

(2007) 04 JH CK 0005
In the Jharkhand High Court

Sashi Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Abhishek Kumar

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Citation : (2007) 4 JCR 217

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Permod Kohli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—This writ application is directed against the order dated 25.8.2006, passed by the Central Administrative Tribunal Circuit

Bench at Ranchi, whereby O.A. filed by respondent No. 4 has been allowed.

2. Vide impugned order, appointment of the present petitioner has been quashed and a direction issued to consider the case of respondent No. 4

for appointment in his place.

3. Briefly stated facts are that vide notification, dated 13.3.2000, the names of eligible candidates were invited through the employment exchange

for the post of EDBPM. Petitioner herein and respondent No. 4 applied for the post of EDBPM, Bagra EDBO. As many as 11 applications were

received. The criteria for selection was marks obtained in Matriculation Examination and possession of landed property. It is admitted case of the

parties that respondent No. 4 secured 602 out of 900 marks in Matriculation Examination whereas the present petitioner had less marks (3rd

Division). On completion of selection, petitioner herein came to be selected. Since respondent No. 4 had better merit and he claims to be

possessed of the landed property, challenged the appointment of the petitioner

before the C.A.T. Patna Bench at Ranchi by filing O.A. 79/2001

which was disposed of by the C.A.T. Patna Bench at Ranchi on 11.12.2002 directing the Chief Postmaster General, Jharkhand Circle, Ranchi to

dispose of the representation of respondent No. 4 within a period of three months Representation of respondent No. 4 was rejected by the

Director Postal Services, Jharkhand Circle, Ranchi vide his order dated 20.7.2004 which reads as under:

4. The records relating to filling up of the post of EDBPM Bagra BO has been examined again in the light of the order dated 11.12.2002 of

Hon"ble CAT Patna Bench in OA 79/2001 with the following observation that Shri Abhishek Kumar although possess more marks in

matriculation examination than that of Shri Shashi Kumar Singh but he had simply submitted sale deed without mutation slip or rent receipt. He was

found not fulfilling the property qualification as on or before 11.04.2000 i.e. the last date of receipt of application, which is mandatory to the post

of EDBPM. In view of the facts stated above, the representation of Shri Abhisekh Kumar Singh has been gone through carefully. The claim of Shri

Abhisekh Kumar Singh does not find merit and hence rejected.

4. Aggrieved of this order, respondent No. 4 filed another OA No. 333 of 2004 which has been decided by the C.A.T. vide impugned judgment.

The Tribunal noticed that last date of submission of application was 16.4.2000. Respondent No. 4 acquired agricultural land situated in village -

Khaplawani P.O. Kelheiya via Chatra by virtue of sale deed dated 31.3.2000 i.e. prior to the date for making application. However, the mutation

was ordered on 5.5.2000 i.e. after the last date of submission of application. Selection Board rejected his claim for appointment only on the

ground that land had not been mutated in favour of respondent No. 4 as on the last date for making application and despite his better merit than the

petitioner, he was denied appointment. The Tribunal noticed these facts and held that mutation entry neither creates nor extinguishes title or

ownership. Since respondent No. 4 was otherwise owner of the property by virtue of (sic) appointment was wrongly rejected.

5. Mrs. Pal, learned Counsel for the petitioner submits that respondent No. 4 failed to produce either mutation slip or the rent receipt and thus he is

not entitled to appointment.

6. It is settled law that mutation is only a fiscal entry for purposes of imposing liability for payment of land revenue and does not by itself confer title

over the landed property. This proposition is settled by the Apex Court in the case of Smt. Sawarni Vs. Smt. Inder Kaur and Others, .

Respondent No. 4 had title over the property by virtue of registered sale deed and thus mutation being, only a consequential entry, his title was in

existence as on the last date of making application.

7. In any case, a Full Bench of Tribunal in H. Laxman and Anr. v. Superintendent of Post Offices had quashed this condition. Therefore, the only

criteria for selection remains the merit in Matriculation examination and admittedly respondent No. had better merit than the petitioner. On the basis

of merit, the Tribunal allowed O.A. filed by respondent No. 4 and quashed the appointment of the petitioner and issued further directions as

referred to above.

8. Mrs Pal learned Counsel for the petitioner, has referred to two judgments of this Court passed in W.P.(S) No. 2865 of 2004 and in W.P.(S)

No. 6439 of 2004. In W.P.(S) No. 2865 of 2004, the Tribunal had set aside the appointment on the basis of higher merit of candidates who were

not parties before the Tribunal. The order of Tribunal was challenged before the High Court and a Division Bench of this Court set aside the order

of Tribunal on the ground that merit of those persons, who are not before the Court, could not be made a basis for quashing the appointment. This

Court further held that writ petitioners had not fulfilled the conditions of advertisement. Facts of that case are distinct than the present case. In W.P.

(S) No. 6439 of 2001, this Court held that marks obtained in Matriculation Examination was not the sole criteria for appointment and applicant

should have his own immovable property in his name. In the present case respondent No. 4 is possessed of landed property. Mrs. Pal has further

relied upon the judgments in the case of Union of India v. Chandra Shekhar Sah reported in 2002 (2) JCR 18 (JHR) and in the case of Ajeet

Kumar Singh v. Union of India and Ors. reported in 2001 (4) PLJR 7. In the case of Union of India (supra) the Tribunal determined the merit and

set aside the appointment. In that case, there was a dispute whether other conditions of advertisement were fulfilled or not. However, in the present

case, better merit of respondent No. 4 is not disputed by the petitioner and other

respondents but appointment refused on other irrelevant grounds.

Neither the Tribunal nor we have determined the merit of candidates as merit is admitted by both the parties. In view of the admitted position and

merit, the ratio of the other judgment in Ajeet Kumar Singh (supra) has also no application to the facts of the present case.

9. In view of the above, we do not find any merit in this petition, which is accordingly dismissed.