
(2012) 08 DEL CK 0023

In the Delhi High Court

Case No : Writ Petition (C) 3660 of 2007

Shiv Charan Lal Sharma

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 217

Control Of National Highways (land And Traffic) Act, 2002 — Section 5, 5(1), 7

Citation : (2012) 131 DRJ 326

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Tamali Wad, for the Appellant; H.K.Gangwani, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The present petition is being filed to set aside the impugned communication dated 19th January, 2006 issued by the respondent no. 1 informing the petitioner regarding non-approval of his candidature by the Central Government, for the post of Presiding Officer, National Highways Tribunal. Vide the Circular dated 25.02.2003 of the respondent no. 1, applications were invited for appointment to the Post of Presiding Officer of the National Highway Tribunal, to be established u/s 5 of the Act in each State / Union Territory.

2. In response thereto, Petitioner, who is a Practising Advocate with experience of more than 26 years in Rajasthan High Court, submitted his bio-data along with application to respondent no. 1 on 30.04.2003.

3. After scrutinizing the application and verification of the documents / certificates / testimonials as to the eligibility of the Petitioner, respondent no. 1 vide letter no. NH-11014/1/96-PL (VOL.V) invited the petitioner for an interview to be held on 18.09.2003 by the Selection Committee in the Supreme Court Judges' Lounge, Supreme Court Building, New Delhi.

4. Out of total number of 31 candidates, who had applied for the post of Presiding Officer, only 20 candidates including the petitioner were invited for interview by high-powered Selection Committee, headed by sitting Hon'ble Judge of the Supreme Court (nominee of the then Chief Justice of India) along with Secretary, Ministry of Law and Justice and Secretary Ministry of Road Transport and Highways.

5. After the interview was held as scheduled on 08.09.2003, 16 candidates including the petitioner appeared before the Selection Committee. Based on the performance of the candidates in the Interview and taking into account the Annual Confidence Report of the officers, the Selection Committee proposed 5 candidates for 5 Tribunals and 4 candidates were kept in reserve panel. However, the name of the petitioner appeared as the last candidate in the reserve panel.

6. Thereafter, the proposal for approval of ACC was sent on 05.01.2005 and in the meanwhile i.e. (from 18.09.2003 till 05.01.2005) the constitution of 8 National Highway Tribunals had already been notified. Out of 9 candidates including 4 candidates in the reserve panel, Sh. Gopal Chandra Mitra (reserve panel) had retired on superannuation on attaining the age of 60 years.

7. Verification report from Intelligence Agencies against 2 candidates (recommended by Selection Committee namely one from regular panel and one from reserved panel) were not found favourable. Therefore, the Ministry sent a proposal to ACC for 6 names including the name of the petitioner placed at Serial No. 6, for the proposed 8 Tribunal. However, ACC approved first 5 candidates and did not approve the name of the petitioner. Accordingly, offer was issued to the approved candidates on 16.05.2005.

8. Ld. Counsel further submitted that Sh. Mithlesh Kumar Sharma and Mr. Sayed Nazir Abbas Zaidi did not accept the offer on personal grounds and another candidate Mr. Alok Kumar Das had attained the age of 60 years as on 23.01.2005, therefore, there was no occasion to consider and approve the name of the petitioner for the Post of Presiding Officer of the Tribunal.

9. Contrary to that the petitioner received communication dated 19.01.2006 from Ministry of Road Transport and Highways that the Govt. did not approve his appointment for the post of Presiding officer, National Highway Tribunal. The same is Annexure P-1.

10. Being aggrieved, petitioner initially challenged the non-appointment before Central Administrative Tribunal vide O.A. No. 757 of 2006 same was dispose of with the direction to approach this Court. Hence, the petitioner filed the present petition.

11. Ld. Counsel for the petitioner has submitted that in order to provide for control of land within the National Highways, the Right of ways and traffic moving on the National Highways and for removal of unauthorized occupation thereon, the Parliament enacted the Control of National Highways (Land and

Traffic) Act, 2002. As per Section 5(1) of the said Act, empowers the Central Government to establish one or more Tribunals in the States / Union Territories to be known as National Highway Tribunals consisting of only one person, referred to as the Presiding Officer to be appointed by notification in Official Gazette by the Central Government.

12. Petitioner was interviewed on 18.09.2003 and his name was recommended by the Selection Committee. According to Rules, Selection panel shall be valid for a period of 2 years as enumerated in Sub-Clause 6 of Rule III of the National Highways Tribunal Procedure for appointment as Presiding Officer of the Tribunal Rules, 2003, which reads as under:

The Central Government shall on the basis of the recommendations of the Selection Committee make a list of persons selected for appointment as Presiding officer and the said list be valid for a period of two years. The appointment of a Presiding Officer shall be made from the list so prepared.

13. But the respondent thereafter issued another notification on 09.08.2005, before expiring the life of the first Selection without recording any reasons.

14. It is further submitted that there is nothing against the petitioner on record whereupon the approval of ACC has not been granted.

15. Ld. Counsel has relied upon a case decided by the Apex Court in Union of India and Ors. v. Bhaskarendu Datta Majumdar, Civil Apl. No. 7116/2010 wherein it is held as under:

Before the Division Bench, the primary issue raised on behalf of the respondent herein was that his name had been recommended by all the authorities and two members of the ACC but in the final analysis the ACC had not accepted the recommendation and it was thus incumbent on the ACC to offer reasons for differing with the proposal made by the PESB and though the said reasons were not required to be communicated to the officer concerned, it was nonetheless open to the Court to examine the record to see if any reason had indeed been recorded.

16. Further reliance has also been placed on the decision of the Apex Court in the case of Union of India and Ors. vs. N.P. Dhamania & Ors. 1995 Suppl. (1) SCC 1 in which it has been held that:

Though the ACC was the appointing authority and therefore entitled to differ with the recommendation of the PESB, it was necessary to give reasons for doing so to obviate any chance of arbitrariness and for that purpose the Court could look into the record to satisfy itself.

17. Respondent Department of Road Transport Highways has filed affidavit and additional affidavit in response to the instant petition and submitted that the process of filling up the Posts of Presiding Officer was initiated first time during February, 2003 and applications were invited from the eligible persons.

18. A list of 20 eligible candidates was prepared in the Department of Road Transport and Highways. The Registrar General of the Supreme Court was requested on 23.04.2003 to place the matter, regarding the composition of the Selection Committee, before the Chief Justice of India. Accordingly, Selection Committee was constituted on 23.07.2003.

19. Petitioner was one of the candidates, who had applied for the post of Presiding Officer. His name was included in the list of the eligible candidates to be called for Interview. The Interview was held on 18.09.2003 and 16 candidates including the petitioner appeared before the Selection Committee.

20. Based on the performance of the candidates in the interview and taking into account the Annual Confidential Reports of the officers, the Selection Committee recommended 5 candidates in the regular panel and 4 candidates in the reserved panel for the proposed 5 Tribunals. The name of the petitioner appeared as the last candidates in the reserved panel.

21. It is further stated that as per the guidelines into force, appointment to the posts at the level of Joint Secretary and above requires the approval of the Appointment Committee of the Cabinet (ACC). Therefore, the proposal for approval of ACC was sent on 15.01.2005 by sending 6 names including the name of the petitioner placed at serial no. 6 for the proposed 8 Tribunals. However, the ACC approved first 5 candidates and did not approve the name of the petitioner.

22. Though it is also stated in the counter-affidavit that the Ministry thereafter issued another notification for filling up the posts of Presiding Officer, the petitioner once appeared and second time refused to even appear, however, the same is not relevant for the issue raised in the instant petition. Therefore, the detail of the second or third notification is not noted for the reasons mentioned above.

23. Ld. Counsel for the respondent has submitted that inclusion of the name of the petitioner in the Selection panel does not give him the right to be appointed. Further the ACC is the final Authority to approve the name. The case of the petitioner was not approved as he was not found eligible for the said post.

24. During arguments, Ld. Counsel for the respondent has produced the original record of the ACC. This Court has perused the same and found that the reasons recorded vide note which is at Page 34 of the File No. 1/1/2005/EO/SM-II as under:-

There was nothing to indicate in specific terms, that applications of Practicing Advocates were also being solicited. Under the above circumstances, the Appointment Committee of the Cabinet may kindly reiterate non-approval to the appointment of the petitioner, as Presiding officer, National Highways Tribunal.

25. Accordingly, same has been approved by the ACC, which is contrary to the memorandum issued on 25.02.2003 by which it is stated that u/s 7 of the Act for appointment as Presiding Officer, a person has to be qualified to be a Judge of

High Court or he should have been member of Indian Legal Service.

26. After hearing Id. Counsel for the parties and on perusal of the record produced by the respondent, it is clear that vide Circular dated 21.02.2003 addressed to Registrar of High Courts, applications were invited for appointment of Presiding Officer of the National Highways Tribunal in the Pay Scale of Rs. 18,400-22,400. In pursuance of the said circular, petitioner, who is a practicing Advocate with more than 24 years experience applied for the said Post. The Selection Committee, which was presided over by sitting Judge of the Supreme Court, found him eligible and selected him.

27. In its note dated 10.03.2005, Ministry noted the names of the 9 candidates, who have been selected by the Selection Committee and in Paragraph no. 6 clearly noted that the petitioner is not in Government Service, but selected him for appointment in the service of the Tribunal till the age of 62 years. He was placed at Serial no. 6 in the said note, which was then sent to ACC (Appointment Committee of the Cabinet).

28. In the note dated 17.03.2005 sent for ACC approval, it is specifically mentioned that applications from Practicing Lawyers were not called for, therefore, the appointment of the 5 persons, except the petitioner, may be approved. Accordingly, the name of the petitioner was not approved.

29. It is evident from the Circular dated 21.02.2003, addressed to the Registrar of High Courts, for wide publicity amongst the eligible persons and names of suitable persons / Officers along with their complete bio-datas / experience etc. sent to the respondent Ministry by 31.03.2003.

30. Article 217 of the Constitution of India under Clause 2 provides that a person "shall not be qualified for appointment as a Judge of High Court unless he is a citizen of India and (a) has for at least 10 years held a Judicial Office in the Territory of India or (b) has for at least 10 years been an Advocate of High Court or of two or more such Courts in succession.

31. The particular of the petitioner, which is placed on record, clearly shows that he has experience of more than 24 years as Advocate at High Court of Rajasthan. Therefore, he is eligible for the post in question. Moreover, the selection committee, headed by the sitting Judge of Supreme Court of India, selected him after interview.

32. Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, however, the appointing authority cannot ignore the select panel or on its whims and fancies decline to make the appointment. When a person has been selected by the selection committee and there is a vacancy which can be offered to him, keeping in view his merit position then ordinarily, there is no justification to ignore him for appointment.

33. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, the reasons given are contrary to their own

circular. This Court finds no material against the petitioner, except the reasons given in the note mentioned above.

34. No doubt, the approval of the AC is mandatory and the final authority vests with the ACC. But if the selection committee has selected any candidate, the ACC can reject the same by giving the reasons on record, which is missing in the present case.

35. In view of the above discussion, I am of the considered opinion that there was no reason against the petitioner not to send for ACC approval. Therefore, impugned communication dated 19.01.2006 is set aside.

36. Since the name of the petitioner has not been approved by the ACC which is mandatory, therefore, the respondent Ministry is directed to send the name of the petitioner for ACC approval. If the ACC approves the same, the concerned Ministry shall issue the appointment letter to the petitioner against the first available vacancy.

37. Instant petition is allowed on the above terms. No order as to cost.