

(2009) 11 JH CK 0017
In the Jharkhand High Court

Ghanshyam Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0017

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—This writ petition has been filed by the petitioner for issuance, of appropriate writ/direction commanding the respondents to consider and grant promotion to him to the post of Inspector of Police from the date the other persons junior to the petitioner have been granted promotion to the said post. The case of the petitioner is that he was appointed as Sub-Inspector of Police in the year 1976, and since then, he has not been given any promotion except the first time bound promotion, which was given to him after completion of 24 years of service. In the year 1989-90, for certain charges, he was departmentally proceeded and consequent thereto, in the year 1992, a punishment of one black -mark was awarded to him. The grievance of the petitioner is that though the D.G. Board constituted for considering the case of promotion held its meeting in the year 1997, in which the case of the petitioner for promotion was also to be considered, but the same was not considered because of the fact that the department did not make available his A.C.Rs. and other relevant service records, and thereby, the petitioner's case could not be considered for promotion to the post of Inspector of Police. Again in the year 1999, a departmental proceeding was initiated against the petitioner and consequent thereto, by an order, in the year 2001, he was awarded punishment of compulsory retirement from service. The petitioner preferred a departmental appeal against the said order of punishment. The appellate authority set aside the order of punishment, and remanded the matter back to for fresh enquiry.

Thereafter, a fresh enquiry was held, and in that enquiry, the petitioner was not found guilty, and he was exonerated in September, 2003. The further grievance of the petitioner is that though the D.G. Board sat in the year 2001, 2002, 2003, 2004 and 2006, but the case of the petitioner for promotion was not considered."

2. Nobody appears for the State of Jharkhand, though an affidavit has been filed by the State of Jharkhand. From which it appears that the case of the petitioner was considered by the D.G. Board which held its meeting on 25.2.2003, but he was not granted promotion on that ground that his service records were not found to be satisfactory. It is further stated on behalf of the petitioner that the D.G. Board again held its meeting on 12.8.2006 and after considering the case of the petitioner, he was not granted promotion on the ground that his service record were found to be not satisfactory.

3. Learned Counsel for the petitioner submitted that no adverse remark was ever communicated to the petitioner by which it can be said that his service record was found to be not satisfactory. He has submitted that so far the punishment of awarding one black -mark is concerned, the same was awarded to him in the year 1992, and after expiry of the period of three years, it has lost its significance and force, therefore, it cannot be said that the service record of the petitioner was unsatisfactory in any manner. He further stated that it is a well settled principle of law that if an adverse remark in service record is not communicated to a delinquent, the same cannot be taken into consideration for not granting promotion.

4. In such a situation, since nobody has appeared on behalf of the State of Jharkhand, I have left with no other option but to allow this application. Accordingly, this writ petition is allowed, and the matter is remanded back to the authorities concerned to consider the case of promotion of the petitioner afresh, and if it is found that there is no adverse entry in the service record of the petitioner, then an appropriate consequential order may be issued. If it is found that there is adverse entry in the service record of the petitioner that must be communicated to the petitioner so that he may be given a chance to explain the same.

5. With these observations and direction, this writ application stands allowed.