

(2010) 07 PAT CK 0085
In the Patna High Court

Sudhanshu Shekhar Tripathi

APPELLANT

Vs

Bihar Public Service Commission and Others

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0085

Hon'ble Judges : Sudhir Kumar Katriar, J;Birendra Prasad Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—This appeal under Clause 10 of the Letters Patent Appeal of the High Court of Judicature at Patna has been preferred by the petitioner of CWJC No. 3519 of 2006, and raises a grievance with respect to the order dated 15.09.2006, whereby the writ petition has been dismissed. The writ petitioner raises a grievance in the writ proceeding that, in view of the aggregate marks obtained by him, he ought to have been allotted to the Bihar Police service, and he has instead been recommended the job of Employment Officer.

2. Bihar Public Service Commission (hereinafter referred to as "the Commission") conducted the 36th Combined Competitive Examination, which was held in the year 1989. The old reservation policy was in force at the time of the advertisement. The same was substituted by the new reservation policy at the time the merit list was prepared, and the recommendations were made as per the new reservation policy. This led to a large number of writ petitions in this Court which were allowed, the merit list as per the new reservation policy was set aside, and the Commission was directed to prepare a fresh merit list after applying the previous reservation policy which was in force at the time of the advertisement. Accordingly, a fresh merit list was prepared. However, the writ petitioner's position in the merit list remained the same in both the lists. In fact, the present petitioner was a petitioner in the earlier writ petition also. This is by way of background of the present writ petition.

3. In the fresh merit list, the petitioner has been recommended for the post of Employment Officer. He preferred the present CWJC No. 3519 2006 raising a grievance that, in view of the marks scored by him at the selection process, he ought to have been recommended for a post in the Bihar Police service, or at least for any one of the Uniformed services. It is relevant to state at this stage that the 36th Combined Competitive Examination was held for recruitment to 14 different services of gazetted officers. The Bihar Police Service, Bihar Exercise Service, and the post of Battalion Commandant, are treated to be uniformed services. Those of the candidates who have been given preference for any one of the uniformed services are separately assessed at the same viva voce test. Those of the candidates who have been given preference for non-uniformed services are separately assessed at the same viva voce test. It is further relevant to state that the candidates for the police service and the non-police service are so separately assessed at the same viva voce test, leading to a combined gradation list. Every candidate is subjected to the same uniform selection process, leading to a combined gradation list. Consequently, in view of the marks obtained by the candidate and the preferences given by them, the petitioner was recommended for the post of Employment Officer. The petitioner raises a grievance in the writ petition that he had scored total of 585.5 marks and, therefore, he ought to have been recommended for the post of Bihar police service and, in any case, he should have been recommended for the post of Battalion Commandant, and other posts in the uniformed service.

4. During the course of writ proceedings, the Commission was directed to explain the position. It placed on record a supplementary counter affidavit, the relevant portion of which is reproduced herein below:

As per the preference given by the petitioner and taking into consideration his non-police marks, i.e. 580.5, he was recommended for the post of Assistant Employment Officer (B.E.O.) as his choice for the said post was mentioned at Sl. No. 4 while the choice for the post of Battalion Commandant (Uniformed post) was preferred at Sl. No. 8 much lower in order of his preference.

Similarly, Devendra Kumar Singh, Roll No. 6856, who obtained 579 marks as per police marks was offered the post of Battalion Commandant as his choice for the said post was at Sl. No. 5, and he made it as per his order of preference.

Thus, for the sake of fair consideration of the facts, a candidate securing more marks is not able to get a particular choice service because of its lower preference, whereas a candidate securing lesser marks gets that particular choice service as per his higher preference for it.

9. That since the petitioner has been recommended on a non-police post, his non police marks were taken into consideration. Devendra Kumar Singh was initially recommended for appointment to the post of Assistant Employment Officer as his non-police marks of 577 was taken into consideration. In the revised merit list, prepared in the light of Reservation policy of 1978, he has been recommended

for appointment to the post of Battalion Commandant on the basis of his police marks i.e. 579.

Since the preferential choice of the petitioner for the post of Assistant Employment Officer (B.E.O.) was higher than either for the post of Excise Inspector or the Battalion Commandant, he was allotted the post of Assistant Employment Officer (B.E.O.) in accordance with the inter-se-merit of the petitioner vis-à-vis the order of preference given by him, subject to the availability of the post as per reservation roster then in force.

4.1) The summary of chart prepared by the Commission after on of the selection process and was marked as Annexure-D to the supplementary counter affidavit. The same is reproduced herein below:

Bihar Public Service Commission, Patna

Chart showing the allotment of different Uniformed Services Posts (Bihar Police Service - DSP, Excise Inspector and Commandant) of General Category according to Merit-cum-Choice of Candidates (36th Combined Competitive Examination Combined Merit List (prepared in the light of Reservation Policy, 1978), vis-a-vis Allotment of Post of District Employee (BEO) to the petitioner; namely, Sudhanshu Shekhar Tripathi, Roll No. - 48641, Reservation - General Category.

S Name of Candidate Roll. Merit Written Police Total Preference of Post Rent No. No. Position in Marks Marks of Post in order Allotted Combined the of Choice Merit List Interview 01 Sudhanshu Shekhar 48641 121 539 46.5 585.5 BPS, BAS, SR, BEO Tripathi BEO, SEO, BES, EXI, BC, ADS, PRO

BIHAR POLICE SERVICE VACANCY OF GENERAL CATEGORY - II

1. Lalan Mohan Prasad 15099 1 660 55.5 715.5 BPS, BAS. SR. EXI. BES BPS 02. Sunil Kumar 20630 3 640 52.5 692.5 BPS. BAS. BES, SEO, EXI BPS 03. Sudhir Kumar Singh 19740 4 637 44.5 681.5 BPS, BAS, SR, SEO, HES BPS 04. Manoj Kumar Singh 3986 5 617 58.0 675.0 BPS, BAS, BES(F) BPS 05. Shekhar Kumar 6968 7 637 25.0 662.0 BPS, BAS. SR, BLS. HES BPS 06. Rajesh Tripathy 41188 8 640 16.0 656.0 BPS, BAS, BES, SR, PRO BPS 07. Jitendra Mishra 16339 9 645 11.0 656 0 BPS, BAS, SR, BES. EXI BPS 08. Ashok Kumar 18135 11 624 26.0 650 0 BPS. BAS. BES BPS 09. Nawal Kishore Singh 11371 13 612 36.5 648.5 BPS. BAS. BES BPS 10. Abhay Kumar Verma 31112 16 588 51.5 639.5 BPS. BAS. SR BPS 11. Ravindra Kumar 6700 18 605 32.5 637.5 BPS, BAS, SR BPS

EXCISE INSPECTOR VACANCY OF GENERAL CATEGORY - 01

01.Pramatma Pandey 22323 110 538 47.0 585.0 BAS, SR, EXI. PRO. ADS EXI

BATTALIAN COMMANDANT VACANCY OF GENERAL CATEGORY - 03

1. Harendra Kr. Singh 24917 126 538 41.0 579.0 BPS, BAS, BES, EXI, SR, BC, ADS BC 02. Pawan Kumar Singh 14986 127 529 51.5 580.5 BPS. BAS, BES, BC, SR, PRO, EXI BC 03. Devendra Kumar Singh 6856 134 526 53.0 579.0 BPS,

BAS. SR. BES BC, EXI, ADS BC 5. It thus appears to us that the total marks scored by a candidate shall, in view of the total number of posts available for recommendation, take him within the select list. Thereafter recommendation of one or the other candidate for a particular post or service depends on his preference. In other words, the Commission by its uniform method has given top priority to the preference given by the successful candidates at the time he had submitted his application at the very inception. The position is evident from the aforesaid chart, and summarized by the learned Single Judge in his order. On a perusal of materials on record, we agree with the findings of the learned Single Judge that the writ petitioner was rightly recommended for the post of Assistant Employment Officer. We, therefore, agree with the recommendations made by the Commission, and equally agree with the decision of the learned writ Court.

6. In the result, this appeal is dismissed. But there shall be no order as to cost.