

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2823 of 2017

=====

Shiv Kumar, S/o Sri Anirudh Prasad Gupta, New Dodown Road, Near Weleham English School, Gaya, District - Gaya

.... Petitioner/s

Versus

1. The Union of India, through the D.G. cum Secretary, Department of Posts, Dak Bhawan, New Delhi
2. The Chief Postmaster General, Bihar Circle, Patna
3. The Asstt. Director (Staff & Recruitment), O/o the Chief Postmaster General, Bihar Circle, Patna
4. The Superintendent of Post offices, Aurangabad Division, Aurangabad

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Hemant Kumar Karn, Advocate Mr. Jayant Kumar Karn, Advocate Mr. Sujeet Kumar, Advocate
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Satyavrat Verma, CGC

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 10-04-2017

Heard counsel for the petitioner and the Additional
Solicitor General representing the Postal Department.

2. Vide order dated 23rd November, 2016, the Central
Administrative Tribunal, Patna Bench, Patna dismissed O.A. No. 521
of 2015 refusing to give any relief to the petitioner on the ground that
in terms of the advertisement, the petitioner did not have 60% marks
under unreserved quota to be selected on the post of Postal Assistant.

3. Submission of the counsel for the petitioner is that



petitioner made an application as an OBC candidate. He had minimum educational qualification and marks required for an OBC candidate in conformity with the advertisement. He performed very well in the written examination, which was held. His performance in the selection exercise placed him at serial no. 4 in the merit position. But when it came down to offering him a letter of appointment, respondent-authorities remained silent and the petitioner was compelled to approach the Tribunal for a direction in this regard.

4. From perusal of the order of the Central Administrative Tribunal, what emerges is that since the petitioner has now been placed as an unreserved category candidate, therefore, he must have the minimum qualification and marks, as laid down in the advertisement meant for unreserved category. Factually, though the petitioner had been shown to have passed in first division, but his actual marks were less than 60%. He was granted 3 grace-marks in terms of the policy of the Bihar School Examination Board and, therefore, he is not eligible for such consideration.

5. There seems to be an obvious infirmity in the logic and the deductions, which has been arrived at by the learned Tribunal, by applying the terms and conditions of the advertisement of a general category candidate to an OBC candidate which the petitioner is merely because he has been placed in the unreserved category due to



good performance in the selection process.

6. The Court has seen the provision with regard to educational qualification. The educational qualification laid down is as under:

“Educational Qualification: (i) 10+2 standard or 12th class pass with at least 60% marks and above from any recognized University/Board of School Education, Board of Secondary Education with English as a compulsory subject (Excluding vocational streams) for OC candidates, 55% and above for OBC and 45% and above for SC/ ST shall apply. (ii) Should have studied local language of the State or Union Territory of the Postal Circle concerned or Hindi as a subject at least in Matriculation or equivalent.”

7. The counsel for the petitioner submits that merely because of the performance of the petitioner in the written examination, he was placed in the merit position at serial no.4, therefore, he has to be appointed under unreserved category, but that cannot rob him of his status as an OBC. The eligibility, which has been laid down in the advertisement for the OBC candidates shall continue to be applicable to an OBC candidate. But for the purposes of appointment, he will be treated as unreserved category because of his performance and the merit position he had obtained overall. This



Court is also of the same opinion that the petitioner does not lose his original status as an OBC candidate. He continues to be an OBC candidate, but because of his merit, he will be treated to have gained a position under the unreserved category. The disqualification, which has been read by the Tribunal in its order impugned by applying the parameter laid down for unreserved category, is an irrational kind of interpretation, which has been given. In fact, such an interpretation would rob the petitioner or such candidates of their Constitutional guarantee, which has been provided for under Articles 15 and 16 of the Constitution of India.

8. In view of the above, the Court is satisfied that the Tribunal has erred in dismissing the O.A. application and holding that the petitioner was not eligible because he does not have 60% marks, which is required for an unreserved category candidate. The Court reiterates that for the petitioner his eligibility, shall remain at 55% and not 60%.

9. The impugned order dated 23rd November, 2016 passed in O.A. No. 521 of 2015 is quashed. The writ application is allowed. The Chief Postmaster General, Bihar Circle is directed to ensure that the petitioner is appointed on the post of Postal Assistant forthwith without any further delay. Any appointment made because of the order passed by the Tribunal robbing the petitioner of his merit



position will be of no consequence so far as petitioner is concerned because the principle of last come first go shall prevail.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.04.2017
Transmission Date	NA

