

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

(13)

ORIGINAL APPLICATION NO.1147 OF 1997

Allahabad, this the 6 th day of May, 1999.

CORAM : Hon'ble Mr. S.Dayal, Member(A)
Hon'ble Mr. S.K.Agrawal, Member(J)

Raman Mishra,
S/o. Sri Akhilesh Chandra Mishra,
R/o. 1-0/1 K, Tilak Nagar, Allahapur,
Allahabad (U.P.)

.....Applicant

C/A. Shri O.P.Gupta, Advocate

Versus

1. Superintending Engineer (Civil),
Postal Civil Circle, Ambala Cantt.
2. Union of India through Secretary,
Ministry of Communication,
Govt.of India, New Delhi.

.....Respondents

C/R. Shri N.B. Singh, Advocate.

O R D E R

(By Hon'ble Mr. S.K.Agrawal, Member(J)

In this original application applicant makes a prayer to declare him entitle to be considered for the post of Works Clerk Grade-II (L.D.C.) and to modify the departmental rules in view of the decision of Supreme Court as reported in Excise Superintendent Malkapatnam Krishna District, A.P. Vs. K.B.N.Vishweshwara Rao and Ors. reported in 1996 (6) SCC 216 and also to consider all the applicants who has applied directly in pursuance of notification dated 3-9-97.

(14)

2. Facts of the case as stated by the applicant are that respondent No.1 sent a letter to Employment Exchange, Allahabad on 3-9-97 to sponsor the names of suitable candidates for the selection of three posts of Works Clerk Grade-II (L.D.C.). It is stated by the applicant that although the name of the applicant was also registered with employment exchange, but employment exchange did not sponsor his name, therefore he has applied to respondent No.1 on 16-10-97 directly, but applicant was informed orally by respondent No.1 that for the post of Works Clerk Grade-II (L.D.C.) selection will be confined to those whose names are sponsored by the employment exchange. It is stated that applicant sent his application well within stipulated period and he also fulfils all the requisite qualifications as required for the selection. Therefore, in view of the law laid down by Hon'ble Supreme Court of India in Excise Superintendent, Malkapatnam Vs. K.B.N. Vishweshwara Rao and Others 1996 SCC (L&S) Vol. II page 1420 the candidature of the applicant should also be considered and the circular and notification which are issued for this purpose be quashed.

3. Counter was filed on behalf of respondents. In the counter it is stated that requisition for the posts was sent to Employment Exchange to send a list of eligible candidates for selection, but the name of the applicant was not sponsored by the employment exchange, hence he can not be considered. It is also stated that applicant has submitted his application on 16-10-97 directly for the appointment. The claim of the applicant is based upon the judgement of Excise

Superintendent Malkapatnam Vs. K.B.N.Vishweshwara Rao & Others reported in 1996 SCC (L&S) Vol.II 1420, but as per departmental rules the candidature of the applicant cannot be considered as his name was not sponsored by the Employment Exchange.

4. Rejoinder was filed reiterating the facts stated in the original application.

5. A Supplementary Counter Affidavit has also been filed, which is on record.

6. Heard the learned lawyer for the parties and also perused the whole record.

7. Learned counsel for the applicant has submitted that in view of Apex Court judgement in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Vishweshwara Rao and Others respondents are bound to consider the candidature of the applicant inspite of the fact that his name has not been sponsored by the employment exchange. On the other hand learned lawyer for respondents has submitted that according to executive instructions of the department the names of suitable candidates were only requisitioned from the employment exchange. Since the name of the applicant was not sponsored by the employment exchange his candidature cannot be considered.

8. Vide order dated 28-10-97 this Tribunal has provided that in case the applicant fulfils all the requisite qualifications and also registered with the

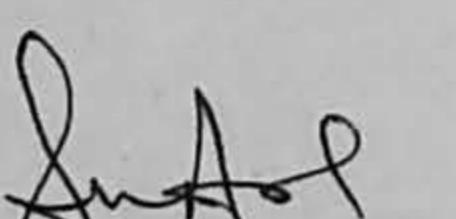
employment exchange, his candidature for the post may be considered on provisional basis, moreover the result in respect of the applicant shall not be declared till further orders.

9. We have given thoughtful consideration to the rival contentions of both the parties and also perused the record thoroughly.

10. In case of Excise Superintendent Malkapatnam Krishna District, A.P. Vs. K.B.N. Vishweshwara Rao and others reported in 1996 (6) SCC 216 Hon'ble Supreme Court has distinguished the case of Union of India and Ors. Vs. N. Hargopal and Ors. AIR 1987 SC 2227 and held -

"It is common knowledge that many a candidates 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."

11. On the basis of special facts of that case, it has been observed that the better course for the State would be to invite applications from Employment Exchange as well as through advertisements and also giving wide publicity through TV, Radio etc. The court has to consider whether the persons who had applied directly and not through Employment Exchange would be considered.

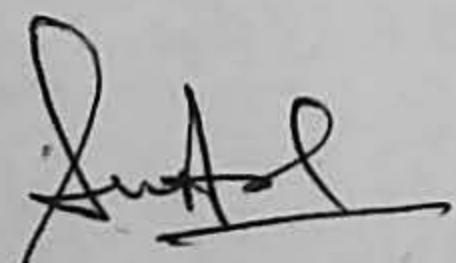


12. Similar view was also taken in the case of Arun Tewari Vs. Zila Mansavi Shikshak Sangh, AIR 1998 P.331.

13. In the case of Union of India & Ors. Vs. N. Hargopal (Supra), it was held that where the Govt. instructions enjoin that the field of choice in the first instance be restricted to candidates sponsored by the Employment Exchange were upheld as not offending Articles 14 and 16 of the Constitution of India. In the case of Delhi Development Horticulture Employees Union Vs. Delhi Administration Delhi, 1992 SCC P.99 the Apex Court approved the recruitment through Employment Exchange as a method of preventing mal-practices but in case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. KBN Vishweshwara Rao & Ors (Supra) the Apex Court distinguished the case reported in 1987 (3) SCC 308 UOI & Ors. Vs. N.Hargopal & Ors. on the basis of special facts of this case.

14. In the instant case it is not disputed that applicant has submitted his application direct to the concerned authority within the time. It is also not disputed that the applicant's name was registered with the employment exchange and was valid till the date but his name was not sponsored by the employment exchange to the concerned authority. Thereby on the basis of law laid down by the Apex Court in this connection we are of the opinion that the applicant is entitle to be considered for the post.

15. The prayer of the applicant is that he has legal right for consideration in view of the decision



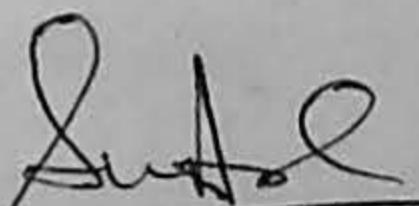
of Supreme Court and it is also prayed to consider all applications which are received directly without employment exchange and to modify the departmental rules in view of the decision of Hon'ble Supreme Court of India.

16. It is pertinent to mention that Govt. of India, Ministry of Communication vide its order dated 14-8-98 has modified the rules for recruitment on the basis of Hon'ble Supreme Court judgement in the case of Excise Superintendent Malkapatnam Vs. KBN Vishweshwara Rao & Ors. reported in 1996 (6) SCC 216.

In view of the decision of the Apex Court the applicant who has applied directly is entitle to be considered for the post and all other candidates who have applied within time and are fulfilling the qualifications laid down for the post are also entitle to be considered alongwith other candidates whose names were sponsored by the employment exchange.

17. In view of the foregoing discussion we allow this original application. The respondents have already considered the candidature of the applicant by orders of this Tribunal dated 28-10-97. We, therefore, direct that the applicant is entitle to be considered for the post of in response to requisition along with others who has applied directly and whose names were sponsored by the employment exchange strictly in accordance with the rules and thereafter the result be declared by the respondents.

18. With the above directions this original application is disposed off with no order as to costs.


satya/

MEMBER(J)


MEMBER(A)