

(2005) 05 PAT CK 0071
In the Patna High Court
Case No : CWJC No. 2058 of 2000

Dr. Rama Nand Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Citation : (2005) 3 PLJR 307

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Tuhin Shankar, for the Appellant;

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the petitioner and learned counsel for the State. Petitioner retired from service under the State of Bihar on 31st January, 1992. At that time he was holding a post of Deputy Director, Health Services in the selection grade. He has filed this writ petition on 28.2.2000 on being aggrieved by notification of Government No. 220(4) dated 16.5.97 whereby similarly situated officers of the department were promoted in the super time selection grade (2/1/2%) but the promotion of the petitioner was withheld. It appears that notification dated 16.5.97 was rectified by notification dated 26.6.98 contained in annexure-3. In the earlier notification petitioner's name was at serial 4 of schedule "Kha" and by notification contained in annexure-3 it was made clear that for the Medical Officers whose names are in schedule "Kha" Promotion Committee had recommended to keep posts reserved for various reasons.

2. On behalf of petitioner it has been submitted that like the Medical Officers whose names are in schedule "Ka" petitioner should also have been granted promotion in super time selection grade (2/1/2%) with retrospective effect and that the decision to keep the case for promotion pending suffers from arbitrariness and illegality because none of the conditions determined by the

State of Bihar for placing the case of an employee under seal cover procedure was applicable to the case of the petitioner. It has been asserted on behalf of the petitioner that there was no departmental proceeding against him when he retired from service nor there was any criminal proceeding and he was given full pension after retirement. It has further been shown that even till date no charges have been framed against the petitioner in any departmental or criminal proceeding.

3. On behalf of State it has been submitted that that petitioner's case was subsequently considered on 17.5.01 as would appear from Annexure-A to the supplementary counter affidavit of State but he was again denied promotion because the Vigilance Department had not given clearance for his promotion.

4. Learned counsel for the petitioner has relied upon judgment of the Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., in support of his submission that once the Departmental Promotion Committee admittedly found the petitioner fit for promotion when it was considering the cases of other similarly situated officers, the case of the petitioner could not have been kept in abeyance by resorting to seal cover procedure because neither the petitioner was under suspension at the relevant time nor there was any charge sheet against him in either in departmental proceeding or in a criminal proceeding. On the other hand, learned counsel for the State has relied upon a judgment of the Supreme Court in the case of Union of India and Another Vs. R.S. Sharma, and has submitted that the judgment in the case of Jankiraman has been explained and resorting to seal cover procedure was found permissible even in the case where formal sanction had been accorded to prosecute the concerned employee in the meantime.

5. The concerned employee in the case of Union of India vs. R.S. Sharma belonged to Indian Telecommunication Services, Group-A and in his case the relevant office memorandum as quoted in paragraphs of the Judgment provided for resorting to seal cover procedure even where investigation on serious allegations of corruption etc. was in progress either by C.B.I. or any agency, departmental or otherwise. In the said judgment it was explained that Clause (iv) of the relevant office memorandum had not fallen for consideration in the case of Jankiraman and therefore that judgment was not applicable so far as peculiar facts in the case of Union of India vs. R.S. Sharma were concerned.

6. In the case of petitioner learned counsel has referred to even the latest policy decision of the State of Bihar contained in Circular of Personnel and Administrative Reforms Department dated 11.9.02 but in that circular also there is no category like the category (iv) noticed above. The only three categories under the policy decision of the Government of Bihar are:-(i) Officers under suspension; (ii) Against whom there is already a decision to initiate disciplinary proceeding and charge sheet has been issued and (iii) Officials against whom charge sheet has been submitted in any criminal proceeding. Admittedly, petitioner's case does not fall in any of three categories because as per case of

the State only investigation into a vigilance case is going on even presently and petitioner's alleged involvement is also under investigation. Admittedly, no charge sheet has been submitted in relation to the aforesaid vigilance case against the petitioner. In such circumstance it is found that learned counsel for the petitioner has rightly relied upon judgment of the Supreme Court in the case of Jankiraman (supra). It is found that respondents were not justified in resorting to seal cover procedure and in putting the case of the petitioner for promotion in abeyance only because a vigilance case allegedly involving large number of persons is under investigation and petitioner's conduct is also under investigation in relation to such criminal case.

7. Considering all the facts and circumstances, long period since retirement of the petitioner from service and that he is getting full pension without any proceeding, the prayer made in this writ petition is allowed. The concerned respondents are directed to act as per recommendation of the departmental promotion committee made in favour of the petitioner and grant him due promotion into super time selection grade (two and half percent) with effect from 1.1.1987 as granted to similarly situated persons. The aforesaid promotion should be granted to the petitioner as early as possible preferably within three months from the date of production/communication of a copy of this order before the concerned Secretary. The consequential monetary benefits as given to similarly situated employees should also be given to the petitioner without any delay and preferably within the aforesaid period of three months. In the facts of the case there shall be no order as to costs.