

(2012) 09 CAL CK 0131
In the Calcutta High Court
Case No : WPCT No. 619 of 2012

Shri Ram Prasad	Vs	APPELLANT
The Andaman and Nicobar Administration and Others		RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 09 CAL CK 0131

Hon'ble Judges : Jayanta Kumar Biswas, J; Harish Tandon, J

Bench : Division Bench

Advocate : Hemraj Bahadur, for the Appellant; Krishna Rao, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WPCT under art. 226 dated September 13, 2012 is questioning an order of the Central Administrative Tribunal, Calcutta Bench (Circuit at Port Blair) dated August 27, 2012 WPCT 86). By the order dated August 27, 2012 the Tribunal dismissed the petitioner's OA No. 36/AN/2011. The OA was filed questioning a decision of the respondent to withdraw the financial benefits the petitioner had been given under the ACP. The ACP benefits had been withdrawn and pay was refixed on the grounds that the petitioner had been given the benefits wrongly.

2. By an order dated August 21, 1980 the petitioner was appointed to the post of Editor (Hindi) in the Chief Commissioner's Secretariat of the A & N Administration. The question that the Tribunal was deciding was whether the petitioner was appointed to the post of Editor (Hindi) consequent upon his selection for promotion to the post or selection for appointment to the post as a direct recruit.

3. The appointment to the post of Editor (Hindi) was to be made according to the Andaman and Nicobar Islands Publicity and Tourism Department (Editor-Hindi) Recruitment Rules, 1980. The rules provided that the post was to be filled by promotion failing which either by direct recruitment or by deputation; that Hindi

Translators having experience in journalism and flair for writing would be eligible for promotion; and that the selection should be made after conducting written test and interview by a DPC.

4. Before the Tribunal the petitioner contended that he had been appointed to the post of Editor (Hindi) consequent upon his selection through a process initiated for filling the post by direct recruitment, and not by promotion. The respondents filed a reply and produced the original records to show that the petitioner had been appointed to the post by promotion. The Tribunal held that the petitioner had been appointed to the post by promotion, and not by direct recruitment.

5. The papers used before the Tribunal have been produced with the WPCT and in addition the petitioner has produced a document dated August 21, 1980 (WPCT p.21). Relying on the document Mr. Bahadur appearing for the petitioner has argued that since an intimation of the petitioner's appointment to the post was given to the Employment Officer, Port Blair, it is appropriate to conclude that the petitioner had been appointed to the post by direct recruitment.

6. Mr. Rao appearing for the respondents has produced the original records which were produced also before the Tribunal, and we have gone through the records and also read out the relevant part thereof to Mr. Bahadur and Mr. Rao.

7. It is absolutely clear from the original records that though at one stage a proposal was considered for requisitioning names for the post from the Employment Exchange, ultimately decision was taken to fill the post by promotion. A note dated June 5, 1980 in the original records reveals that a three-member DPC was constituted according to the Recruitment Rules, and that the petitioner and another Hindi Translator were the two candidates considered by the DPC. It is evident from the original records that the petitioner took the requisite written test and obtained mark higher than the other candidate.

8. There can be no doubt at all that the petitioner was selected for appointment to the post by promotion, and not by direct recruitment. Simply because a copy of the appointment order dated August 21, 1980 was sent to the Employment Officer, Port Blair, it cannot be concluded that the selection in question was by direct recruitment and not by promotion. It is, therefore, clear that the petitioner getting two promotions at the date he was given the ACP benefit he was not eligible for the benefits. The benefits were wrongly given, and hence the respondents did not commit any wrong by withdrawing them.

9. We are unable to accept that since the benefits were not given because of any misrepresentation on the part of the petitioner or fraud exercised by him, the respondents are not entitled to recover the overpayment. The petitioner is still in employment and the illegality was detected only after the audit objection was given. The overpaid amount has not yet been ascertained. We are of the view that once the amount is ascertained, the respondents should give the petitioner reasonable opportunity of paying the overpaid amount in easy instalments. For

these reasons, we dismiss the WPCT. No costs. Certified xerox.

Harish Tandon, J.

I agree.