

(2014) 08 PAT CK 0035
In the Patna High Court
Case No : CWJC Nos. 23598 and 8875 of 2013

Om Prakash

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2015) 3 PLJR 199

Hon'ble Judges : I.A. Ansari, J;Anjana Mishra, J

Bench : Division Bench

Advocate : Munna Prasad Dixit, Advocate for the Appellant; Mahesh Prasad, Advocate for the Respondent;

Final Decision : Allowed

Judgement

I.A. Ansari, J.

1. By this common judgment and order, we propose to dispose of both the writ petitions, namely, CWJC No. 23598 of 2013 and CWJC No. 8875 of 2013, whereby the two writ petitions have put to challenge the order, dated 2.8.2012 passed, in Original Application (in short O.A.) No. 920 of 2011, by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the learned Tribunal"), partly allowing the O.A. with directions, which we would deal with as we proceed. What may be borne in "mind is that CWJC No. 23598 of 2013, putting to challenge the order, dated 2.8.2012, aforementioned has been filed by the applicant of the said O.A.; whereas the respondents, in the said O.A., have challenged the said order, dated 2.8.2012, in CWJC No. 8875 of 2013.

2. Before we enter into the discussion on the merit of the present writ petitions, the facts, giving rise to the O.A., may, in brief, be set out as under:--

(i) Pursuant to the Employment Notice No. GN-05/2010 inviting applications for appointment to the posts, amongst others, of Section Engineer (Telecom), the

original applicant, Shri Om Prakash, and respondent No. 3, in the said O.A., namely, Shri Mukesh Kumar Mishra, were, amongst other, applicants.

(ii) In course of the selection process, which ensued publication of the said Employment Notice, eligible candidates appeared in the written examination held on 19.12.2010. The result of the written examination was published on 7.10.2011, but the name of Shri Om Prakash (i.e., the original applicant) did not find place in the select list.

(iii) Aggrieved by his non-inclusion in the select list, the original applicant sought for necessary information, under the Right to Information Act, 2005, and came to learn from the Railway Recruitment Board, Muzaffarpur, that the marks, obtained by the original applicant, were 80.867 as against 72.333 marks received by the last selected candidate of unreserved category (UR) and that the rejection of the candidature of the original applicant was on the ground that in the OMR answer sheet, community had not been indicated by the original applicant.

(iv) On coming to learn why he had not been declared selected in the said selection process despite the fact that he had secured more marks than the last selected candidate in the unreserved category, as mentioned hereinbefore, the original applicant made an application under Section 19 of Administrative Tribunals Act, 1985, which gave rise to O.A. No. 920 of 2011.

(v) In the O.A., the original applicant submitted to the effect that while in the admit card of the original applicant, the community had been described as UR (i.e., unreserved category), and, he had not mentioned, in the OMR answer sheet, that he belongs to unreserved category and, thus on technical ground, his candidature ought not to have been rejected, more particularly, when he had secured far more marks than the last selected candidate.

3. Resisting the O.A., the respondents submitted, in their written statement, that the original applicant had not mentioned his community in the OMR answer sheet, though, there was, on the reverse side of the admit card, candidates had been asked to read the instructions printed on the reverse side of the OMR answer sheet and, on the reverse side of the OMR answer sheet, instruction No. 4 clearly read, "Your answer sheet will be evaluated through electronic scanning process. Incomplete and incorrect entries may render your answer sheet invalid". Thus, on the ground that the original-applicant had not filled up the OMR Answer Sheet in terms of the instructions, which required every candidate to mention if he or she belonged to reserve or unreserved category, the original-applicant was disqualified.

4. In the backdrop of the rival contentions, which had been raised in the O.A., why the learned Tribunal partly allowed the O.A. and what directions were given by the learned Tribunal, can be safely gathered from the observations made, and the directions given, by the learned Tribunal, at paragraph-6 of its order, dated 2.8.2012, which stands impugned in the present two writ petitions.

5. We, therefore, re-produce hereinbelow the observations made, and the directions given, by the learned Tribunal, in paragraph Nos. 5 and 6, of its order:--

"5. The private respondent, Mukesh Kumar Mishra has filed a written statement contending that all the candidates were categorically made to understand that any declaration unfilled by them would make their candidature invalid. On the back side of the Call Letter/Admit Card itself, it was specifically written under Note:[3] "Candidates must copy the "declaration" in Question Booklet/OMR Answer Sheet or both as per instruction, failing which candidature will be cancelled". The applicant failed to follow and comply with the above precondition and as such his candidature had been cancelled in terms of Note [3]3. The applicant has admitted that it was known to him that he was given instructions to fill up the declaration paper/OMR Answer Sheet, failing which he would be declared unfit, but the applicant failed to comply with the instructions given to him and as such his candidature was cancelled. The authorities have no discretion to overlook and allow candidature of a candidate who fails to comply with the instructions. The mentioning of community was a requirement under Column 9 as stated in the written statement filed by the official respondents also.

6. Heard the learned counsels for the applicant and the private respondent on 10.7.2012. There was no one present on behalf of the official respondents. Perused the entire record. It is seen that in as much as there was omission to fill up column 9 [which is for community] in the OMR answer sheet, and there were instructions on the reverse side of the OMR sheet [instruction No. 4] that complete and incorrect entries may render the answer sheet invalid, the OMR was treated as incomplete and invalid in the electronic [computerized] processing of evaluation. In the admit card, the community was noted as DR. It is, therefore, clear that there was a minor slip or omission by the applicant in not filling up column 9 in the OMR sheet which is community, and there was no intention to seek any undue benefit or advantage sought to be gained by this. He had scored 80.867 marks as against 72.333 marks obtained by the last selected candidate of UR category. While, therefore, the rejection of the applicant's candidature in the computerized system of evaluation was not illogical, and consequently the selection of the private respondent was in order, there is a case for reconsideration of result of the applicant by ignoring the omission on his part in not filling up item 9 of the OMR sheet, that is, Community, considering that it was only inadvertent, that the entry of community as UR was there in the Admit Card, and the applicant could not have had any intention to secure the post of Section Engineer (Telecom) by unfair means or to derive any undue benefit or advantage, and that he had secured relatively high marks. The respondents are accordingly directed to accommodate the applicant additionally either in that batch, if there is vacancy or post to accommodate him or as and when a vacancy becomes available without requiring him to appear in the examination again [to be conducted by the RRB], subject to his being eligible otherwise, without excluding the private respondent, Mukesh Kumar Mishra, who has been selected

already by virtue of the applicant not being included. With this direction, the OA stands disposed of. No order as to costs."

6. Contending to the effect that having found that he had been illegally and unjustly denied selection, though he ought to have been treated as a selected candidate in unreserved category (UR) and yet he had not been directed to be appointed by removing respondent No. 3, namely, Shri Mukesh Kumar Mishra, whose name had appeared last in the said select list, the original applicant has filed the writ petition, which has given rise to CWJC No. 23598 of 2013; whereas the Union of India has filed the writ petition, which has given rise to CWJC No. 8875 of 2013, putting to challenge the conclusion reached by the learned Tribunal that the original applicant had been illegally and unjustly denied selection and the directions were given that he shall be appointed as and when a vacancy becomes available in the post of Section Engineer (Telecom).

7. Drawing our attention to the OMR Answer Sheet, Mr. M.P. Dixit, learned Counsel, appearing on behalf of the original applicant-writ petitioner, has contended that it was discretionary, on the part of the Union of India, to disqualify a candidate if the candidate had failed to mention the community? to which the candidate, in a given case, belonged to and when in the admit card, it had been clearly mentioned that the original application*-writ petitioner was a candidate of UR category, the omission to supply this information, in the OMR Answer Sheet, ought not to have been made a ground for rejection of the candidature of the original applicant-writ petitioner and he ought to have been directed to be appointed by removing respondent No. 3, namely, Mukesh Kumar Mishra.

8. Countering the submissions so made on behalf of the original applicant (i.e., the petitioner), Mr. Anil Kumar Sinha, learned Counsel, submits that the Union of India had rightly rejected the candidature of the original applicant and that the learned Tribunal has fallen in serious error in being influenced by the fact that the original applicant had secured higher marks than respondent No. 3, who was the last selected candidate. This apart, submits Mr. Sinha, the learned Tribunal has directed to appoint the original applicant-writ petitioner if there is any vacant post or as and when a vacancy becomes available without requiring the original-applicant to appear in the examination, but the learned Tribunal did not notice the fact when there was no vacant post left in the last selection process, wherein respondent No. 3 stood selected, the original applicant could not have been appointed as a candidate in the last selection process and, as far as the vacancy of the next selection process is concerned, none of the vacancies can be filled up by appointing the original applicant-writ petitioner inasmuch as it would amount to reducing a vacancy in the next selection process, which would affect the future candidates, who may become available to participate in the next selection process.

9. So far as respondent No. 3, who is the last selected candidate, is concerned, the submission of learned Counsel, appearing on his behalf, is that since the

original applicant had not filled up OMR Answer Sheet, according to the instructions given, his candidature has been rightly rejected and the present writ petition, which has been filed by the original applicant, needs to be, therefore, dismissed and the selection and appointment of respondent No. 3 deserves to be maintained.

10. Let us, now, deal with the rival submissions made before us.

11. While considering the two writ petitions, what needs to be noted, at the very outset, is that Clause (3) on the reverse side of the admit card reads, "Candidates must copy the declaration in Question Booklet/OMR Answer Sheet or both as per instruction, failing which candidature will be cancelled".

12. However, instruction No. 4 of the OMR Answer Sheet reads, "your answer sheet will be evaluated through electronic scanning process. Incomplete and incorrect entries may render your answer sheet invalid".

13. From what has been written on the reverse side of the admit card, it becomes crystal clear that it was obligatory on the part of a candidate to make a declaration as to the category in which he falls, namely, whether he belongs to UR category or reserved category and, in the event of failure to make such declaration, his candidature was not only liable to be cancelled, but was to be cancelled. In the face of what has been mentioned in the admit card, there was no option, but to cancel the candidature of a candidate, who had failed to make a declaration aforementioned.

14. Coming to the OMR Answer Sheet, it may, however, be noted, very carefully, that in the event of failure of a candidate to make a declaration of his community?, the OMR Answer Sheet clearly stated that such failure may render the OMR Answer Sheet invalid. It was, thus, discretionary, on the part of the Union of India, to either allow or not to allow evaluation of a candidate's OMR Answer Sheet.

15. If the instructions given in the admit card are considered, the Union of India did nothing illegal in cancelling the candidature of the original application**-writ petitioner inasmuch as it was obligatory on their part to cancel the candidature, when the original application-writ petitioner had failed to make the requisite declaration.

16. If, however, we turn to the OMR Answer Sheet, as we must do, it becomes clear that it was discretionary, on the part of the Union of India, to treat the OMR Answer Sheet as invalid or valid.

17. In the present case, the Union of India has chosen to treat the OMR Answer Sheet of the original application**-writ petitioner valid and has accordingly evaluated the original applicant's OMR Answer Sheet and allotted marks, the marks obtained being 80.867. As against the marks so obtained, respondent No. 3, in the O.A., namely, Shri Mukesh Kumar Mishra, had secured only 72.333 marks.

18. In such a case, as pointed out above, the original application**-writ petitioner ought to have been included in the select list, when his OMR Answer Sheet had been evaluated in exercise of discretionary power of the Railway. Consequently, respondent No. 3, namely, Shri Mukesh Kumar Mishra, ought not to have been included in the select list.

19. In tune with the above conclusion, which we have reached, the learned Tribunal ought to have set aside the selection and appointment of respondent No. 3, namely, Shri Mukesh Kumar Mishra, and it ought to have directed that the original application**-writ petitioner be appointed in place of respondent No. 3. Failure to do so by the teamed Tribunal was not only illegal, but unjust and would, therefore, call for interference with the impugned order in exercise of this Court's extra-ordinary jurisdiction under Article 226 of the Constitution of India.

20. Because of what have been discussed above, we are clearly of the view that no direction ought to have been given by the learned Tribunal to appoint the original application**-writ petitioner in the next vacancy, which may become available in the post of Section Engineer (Telecom). To this extent, the grievance of the original application**-writ petitioner and also of the Railway cannot be said to be unfounded.

21. In the result and for the reasons discussed above, we hold the original application**-writ petitioner legally entitled to be included in the select list by cancelling the appointment of respondent No. 3 and to be appointed against the vacant post of Section Engineer (Telecom) and by removing him (respondent No. 3) from the select list.

In terms of the above observations and directions, the two writ petitions shall stand allowed to the extent as indicated above. The impugned order, dated 2.8.2012, passed by the learned Tribunal, in the said O.A., shall accordingly stand set aside and modified.

Anjana Mishra, J.

I agree.

?Ed.--sic--category?

*sic--applicant?

**sic--applicant?