
(2006) 11 PAT CK 0154
In the Patna High Court
Case No : CWJC No. 13862 of 2004

Awadhesh Kumar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Citation : (2007) 1 PLJR 294

Hon'ble Judges : Narayan Roy, J;Abhijit Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Pushkar Narain Shahi. learned counsel for the petitioner, and Mr. Sanjay Kumar, learned counsel for the Union of India. This writ application is directed against the order/judgment dated 30th September, 2004 passed in O.A. No. 770 of 2002 by the Central Administrative Tribunal (hereinafter to be referred to as "Tribunal"), whereby and whereunder the application filed by the present petitioner was dismissed.

2. From the facts and circumstances of the case gathered from the records it appears that the petitioner pursuant to an advertisement issued by the Superintendent of Post Offices, Purnea being advertisement No. 368 dated 23.5.2000 applied for appointment on the post of Extra Departmental Branch Post Master and after scrutiny of the applications filed by the eligible persons, the petitioner finally was appointed on the post aforesaid. After his appointment certain complaints were received alleging malpractices in appointment of the persons as Extra Departmental Branch Post Master including the petitioner. The complaint was duly considered by the Department and a departmental proceeding was initiated, where a show cause notice was given to the petitioner as to why his services should not be terminated. The petitioner participated in the inquiry and on conclusion of inquiry materials surfaced before the inquiry officer that the petitioner had applied in a most irregular manner, inasmuch as his application was received directly by the Superintendent of Post Offices,

Purnea on 3rd of July, 2000, whereas the last date of receipt of applications was fixed as 21st June, 2000 as per the terms of the advertisement. The petitioner, accordingly, was terminated, which was challenged by him before the Tribunal and ultimately giving rise to this application.

3. It is contended by Mr. Pushkar Narain Shahi, learned counsel for the petitioner that the petitioner had applied well within time directly before the Superintendent of Post Offices, Purnea and since he had secured the highest marks he was appointed on the post of Extra Departmental Branch Post Master, as suitable candidates of Scheduled Tribe category were not available. Mr. Shahi, learned counsel, further contended that such provisions have been given in the advertisement that in case, the suitable Scheduled Tribe candidates are not available, persons of other categories may be appointed directly on merit and since the petitioner had secured the highest marks, he was appointed on merit in absence of the Scheduled Tribe candidates. He also tried to emphasise that the Superintendent of Post Offices, Purnea in course of inquiry had stated before the inquiry officer that he had received the application of the petitioner on 17.6.2000 prior to cut-off date i.e. 21st of June, 2000, but by mistake, the same was docketed on 3rd of July, 2000 by the office staff. Learned counsel while summing up his submissions stated that there was no question of malpractices on the part of the petitioner nor it can be said to be a case of back-door entry.

4. Counsel appearing on behalf of the respondents, on the contrary, with reference to the counter affidavit submitted that the advertisement issued by the authorities clearly postulates that the application must reach the concerned officer by 21st of June, 2000 through registered post. A further stipulation has been made that the application may also be invited through the Employment Exchange, but the petitioner directly applied before the Superintendent of Post Offices, Purnea, beyond the provisions as stipulated in the advertisement. To buttress his point, learned counsel for the respondents with reference to the counter affidavit, submitted that the application of the petitioner was directly received in the office on 3rd of July, 2000, and, in this view of the matter, his application was found to be de hors the provisions as mentioned in the advertisement and the petitioner on that account was terminated from services after holding proper inquiry and giving ample opportunities of being heard. He also submits that suitable Scheduled Tribe candidates were available but ignoring their claims the petitioner was preferred on extraneous consideration.

5. From the judgment of the Tribunal, it appears that the appointment of the petitioner was found to be ab initio void and the order of termination was, therefore, not interfered with.

6. It is not in dispute that the petitioner filed his undated application directly before the Superintendent of Post Offices, Purnea. This fact finds corroboration from Annexure D to the counter affidavit.

7. On plain reading of Annexure D, it appears that the application was directly

filed by the petitioner before the Superintendent of Post Offices, Purnea and the same was undated. It is further manifest that the application filed by the petitioner was docketed in the office on 3rd of July, 2000 and there is no mention in his application that it was filed on 17.6.2000 prior to the cut-off date.

8. From the advertisement issued by the authorities for such appointment, which has been brought on record, marked as Annexure A to the counter affidavit, it is manifestly clear that the applications were to be sent through Post Offices under registered cover and there was no stipulation made in the advertisement to the effect that the application may also be filed directly before the authority concerned. The cut-off date for receipt of the applications, as mentioned in the advertisement, was 21st of June, 2000.

9. Ex facie, it appears from annexure D that the application filed by the petitioner was received and docketed in the office on 3rd of July, 2000. At the face of the materials on record, we are, therefore, satisfied that the application filed by the petitioner was received directly in the office on 3rd of July, 2000. There is no scope left to the Court to presume that the application was filed much prior to the cut-off date, as his application was undated.

10. Obviously, therefore, the petitioner had applied contrary to the provisions laid down in the advertisement and, thus, he should not be considered for appointment.

11. From the materials, as referred to above, it appears to us that undue favour was shown to the petitioner by the Superintendent of Post Offices, Purnea, and was allowed back-door entry.

12. Regard being had to the facts and circumstances of the case as referred to above, we do not find any infirmity or illegality in the judgment/order passed by the Tribunal.

13. This writ application is, accordingly dismissed. Before we part with this order, we would like to indicate that it appears to be a case of *fait accompli*, where the Superintendent of Post Offices, Purnea, should have been held equally liable for bestowing undue favour to the petitioner in appointing him while his application was received in the office much beyond the cut-off date and beyond the provisions stipulated in the advertisement. In our opinion, the conduct of the Superintendent of Post Offices, Purnea further requires departmental scrutiny, if not already done.