
(2017) 08 JH CK 0035
In the Jharkhand High Court
Case No : 1587 of 2016

Sanjit Mukherjee & Anr

APPELLANT

Vs

The State of Jharkhand & Anr

RESPONDENT

Date of Decision : 08-08-2017

Acts Referred:

Citation : (2017) 08 JH CK 0035

Hon'ble Judges : Aparesh Kumar Singh, B.B. Mangalmurti

Bench : DIVISION BENCH

Advocate : Yogendra Prasad, Rajiv Sinha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The applicant/writ petitioner being aggrieved by the dismissal of Original Application (O.A.) No. 92/2013(R) by the impugned order dated 20.5.2015 passed by the learned Central Administrative Tribunal(CAT), Patna Bench (Ranchi Circuit Bench) has preferred the instant writ petition.
3. The facts of the case fall on a very narrow compass and are being referred to hereinafter:- A limited Departmental Competitive Examination was held (LDC) for 3 notified vacancies, 2 under Unreserved (UR) category and 1 under Schedule Caste(SC) category for the year 2012 for promotion to the post of Inspector of Post under 66.66% departmental quota in the Jharkhand Circle. Applicant being interested applied for that. He belongs to UR category. Results were declared on 8.1.2013. Applicant being unsuccessful thereafter approached the learned CAT through the instant O.A. for a direction upon the Respondents to revise the results of the Limited Examination for the year 2012 treating 5 vacancies for the promotional quota in the UR category. Applicant's claim was based upon an inter-departmental communication dated 14.6.2013 between the Chief Postmaster General, Jharkhand Circle, Ranchi and the Deputy Director (R&P), New Delhi. The Chief Postmaster General, Jharkhand Circle sought to intimate that 5 promotional

quota vacancies under UR category in the IPO cadre for the year 2012 were existing in this Circle. Due to wrong intimation of vacancies to the Directorate by the Circle, only 2 UR category candidates and 1 SC category candidate were declared successful in the results dated 8.1.2013. Admittedly the promotional exercise had been over by then. Petitioner had also participated in the exercise without any demur.

4. Respondents successfully resisted the prayer made before the learned CAT also taking a ground that applicant having participated in the examination cannot challenge the vacancy position after declaration of the results. Learned Tribunal was also convinced that the challenge was belated and any vacancy left out would be carried forward to the subsequent year of recruitment. Any change in the vacancy position after declaration of the results would be not tenable in law.

5. Learned counsel for the applicant-petitioner has once again relied upon the communication dated 14.6.2013, which is at Annexure-4 to the instant application. A perusal of the instant correspondence shows few more related aspects with which petitioner obviously does not seem to be interested. It indicates that there are 38 posts in the IPO cadre in the Circle out of which 25 are in departmental quota and 13 are in direct recruitment quota. The breakup between different category is also indicated therein. In direct recruitment quota 5 direct recruit IPOs of UR community of other circles have been allowed to join in this circle on their transfer under Rule-38 of P&T Manual Volume-IV during the year 2012, as a result of which there was excess representation of two IPOs in direct recruitment quota. At the relevant point of time, 14 IPOs were shown to be working against 13 sanctioned posts in direct quota and excess one would be adjusted in future vacancies under direct recruitment quota. In promotional quota, though all SC, ST points have been filled up earlier, two excess candidates of SC and ST community were given promotion in the year 2008 and 2012 respectively. The Chief Postmaster General was of the considered opinion that 5 promotional vacancy quota in UR community in IPO cadre was existing in the 2012 in this Circle. However, he admits that due to wrong intimation of vacancies to the Directorate by the Circle, only 2 UR category candidates and 1 SC category candidate were declared successful in the results dated 8.1.2013.

6. Respondents in their written statements have stuck to their stand that after the 3 vacancies were notified for the promotional exercise of the year 2012 in Jharkhand Circle, results declared on 8.1.2013, such a plea to accommodate the applicant or any other person treating vacancies as 5 in the year 2012 is not legally tenable. These vacancies were advertised and known to all concerned including the applicant. The Respondents also answered the plea of the applicant made at Para 5(iii) of the O.A. by stating that vacancies in departmental quota for IP examination in Uttar Pradesh Circle were restored before conduct of the examination in 2011 but in the case of Jharkhand Circle notified vacancies were not changed prior to the examination or even before declaration of the result.

7. Learned ASGI has referred to the communication dated 1.7.2013 made by the

Assistant Director General (DE), Department of Posts in respect of the subject matter of the instant O.A and as a reply to the letter dated 14.6.2013 of the Chief Postmaster General, Jharkhand Circle. The letter also communicated that candidate belonging to SC/ST quota appointed in the year 2008 and 2011 cannot be reverted or demoted at this stage as promotion was done as per the information provided by the Circle. The excess representation have to be adjusted in future vacancies, if any caused due to promotion of the existing incumbents to next higher cadre. If the request of the Circle for declaration of the supplementary result for 3 more additional vacancies for OC category is considered, the total number of persons in promotional quota will work out to 27 and it will exceed the prescribed sanctioned strength and result in excess drawal of pay and allowances. There is also an excess representation in direct recruitment quota. If the proposal for adjustment of 3 open category is to be accepted, it would amount to adjusting 3 candidates against 2013 vacancy and would affect the promotional prospects of aspiring candidates intending to appear in IP Examination 2013 which is already scheduled to be held on 7th and 8th September 2013. The department of Post therefore declined to undertake this exercise as it was not only impracticable but would encroach upon the vacancy of 2013.

8. Applicant in his belated challenge to the promotional exercise has not impleaded the successful candidates who got promotion as per the letter dated 8.1.2013. The inter-departmental correspondence also confirms the apprehension that such a course proposed by the applicant would amount to reopening a concluded promotional exercise in which the applicant consciously participated. This exercise could not be an one off exercise, but would also entail other with consequences as detailed above, which are not practicable. Delay in raising the grievance often defeats the right. We cannot lose sight of other related aspects in a cause raised by the applicant for grant of promotion in the promotional exercise of the year 2012, which has attained finality. The learned Tribunal also has taken a correct view of the things and dismissed the O.A finding no legality in the recruitment process as per the notified vacancies.

9. In the aforesaid facts and circumstances, we do not find any error in the impugned order warranting interference under Article 226 of the Constitution of India. Accordingly, the instant writ petition is dismissed.