
(2010) 08 AHC CK 0293

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10981 of 2008

Union of India and Another

APPELLANT

Vs

Subhash Chandra Pandey and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0293

Hon'ble Judges : Sunil Ambwani, J and Kashi Nath Pandey, J

Final Decision : Allowed

Judgement

K.N. Pandey, J.

Heard Shri Amit Sthalekhar, learned counsel for the petitioner. Shri P.S. Baghel assisted by Shri Bashist Tiwari appears for the respondent.

In this third writ petition in the same matter in which special leave petition against the judgment in Subhash Chandra Pandey Vs. Union of India & Ors., Writ Petition NO.19740 of 2008 decided on 17.4.2008 has also been dismissed. Shri P.S. Baghel submits that the record be summoned including the answer sheets to verify whether Shri Prem Vishwakarma has obtained 59 marks as against 58 marks received by the petitioner in the written test for selection for appointment as "Law Assistant" in the office of D.R.M., Northern Railways, Lucknow to be adjusted in the general category.

We are not inclined to accept the prayer, as the tabulation sheet has been produced and that the record was perused by the Tribunal as well as this Court on two occasions. In the judgment dated 17.4.2008 in Writ Petition No.19740 of 2008, Subhash Chandra Pandey Vs. Union of India & Ors. examining the same judgment, at the instance of Shri Subhash Chandra Pandey the respondent No.1 this Court held:

"Hon. B.S. Chauhan, J.

Hon. Arun Tandon, J.

The present petitioner filed Original Application No.186 of 1999 for quashing of the order dated 27.1.1999 and dated 16.3.1999. By means of this order dated 27.1.1999 the candidature of the petitioner was rejected and by means of the order dated 16.3.1999 one Prem Vishwakarma was appointed as Law Assistant in the office of Divisional Railway Manager, Northern Railways, Lucknow after selection in terms of the advertisement dated 13th-19th February, 1999. The Original Application was allowed by the Tribunal vide order dated 29.5.2002 and directions were issued that the petitioner be appointed in place of respondent No.5 namely Prem Vishwakarma. The order so passed by the Tribunal was challenged by respondent No.5 by means of Writ Petition No.12671 of 2003 and by the Union of India by means of Writ Petition No.28083 of 2002. The writ petitions were allowed by means of the judgment and order dated 18.2.2005, the order of the Tribunal was set aside and the matter was remanded to the Tribunal to decide afresh. The order of the Hon'ble High Court was challenged before the Supreme Court by way of Special Leave Petition which was dismissed vide order dated 25.1.2007.

On remand the Tribunal in its order dated 1.11.2007 has recorded following findings:

That on inspection of the original records of the selection, it is apparently clear that the petitioner had secured only 58 marks as a General Category candidate while Prem Vishwakarma who belongs to Other Backward Classes category had secured 59 marks and was, therefore, rightly selected for the post. The Tribunal has held that the petitioner did not have any claim for being offered appointment in preference to Prem Vishwakarma. However the Tribunal found that there was some discrepancy with regards to the reservation of the vacancies vis a vis the roster point applicable and it has therefore directed that if there is any vacancy available for the General Category on the roster point the applicant petitioner be appointed against the said roster point as Law Assistant.

In compliance of the aforesaid order of the Tribunal the General Manager has passed the order dated 30.1.2008 recording that the petitioner cannot be offered appointment for the reasons recorded in the order.

Against the order of the Tribunal dated 1.11.2007 and the order of the General Manager dated 30.1.2008 the present writ petition has been filed.

Shri Bashisht Tiwari, learned counsel for the petitioner could not point out any illegality in the order passed by the Tribunal so far as the marks obtained by the petitioner and Prem Vishwakarma are concerned. It is admitted that Prem Vishwakarma has secured more marks than the petitioner and, therefore, the petitioner cannot have any legal objection to the appointment of Prem Vishwakarma.

In view of the aforesaid the relief qua quashing of the appointment of Prem Vishwakarma has rightly been turned down by the Tribunal. The Tribunal however permitted consideration of the claim of the petitioner after

reconsideration of the roster points qua general category in view of the observations made in the order of the Tribunal. The General Manager has reexamined the matter and has found that the petitioner cannot be offered appointment in the panel.

As already noticed therein above, we are of the considered opinion that there is no illegality in the order of the Tribunal which may warrant any interference under Article 226 of the Constitution of India. If the petitioner is aggrieved by the order of the General Manager dated 30.1.2008 he may approach the Tribunal by way of Original Application under section 19. Writ petition against the order of the General Manager would not be maintainable in view of the judgment of the Hon'ble Supreme Court in the case of L. Chandra Kumar Vs. Union of India & Ors., 1997 (3) SCC 261.

In view of the aforesaid the present writ petition is dismissed with liberty to the petitioner to seek his remedy before the Central Administrative Tribunal against the order dated 30.1.2008."

Shri Amit Sthalekar appearing for the Union of India submits that for the post of Law Assistant there were 2 vacancies in General Category; 1 in OBC; 2 in ST and 1 vacancy to be filled up by horizontal reservation by exserviceman. After remand the Tribunal reconsidered the matter and found that even if the claim of 3 vacancies in general category out of 6 is taken into consideration, Shri Samarjeet Singh with 70 marks belonging to General Category was selected, Shri Devinder Singh with 60 marks belonging to OBC category was adjusted against general vacancy, and Shri Prem Vishwakarma with 59 marks belonging to OBC category was adjusted against general vacancy filled up all the three posts. One vacancy for OBC was carried forward.

After remand the Tribunal held that it is highly unlikely that the registered letter reached Chandigarh from Allahabad and got delivered within two days. It further held that assessment sheet clearly shows that Shri Prem Vishwakarma had obtained 59 marks in written test and viva voce while applicant obtained 58 marks. On the objection that Shri Prem Vishwakarma has been adjusted in general category by giving him higher marks (by manipulation) the Tribunal observed that there are no cutting, overwriting and alterations or any other form of tampering as far as assessment sheet is concerned.

With these findings recorded against the respondent, we find that the Tribunal committed gross error in law in directing the respondents to rework out the availability of roster points, under general category and if it is available, appoint the applicant against the roster point as Law Assistant. The reservation has to be applied on the posts and not on roster point, which is provided for filling up vacancies.

It is submitted that Shri Vishwakarma was given benefit of age relaxation and thus he could not be adjusted in the general category. In Jitendra Kumar Singh Vs. State of U.P., (2010) 3 SCC 119 (para 48) the Supreme Court has held that

the age relaxation is given to make the reserved candidates eligible to compete. The age relaxation or any other relaxation to make reserve category candidates eligible, cannot be a ground to deny him adjustment, if he has appeared in the same written test and in same interview and has scored higher marks than the general category candidates in general category.

The writ petition is allowed. The judgment of the Central Administrative Tribunal dated 01.11.2007 in Original Application No.186 of 1999 is set aside.