
(2008) 09 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 11212 of 2005

Krishna Ballabh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Citation : (2008) 4 PLJR 479

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Y.V. Giri and Raju Giri, for the Appellant; J.P. Karn, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard Learned Counsel for the petitioner and the respondent. Petitioner in the present writ application was declared successful for the post of Junior Telecom Officer-02 in the examination held on 9.6.2002. After verification of his documents/certificates by Selection Committee, his name was included in the list of trainees and allotted Bihar Telecom Circle. The petitioner was informed that he will have to undergo pre-appointment training of the Junior Telecom Officer. At this stage, a complaint was received against the petitioner alleging that he had adopted unfair means in the examination for the post of J.T.O. in 2002 examination. On receipt of such complaint, his order for training was kept in abeyance till completion of enquiry/investigation and the Complaint was referred by the Chief General Manager, Telecommunication, BSNL, Bihar Circle, Patna (Respondent No. 2) to DGM (Vigilance) O/o CGMT, Bihar Circle and BSNL Headquarters, New Delhi for settlement of the case by letter dated 26.8.04. The petitioner was informed that his order for training has been kept in abeyance till investigation/finalization of the complaint lodged against him.

2. This application has been filed for quashing the order dated 26.8.04 issued by respondent No. 2 whereby petitioner's order for training was kept in abeyance. Further prayer of the petitioner is for a direction to issue pre-appointment

training letter in his favour and after completion of training period to issue final appointment letter of Junior Telecom Officer, Bihar Circle, BSNL.

3. Subsequently, an inquiry was made in respect to this Complaint in which no final order was passed. The allegation made against the petitioner was not found to be true but on a fresh ground, the training of the petitioner was again kept in abeyance. This fresh ground is pendency of C.B.I. Case R.C. No. 43A/97 against the petitioner. The D.G.M. (Vigilance) by order dated 3.12.2003, has directed to keep petitioner's recruitment in B.S.N.L in abeyance on account of regular CBI case pending against him and only on getting clearance from the C.B.I, authorities or the Hon'ble Court, appointment can be processed.

4. Mr. Y.V. Giri, counsel for the petitioner, assailing the order dated 26.8.2004 has submitted that the earlier ground on which the letter of training was not issued in favour of the petitioner and kept in abeyance has finally not been proved. Now the respondents cannot further keep it in abeyance on any fresh ground which was not the subject matter of keeping the order for training in abeyance.

5. In the year, 1996, the petitioner appeared in the Combined Engineering Entrance Examination, 1996 conducted by MIT, Muzaffarpur. He was declared successful in the examination and got admission in B.Sc. Engineering in B.I.T., Sindri. The petitioner took admission in B.Sc. Engineering (Electronic and Communication) in B.I.T., Sindri in the session, 1996-2000. While he was pursuing his first year's course, some unsuccessful students who failed in the Combined Engineering Entrance Examination filed C.W.J.C. Nos. 7666, 7779 and 8122 of 1996 challenging the whole entrance examination on the ground of manipulation and use of unfair means. In this case, all successful students including the petitioner were impleaded as party/respondents. During pendency of the writ applications, the successful candidates who had already taken their admission in the Engineering Course were allowed to continue their studies subject to result of writ applications. The writ applications were allowed and vide order dated 17.7.1997, results of 245 students including the petitioner of Combined Engineering Entrance Examination, 1996 was cancelled. The judgment and order passed in the writ applications were challenged by filing several L.P.As. which were tagged together and disposed of by a common judgment and order dated 22.5.1998 with a direction that the admission of the concern examinees is relegated to the stage of the interim order dated 20.8.1996 passed by the Writ Court and shall continue till the charge-sheet is submitted against them and pursuant to the charge-sheet, charges are framed by the court concerned against them. This order was passed in L.P.A. No. 876 of 97 and analogous case considering the fact that though on the direction of High Court, C.B.I. case has been instituted and it is in progress but the investigation has not yet completed. If ultimately in investigation, nothing is found against the examinees, in that event, cancellation of their admission will cause considerable and irreparable harm to them which cannot be compensated. The investigation continued and in the meantime, the petitioner and several other students like petitioner completed

their Engineering Course. When the petitioner was in his final year, he applied for the post of Graduate Junior Telecom Officer pursuant to an advertisement made by BSNL for appointment. Admit card was issued to him; he sat in examination and was declared successful.

6. Counter affidavit has been filed on behalf of the Union of India representing BSNL. In the counter affidavit, it has been stated that the fact regarding pendency of C.B.I. Case was admitted by the petitioner himself during inquiry. The Superintendent of Police, C.B.I. vide his letter dated 24.8.2004 has intimated that Krishna Ballabh (petitioner) has been charge-sheeted in C.B.I. Case bearing R.C. No. 43(A) of 1997 and the case is presently pending under trial in the court of Special Judge, CBI AHD, Patna. After having this knowledge, the respondents have decided not to send the petitioner for training and to keep petitioner's training for the post of J.T.O. in abeyance till the outcome of C.B.I. Case.

7. It is not the single case of the petitioner who has faced problem on account of pendency of C.B.I. Case i.e. R.C. No. 43A of 1997/Pat. In a similar circumstance, when the Certificate was not being issued in favour of Astha and Vinita Singh of final B.Tech. Examination, they approached High Court of Jharkhand, Ranchi by filing W.P.(C) 4102 of 2001 where Ranchi University was directed to issue their Certificates as they have completed studies considering the fact that except prima facie allegation, there is no finding of a competent court against them holding them guilty of charge.

8. The case of present petitioner can be equated with the case of the writ petitioner of W.P.(C) 4102 of 2001. The petitioner has successfully completed his Engineering Course and passed out through 1st Division. He has also passed the Competitive Examination for being appointed as Junior Telecom Officer. Simply because, a criminal case is pending against him, the petitioner cannot be debarred from being appointed on the post. Even in the L.P.A. the Patna High Court did not restrict successful candidates from pursuing their studies, till investigation is complete, charge-sheet is submitted and charge is framed. Even if charge is framed until charges are proved, no one can be deemed to be convicted. He cannot be held guilty in the eye of law. Till now there is merely prima facie allegation against the petitioner as well as all charge sheeted accused but there is no finding of any competent court holding them guilty. In that view, if ultimately, the petitioner is not held guilty but at present, he is debarred from holding any post, he cannot be compensated. In the interest of justice and equity, it is desirable that till final outcome of C.B.I. Case, the petitioner should avail all opportunities to enhance his career, get a job on account of his Engineering Degree which he has completed prior to submission of charge-sheet. Respondents cannot be allowed to punish the petitioner prior to his conviction by a competent court.

9. Accordingly, the order dated 26.8.04 issued by respondent No. 2 keeping the order of training of the petitioner in abeyance as well as the subsequent decision to keep the order of training in abeyance till final outcome of C.B.I. Case No. R.C.

43/A/97/Pat. is quashed. The respondents are directed to issue order for training of the petitioner and on completion (sic-completion?) of training period, issue final appointment letter of Junior Telecom Officer, Bihar Circle, BSNL to the petitioner. This application is allowed.