

(2017) 05 PAT CK 0014

In the Patna High Court

Case No : 1320 of 2014

Arun Kumar Singh

APPELLANT

Vs

The Bihar State Electricity Board and Ors.

RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

Citation : (2017) 05 PAT CK 0014

Hon'ble Judges : Ajay Kumar Tripathi, Nilu Agrawal

Bench : DIVISION BENCH

Advocate : Pushkar Narayan Shahi, Ajay Kumar Sharma, Vinay Kirti Singh, Vijay Kumar Verma, Akhileshwa Singh

Judgement

1. The judgment under challenge in the Letters Patent Appeal is dated 25.06.2014. The writ application of the present appellant had been dismissed by the Learned Single Judge holding that the speaking order passed in Annexure - 14 to the writ application does not warrant any interference. Therefore, the claim of the appellant that he is entitled to carry the three increments, which he had earned as a Bill Clerk by passing the departmental examination to another post of Lower Division Assistant was held to be not applicable to the facts of the case.

2. The appellant, no doubt, was initially appointed as a Bill Clerk on a pay-scale of Rs. 1300-2240/- w.e.f. 09.05.1986. While working as Bill Clerk he passed the departmental examination and earned three advance increments w.e.f. 24.12.1990. Therefore, his pay became Rs. 1620/- .

3. The erstwhile Electricity Board issued advertisement for appointment on the post of Lower Division Assistant. This was a limited competitive examination, available to the employees. Since the said post carried higher pay-scale and emoluments, the appellant applied, got selected and appointed. The pay-scale for Lower Division Assistant was fixed at Rs. 1400-2450/-. The petitioner made a grievance that the advantage of the three increments, which he had earned on the previous post of Bill Clerk, should be reflected and protected in the fixation of

pay, on appointment as Lower Division Assistant. He also sought parity with one Surendra Kumar.

4. The Learned Single Judge dismissed the writ application for the following reason: "5. After hearing the parties and considering the materials available on record, the Court is of the opinion that the order impugned, as contained in Annexure-14 to the writ petition, requires no interference. It is evident that the petitioner pursuant to the advertisement i.e. Advertisement no.08/89 had applied for being appointed as Lower Division Clerk knowing well the pay scale of the Lower Division Clerk, which is apparent from the statements made in paragraph-7 of the writ petition. Since he himself had opted for being appointed on higher post of Lower Division Assistant from the Bill Clerk, he was not entitled to claim for fixing his pay scale, as drawn by him in the capacity of Head Clerk inclusive of three increments. Moreover, the Board by its standing order as contained in Annexure-15 to the writ petition has already taken decision to exclude advance increments allowed to the lower post prior to appointment on higher post. At this juncture, it would be appropriate to quote the standing order dated 11.03.1994, which is as follows:

Bihar State Electricity Board : Patna Department of General Administration

Standing Order No.4/Civil/Pors/4001/94/757/Dated 11/3/94

Sub: -Fixation of Pay after taking into account advance increments granted on lower post.

Of late it has been noticed that while fixing the pay of an employee on his appointment to a higher post (outside his cadre and not falling in line of promotion) the benefit of advance increments allowed on lower post for passing departmental examination has been given on higher post in violation of Rules. On appointment to a higher post not falling in the line of promotion but involving assumption of duties and responsibilities of higher importance the pay will be fixed in the time scale of pay at the stage next above his substantive pay (exclusive of the advance increments) under Rule 78(a)(1) of the Bihar Service Code as envisaged in Board's letter No.233 dated 9.8.86. Thus while taking into account his substantive pay of the old post the advance increments, if allowed, to lower post prior to appointment on higher post, shall have to be excluded invariably.

All such similar cases in which fixation of pay on higher posts have been made by giving the benefit of advance increments allowed in the lower post, should be reviewed and necessary recoveries, if any, be made.

By order of the

Bihar State Electricity Board

Sd/-

6. So far as the claim of the petitioner regarding similarity to the case of Surendra Kumar of C.W.J.C. No.6120 of 1994 is concerned, after examining the Judgment dated 3rd July, 1995 (photo copy is on record) the Court is of the opinion that such claim of the petitioner is misconceived. In the case of Surendra Kumar, he was given promotion from the post of Correspondence Clerk to the post of Head Clerk, whereas the petitioner was appointed pursuant to the Advertisement published in the year 1989. It further appear that the petitioner was appointed in different stream and, as such, the Joint Secretary has rightly rejected the representation of the petitioner claiming inclusion of three increments, which was granted to him as Bill Clerk in the pay scale of Lower Division Clerk."

5. Therefore, the appeal has been preferred against the said order. 6. Submission of learned senior counsel for the appellant is that the Learned Single Judge made error by not taking into consideration the 1986 Circular or Order, issued by the Electricity Board itself and wrongly applied a 1994 Standing Order, which is Annexure - 16 to the writ application and has been quoted in earlier part of the order in dismissing the writ application and upholding the speaking order. It is also urged that Rule 78 (a) (i) of the Bihar Service Code was not appreciated in the right perspective and, therefore, the error has happened.

6. The stand of the learned senior counsel representing the erstwhile Electricity Board is that the earning of three increments by passing the departmental examination related to the earlier post of Bill Clerk. The component of increment does not go into the basic pay. That is in addition to the basic pay and since the appellant had passed the departmental examination, which was to encourage efficiency, he was rewarded by grant of three increments.

7. In this case a distinction has been noticed by the Learned Single Judge that the appellant was holder of a different post, i.e., Bill Clerk. Pursuant to the advertisement and recruitment exercise done by the Electricity Board he was a new appointee on a different post. So far as the case of Surendra Kumar is concerned, his case was a case of promotion within the cadre from clerical grade to the higher post of Head Clerk. This promotion was within the cadre and normal channel of promotion and did not relate to a case of fresh appointment on a different post. It is also emphasized on behalf of the learned senior counsel for the respondents that even on the newly appointed post increment will be required to be earned by an employee by a passage of time or by passing departmental examination, as and when they are held for better efficiency in service. The component of carry over is not envisaged.

8. The Court after hearing the parties and having perused the order of the Learned Single Judge comes to a similar opinion that the impugned order of the Learned Single Judge does not suffer from any infirmity. The 1994 Standing Order is a clarificatory order in relation to 1986 order and the basic components

of the two can be culled out by reading both of them simultaneously. Therefore, the expectation of the appellant to end up a notch higher in terms of pay-scale after his appointment on the post of Lower Division Assistant by carrying over the component of increment is a misplaced expectation to have.

9. Neither the respondent-authorities of the erstwhile Electricity Board have made an error of judgment nor has the Learned Single Judge committed any error, which is required to be rectified in appeal. Appeal has no merit, it is dismissed.