
(2012) 05 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38313 of 2011

Union of India and Others

APPELLANT

Vs

Chandrabhan Dixit and Others

RESPONDENT

Date of Decision : 30-05-2012

Acts Referred:

Citation : (2012) 8 ADJ 153 : (2012) 6 AWC 6477

Hon'ble Judges : Vineet Saran, J; Jayashree Tiwari, J

Bench : Division Bench

Advocate : B.K. Singh Raghuvanshi and R.B. Singhal, for the Appellant; V.P. Shukla and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Jayashree Tiwari, J.—The present petition has been filed by the Union of India and another against Shri Chandrabhan Dixit for quashing of the judgment and order dated 29.3.2011 passed in Original Application No. 371 of 2008, whereby the Tribunal has held that they are firmly of the view that completion of training with substitute batch can be no reason for denying the legitimate seniority of the respondent No. 1. The Union of India, therefore, have been directed to allow deemed seniority to Chandrabhan at the bottom of 35th batch and allow him all consequential benefits as per rules within three months from the date of receipt of the certified copy of the order. While passing the aforesaid order, the Tribunal has come to the conclusion that the production of mark-sheet was not within the power of the respondent Chandrabhan as the same was not timely supplied by the authorities to him. Immediately after it was made available, it was produced before the petitioners and there were number of litigations which went in favour of the respondent No. 1 and hence if the respondent No. 1 received the mark-sheet with delay, it is not the fault of the respondent No. 1.

2. Briefly stated, the facts of the case are that the respondent No. 1 applied for selection as Trade Apprentice Certificate in pursuance of the advertisement

published by the Ordinance Factory Board. Subsequently, the interview of non-ITI and ITI candidates for 35th batch was held between 26.9.1994 to 6.10.1994 and the respondent No. 1 was permitted to participate. Thereafter, 35 candidates including the respondent Chandrabhan were declared successful and the respondent No. 1 was required to produce the mark-sheet by 10.11.1994 vide letter dated 28.10.1994. Respondent No. 1 was intimated that in case of failure to produce the mark-sheet, his candidature will be rejected. However, since the mark-sheet was not supplied by the authorities, the respondent No. 1 could not produce the same within the time as desired, hence his candidature was rejected. Thereafter, the respondent No. 1 filed Civil Misc. Writ Petition No. 21071 of 1995 before this Court which was disposed of permitting the respondent No. 1 to undergo Trade apprentice training and the petitioners were directed to admit him as ex-ITI candidate in the next batch that may be available after 35th batch. In pursuance of the said direction the respondent No. 1 has undergone apprenticeship training as ex-ITI candidate in 45th batch from October, 2004. Again, the respondent No. 1 filed Original Application No. 144 of 2008 before the Central Administrative Tribunal, Allahabad with the prayer for directing the petitioners to issue apprenticeship training certificate for 35th batch in which he was initially selected and to provide him job accordingly.

3. The Tribunal, upon consideration of the matter, found that no representation has been made to the competent authority by the respondent No. 1 for being considered for regular appointment in the 35th batch treating him to be candidate of 35th batch. The respondent No. 1 was directed to make a detailed representation together with certified copy of the order and complete copy of the O.A. and the annexures filed before the competent authority, i.e. General Manager, SAF, Kanpur, who was directed to consider the representation accordingly and pass a reasoned and speaking order within two months in case they differ from the view for absorption of the respondent No. 1 in regular job along with apprentices treating him as applicant of 35th batch.

4. Accordingly, a detailed representation was filed by the respondent No. 1 which was duly considered by the competent authority and the representation was rejected on the ground that as the respondent No. 1 has undergone training in the year 2005, he cannot be absorbed bypassing the candidates of 2002 batch who are senior to him. The authorities held that since the respondent No. 1 has undergone training and has passed NCTVT-83 batch examination in the year 2005, but has been erroneously treated to have passed the examination in NCTVT-83 batch. Against this, a fresh O.A was filed by the respondent challenging the order of the authority which was allowed by the Tribunal, whereby, the order of the authority was quashed treating the applicant to be a candidate of 35th batch. The observations made by the Tribunal are as under:

...following the ratio emanating from our order in O.A. No. 883/02, we are firmly of the view, that completion of training with a substitute batch can be a reason for denying the legitimate seniority to the applicant. The respondents, therefore,

are directed to allow deemed seniority to the applicant at the bottom of 35th batch and allow all consequential benefits as per rules within three months from the date of receipt of certified copy of this order.

5. Against this order of the Tribunal, the petitioners have come up before this Court in the present writ petition.

6. The crux of the matter is whether a duly selected candidate of 35th batch examination can be denied the seniority on the ground that he has undergone training with a subsequent batch of a later year. From the appraisal of the entire matter in controversy, it comes out that the opposite party respondent has successfully completed his examination and after facing the interview he was duly selected for the apprentice training and therefore, the respondent No. 1 was directed to produce his mark-sheet within stipulated time by the examining authorities. But apparently, as is clear from the letter issued by the competent authority, the mark-sheet had not been issued by the concerned authority by that time. Therefore, it was not within the control of the respondent No. 1 to have produced the same within the stipulated time as it was beyond his power. As soon as the mark-sheet was provided by the competent authority to the respondent No. 1, it was immediately made available to the examining authority. However, because of not providing the mark-sheet in time, his candidature was rejected. However, on the writ petition being filed before this Court, the respondent No. 1 was permitted to undergo training along with candidates of 35th batch though not in the same batch but in the batch subsequent to the 35th batch. The mark-sheet clearly goes to show that the respondent No. 1 has passed the examination which he was required to have passed.

7. Thus the fact remains that a person cannot be deprived of his right due to delay or default on the part of the authorities which is not in his control. The respondent No. 1 has provided the mark-sheet to the examining authority immediately after it was supplied to him. In the circumstances, he shall be deemed to have passed the examination accordingly.

8. In this perspective, this Court directed the authorities to consider the respondent No. 1 for training in the next batch and to place him at the bottom of the 35th batch and he was also allowed to join the training in the light of the order passed by the High Court. The reason declared by the competent authority for not providing the seniority of 35th batch on the ground that the trainees of 2002 batch will be bypassed by the trainee of 2005 appears to be fallacious and unreasonable. The fact remains that the respondent No. 1 has qualified himself and has been declared successful by the authorities for the selection of 35th batch but for the failure to produce the mark-sheet which was beyond his power, he was not considered for the same and his candidature was rejected. By production of the mark-sheet at the earliest when it was made available to him, the respondent No. 1 has removed the ground and complied the directions of the petitioners and thus made himself entitled for consideration. This Court has permitted the respondent No. 1 to undergo training and as such the respondent

No. 1 is deemed to have been selected as a candidate of 35th batch and the findings given by the Tribunal for absorption to be made at the bottom of 35th batch in the next batch is well reasoned and in consonance of law even though he had undergone training later on.

9. In the circumstances, the order passed by the Tribunal is well reasoned. The petition is devoid of merits and is liable to be dismissed. However, it is directed that the respondent No. 1 be adjusted at the bottom of 35th batch or in the next batch immediately. The petition is accordingly dismissed.