
(2006) 09 PAT CK 0079
In the Patna High Court
Case No : C.W.J.C. No. 7366 of 2005

Tuntun Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Citation : (2006) 09 PAT CK 0079

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The petitioner seeks to challenge an order, dated 3.6.2005 passed by the Central Administrative Tribunal, Patna Bench, in Original Application No. 504 of 1999. By the order coming under challenge the Tribunal allowed the application filed by one Rajiv Ranjan Singh (respondent No. 5), set aside the petitioner's appointment as Extra Departmental Branch Post Master and directed the postal authorities (respondents before the Tribunal) to appoint respondent No. 5 (applicant before the Tribunal) in place of the petitioner.

2. For filling up the post of E.D.B.P.M., Kathavasi E.D. Branch office, district Saharsa, the Postal Superintendent, Saharsa Division asked the District Employment Exchange to send the names of suitable candidates vide his letter No. A29 dated 22.7.1998. In terms of the letter the candidates' names were required to be sent to the postal authority by registered post within thirty days from the date of the letter. The Employment Exchange duly sent a list of candidates that included the petitioner and respondent No. 5. The postal authorities selected the petitioner and issued the order of his appointment on 25.6.99. Respondent No. 5 challenged /appointment of the petitioner before the Tribunal. It was contended on his behalf that in the matriculation examination he had secured 554 out of 900 marks while the petitioner (the selected candidate) had obtained only 545 marks out of 900. The postal authorities were, therefore, in error in selecting and appointing the petitioner in preference to him.

3. On behalf of the postal authorities it was admitted that the petitioner had higher marks in the matriculation examination and on that basis he was the first

in the merit list among all the candidates. It was, however, explained that he failed to submit, till the last date for receipt of application, any document to show that he held some landed property in the village in his exclusive name. He, thus, did not fulfil one of the essential conditions for appointment and in those circumstances the petitioner who was the next in the merit list was selected and appointed.

4. On the point of holding some land in the village where the post office is situate, it is the admitted position that along with his application respondent No. 5 enclosed copies of sale deeds, dated 11.8.1996 and 19.9.1986 which were in the joint names of himself and his brother Sanjiv Kumar Singh. Later on, his father executed a gift deed in his favour on 31.8.1990. When called upon by the postal authorities to submit his papers for verification, respondent No. 5 produced all his certificates / documents, including the gift deed on 7.6.1999, the date fixed for the purpose. On verification of the documents the Assistant Superintendent of Post Offices kept with him the photo copy of the gift deed along with the other papers.

5. On a consideration of the rival contentions the Tribunal upheld the claim of respondent No. 5 and allowed his application. The Tribunal based the decision on certain earlier judgments of its other Benches. It referred to the judgment in *Suman Singh v. C.P.M.G., Lucknow* 2000 (3) ATJ 124 in which it was held that the candidate who was first in merit and had the highest percentage of marks in the matriculation examination had to be selected for the post and offered appointment. Thereafter he was required to satisfy the other conditions relating to accommodation for the post office and residence.

6. The Tribunal also referred to one of its Full Bench decisions in *H. Lakshamana and Ors. v. Superintendent of Post Office, Bellary and Ors.* The question before the Full Bench was whether the condition of having adequate means of livelihood as provided in the departmental circular, dated 6.12.1993 was absolute or only a preferential requirement for appointment to the post of EDBPM. The Full Bench, relying upon certain passages in the decision of the Supreme court in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, held that the condition of having adequate means of livelihood in the circular, dated 6.12.1993 was invalid; it could not be applied even as a preferred requirement not to speak of an absolute condition for appointment as EDBPM. The Tribunal accordingly, held that the postal authorities had wrongly excluded respondent No. 5 for failure to submit documents to show his exclusive holding of land in the village.

7. Mr. K.N. Chaubey, Senior Advocate appearing for the petitioner strongly assailed the Tribunal's order. He submitted that Clause 3 of the letter calling for the candidates names from the Employment Exchange expressly stipulated that the candidate should have an independent source of livelihood and must have some land in his personal name, the mutation of which must be completed before the last date of submission of application forms. At the same time he must also submit up-to-date rent receipts for the land.

8. Mr. Chaubey submitted that the Tribunal was gravely in error in completely disregarding the express condition stipulated in the appointment notification. He further submitted that the decisions of the Lucknow bench in Suman Singh (supra) and of the Full Bench in M. Lakshamana (supra) were not rendered correctly and were not fit to be approved / followed by this Court. He argued that the post master was required to deal with substantial monies in cash in the form of money orders, postal-deposits, sale of postal articles etc. and in that view the insistence upon the candidate having an independent and adequate source of livelihood and some landed property in the village in his exclusive name was relevant, reasonable and justified from more angles than one. He contended that the decisions in Suman Singh and H. Lakshamana had failed to see that as a measure of security for the postal monies in cash handled by the post master it was reasonable and justified for the department to insist on the condition that the candidate should have an independent source of livelihood and some land in the village in his exclusive name. In support of his submissions Mr. Chaubey relied upon a Supreme Court decision in Suman Verma Vs. Union of India (UOI) and Others, .

9. In my view the decision relied upon by Mr. Chaubey is on a different issue. It does not help the petitioner in this case and as a matter of fact in one way it goes against him. In the case of Suman Verma, respondent No. 6 of the case had admittedly secured higher marks in the matriculation examination. Nevertheless, he was not selected by the postal authorities for his failure to submit the mutation order in respect of the land in his name before the last date for submission of applications. The postal authorities had selected Suman Verma though his marks in the matriculation examination were lower than respondent No. 6. The Administrative Tribunal on being moved by respondent No. 6 set aside the appointment of Suman Verma and directed for appointment of respondent No. 6. The order of the Tribunal was confirmed by the High Court and Suman Verma took the matter in appeal before the Supreme Court. The Supreme Court noted that the appointment notification was issued on 14.10.1996 and the last date for submission of applications was 12.11.1996. With regard to the land holding of respondent No. 6, the Supreme Court noted the relevant facts in para 10 of the decision as follows:

It was stated that pursuant to the gift deed dated 10.10.96, she became the owner of agricultural land. The last date for submission of the applications was 12.11.96. Respondent No. 6 became owner of agricultural land on 29.10.96, i.e, before the last date of submission of application. The mutation entry, however, could be made on 22.11.96. It is thus clear, submitted the counsel, that respondent No. 6 became owner of Immovable property prior to the last date of submission of application, but the mutation entry could be effected in revenue records subsequently. But for that, it cannot be said that respondent 6 did not possess agricultural land on the last date of submission of application.

10. The Supreme Court upheld the submission made on behalf of respondent No.

6 and held that the failure to submit the mutation order before the last date for submission of applications was of no consequence. In para 16 of the decision it was held as follows:

In our considered opinion, however, the learned Counsel for Respondent 6 is right in submitting that Respondent 6 had become owner of agricultural land in October 1996. The relevant date for consideration was 12-11-96 and before that she possessed such property. Rekha Chaturvedi in our view, supports Respondent No. 6 than the appellant. When Respondent 6 became the owner of the property in October 1996 before the last date of submission of application, she could be said to be possessing agricultural land and, hence, she was eligible. In our opinion, owning of agricultural property and getting the name entered in revenue records are two different and distinct things. Mutation entry does not confer right or title to the property. Though the law is very well settled, in our opinion, CAT was right in relying upon the decision of this Court in *Sawarni v. Inder Kuer* wherein this Court held that mutation entry neither creates nor extinguishes title or ownership.

11. It is, thus, to be seen that the Supreme Court decision is not on the point urged by Mr. Chaubey.

12. Further, all that can be said on the basis of Mr. Chaubey's submission is that having regard to the nature of the job it would be justified for the postal department to insist that the prospective candidate should have an independent source of livelihood and hold some land in his name as a measure of security for the department's money passing through his hand. As noticed, in *Suman Verma's* case the Supreme court found that this requirement cannot be extended to lay down the condition that the mutation order / rent receipts for the land must also be submitted before the last date for submission of applications. Similarly, security requirement would be satisfied by the candidate holding some land in his name and, therefore, the condition to hold land in his exclusive name can hardly be said to be reasonable and justified. Seen in this light it would appear that even according to the submissions of Mr. Chaubey, respondent No. 5 had satisfied all the conditions.

13. The gift deed in his favour was executed by his father on 31.8.1998, i.e. beyond the last date for submission of applications and for that reason it might be discounted. But along with his application respondent No. 5 had submitted sale deeds of lands in the joint names of himself and his brother Sanjiv Kumar Singh. There is no reason why those sales deeds would not satisfy the condition of the candidate holding land in the village in his name.

14. I, thus, find that apart from the reasons assigned by the Tribunal, respondent No. 5 appears to satisfy the condition even on the basis of the submissions made by Mr. Chaubey.

15. For the reasons discussed above, I find no merit in this writ petition. It is dismissed but with no order as to costs.

S.K. Katriar, J.

16. I agree.