

(2001) 01 JH CK 0010
In the Jharkhand High Court
Case No : CWJC No. 2461 of 1999 (R)

Ashok Kumar Mishra and Others

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Citation : (2001) 01 JH CK 0010

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The petitioners, who are Electrical Operators of Bihar State Electricity Board in Patratu Thermal Power Station, preferred this writ application for their absorption to the post of Junior Electrical Engineer (General Cadre) fall vacant upto 31st March, 1992. Such claim have been made on the basis of a judgment and order dated 10th April, 1992 passed by the Apex Court in SLP (Civil) No. 3859 of 1991.

2. It appears that in pursuance of an advertisement No. 1/83 dated 26th May, 1983 the petitioners and others applied for appointment to 447 posts of Junior Electrical Engineers. They were successful in the written test but after interview while number of successful candidates were appointed as Junior Electrical Engineers, those including the petitioners, being lowered in the merit list, were appointed against lower posts of Electrical operators. This gave rise to a writ petition C.W.J.C. No. 7348 of 1989 which was decided on 12th December, 1990. Against the said Judgment of the Patna High Court one Nirmal Kumar Sharma and Others, moved before the Apex Court in SLP (Civil) No. 7642 of 1991 which was dismissed by order dated 10th April 1992. However, the Apex Court taking into consideration that a number of posts fall vacant upto 31st March, 1992, directed the Board to fill up those post in ratio of 75% and 25% by direct recruitment and absorption from amongst eligible employees respectively un contemplated under Rule 7.

3. Respondents in their counter affidavit brought on record the following facts.:--

The vacancy of J.E.E. (General Cadre) was worked out and found that 77 posts were vacant under 75% quota of direct recruitment and 26 posts under 25% quota for internal recruitment/absorption. In pursuance of the Apex Court's direction on Employment notice No. 3/98 was published for direct recruitment and another Employment Notice No, 1/93 was published for appointment out of internal eligible candidates. Approximately 209 applicants, mostly Diploma Holders appeared on written test held on 11th October, 1998 and selected candidates have been appointed,

4. So far as the petitioners are concerned, they having obtained lower marks were not provided with order of appointment. The marks obtained by one or other petitioner have also been shown at Para 11 of the counter affidavit.

5. Counsel for the petitioners assailed the process of the selection and objected the written test for absorption and placed reliance on modified Rule-7 published by Notification dated 14th October, 1988 as also on Rule 8(b). There in a ratio of 75%/25% was fixed for examination/written test and interview.

6. According to the counsel for the petitioners, process of selection started in 1993. The respondents were bound to make selection on the basis of old rule as was applicable i.e. the rule notified on 14th October, 1988. No written test having prescribed under the rule to hold examination. It was suggested that the amended regulation 8(b) can not be applied in selection process having started in the year 1993.

7. Admittedly, there is no rule/ guidelines framed to fill up the posts of Junior Electrical Engineer (General Cadre) by absorption of Electrical operators. The posts are to be filled up in terms with Rule 7. All the time the Board filled up the posts through competitive written test. This will be evident from the fact that a written test was conducted in pursuance of advertisement (No. 1/83) dated 26th May, 1983 in which the petitioners appeared. They having placed lower in the merit list were appointed as Electrical Operators. Subsequently, after the decision of the Apex Court the Board decided to fill up 25% post from amongst eligible employees. The Board decided to conduct the written test for selection. The petitioners were asked to appear in written test as was scheduled from 24th April 1994 for one or other reasons the said written test was not conducted on 24th April, 1994. It was subsequently conducted and held, on 18th March 1998 in which the petitioners appeared. Thereby, it will be evident that the petitioners had knowledge even in the year 1983, April, 1994 and in March 1998 that the posts of Junior Electrical Engineer (General Cadre) are being filled up by Competitive test. They having taken part in such written test and having not declared successful now it is not open to them to challenge the written test, nor can ask for straight way absorption without resorting to such selection.

8. Accordingly there being no merit, the writ petition is dismissed.

9. Petition dismissed.