
(2010) 02 JH CK 0109
In the Jharkhand High Court

Bhakta Rajendra Malakar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Citation : (2010) 02 JH CK 0109

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the counsel for the parties.

2. In this writ petition, the petitioner has prayed for a direction to the respondents to consider and grant promotion to the petitioner to the post of Sub Inspector of Police from the date his Juniors were given promotion to the aforesaid post with all consequential benefits. Further prayer of the petitioner is for a direction to the respondents to decide his seniority in his cadre pursuant to the order dated 02.12.1999 passed in C.W.J.C. No. 8126 of 1998.

3. The case of the petitioner is that he was appointed to the post of Assistant Driver Constable on 18.09.1968 and was subsequently absorbed as a Matriculate Constable vide Office Order No. 1537/69, dated 18.08.1969, Subsequently, he was transferred to the Bihar Police Radio, Patna on 01.03.1972 Thereafter, the petitioner was promoted to the post of Assistant Sub Inspector (A.S.I.) Wireless with effect from 22.12.1975.

4. The petitioner states that when the persons junior to him, such as Deep Narayan Mishra, Ram Das Sharma, S. Chandra etc, were promoted to the post of A.S.I. w.e.f. 01.04.1975 but the petitioner was not given the said benefits he filed a Writ Petition being C.W.J.C. No, 8126 of 1998, which was disposed of vide Order dated 02.12.1999 with the following directions, to the respondents to determine the seniority of petitioner as matriculate constable (literate constable) on the basis of his date of absorption to the said post w.e.f. 18,08.1969 and then

to the next higher post of A.S.I, (wireless) to be determined on the basis of guideline of the state and the date of promotion coupled with the position in the merit list, if any, prepared, On such determination of seniority as A.S.I. (Wireless), If it Is found that any person junior to him has already been promoted to the post of Sub-Inspector of Police, the authorities will consider the case of petitioner for promotion to the post of Sub-Inspector of Police from the date, immediate juniors were so promoted.

5. The Letters Patent Appeal, filed by the State against the aforesaid order passed In the Writ Petition was dismissed as time barred.

Even the SLP (S.L.P.) filed before the Supreme Court was also dismissed.

6. It is staled that when the order passed by this Court was not compiled with the petitioner filed a petition for initiating proceeding for contempt In which, the opposite parties filed show cause annexing the Order dated 24.08.2001 Issued by the Deputy Inspector General of Police (Wireless), whereby seniority of the petitioner was ordered to be determined w.e.f. 18.08.1969.

The grievance of the petitioner is that neither the benefits of promotion nor any monetary benefits was given to the petitioner, However, the proceeding for contempt was dropped by giving liberty to the petitioner that if so wishes, he may challenge the said order dated 24.08.2001 before appropriate forum. Accordingly, the present Writ Petition has been filed.

7. Mr. K.K. Shrivastava, learned Counsel for the petitioner submitted that pursuant to the order passed in C.W.J.C. No. 8126 of 1998, he was entitled to the promotion as well as the monetary benefits, which has been denied to him. If is further submitted on behalf of the petitioner that during pendency of this Writ Petition. The petitioner has retired from the service on 31 09.2008.

8. A counter affidavit has been filed on behalf of the respondent No. 4 wherein, it is stated that the Bihar Police Radio and Jharkhand Police Wireless, is a closed cadre Unit, separate from the General Police Cadre and the seniority is fixed from the date of appointment Rules 1235 of Appendix 92 of Police Manual explains the position regarding appointment, training and promotion of Wireless personnel.

From the very beginning of Wireless Section in Bihar, the Matriculate Constables recruited In different Police Forces at different places, had been transferred to the Bihar Police Radio, Patna (Wireless Unit), for absorption in Wireless Section as Literate Constable (Operator).

After absorption in Wireless Section, those personnels used to be sent for Wireless Basic Grade - III Operator Training and after completion of the Basic Grade - III, Operator Examination, they were being deployed for Wireless working in different Wireless Station, Therefore, the seniority has to be fixed vide Rule 1235 Appendix 92 and Police Order No. 203/76.

9. According to the respondents, the petitioner was appointed as an Assistant

Driver Constable on 18.08.1968 in Bihar, Patna and was transferred to Bihar Police Radio, Patna on 01.03.1972 for absorption as Literate Constable (Operator). He joined on 29.03.1972 in Bihar Police Radio, Patna as Literate Constable (Operator) He was sent for Basic Wireless Grade - III, Operator Training and he passed on 10.1.1973. He appeared at the competitive examination for the fixation of seniority in the rank of Literate Constable (Operator) on 07.11.1975 and after he passed this examination, he was placed at Sl. No. 23. According to this seniority list, he WAS promoted to the post of A.S.I. (Operation) on 22.12.1975.

It is further stated in the counter affidavit that thereafter, he passed Grade - II Operator Examination on 17.06.1998 and then he was promoted to the rank of S.I. (Operation) on 04.09.2000 and now he is posted in Jharkhand as S.I. (Operation) after bifurcation of the State.

10. It is further slated that the seniority, fixation and promotion order are strictly followed according to the Police Manual, orders and instructions issued from time to time. It is also stated by the respondents that the persons, whose name has been mentioned as Juniors to the petitioners i.e. Deep Narayan Mishra, Ram Das Sharma, S. Chandra, are in act not juniors to him, They were directly recruited in the Wireless Section, Bihar Police Radio on 10.06.1971, 19.06.1971 and 19.06.1971 respectively whereas, the petitioner was recruited on 18.08.1968 in other Police force as Assistant Driver Constable and was absorbed in the Wireless Section only on 29.03.1972 and as such, in this way, the petitioner's absorption date in the Wireless Section is after the date of those directly appointed three persons who have been described by the petitioner as Juniors to him.

11. From the pleadings of the parties which has been noticed above, It is clear that the petitioner was not originally recruited in the Wireless Section, rather he was Assistant Driver Constable in the Police Force and he was absorbed in the Wireless Section only on 29.03.1972 and, therefore, he cannot rank senior to those persons, who were directly recruited as Literate Constable (Operator) prior to the date, the petitioner was absorbed in the Wireless Section as a Literate Constable Operator. Therefore, it is wrong to say that the aforesaid three persons namely Deep Narayan Mishra, Ram Das Sharma, Section Chandra were infact Junior to the petitioner. In this view of the matter, the claim of the petitioner that he should be given promotion from the date the aforesaid three persons were given promotion, is not tenable.

12. For the reasons stated above, in my view, no case for any interference is made out. Accordingly, this Writ Petition is dismissed but without any costs.