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(2007) 07 OHC CK 0033

In the Orissa High Court

Case No : O.J.C. No. 6906 of 1998

Bijay Kumar Nayak — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 6

Citation : (2007) CLT 414 Supp : (2007) CLT 134 Supp : (2007) 2 OLR 509 Supp : (2007) OLR 414 Supp : (2007) OLR 134 Supp

Hon'ble Judges : Pradip Mohanty, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : T.N. Pattnaik and S.P. Pattnaik, for the Appellant; J.K. Mishra and P.C. Biswal, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This writ petition has been filed against the impugned order dated 5.3.1998 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 48 of 1996 dismissing the said OA filed by the Petitioner.

2. The brief facts of the case are that due to the retirement of one Rama Chandra Tripathy on 31.5.1994, the post of Extra Departmental Mail Carrier at Byree Sub-Post Office, which was held by him, fell vacant. For filling up the said post, recruitment process was started and names were sponsored by the Employment Exchange for that purpose. The name of the Petitioner along with three other names was sponsored, who made application for the said post.

3. The Petitioner was selected and an appointment letter was issued to him vide order dated 28.5.1994 and he resumed his duty on 31.5.1994 (AN) relieving the said incumbent Sri Rama Chandra Tripathy. But all of a sudden, vide order dated 17.1.1995, his services were terminated by opposite party No. 3.

4. A plea was taken on behalf of the opposite parties that the termination order

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was passed in accordance with Rule-6 of the E.D. Agents (Service and Conduct) Rules, 1964 according to which the services of an employee, who has not already rendered more than three years'' continuous service from the date of his appointment, shall be liable to termination by the appointing authority at any time without notice. It was further pleaded on behalf of the opposite parties that a complaint was filed by the Service Union alleging irregularity and malpractices in the selection. The matter was reviewed and thereafter, it was noticed that the selection made by the S.D.I.P. was irregular and not fair and while making selection out of the candidates applied for, the S.D.I.P. ignored the instruction/ guidelines issued in connection with the selection of ED Agents.

5. In the counter affidavit filed in this Court by opposite parties 1 to 3, it has been stated that out of five candidates in the fray three including the Petitioner belonged to O.C. and the rest two to S.C. The S.C. candidates (i.e. sl. Nos. 1, 2 and 4 of the check list) possessed the qualification of Class-VIII, IX and Matriculation respectively and the rest two i.e. serial No.3 and 5 of the check list belonging to S.C. possessed qualification of Class-IX and Matriculation respectively. As per the criteria, the selection should have gone in favour of Sri Madhabananda Mallick, the candidate at sl. No.5 of the check list who is a Matriculate as well as a Scheduled Caste. But S.D.I.P. did not take his case into consideration on the ground that he belonged to village Solar, Post Chhatia which is not a disqualification for his selection and appointment. Moreover the residential certificate submitted by Sri Madhabananda Mallick from the competent authority shows that he is a resident of Byree. On the same ground, the candidature of another candidate namely Sri Binay Kar (sl. No.4 of the check list), a Matriculate and O.C., was also overlooked in spite of the fact that he deserved preference/weightage over the non-matric candidates particularly the Petitioner. In analogous manner, the S.D.I.P. Central has overlooked one S.C. candidate namely Bidyadhar Mallick who deserved preference over the Petitioner as he belongs to reserve community. Sri Mallick and the Petitioner are equally qualified i.e. both possessed qualification of Class-IX and belonged to Byree village. By virtue of belonging to preferential community Sri Bidyadhar Mallick was to be given weightage over the Petitioner and, therefore, the selection process was vitiated.

6. Learned Counsel for the Petitioner has submitted that in a similar matter, i.e., in the case of Sribanta Kumar Ray, in which the applicant was selected and appointed as Extra Departmental Branch Post Master and complaints being made that one Premananda Pradhan candidate in the field of competition whose name was not sponsored by the Employment Exchange was entertained direct and that out of five candidates sponsored by the Employment Exchange, only two candidates responded and selection was made hurriedly instead of making public notification, the appointment was terminated, the Tribunal allowed the case. In that case, the plea was that the termination was made under Rule-6 of the above mentioned Rules, as has been taken in the instant matter. However, the Tribunal held that the appointment of the Petitioner in that case namely, Sribanta Kumar

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Ray, was not irregular so as to cause any prejudice and, therefore, Rule-6 of Extra Departmental Agents (Conduct and Service) Rules, 1964 was not applicable in that case and the termination of services of that Petitioner under Rule-6 was not in accordance with law. The Tribunal relied upon its earlier decision in the cases of Awdesh Kumar v. Union of India and Ors.; (1997) 35 ATC 511, in which it was held that the services of an ED Agent could only be terminated under Rule-6 only when the appointment of the said ED Agent was irregular.

7. The contention of the learned Counsel for the Petitioner that the Tribunal has decided the case of Sribanta Kumar Ray taking a view contrary to the view taken in the instant matter is not sustainable in the eye of law as in that matter, the Tribunal had held that the appointment of Sribanta Kumar Ray was not irregular whereas in the instant case, the Tribunal has held that the appointment of the instant Petitioner namely Bijay Kumar Nayak was irregular.

8. It is well settled that if on the review of the selection, it is found that the appointment was irregular and the services of the irregular appointee are terminated, there cannot be any irregularity in the same.

9. In the instant case, we have also found that the selection was irregular and was not made in accordance with guidelines issued by the Department specially the criteria for recruitment in which it has been inter alia provided that the candidate must have passed 8th standard but preference should be given to the candidate with matriculation qualification and out of candidates, preference should be given to candidate belonging to S.C. and S.T. to ensure minimum percentage of representation. From perusal of Annexure-D/2 to the counter affidavit, it appears that vide D.G., P and T letter No. 43-117/80- Pen dated 8th October, 1980, there are standing instructions which are in respect of enforcement of percentages fixed for SC and ST in the recruitment. In that regard, the representation of SC and ST candidates in the employment of ED staff should at least be kept to the prescribed minimum limits as in the Groups ''C'' and ''D'' posts in the Department. These instructions may be brought to the personal notice of all Divisional Heads for their guidance and for assessing the position on Divisional basis.

10. It is also a matter of consideration for this Court that when in reviewing the selection, the authorities have found that SC candidates possessing the qualification of matriculation and Class-IX were not properly considered and they were deprived of their rights of consideration, no scope of judicial review remains in such a situation.

Therefore, we find no illegality, impropriety or manifest error of law in the impugned order passed by the Tribunal. Therefore, the writ petition is dismissed. No order as to costs.

Pradip Mohanty, J.

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11. I agree.

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