
(2003) 02 OHC CK 0053

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8202 of 1998

Santosh Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 325, 351

Citation : (2003) 1 OLR 457

Hon'ble Judges : R.K. Patra, J;M. Papanna, J

Bench : Division Bench

Advocate : B.S. Mishra-2, M.R. Mishra and A.P. Dhir Samanta, for the Appellant;
M. Agrawal, Senior Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this writ petition, the petitioner seeks to assail the validity of the order dated 4.5.1998 passed by the Central Administrative Tribunal, Cuttack in O.A. No. 698 of 1997 by which his prayer for appointment to the post of E.D.B.P.M., Bichikota Branch Office was rejected.

2. Facts relevant for disposal of this writ petition are as follows :

The petitioner after passing H.S.C. Examination got his name registered in the Sub-Employment Office at Gunupur. In response to the requisition of the Senior Superintendent of Post Offices, Koraput Division, Jeypore, Junior Employment Officer sponsored the petitioner's name along with others. After verification of documents, he was selected and by order dated 6.10.1996 he was informed that he had been provisionally selected for the post of E.D.B.P.M., Bichikota Branch Office. The S.D.I. (P) Gunupur was directed to verify his documents personally and if found genuine to appoint him in the post of E.D.B.P.M., Bichikota. Although the petitioner complied all formalities, as he was not allowed to join as E.D.B.P.M.. Bichikota, he filed O.A. No. 698 of 1997 giving rise to the impugned order.

3. The case of the department before the Tribunal was that although the petitioner was provisionally selected, it was subject to verification of the genuineness of the documents. In course of verification of documents, the Inspector of Post Offices visited Bichikota when some villagers impressed upon him that the petitioner should not be allowed to join because he was involved in G.R. Case No. 137 of 1994 under Sections 351 and 325 I.P.C. As petitioner had suppressed the above fact i.e. involvement in the said G.R. case, the Tribunal took exception to it and held that he could not have been appointed to the post.

Shri Mishra. counsel for the petitioner contended that the petitioner thought that if he admitted his involvement in the criminal case, it might be construed as his admission of guilt and thinking that it might stand as a bar for his appointment, he bona fide did not mention the same. He submitted that by the time he was selected, he had already been acquitted of the criminal charge by the judgment and order dated 10.7.1997 and therefore, there is no stigma attached to him. In this connection, he places reliance on the judgment of the Supreme Court in Commissioner of Police, Delhi and Another Vs. Dhaval Singh, That was a case where the concerned candidate applied for the post of constable and against the column - "whether any criminal case is pending" - he put a cross mark. After he was selected, he wrote to the concerned authority admitting his mistake in not filling up the relevant column properly. That was also a case where he was ultimately acquitted, The Supreme Court in the circumstances held that cancellation of the candidature was without proper application of mind and without taking into consideration all relevant materials.

The facts of that case are similar to the case at hand. In the circumstances, we are inclined to hold that the petitioner could not have been deprived of the appointment merely because he did not correctly mention about his involvement in the criminal case. Admittedly, by the time he was selected for appointment, he had been acquitted of the charges in the criminal case. Therefore, there was no stigma attached to him by the time he was selected. Therefore, in our opinion, he could not have been deprived of the appointment.

For the reasons aforesaid, the impugned order is not sustainable in law and is hereby quashed and the O.A. No. 698 of 1997 filed by the petitioner stands allowed. The opposite party No. 3 is directed to issue appointment order to the petitioner within one month of receipt of the writ.

The writ petition is accordingly allowed.

M. Papanna, J.

4. I agree.