
(2016) 12 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 1953 of 2014

Union of India

APPELLANT

Vs

Pompa Chanda

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Citation : (2016) 5 GauLT 506 : (2017) 2 NEJ 348

Hon'ble Judges : Mr. Hrishikesh Roy and Mr. Nelson Sailo, JJ.

Bench : Division Bench

Advocate : Mr. S.C. Keyal, Asstt. Solicitor General of India, for the Appellants;
Mr. S. Dutta and Mr. C.S. Hazarika, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Hrishikesh Roy, J.(Oral) - Heard Mr. S.C. Keyal, the learned Asstt. Solicitor General of India representing the petitioners. The learned counsel Mr. S. Dutta appears for the respondent/applicant.

2. The challenge here is to the order dated 24.01.2014 (Annexure-E), in the O.A. No. 72/2011, whereby the learned Central Administrative Tribunal, Guwahati (in short "the Tribunal") had directed the authorities to appoint the applicant Pompa Chanda, in the post of Technician of the Lower Power Transmission Station (LPTS), Hojai, following the selection exercise undertaken by the Prasar Bharati authorities.

3. Subsequently, the impugned decision was taken on 11.3.2011 (page-63) to cancel the process and to go for fresh selection and this was challenged by the two candidates, who were selected and recommended for the two vacancies. The O.A. No. 202/2011, filed by Nandita Dey, who was placed in the 2nd merit position, was dismissed as the Tribunal found that the application of Nandita Dey was entertained beyond the last date and that is why she was denied relief by the common verdict of 24.1.2014. Eventually the W.P.(C) No. 1618/2014, filed by the disappointed candidate (Nandita Dey) was also rejected by this Court on

26.3.2014. But the other applicant Pompa Chanda, placed in the 1st merit position benefited since her O.A. No. 72/2011 was allowed. The Tribunal found no vitiating factor in her selection and placement at the top of the select list and accordingly, her appointment was ordered by upholding the selection.

4.1. Mr. S.C. Keyal, the learned Asstt. SGI submits that the decision for a fresh recruitment process was taken on account of certain mistakes committed by the selecting authorities and therefore this should not have been a matter of interference, by the learned Tribunal. He refers to the recruitment notice(s) dated 14.11.2007 and 9.1.2008, as against the notification dated 3.3.2008 to contend that the qualification criteria was amended in the notification dated 3.3.2008 and since the process of selection had failed to take note of the changed qualification criteria, the same stands vitiated.

4.2. As the candidates for the post of Technician were evaluated through written test, practical test and viva voce and weightage for each segment, as prescribed by the employment guidelines, were not adhered to by the Selection Board, Mr. Keyal contends that the evaluation was made through an erroneous process and therefore the same could not have been the basis for appointment of either of the recommended candidate.

5.1. On the other hand, Mr. S. Dutta, the learned counsel submits that none had questioned the bona fide of the selection process, whereby the respondent was placed in the 1st merit position of the select list. He submits that as many as 23 candidates had participated in the selection exercise and the respondent was placed (as per her performance), in the 1st merit position. Therefore it is argued that on account of some minor deficiency, the entire selection process must not be brushed aside, as this will result in irreparable injustice to the recommended candidate.

5.2. The respondent refers to the observation of the Tribunal with regard to the notification of 9.1.2008, where under, the qualification criteria was changed and points out that this notification of 9.1.2008 was never circulated and therefore the said internal communication/copy, can't be the basis for testing the legality of the selection process.

5.3. Mr. S. Dutta, the learned counsel for the applicant also submits that the finding of fact recorded by the Tribunal on the bona fide of the selection process and also the non-issuance of the notification of 9.1.2008, is not challenged by the employers and therefore he argues that since a reasonable view was taken by the Tribunal, the same needs no interference by the Writ Court.

6. The writ petitioners, as we find, do not suggest that the notification of 9.1.2008 (with added qualification) was ever issued or circulated. Therefore to test the legality of the selection process with reference to the specifications made in this uncirculated notification of 9.1.2008, can't surely be justified.

7. The case paper show that 23 candidates who applied for the post of Technician

were evaluated on the basis of marks secured by them in the written test, practical test and viva voce. The bona fide of the Selection Board or the evaluation exercise is never questioned but all that was stated before the Tribunal is that the weightage of marks was altered for the 3 segments of the recruitment test. We notice that this aspect was specifically examined by the Tribunal and they found that there was no hard and fast rule on the marks to be earmarked for the interview segment. Thus when the candidates were evaluated through the three tiered process of written examination (40%), practical test (30%) and viva voce (30%), the exercise undertaken was not found to be so vitiated, to deserve interference of the Tribunal. Hence direction was issued for appointment of the first merited candidate, by allowing her O.A. No. 72/2011. But at the same time, the Tribunal did not issue similar direction in the O.A. No. 202/2011, since in the other case, the late applicant was erroneously entertained. It is therefore seen that the Tribunal segregated the erroneous portion of the exercise done by the Selection Board and that is how the Tribunal rejected the O.A. No. 202/2011 and this decision was then upheld by the High Court through the dismissal of the W.P.(C) No. 1618/2014, filed by the candidate Nandita Dey.

8. As regards the general process of selection, the Tribunal did not find any major deviation to warrant interference with the selection process. Accordingly, having found that the respondent was recommended on the basis of a bona fide process, ordered her appointment, as the 1st merited candidate.

9. The view taken by the learned Tribunal was a reasonable view and equity consideration would surely stand with the applicant who was recommended on the basis of her performance in the recruitment exercise. We can't also be unmindful of the ratio laid down in *A.P. Public Service Commission v. P. Chandra Moulessware Reddy* reported in (2006) 8 SCC 330, where the Supreme Court while examining the mistake committed by the recruitment Body, refused to interfere with the recommendation on account of equitable consideration. This decision of the Apex Court was rightly relied by the Tribunal in granting relief to the applicant in the O.A. No. 72/2011. In our perception, a reasonable view was taken and since the finding of facts recorded by the Tribunal are not under challenge, it will not be appropriate for the Writ Court to interfere with the relief granted to the respondent/applicant.

10. It may however be observed that while the Prasar Bharati authorities have tried to project a case of anomalous selection, although this Court posed a specific question to the employer on 10.4.2014, no disciplinary action is found to be taken so far, against any of the officers involved with the selection process, as can be gathered from the communication dated 23.10.2015. It can be noticed that the respondent had no role in the process of selection and was just a candidate like the others in the fray and therefore to victimize her for any purported lapse of the Selection Board, in our understanding, will not at all be justified.

11. Because of the above discussion, no merit is seen in this case and accordingly the same is dismissed. The interim order is thus vacated and we direct the writ petitioners to comply with the Tribunal's direction in the O.A. No. 27/2011, within a period of six weeks from today. It is ordered accordingly.

12. This case stands disposed of with the above direction. No cost.