
(2003) 09 JH CK 0090
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3098 of 2003

Ram Kishore Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 196

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Binod Poddar and Ram Kishore Prasad, for the Appellant; P.K. Prasad, Sr. SCCG, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The petitioner, a Practising Advocate, was a candidate for selection to the post of a Judicial Member in the Central Administrative Tribunal. The petitioner was included in the select list. After the Committee constituted in that behalf made its recommendations, the entire proceedings were placed before the Chief Justice of India. It may be noticed that when the Committee made its recommendations, the Committee did not have the confidential report on the Vigilance enquiries made regarding the petitioner. But, before the matter was placed before the Chief Justice of India, the report was made available. It was brought to the notice of the Chief Justice that from the report regarding the character and antecedents etc. of the 14 persons included in the list and in the waiting list, it was found that the petitioner who was ranked no. 6, and another who was ranked No. 1 were found to be unsuitable and the proposal was made that they be replaced by Nos. 1 and 2 in the waiting list. The report of the Intelligence Bureau was also enclosed. The Chief Justice of India concurred with the proposal made by the appointing authority, the Central Government. In other words, the Chief Justice of India also agreed that the decision not to appoint the petitioner herein in the light of the

report of the Intelligence Bureau relied on by the appointing authority was justified. Thus, the petitioner was not appointed as a member of the Central Administrative Tribunal.

2. Feeling aggrieved by his not being appointed to one of the seven vacancies, the petitioner moved the Central Administrative Tribunal for relief. That Tribunal took the view that the dispute sought to be raised by the petitioner was not within the purview of the Tribunal and that the remedy of the petitioner, if any, lay elsewhere. It is in that context that the petitioner has filed this writ petition before this Court on 2.7.2003. We may notice that the seven appointments were notified by the Central Government on 14.1.2002 and those appointees have filled all the seven vacancies for which the selection was made. The petitioner has claimed that he also ought to have been appointed to one of those seven vacancies already filled up.

3. We may straightaway observe that the petitioner has not impleaded at least the last of the persons appointed who would be affected in case his writ petition was to be allowed and the relief sought for by the petitioner is granted. When this aspect was pointed out, it was argued on his behalf that a direction can be given, if his claim was being upheld, to accommodate him against any future vacancy that may arise in the Central Administrative Tribunal. It was also asserted that other vacancies have come into existence in the Central Administrative Tribunal. We are not in a position to agree with the submission that we can direct that the petitioner should be appointed in some vacancy that may arise in future or in a vacancy other than in one of the seven posts in the selection of which he participated and was included in the list by the Committee constituted in that behalf. The process of selection is complete when the advertised vacancies are filled up and it is not for the Court to direct that one of the candidates should be appointed in some future vacancy that may arise. That would mean that the right of another, who had become eligible to compete for that future post would be affected or one of them would be deprived of the post the selection for which they can legitimately compete. We are, therefore, satisfied that the present writ petition should be dismissed on the ground that no meaningful relief could be given to the petitioner even assuming that he is entitled to it in the absence of the candidate who would be affected, being on the party array.

4. Merely by being included in the select list by the Committee constituted in that behalf, the petitioner does not get a right to be appointed. His antecedents are required to be verified since he was being appointed to a judicial post in a body, like the Central Administrative Tribunal. The appointing authority not only had the right, but also the duty to verify his antecedents. Based on the report that they may receive, it is open to the appointing authority not to appoint a person who has been included in the select list prepared by the Committee constituted in that behalf. In the case on hand, the action of the appointing authority in excluding the petitioner based on, the intelligence report has been concurred in

by the Chief Justice of India who was apprised of the entire position as can be seen from the submissions made to him by the Government of India and the concurrence of the Chief Justice of India, both produced along with the supplementary affidavit. It is not for this Court to sit in appeal over the decision of the Central Government after obtaining the concurrence of the Chief Justice of India after apprising him of all the relevant facts. We are therefore satisfied that no case is made out for interference by this Court under Article 226 of the Constitution of India. The petitioner has attempted to allege mala fides against the Intelligence Bureau. Except a bald assertion that some members of the Intelligence Bureau sought a bribe from him, which he refused to pay and that is the reason for the adverse report against him, no material is placed in support of that allegation. Based on such an allegation alone, we cannot interfere with the decision of the appointing authority taken with the concurrence of the Chief Justice of India. No case of mala fides has been adequately pleaded justifying an investigation by this Court into that question sought to be raised.

5. On a consideration of all the relevant aspects available in the case, in the light of the elaborate arguments made before us, we are not satisfied that this is a fit case for exercise of our discretionary jurisdiction under Article 226 of the Constitution of India, in any event. We, therefore, decline to interfere and dismiss the writ petition.