

(2006) 09 PAT CK 0098
In the Patna High Court
Case No : CWJC No. 6601 of 2005

Sanjay Kumar Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Citation : (2006) 4 PLJR 80

Hon'ble Judges : S.K. Katriar, J;Aftab Alam, J

Bench : Division Bench

Advocate : Birendra Kumar Sinha, Alok Kumar Sinha in 6601 and Mr. Rajiv Krishna Bariar in 4806, for the Appellant; Ravi Ranjan (in both), Mr. Rajiv Krishna Bariar (in 6601) and Mr. Jayant Kumar Kam (in 4806), for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—These two writ petitions bring to this Court two orders of the Central Administrative Tribunal, Patna Bench that suffer from an apparent inconsistency. The matter relates to appointment of Extra Departmental Brach Post Master (EDBPM), prior to August, 1998. At that time, it was not open to the candidates to apply directly and applications for appointment could only be routed through the local employment exchange. The recruitment procedure commenced with the postal authorities asking the local employment exchange for names of suitable candidates. The requisition stipulated that the list of names should reach the postal authorities by registered post within thirty days of the issuance of the letter. In some cases, as in the two in hand, the employment exchange fixed a deadline for submission of applications to it a few days ahead of the last date for the receipt of the applications before the postal authorities. In both cases, a few candidates submitted their applications before the employment exchange beyond the last date fixed by it but before the expiry of the 30 days" period stipulated in the requisition by the postal authorities. Consequently, the employment exchange either did not send their names or sent their names so as to reach the postal authorities after the expiry of the 30 days" period. As a

result, those candidates were not considered by the postal authorities for appointment and selection was made from among the candidates whose names had reached the postal authorities within the 30 days" period. The candidates thus excluded from consideration challenged the actions of the employment exchange/postal authorities in excluding them from consideration and the selection and appointment of the respective candidates in the two cases.

2. In one of the two cases, the Tribunal interfered in favour of the candidate excluded from consideration, set aside the selection and appointment made by the postal authorities and directed them to make a fresh selection taking into consideration the excluded candidate (applicant before the Tribunal). In the other case, the Tribunal declined to interfere in the matter and upheld the appointment made by the postal authorities, notwithstanding the exclusion of the applicant before it.

3. C.W.J.C. No. 6601 of 2005 is the case in which at the instance of the excluded candidate, the Tribunal interfered with the selection made by the postal authorities and set aside the appointment of the selected candidate. The facts of the case may briefly be stated thus.

4. For appointment to the post of EDBPM, Mohammadpur Branch Post Office, District-Gopalganj, the postal authorities sent requisition to the local employment exchange vide letter, dated 28.4.1997 asking for suitable names. The letter required the list of name to reach the postal authorities by registered post within 30 days from the issuance of the letter. The last date for the applications to reach the postal authorities would thus be 27.5.1997. The employment exchange fixed {without any consultation with the postal authorities} 22.5.1997 as the last date for receiving the applications. One Umesh Kumar -Singh, respondent No. 5 in this writ petition and applicant before the Tribunal sent his application to the employment exchange by registered post on 24.5.1997. His application was received in the employment exchange on 26.5.1997, but before that the employment exchange had already sent the list of the candidates to the postal authorities. The application of Umesh Kumar Singh lay at the employment exchange for some time before it was forwarded to the postal authorities so as to reach them on 2.6.1997. The postal authorities did not take that application into consideration and confined their selection to the list earlier received from the employment exchange within the 30 days" period. Umesh Kumar Singh challenged the appointment of the selected candidate (Sanjay Kumar Singh) in O.A. No. 506 of 1997. The Tribunal by its order, dated 16.8.2002 allowed the application and directed the postal authorities to make a fresh selection taking into consideration the candidature of Umesh Kumar Singh also. The defeated candidate Sanjay Kumar Singh (petitioner before this Court and respondent No. 5 before the Tribunal) filed a review petition before the Tribunal (R.A. No. 50 of 2002) bringing to its notice that in an earlier case of Manju Gupta (O.A. No. 380 of 1997), the Tribunal had taken a contrary view on similar facts. The Review Application was rejected by order dated 5.10.2004. This writ petition is filed by

Sanjay Kumar Singh challenging the orders passed in O.A. No. 506 of 1997 and R.A. No. 50 of 2002.

5. In the counter affidavit filed on behalf of the postal authorities, it is stated that in the meanwhile following the direction of the Tribunal, a fresh selection has been made in which Umesh Kumar Singh has been selected and appointed.

6. In C.W.J.C. No. 4806 of 2005. the Tribunal took a contrary view and declined to interfere with the selection and appointment made by the postal authorities at the instance of the applicant whose name was not considered because it reached the postal authorities beyond the last date for submission of applications. The facts of the case are as follows.

7. For appointment to the post of EDBPM Uteshra EDBO in Saharsa Postal Division, the postal authorities made requisition to the employment exchange, Saharsa vide letter No. 493, dated 28.7.1997. The requisition required that the list of names sponsored by the employment exchange should reach the postal authorities by registered post within 30 days from the issuance of the letter. The last date for the applications to reach the postal authorities would thus be 26.8.1997. At that time, the employment exchange, Saharsa was under the additional charge of an Officer of the district administration (impleaded as respondent No. 4 before the Tribunal). It was stated in the written statement filed on his behalf that in connection with his other official duties, he was required to be present at Madhepura on 22.8.1997; 24.8.1997 and 25.8.1997 were Gazetted holidays and in those circumstances he fixed 20.8.1997 as the last date for receiving applications at the employment exchange, Saharsa to enable him to scrutinize the applications and to forward to the postal authorities only those which fulfilled the requisite criteria. It was further stated that all valid applications received till 20.8.1997, after proper scrutiny, were despatched to the postal authorities through registered post on 22.8.1997 so that those may reach before the last date 26.8.1997. The applicant-petitioner submitted his application before the employment exchange on 21.8.1997. The employment exchange did not sponsor it to the postal authorities because it was submitted beyond the last date (20.8.1997) fixed for receiving applications in the employment exchange. The Tribunal after hearing the parties found that there was no infirmity in the appointment of the selected candidate (respondent No. 5 before it) and declined to interfere with his. appointment. The postal authorities were, however, directed to consider the candidature of the applicant in some other advertisement that might be issued in the near future in case he satisfied the eligibility criteria.

8. Heard Mr. Birendra Kumar Sinha, Counsel for the petitioner in C.W.J.C. No. 6601 of 2005 and Mr. Rajiv Krishan Bariar in C.W.J.C. No. 4806 of 2005. Also heard Dr. Ravi Ranjan, Assistant Solicitor General representing the postal authorities and Mr. Rajiv Krishna Bariar and Mr. Jayant Kumar Karn, Counsel representing the private respondents in the two cases.

9. The inconsistency in the two decisions of the Tribunal is apparent and it is

clear that one of the two decisions must yield in favour of the other.

10. On hearing counsel for the parties and on going through the materials on records, I am of the view that the procedure of recruitment was inherently flawed and the lacuna was mainly in the way the requisition was made by the postal authorities to the employment exchange. At the material time (years 1997 & 1998), the postal authorities made requisition to the local employment exchange in terms of D.G., R&T., Letter No. 45-22/71-SPB. 1/ Pen., dated the 4th September.1982. Paragraph 2 of the letter read as follows:-

2. It has now been decided that the employment of ED Agents should be made through Employment Exchanges. For this purpose, the concerned recruiting authority should send a requisition to the local Employment Exchange, having jurisdiction over the area, requesting nomination of suitable candidates for the post, having the prescribed qualifications, within a period of 30 days from the date of sending requisition to the Employment Exchange for nomination of candidates, to the concerned authority. While placing requisition on the Employment Exchange, the competent recruiting authority should make a special mention of the following points:-

(a) x x x x

(b) x x x x

11. The recruitment procedure thus precluded a candidate to make an application directly to the postal authorities. Further, the requisition sent to the employment exchange stipulated that the names sponsored by it should reach the postal authorities through registered post within 30 days from the date of the issuance of the requisition. It may be noted here that precluding a candidate from making an application directly was quite unreasonable and when the matter came to the notice of the Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , the Apex Court gave suitable directions in the matter in light of which the deoartmental authorities issued letter No. 19-4/96-ED & Trg., dated the 19th August, 1998. The basic flaw in the recruitment procedure is thus removed and now many cases are not likely to come to the Court as a result of the flawed procedure.

12. In the cases in hand, the anomaly has resulted from the stipulation that the list should reach the postal authorities within 30 days of the date of issuance of the requisition. Normally, the date of despatch is taken as the relevant date because the postal delays, if any, are beyond the control of the sender. In this case, there was all the more reason to take the date of despatch by the employment exchange as the relevant date because the list was required to be sent through registered post, i.e. one of the agencies of the postal department itself. Further, the requisition was apparently based on the assumption that the employment exchange would sponsor the names of candidates already registered with it. But as a matter of fact it appears that on receipt of the requisition the employment exchange called for applications and forwarded them to the postal

authorities. In that case, the employment exchange would need a few days" time to scrutinize the applications received by it and, therefore, in order to avoid any scope for confusion or misunderstanding, it was proper to indicate in the requisition itself the last date for receipt of the applications before the employment exchange.

13. On a careful consideration, it is my view that the confusion and misunderstandings in the minds of the applicants were bound to arise from the form in which the requisition was made. It would, therefore, not be fair to penalize a candidate for the bona fide misunderstanding or confusion. I would, therefore, take the view that it was unjust, unfair and unreasonable to exclude the petitioner Shailendra Kumar in C.W.J.C. No. 4806 of 2005 from consideration. I am, therefore, constrained to interfere with the selection and appointment of Shri Nand Kumar Yadav (respondent No. 5) as EDBPM, Uteshra EDBO and to direct the respondent authorities to make a fresh selection taking into consideration the candidature of the petitioner Shailendra Kumar. In case, in the fresh selection, Nand Kumar Yadav is once again selected, that would be the end of the matter. But in case, he fails to get selected, it cannot be lost sight of that he has been in service for about nine years and his removal is due to no fault on his part. Hence, in that event it is directed that the postal authorities would accommodate him elsewhere on a suitable post. For the reasons discussed above, the order of the Tribunal in C.W.J.C. 6601 of 2005 is confirmed and the writ petition is dismissed. The order of the Tribunal in C.W.J.C. 4806 of 2005 is set aside and that writ petition is allowed with the observations and directions as made above. There will be no order as to costs in these two cases.

S.K. Katriar, J.

I agree.