

Arun Kumar Nayak vs Union Of India & Ors on 20 September, 2006

Equivalent citations: 2006 AIR SCW 5296, (2006) 47 ALLINDCAS 468 (SC), (2006) 2 CLR 676 (SC), (2007) 2 SERVLJ 226, (2006) 111 FACLR 847, (2006) 4 LAB LN 604, (2006) 2 ORISSA LR 678, (2006) 4 PAT LJR 251, (2006) 4 SCT 362, (2006) 8 SCJ 382, 2006 (8) SCC 111, (2006) 6 SERVLR 16, (2006) 7 SUPREME 323, (2006) 9 SCALE 401, (2006) 4 ESC 484

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Bench: H.K.Sema, P.K.Balasubramanyan

CASE NO. :
Appeal (civil) 2262 of 2005

PETITIONER:
Arun Kumar Nayak

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 20/09/2006

BENCH:
H.K.SEMA & P.K.BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T H.K.SEMA,J.

This appeal is directed against the judgment and order dated 13.02.2003 of the High Court of Orissa in OJC No. 6122 of 2000 whereby the order dated 6.8.1999 passed by the Central Administrative Tribunal (hereinafter the Tribunal) in O.A.No.606 of 1998 was set aside.

We have heard the parties at length. The present controversy relates to the appointment of Extra Departmental Sub Post Master (in short EDSPM) at Ratnagiri, now redesignated as, "Gramin Dak Sewak". On 18.9.1997 a requisition was made to the local Employment Exchange. It was stipulated that preference would be given to ST/SC candidates. Pursuant to the advertisement the Employment Exchange sponsored a list of 40 candidates including the 4th respondent herein Sri Chittaranjan Kar. A corrigendum was issued on 19.8.1998 requiring public Notification having wider publicity along with the requisition to be made to the Employment Exchange. This corrigendum was issued in terms of the directions issued by this Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and others 1996(6) SCC

216. On 9.9.1998, the public Notification was issued inviting applications from intending candidates. In the said Notification, it was stipulated that if a minimum number of 3 eligible candidates belonging to ST community do not offer their candidature, the vacancy in question shall be offered to the candidates belonging to OBC and SC candidates respectively, in order of deficiency in representation. Pursuant to Public Notification the appellant applied for the post as an OBC candidate in the prescribed application format along with the requisite documents.

It may be mentioned here that out of 40 candidates sponsored by the Employment Exchange, only 7 candidates submitted their application forms when called upon to do so. Thus, 33 were eliminated. Out of the balance 7 candidates, six candidates were again disqualified since they did not produce all the necessary documents. The candidature of only the 4th respondent was considered and he was selected on 15.10.1998. There was no element of selection. The process of selection was a mockery. The candidates including the appellant, who applied pursuant to the advertisement, were eliminated by Respondent No.2 Supdt. of Post Offices, Cuttack, North Division, on the ground that since the recruitment process had already commenced pursuant to the requisition made to the Employment Exchange on 18.9.1997, the public Notification issued on 9.9.98 inviting applications was superfluous and unnecessary. On this reasoning, the 2nd Respondent was of the view that the 4th respondent who is a general category candidate was the only eligible candidate amongst the applicants who applied pursuant to the requisition made to the Employment Exchange. Aggrieved thereby, the present appellant challenged the selection of 4th respondent by filing O.A.606/98 before the Central Administrative Tribunal, praying inter alia for quashing the selection process and directing the Department to consider the petitioner's application along with others on merits. The learned Tribunal passed an interim order that any appointment made would be subject to the final result of the O.A. Pursuant to the aforesaid interim order, the department issued a letter of appointment in favour of respondent No.4 on 15.1.1999, with a rider that appointment was subject to the final result of O.A. Thereafter, by an Order dated 6.8.1999, the Tribunal allowed the O.A. and quashed the entire selection process in question with a direction to the respondent department to conduct a selection process afresh and consider all the applications on merit, received both from the Employment Exchange and the candidates who submitted applications pursuant to the public Notification dated 9.9.98 including the application of the appellant. The Tribunal after hearing the parties has held that after examining the records of the selection file in original, out of seven candidates who were being considered, six candidates did not submit all the necessary documents and they were disqualified. The Tribunal also found that the Selection Committee considered only the case of 4th respondent whose candidature according to the Committee was complete in all respect and he was selected subsequently. The reasoning of the department was that issuing of public Notification was wrong as the circular of the Director General, Posts, providing for simultaneously calling for names from Employment Exchange and for issuing public Notification was not applicable in respect of the cases where selection procedure had already been taken on hand and therefore six candidates who applied pursuant to the public Notification were disqualified. The stand of the department was rejected by the Tribunal and, in our view, correctly. The Tribunal was of the view that there was no element of choice before the department since the only candidate remained to be considered was the 4th Respondent. On this reasoning, the Tribunal set aside the selection and appointment of the 4th respondent. We fully subscribe to the views of the Tribunal. In compliance of the direction of the Tribunal the appointment of the 4th respondent was terminated

on 3.5.2000. A fresh selection was held on 15.5.2000 in which the total number of 13 candidates which included the application made pursuant to the sponsored list prepared by the Employment Exchange including that of 4th respondent and the applications made in pursuance of the public notification dated 9.9.98 were considered. In that selection the present appellant, Arun Kumar Nayak, was selected and the 4th respondent was not selected. This would show that the 4th respondent was not eligible even at the time when his case was first considered by the Selection Committee on 15.10.1998 and recommended for appointment. However, by the impugned order in OJC No. 6122 of 2000 the High Court has set aside the order dated 6.8.99 of the Tribunal and confirmed the appointment of the 4th respondent. This Court issued notice on 28.3.2003 and the order of the High Court was stayed. It is stated that in view of the stay order granted by this Court the appellant is still continuing in the post. The High Court upset the reasoning of the Tribunal by relying on the decision of this Court in Union of India vs. N.Hargopal (1987) 3 SCC 308, where it has been held that the Government instructions enjoying the field of choice should in the first instance, be restricted to candidates sponsored by the Employment Exchanges, and the same was upheld as not offending Articles 14 and 16 of the Constitution. The High Court has also relied on the decision of this Court in the case of Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi (1992) 4 SCC 99, where this Court approved the recruitment through Employment Exchanges as a method of preventing malpractices. Subsequent decisions of this Court rendered in Excise Supdt. Malkapatnam vs. K.B.N.Visweshwara Rao (1996) 6 SCC 216, wherein Hargopal (supra) was considered and distinguished, was placed before the Division Bench of the High Court but the High Court brushed it aside by observing that it was distinguishable on the basis of special facts of that case.

In Visweshwara Rao (supra) a three Judge Bench of this Court after considering Hargopal (supra) held in paragraph 6 as under:-

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would

be available to all eligible candidates."

This Court in *Visweshwara Rao (supra)*, therefore, held that intimation to the Employment Exchange about the vacancy and candidates sponsored from the Employment Exchange is mandatory. This Court also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better.

In *Arun Tewari Vs. Zila Mansavi Shikshak Sangh (1998) 2 SCC 332*, where to fill about 7000 posts of Assistant Teachers under a time-bound scheme (Operation Blackboard), statutory rules were amended and decision taken to fill up vacancies district wise by calling candidates from district employment exchanges, without involving the Selection Board, the Two Judge Bench of this Court held that in view of the exigency the method adopted in the given facts was not unfair. Although a reference was made to *Visweshwara Rao (supra)* but it was not even distinguished in *Arun Tewari (supra)*. The decision of the two judge bench of this Court after considering *Hargopal (supra)*, *Delhi Development Horticulture Employees Union (supra)* and *Visweshwara Rao (supra)* held in paragraph 20 as under:-

"The next contention relates to inviting applications from employment exchanges instead of by advertisement. This procedure has been resorted to looking to the requirements of a time-bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants who so complain, however, do not possess the requisite qualifications for the post. As far as we can see from the record, nobody who had the requisite qualifications has complained that he was prevented from applying because advertisement was not issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment, applications were invited through employment exchanges for 1993 only. In this context, the special procedure adopted is not unfair."

Therefore, the decision by this Court in *Arun Tewari (supra)* is based on the facts of that case, namely a time bound scheme and exigency of service. No law has been laid down thereunder. But in the case of *Visweshwara Rao (supra)* a three Judge Bench of this Court has laid down the law and that is still holding the field.

There is yet another reason for which the order of the High Court, cannot be sustained. In the Notification dated 9.9.98 the applications were invited from the intending candidates belonging to

ST community for the posts. It was also stipulated in the advertisement that if a minimum of three eligible candidates belonging to the ST community do not offer their candidature, the vacancy in question will be treated as unreserved and offered to the candidates belonging to the other reserved communities in order of deficiency in representation OBC Community and SC community. The appellant belongs to OBC. Admittedly, the 4th respondent belongs to general category. Even otherwise, he could not have been selected, notwithstanding the availability of candidates from other reserved category like OBC and SC community.

For the aforesaid reasons, the impugned order of the High Court dated 13.02.2003 passed in OJC No.6122 of 2000 is hereby set aside. The appeal is allowed. Writ Petition filed by the 4th respondent stands dismissed. No costs.