

(2007) 02 PAT CK 0189
In the Patna High Court
Case No : Civil Review No. 97 of 2002

Surendra Kumar Chaudhary	Vs	APPELLANT
The Union of India (UOI) and Others		RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 190

Hon'ble Judges : Narayan Roy, J;J.N. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Umesh Prasad Singh, learned counsel for the petitioner, and Mr. Ganesh Prasad Singh, learned counsel for the contesting opposite party and learned counsel for the Union of India. By this application the petitioner seeks review of order dated 27.6.2002 passed by a Bench of this Court in C.W.J.C. No. 7926 of 2000, whereby and where under it was observed that the writ petitioner, Chandra Kishore Thakur, will be entitled to seek a review of the decision of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter to be referred to as "CAT), but, at the same time, quashed the departmental order dated 21.2.2002, by which services of the writ petitioner Chandra Kishore Thakur was terminated.

2. Short facts giving rise to this writ application are as under:--

The petitioner and opposite party no. 5 along with others were the applicants for selection on the post of Extra Departmental Branch Post Master (herein after to be referred to "EDBPM"), Raghapur within the District of Samastipur Postal Division. Names of the petitioner and opposite party no. 5 were sponsored by the Employment Exchange and, accordingly, their cases were considered for the post aforesaid and during selection process opposite party no. 5 was selected to the post aforesaid and vide order dated 23rd April, 1993 appointment letter was issued and he joined the post.

3. Appointment of opposite party no. 5, however, was challenged before the CAT in O.A. No. 155 of 1996. The matter was contested before the CAT, where the official respondents in order to justify their stand raised a solitary objection to the effect that the petitioner (Surendra Kumar Chaudhary) since was involved in a criminal case pertaining to Mansoorchak Police Station Case No. 35 of 1992, he was not found eligible for the post.

4. The CAT, however, allowed the application filed by the present petitioner holding that mere involvement in a criminal case would not be a ground for denial of appointment and since the present petitioner had edge over opposite party no. 5 (Chandra Kishore Thakur), so far the marks obtained by him was concerned, he had a preferential right for appointment over opposite party no. 5 and issued direction to the authorities concerned to issue an appropriate order after ascertaining antecedents of the petitioner and till passing of the appropriate order appointment of opposite party no. 5 (Chandra Kishore Thakur) would be deemed to be provisional.

5. In the meantime, the postal authorities terminated appointment of Chandra Kishore Thakur (opposite party no. 5) with immediate effect vide order dated 21.2.2001 pursuant to observation and direction of the CAT passed in O.A. No. 155 of 1996.

6. The order passed by the CAT, however, was challenged before this Court by Chandra Kishore Thakur in C.W.J.C. No. 7926 of 2000, which, ultimately, was disposed of by the order impugned of which review has been sought for.

7. Mr. Umesh Prasad Singh, learned counsel for the petitioner, submitted that in the writ application filed by opposite party no. 5 Chandra Kishore Thakur order passed by the CAT dated 26.7.2000 was challenged, but, at no point of time, had challenged order dated 21.2.2001 passed by the postal authorities terminating the services of Chandra Kishore Thakur and this Court while disposing of the writ application observed that in case the petitioner has any grievance against the order of the CAT to the extent that Surendra Kumar Chaudhary was an accused in a criminal case, the writ petitioner would be entitled to seek a review of the decision of the CAT, but, at the same time, quashed order dated 21.2.2001, passed by the postal authorities terminating the services of the writ petitioner. Learned counsel further submitted that since this Court had directed the writ petitioner to file a review before the CAT, latter part of the order was unwarranted and uncalled for. It is further submitted that the CAT after noticing the fact that the review petitioner. Surendra Kumar Chaudhary, was an accused in a criminal case, allowed his application holding that mere pendency of a criminal case would not debar a person from appointment. He also submitted that in case of Santosh Kumar Jha vs. Union of India and others 2002(1) Patna Law Journal Reports 346 this Court while considering a similar matter held that mere pendency of a criminal case should not be an impediment in selection and appointment to a Government post and in case the applicant is convicted, then there would be no question of selection, but as long as the matter is pending or

he stands acquitted, then the applicant would be entitled to be considered for the post. Learned counsel, therefore, submitted that in these backgrounds, this Court while disposing of the writ application of Chandra Kishore Thakur observed for filing of a review application by the writ petitioner, but there would have been no occasion to quash the termination order of the writ petitioner, which was not even the subject matter of challenge, as at no point of time the amendment application as such was allowed.

8. Mr. Ganesh Prasad Singh, learned counsel for opposite party no. 5, and counsel for the Union of India submitted that the selection and appointment of the review petitioner was ab initio void, and, therefore, this Court in its discretion quashed the termination order of Chandra Kishore Thakur. Learned counsel further submitted that this Court in the context of pendency of the criminal case observed filing of review application, but the observation was not an impediment in the way of this Court to set aside illegal order of termination passed by the postal authorities against Chandra Kishore Thakur, opposite party no. 5.

9. From the facts, as enumerated above, it is manifestly clear that at the initial stage opposite party no. 5 Chandra Kishore Thakur was selected by the postal authorities and appointment letter was issued in his favour in view of pendency of the criminal case against the petitioner, Surendra Kumar Chaudhary. However, pursuant to the order passed by the CAT claim of the petitioner was again examined and appointment of Chandra Kishore Thakur was cancelled and appointment letter was issued in favour of the petitioner, which subsequently was cancelled vide order dated 18th July, 2002 pursuant to the order impugned passed by this Court.

10. The question, in this view of the matter, arises as to whether when this Court observed for filing of a review application was it open to it to set aside the order of termination passed against the writ petitioner on consideration of the fact that the present petitioner, Surendra Kumar Chaudhary, was appointed during pendency of a criminal case in view of the finding of this Court itself in case of Santosh Kumar Jha (supra). More so, the order of termination passed against the writ petitioner was not under challenge, though it was brought on record by way of an interlocutory application challenging the same.

11. It is, obviously, therefore, clear that pendency of a criminal case was not an impediment for appointment on a Government post in view of the ratio laid down by this Court in Santosh Kumar Jha (supra) and, thus, the subsequent order passed by the postal authorities appointing the petitioner, Surendra Kumar Chaudhary and terminating the services of Chandra Kishore Thakur would not be vitiated and in this context it is held that the latter part of the order passed by this Court by the order impugned setting aside the order of terminating of Chandra Kishore Thakur was uncalled for. Further it is borne out from the materials on record that before passing of the order under review, Chandra Kishore Thakur had already filed a review application before the CAT being O.A. No. 1 of 2002 bringing to its notice the fact that Surendra Kumar Chaudhary was

involved in a criminal case. The review application was dismissed as barred by limitation as also on merit, as involvement of Surendra Kumar Chaudhary in a criminal case was already noticed by the CAT in its earlier order. In this view of the matter, this application is allowed and latter part of the order under review setting aside the order of termination of Chandra Kishore Thakur is recalled and to this extent, the order under review stands reviewed.

J.N. Singh, J.

I agree.