of Field Assistant (Gen.) in the Aviation Research Centre (Directorate General of Security), New Delhi. It appears that the Opposite Parties had initiated a selection process for 10 existing and 5 anticipated vacancies of Field Assistant (Gen.) and pursuant to the Petitioner's application all the applicants were interviewed from 23.5.1994 to 27.5.1994. A merit list was prepared for Seven General, 3 SC, 3 OBC and 1 ST candidates. From amongst the applicants the Petitioner's position in the merit list was at serial No. 9 and since there were seven vacancies in that category, the Petitioner was kept at serial No. 2 of the waiting list of the general category.

3. It is stated by the Petitioner that although his name was mentioned at serial No. 2 of the waiting list of the general category, he was not offered with any appointment and instead of that the Opposite Parties, issued a further

advertisement for similar posts on 28.6.1996 and 4.2.1998. Therefore, the Petitioner sought to challenge the said advertisements and prayed for a direction to the Opposite Parties to issue an appointment letter to the Petitioner since he remained at serial No. 2 of the waiting list of the general category prior to proceeding with filling up the posts against the impugned advertisement.

4. Mr. S.N. Kar, Learned Counsel for the Petitioner raised a contention that since the Petitioner was found meritorious and was put at serial No. 2 of the waiting list, pursuant to the interview held by the Opposite Parties in the year 1994, the Petitioner was entitled to be issued with a letter of appointment even if the vacancies have occurred thereafter. In other words Learned Counsel's contention is that from the impugned advertisement dated 28.6.1996 and 4.2.1998 it would be evident that the Opposite Parties required a huge number of Field Assistants and since the Petitioner had been found fit and had been placed at serial No. 2 of the waiting list, he should have been issued with a letter of appointment instead of seeking fresh applications for the said posts. In this regard Learned Counsel for the Petitioner placed reliance upon the Judgments of the Hon'ble Supreme Court in the case of K. Jayamohan Vs. State of Kerala and another, and in the case of Oriental Insurance Co. Ltd. Vs. T.S. Sastry, . Learned Counsel further placed reliance upon the Judgment of this High Court in the case of Rajanikanta Pattanayak and Others Vs. R.S. Bedi and Another, .

5. Mr. J.K. Mishra, Learned Assistant Solicitor General (ASG) appearing for the Union of India on the other hand submitted that the Petitioner's right for appointment would only have arisen had one of the persons selected not joined in his respective post. Learned A.S.G. submitted that a person in the waiting list could get appointment, only if a person in the select list drops out or does not join. It is submitted that in the present case all the general candidates of the select list have joined in their duties and therefore, the Petitioner could not be considered for appointment since there was no vacancy. Learned A.S.G. submitted that since all the appointment orders issued were accepted by the successful candidates there was no possibility of offering appointment to any person in the waiting list far less to the Petitioner who was in the waiting list at serial No. 2 for the general category.

Learned A.S.G. further submitted that the Petitioner has no cause of action against the subsequent advertisement issued on 28.6.1996 and 4.2.1998 under Annexures-2/1 and 2/2 respectively to the Writ Petition. The said notifications inviting applications had been issued from the office of Director, Special Service Bureau (SSB) and Directorate General of Security (Cabinet Secretariat). He further submitted that both these organizations i.e., Director, SSB and Directorate General of Security are different administrative set up with their own cadre and Recruitment Rules and Aviation Research Centre has nothing to do with the vacancies notified by these organizations. Therefore, the Learned A.S.G. submitted that the Petitioner cannot seek appointment either under the Director, SSB or Director General of Security for the aforesaid reasons and since Aviation

Research Centre (who had declared the Petitioner as No. 2 in the waiting list) have nothing to do with the vacancy notified by the other organization having separate cadre and recruitment rules.

6. Now it becomes necessary to deal with the case laws relied upon by the Petitioner. Hon''ble Supreme Court in the case of Oriental Insurance Company Limited (supra) while dealing with the question as to whether contingent reserve promotees whose name have been mentioned in the waiting list could be considered for promotion in the subsequent year when vacancies arose, came to hold in the said case that the purpose of waiting list was to grant promotion in any vacant post arising prior to the formation of the next Promotion Committee. In the present case, the waiting list in question was for appointment and not for promotion and therefore, this decision of the Hon''ble Supreme Court cannot be of any assistance to the Petitioner's case.

7. The Hon''ble Supreme Court in the case of K. Jayamohan (supra) while dealing with the issue about the rights of a candidate kept in waiting list came to hold that such a candidate cannot claim the right of appointment merely because he was kept in the waiting list. The Hon''ble Supreme Court in the said decision reiterated the settled legal position that merely because a candidate is selected and kept in the waiting list, he/she does not acquire any absolute right for appointment and it was open to the Government to make the appointment or not. Even if there was any vacancy it was not incumbent upon the Government to fill up the same. But the appointing authority was required to give reasonable explanation for the non-appointment.

8. In the present case at hand the submissions of the Learned A.S.G. as noted hereinabove clearly gives a reasonable explanation for the non-appointment of the Petitioner, i.e., no vacancy in the list of general candidate since all the selected persons joined in their respective post. Therefore, the grievance of the Petitioner on this issue cannot be entertained.

Next the Petitioners relied upon the Judgment of this Court in the case of Sri Rajanikanta Pattanayak and Ors. (supra). In the said case their Lordships came to hold that the technicality in qualifying physical efficiency test and the requirement of strict compliance thereof cannot be appreciated by this Court since the Petitioners have become aged and they are not expected to compete equally with freshers and therefore directed such cases could have been considered with sympathy and compassion.

This Judgment again is of no assistance to the Petitioner, inasmuch as, sympathy and compassion cannot alone form the basis for granting prayer made by the Petitioner unless he establishes his right in accordance with law. We find the Tribunal in its Order Dated 28.9.2000 in O.A. No. 626 of 1998 has clearly dealt with and considered each of the contentions advanced by the Petitioner herein and has rejected the same. We are in agreement with the views expressed by the Tribunal in the impugned order since in the present circumstances, all the

seven posts of un-reserved category have been filled up, the Petitioner who was admittedly at serial No. 2 in the waiting list cannot be said to have been any right to seek any appointment in terms of the Judgment of the Hon''ble Supreme Court in the case of K. Jayamohan(supra).

9. We further find that the challenge of the Petitioner to the advertisements dated 28.6.1996 and 4.2.1998 issued by the Director, Special Service Bureau (SSB) and Directorate General of Security, Cabinet Secretariat, which are separate organizations under different administrative set up and Opposite Party No. 2-Dierector General of Secretariat, Aviation Research Centre has nothing directly to do with filling up the said vacancies for which applications were invited by the aforesaid organizations.

10. Hence, in view of the above, the writ application merits no further consideration and the same is dismissed, but in the circumstances without cost.

L. Mohapatra, J.

I agree.