

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17282 of 2016

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Deepak Kumar, Son of Shri Kapileshwar Prasad, resident of Village-Malikana, P.O
& P.S.-Masaurhi, District-Patna.

.... Petitioner/s

Versus

1. The Union of India through the Secretary cum Director General, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, G.P.O., Patna.
3. The Director of Postal Services, Office of the Chief Post Master General, G.P.O., Patna.
4. The Assistant Director, (Recruitment) Office of the Chief Post Master General, G.P.O., Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binay Kumar Pandey. Advocate
For the Respondent/s : Mr. S.D Sanjay (Addl. Soc. Gen.)
Mrs. Nivedita Nirvikar, CGC

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 23-03-2017

A set of O.As. were all clubbed and heard together by the Central Administrative Tribunal, Patna Bench, Patna. O.A. No. 89 of 2012, in which this petitioner was also a party as an applicant, was one of the O.As. The Central Administrative Tribunal decided the O.As. by bunching them according to the prayer in batch and dealt with them in its order quite extensibly. So far as this petitioner is concerned, his O.A. along with O.A. No. 97 of 2012 was dismissed and now the



writ application has been filed.

The Tribunal while dealing with O.A. Nos. 89 and 97 of 2012 has discussed the facts and the submissions in the following manner:-

"5. The Office of Chief Post Master General, Bihar Circle issued a notice on 02.12.2011 inviting applications to fill up 3 posts of Postal Assistant/ Sorting Assistant under OBC quota, one each in Aurangabad, West Champaran, Bettiah and NB Samastipur Divisions. The same was also published in news paper. Last date of receiving application was 11.01.2012. In the notification it was clearly mentioned that short listing of the candidates and selection would be done Division-wise/Unit-wise. The date for examination/aptitude test was 05.02.2012. In response to the notice, the applicants submitted their applications within cut off date. They have claimed that they fulfilled all the eligibility conditions to appear and participate in the recruitment as prescribed in the Recruitment Rules. However, no call letters for appearing in the tests were issued to them whereas call letters were issued to other candidates. They filed instant O.As before this tribunal and after hearing the parties, interim orders were passed by the Tribunal directing the respondents to allow the applicants in the O.As provisionally to appear in the examination to be held on 5th February, 2012. It was stipulated by the tribunal that the permission to appear in the examination and the final selection would be subject to final decision in the O.A. It was also directed that the respondents would not publish the result without taking the leave of the Tribunal. Accordingly the applicants were allowed by the respondents but their results have not been declared.

6. The applicants have filed the instant O.As for declaring the actions of the respondents in debarring the applicants to appear in the examination for recruitment against the posts of PA/SA



held on 5th February, 2012 and to direct the respondents to consider candidature of the applicants against all the vacancies of PA/SA and to decide the same in pursuance of the Revised Recruitment Procedure issued in 2004.

7. The common case of the applicants in both the sets of O.As is that the Postal Directorate issued Revised Recruitment Procedure vide Directorate letter 51-2/2003 – SPB – I dated 10.11.2004 (in short RRP) which is in force and the recruitment was to be processed in pursuance of the same. The said RRP clearly stipulates that the process of recruitment will be done on centralized basis. But the respondents failed to appreciate and follow the meaning and definition of "recruitment" and "appointment". Referring to the judgments in the case of Usha Narawariya (Dr) Vs. State of M.P.: 1994(1) SLR 142 (M.P.) (FB); Prafulla Kumar Swain Vs Prakash C. Mishra: 1993 SCC (L&S) 906 and Jagdish Chnadra Patnaik Vs State of Orissa: 1998 (4) SCC 456, they have stated that the selection is a part of recruitment process and precedes appointment. Notifying vacancies, inviting applications, their scrutiny, finalization of list of eligible candidates as would be put to test, their written and oral tests and interview, selection and approval for appointment are all different steps in the process of recruitment. According to the applicants, all these steps were required to be taken centrally as per RRP 2004 which was not done by the respondents.

8. It is further contention of the applicants that the above mentioned Recruitment Procedure came up for judicial scrutiny before this Tribunal in O.A. No. 267 of 2007 and other connected cases and after dissenting order dated 23.12.2009, the matter was referred to a third Member (J) and settled by majority decision. The third Member agreed to the view taken by the Member (J) on the Division Bench. Despite the order passed by the Tribunal, the respondents again started the recruitment process at the Divisional level by short listing



candidates and issuing call letters from the Divisions. In pursuance of the order passed by the Tribunal in O.A. 267 of 2007 and connected cases, the respondents were required to prepare one common list against 202 posts and as the notification was issued centrally by the Office of the CPMG, Bihar Circle, every step/stage of recruitment till finalization of list of selected candidates/ approval for appointment was required to be done on centralized basis. The respondents have violated their own procedure and resultantly candidature of the applicants was rejected even prior to tests."

The core issue therefore, for decision before the Central Administrative Tribunal was whether this petitioner, who was the applicant, could be permitted to participate in the recruitment process on a centralized basis or Division-wise/Unit-wise.

From the O.A. application, it is evident that the advertisement dated 02.12.2011 clearly stated the recruitment to be done Division-wise/Unit-wise and thus the advertisement and the terms was not subject-matter of challenge in the O.A. It is well established in law that recruitments have to be carried out on the basis of the terms and conditions of the advertisement and deviation is not permissible as a rule.

In our considered opinion, the whole purpose for filing the O.A. on behalf of the present petitioner or other applicants, who were parties to the O.A., was to try to climb to the centralized recruitment process to give them wider chances



of consideration. This is not permissible. The recruitment has to be in accordance with the terms and conditions of advertisement inviting applications. The Tribunal after considering the case of this petitioner and keeping in mind the advertisement rightly dismissed the O.A. and distinguished this case from the other cases.

There is no error on the part of the Tribunal in refusing to give any relief to the applicant/petitioner keeping in view that he was responding to the advertisement issued by the respondents where recruitment was required to be done Division-wise and Unit-wise.

The writ application is dismissed.

(Ajay Kumar Tripathi, J)

S.Pandey/-

(Nilu Agrawal, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2017
Transmission Date	

