

(2010) 04 PAT CK 0192
In the Patna High Court

Binod Kumar

APPELLANT

Vs

The State of Bihar and The Excise Commissioner and
Secretary, Excise and Prohibition Department, Government of
Bihar

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0192

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard the parties.

2. The petitioner was working as an Accounts Clerk in the Excise Department. The writ application has been filed for granting him promotion to the post of Sub-inspector of Excise as par the rules contained in annexure 2 and 2/1 which envisage that 60% of the posts would be filled up by direct recruitment and 40% of the posts would be filled up by promotion subject to certain conditions as mentioned in the rule aforesaid.

2. The main conditions for the purposes of filling up the posts of Sub-inspector of Excise from the cadre of Accounts Clerk is that the incumbent must be less than 35 years of age, and ought to have passed the departmental examinations.

3. Certain facts are not disputed. Firstly, that petitioner's date of birth was 4.7.1950 and that he was entitled for consideration for the years 1983-84 and 1984-85. The rules for recruitment of Sub-inspector of Excise issued on 3rd of July, 1954, under Article 309 envisage that the Commissioner of Excise shall determine in accordance with the provision of Rule 1 as to how many of the vacancies have occurred in the preceding financial year, shall be filled up by direct recruitment, and the vacancies to be filled by promotion [Rule 3(c)]. Accordingly the petitioner submits that since he was entitled to be considered in

1983-84 and 1984-85, he ought to have been promoted in the said years. However, no selection was made for those years and all the proceedings were clubbed together as per paragraph 18 of the counter affidavit in the year 1987.

4. Petitioner's case has not been considered on the ground that in the year 1987, the petitioner was 36 years of age and had crossed the age bar as prescribed in Rule 1 of the aforesaid Rules.

5. I may state here that the petitioner has retired in July, 2008 and now he can only claim notional promotion to the post of Sub-inspector of Excise. It is not disputed that the petitioner is the senior clerk or that he had not passed the departmental examination, or was not entitled and fit to be appointed rather the only stand of the State is that the petitioner had crossed the age of 35 years. The admitted fact is that there were 75 vacancies in the year 1981, however, due to the fact that no selection or recruitment had taken place in the year 1982-83 and 1985-86, the vacancies were calculated in the year 1987. Since the entitlement of the petitioner was from the year 1983-34, he cannot be rejected or debarred for promotion (there being no adverse entries) by virtue of the fact that he had attained the age of 36 years in the year 1987. The year in which the recruitment/promotion is being made is not the only criteria which has to be considered by the State Government, rather the period or years which are taken into account for declaring a vacancy, will be the relevant factor for the purpose of filling the vacancy, in cases of persons who are to be appointed by promotion. This Court also finds that the criteria and eligibility for the relevant years, when the vacancy occurred and was sought to be filled up would be the deciding factor in determining the eligibility criteria. For example, if the State Government for example decided to make the recruitments in the year 1990 for the vacancies of the year 1983 onwards, obviously the persons who were entitled in the year 1983-84 onwards would be given prior consideration, than those who are eligible in the year 1990 as per the vacancies available. This Court finds that the reasons for rejecting the petitioner's recruitment to the post of Sub-inspector of Excise as unreasonable and arbitrary and, therefore, directs the respondent No. 2 i.e. the Commissioner-cum-Secretary of the Excise Department (earlier Prohibition Department), Government of Bihar to grant notional promotion to the petitioner within three months from the date of receipt/production of a copy of this order and thereafter to pay his salary and other dues for which he would be entitled to by virtue of the said promotion and fix his pension according within a period of six months of the grant of the said promotion.

6. The order dated 4.7.1994, passed by the Excise Commissioner and Secretary, Excise and Prohibition Department, State of Bihar contained in annexure-1 as quashed.

7. This application is allowed in the aforesaid terms.