

(2019) 09 PAT CK 0135

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19076 Of 2019

Arun Kumar, S/O Sri Asarfi Yadav

APPELLANT

Vs

Union Of India, Through And Ors

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Citation : (2019) 09 PAT CK 0135

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J

Bench : Division Bench

Advocate : Hemant Kumar Karn, S.D. Sanjay, Ram Anurag Singh

Final Decision : Dismissed

Judgement

1. Heard Mr. Hemant Kumar Karn, learned Advocate for the petitioner and Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India.

The petitioner has challenged the order dated 12.12.2018 passed by the Tribunal rejecting the prayer of the petitioner as also the order dated 21.01.2019, whereby the review of the order dated 12.12.2018 referred to above has been refused.

The petitioner claims to have obtained same marks as that of the private-respondent no. 7 while participating in the selection process for the post of Gramin Dak Sevak. The tie was broken by counting marks of the extra papers in Madhyama examination in which it was found that the private-respondent no. 7 has more percentage than the petitioner. As such, the appointment letter was given to private-respondent no. 7.

This led the petitioner to challenge the appointment of private-respondent no. 7 before the Tribunal on the ground that in such an event, the marks of additional paper in the matriculation examination ought not to have been counted; rather age should have been the decisive factor. It was also pointed out by the petitioner before the Tribunal that the date of birth of private-respondent no. 7

as recorded was wrong and that the petitioner was older to him by an year. The aforesaid fact was noticed by the Tribunal and the respondent Department categorically stated before the Tribunal that such wrong entry of the date of birth of private-respondent no. 7 was only a slip of pen and his date of birth was actually 15.02.1993 which made him a year junior to the petitioner.

However, the Tribunal, taking into account that private-respondent no. 7 had obtained more marks in the additional paper, approved the decision of the department in giving appointment to private-respondent no. 7 in place of the petitioner. The petitioner thereafter preferred a review petition stating that age should have been the indice for breaking the tie and not the marks in the additional paper.

In support of the aforesaid contention, Mr. Karn, learned Advocate impressed upon the Tribunal as also before this Court that in some of the cases decided by the Tribunal, age was taken to be the decisive factor in the event of the applicants having obtained similar / identical marks. One such case of the Tribunal has been referred before this Court in which there is a reference of a letter of DOPT dated 08.11.2015 which provides for breaking of the tie in the event of equal marks to candidates, by taking their respective age.

We cannot rely upon the aforesaid letter of the DOPT as the contents of it, has been relied upon by the Tribunal, has not been made available to us by Mr. Karn. An effort was made by Mr. Karn to find out whether such a letter of DOPT has ever been issued or exists but no definite information has been received by him. Apart from this, Mr. Karn has also referred to the service rules for Postal Gramin Dak Sevaks and has shown to this Court that in the chapter dealing with the method of recruitment, preferential categories have been provided, which do not include the consideration of age. The preferential category as provided in the method of recruitment in service rules for Postal Gramin Dak Sevak is only of uneducated / unemployed persons or weaker sections of society. There is no mention of age as a criterion for any preference.

Lastly, it has been urged on behalf of the writ petitioner that in a recent advertisement which has been issued by the Department for appointment of such Gramin Dak Sevaks, the selection process lays down that in case the candidates have the same marks, the merit order would be taken as date of birth (higher age as merit) ST Female, SC Female, OBC Female, EWS Female, UR Female; ST Male, SC Male, OBC Male, EWS Male, UR Male. Therefore, the merit order which has been set forth in the selection criteria does take into account the date of birth and higher age as a factor in the preparation of the merit list but in the same criteria, it has also been clarified that the marks have to be calculated and reckoned by taking conversion of grades and points with multiplication factors of 9.5 against the maximum points of grades as 100.

The different clauses of the criteria has to be read in conjunction and not in isolation.

Otherwise also it would be difficult for us to accept the selection criteria in the advertisement of a separate selection process which has got nothing to do with the selection of private-respondent no. 7 or exclusion of the petitioner for GDS.

In service jurisprudence, the prescription of preferential qualification ought not to only refer to numeric superiority but should be relatable to better mental capacity, ability and maturity to shoulder the responsibility which may be entrusted to the candidates after their selection to a particular post. The basic object of prescribing the minimum qualification is to put a cut-off level for a particular job in accordance with the minimum competence required for the performance of that job.

From the selection process, it can be seen from the records of this case, minimum and maximum age prescription had been provided. The post is of Gramin Dak Sevak where age may not be a relevant factor for deciding the suitability of a candidate, especially if it is juxtaposed to the candidature of a person who has obtained more marks in the basic qualification prescribed for such examination.

In the present case, the prescription of qualification is of matriculation and both, the petitioner as well as the private-respondent no. 7, have obtained similar marks. It was in this circumstance that the marks in the additional paper, which we have not been informed whether it was compulsory or elective paper, private-respondent no. 7 had secured more marks. This decision of the respondent was never challenged by the petitioner before the Tribunal except for making a feeble attempt at indicating that the date of birth of private-respondent no. 7 as recorded was incorrect and that he was younger in age than the petitioner.

The Tribunal therefore was justified in refusing to review its order especially when no such challenge was raised with respect to age not having been taken as a factor for solving the tie between two aspirants / applicants who had secured same marks.

After having gone through the records of the case and after hearing learned counsel for the parties, we are of the view that in the absence of any rule regarding the methodology of breaking the tie in the event of identical marks having been obtained by the candidates, the best possible option for the employer was to see the overall marks of the respective candidates and whoever had obtained better marks be given the appointment letter.

The Tribunal rightly rejected the contention of the petitioner in the first instance and since no objection was raised with respect to the marks being taken as the relevant factor, the Tribunal rightly refused to review its order.

We do not find any reason to interfere with the orders impugned.

The petition is dismissed.

No order as to costs.