

(2006) 12 PAT CK 0099
In the Patna High Court
Case No : CWJC No. 15624 of 2004

Raj Kishore Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Citation : (2007) 1 PLJR 322

Hon'ble Judges : Narayan Roy, J;Ajay Kr. Tripathy, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh and Sandeep Kumar, for the Appellant; Rakesh Kumar Singh for Union of India, M/s Sanjiv Krishna Bariar and Rajiv Krishna Bariar, for the Respondent

Judgement

1. Heard counsel for the parties. Order impugned, as contained in annexure 1 dated 25.10.2000 passed by the Central Administrative Tribunal (hereinafter to be referred to as "CAT"), is under challenge.

2. It appears that one post of E.D.D.A. cum-M.C. of Misraulia Branch Post Office had fallen vacant. An advertisement was issued to fill up that post by a scheduled caste candidate. However, it was also mentioned in the advertisement that in case of non-availability of scheduled caste candidate general category candidate may also be considered. At the same time, names were called for from the Employment Exchange. Certain names were sponsored by the Employment Exchange including the name of the petitioner and that of respondent No. 7 also. The postal authorities on scrutiny of the names and the marks secured by them in matriculation examination selected the writ petitioner, as no candidate belonging to scheduled caste category was available and he, ultimately, was appointed. His appointment, subsequently, was challenged by respondent No. 7 by filing O.A. No. 682 of 1995 before the CAT, which was disposed of on 30th November, 1995 directing the postal authority to dispose of the representation of the original applicant. In the meantime, before disposal of the representation, the appointment of the present petitioner was cancelled vide order dated 25th

April, 1996 by virtue of the order of the Superintendent of Post Offices, Motihari, which, ultimately, was challenged by this petitioner before the CAT in O.A. No. 283 of 1996, which was dismissed and, ultimately, this writ application was filed.

3. It is contended by learned counsel for the petitioner that the petitioner since was appointed, as he secured the highest marks in matriculation examination, his appointment could not have been cancelled by any means. He, ultimately, contended that till date the post, as such, has not been filled up, and, therefore, the case of the petitioner may be considered afresh for the post aforesaid.

4. Counsel appearing for the Union of India by filing an affidavit, however, submitted that the post till date has not been filled up, but no satisfactory explanation is being given as to how the petitioner initially was appointed when the post was to be filled up from amongst the successful candidates of scheduled caste category.

5. It appears from the materials on record and also from the order of the CAT that the postal authority had wholly erred in selecting the petitioner initially, though there was clear stipulation in the advertisement to appoint a candidate from amongst scheduled caste candidates. Even assuming that no name of Scheduled Caste candidate was sponsored by the Employment Exchange, the post could have been readvertised again and fresh names of scheduled caste category candidates could have been called for from the Employment Exchange and even after exhausting all formalities, if no suitable candidate could be found, the postal authorities could have proceeded to appoint anyone from general category candidates on the basis of the marks obtained in the matriculation examination.

6. Prima facie, we are satisfied that no effort could be made by the Postal Department to explore the possibilities of appointing Scheduled Caste candidate on the post aforesaid nor names were called for from the Employment Exchange. This clearly goes to show that just to circumvent the stipulation made in the advertisement, the post aforesaid was kept vacant till date. Even after cancellation of appointment of the petitioner in the year 1996 the post could have been advertised and filled up, but the reasons, which weighed before the respondent authorities in not filling up the post, still remain a mystery. It was constitutional obligation on the part of the postal authorities to do so after cancellation of appointment of the petitioner, and the failure on the part of the Postal Department is not appreciable.

7. Regard being had to the facts and circumstances of the case, we do not find any merit in this application.

8. It is, accordingly, dismissed. However, the postal authorities are directed to readvertise the post afresh and conclude the selection process preferably within a period of six months from today.