
(2013) 12 JH CK 0025
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4774 of 2012

Guru Prasanna Das

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) 1 AJR 460 : (2014) 1 JLJR 601

Hon'ble Judges : R. Banumathi, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Ashrafuzzaman, for the Appellant; Jalisur Rahman, JC to Mr. Ram Niwas Roy, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, C.J.—Being aggrieved by the order dated 19.4.2012 passed by the Central Administrative Tribunal in O.A. No. 24/2010, declining to quash the communication dated 7.10.2009 and 18.12.2009 and also declining to issue direction to the respondents to declare the petitioner as senior to D.B. Ghosh and to grant all promotional avenues and benefits in accordance with rules, the writ petitioner has approached this Court in the present writ application. Brief facts:- The petitioner was appointed as Health Inspector on 29.11.1984 and 7th. Respondent, D.B. Ghosh, was appointed as Health Inspector on 26.1.1991. For selection of one post of H & MI Gr. II in the pay scale of Rs. 1600-2660/-, the petitioner along with one S.K. Dubey was called to appear for written test fixed on 14.10.1992 and both of them secured qualifying marks and they were called for viva-voce and both attended the viva-voce. In viva-voce, S.K. Dubey was found suitable and the said S.K. Dubey was empaneled and he was promoted to the said post of H & MI Gr. II. Again the petitioner was called for further selection for the post of H & MI Gr. II and the petitioner appeared in the written examination, vide letter dated 11.11.1994, and the said selection was treated cancelled by the competent authority due to some procedural lacuna by the letter dated 27.2.1996.

2. Thereafter in further selection of one post of H & MI Gr. II, the petitioner along with D.B. Ghosh, who was 7th respondent in O.A. No. 24/2010, appeared for the written examination on 21.8.1996 with a supplementary date on 20.9.1996. In the said examination, both of them secured qualifying marks in the viva-voce held on 29.10.1996 with supplementary date on 8.11.1996 and D.B. Ghosh was found suitable and he was empaneled for the post of H & MI Gr. II and the said D.B. Ghosh was promoted and posted by office order no. 570/11 of 1996 dated 15.11.1996 and he joined on the said post of H & MI Gr. II on 16.11.1996.

3. For further selection of one post of H & MI Gr. II, the petitioner and one Bijoy Kumar were called in the written examination by letter dated 23.7.1997 and in the written examination held, only the petitioner secured the qualifying marks and thereafter in viva-voce held on 10.11.1997, the petitioner appeared. The petitioner was empaneled and promoted to the post of H & MI Gr. II in the scale of Rs. 5000-8000/- by the office order dated 19.12.1997 and he joined the said post on 21.12.1997.

4. D.B. Ghosh, on being empaneled in 1996, was promoted and posted as H & MI Gr. II by office order dated 15.11.1996 and joined as H & MI Gr. II on 16.11.1996, whereas the petitioner was empaneled for the post of H & MI Gr. II by order dated 13.11.1997 and was promoted and posted as H & MI Gr. II by order dated 19.12.1997 and he joined the said post on 21.12.1997. D.B. Ghosh, who was empaneled and promoted as H & MI Gr. II much earlier than the petitioner, became senior to the petitioner.

5. Against the seniority list published on 11.12.1998 and on 1.10.2001, wherein the petitioner was shown junior to respondent no. 7, D.B. Ghosh, he submitted his objection, vide letter dated 3.10.2001. And the same seniority list was published on 10.1.2007, wherein respondent no. 7, D.B. Ghosh, was again shown as senior to the petitioner. The petitioner made representation dated 7.3.2007 raising objection against the said seniority list and the same was not considered. Being aggrieved with the aforesaid, the petitioner filed O.A. No. 33/2009 before the Tribunal seeking quashing of the empaneled list dated 23.8.2007 and notification dated 30.12.2008. By the order dated 16.7.2009, the Tribunal directed the respondents to dispose of the representation of the petitioner against the seniority list. The petitioner filed another representation before the respondents claiming to be senior to respondent no. 7, D.B. Ghosh, and claiming promotion. The respondents passed order dated 7.10.2009 rejecting the claim of seniority of the petitioner on the ground that D.B. Ghosh was promoted and posted by order dated 15.11.1996 and whereas the petitioner was empaneled only by order dated 19.12.1997 and he joined the said post on 21.12.1997 and therefore, the petitioner cannot claim seniority over D.B. Ghosh.

6. Challenging the said communication dated 7.10.2009 and also the order dated 18.12.2009, the petitioner has filed O.A. No. 24/2010 before the Tribunal. The Tribunal dismissed the said O.A. holding that D.B. Ghosh was promoted and posted on the post of H & MI Gr. II by the order dated 15.11.1996, whereas the

petitioner appeared only in the next selection test on 19.12.1997 and he joined the post on 21.12.1997 and therefore, the petitioner cannot claim seniority over D.B. Ghosh.

7. Learned counsel, Mr. M.A. Khan, appearing for the petitioner contended that petitioner's initial date of appointment as Health Inspector was 29.11.1984, whereas the date of appointment of D.B. Ghosh was 26.1.1991 and while so, the respondents have deliberately declared the petitioner unsuitable and the petitioner's junior, D.B. Ghosh, was declared suitable. Learned counsel further submitted that the petitioner should be given promotion from the date of promotion of D.B. Ghosh and the impugned orders dated 7.10.2009 and order dated 18.12.2009 are not sustainable. Learned counsel submitted that various submissions made on behalf of the petitioner were not properly appreciated by the Tribunal and prayed for allowing the writ petition.

8. Learned counsel, Mr. Jalisur Rahman, for the respondents submitted that D.B. Ghosh was found suitable and empaneled and was promoted to the post of H & MI Gr. II on which he joined on 16.11.1996, whereas the petitioner joined the said post only on 21.12.1997. Learned counsel further submitted that D.B. Ghosh, on being selected and promoted as H & MI Gr. II earlier than the petitioner, became senior to the petitioner and the petitioner cannot claim seniority over and above D.B. Ghosh.

9. We have considered the submissions, rival contention and also perused the records. As elaborated earlier, both the petitioner and D.B. Ghosh appeared in the written examination on 21.8.1996 and both of them secured qualifying marks in the written examination and they were called for viva-voce held on 29.10.1996 with supplementary dated on 8.11.1996. In viva-voce, D.B. Ghosh was found suitable and empaneled and promoted and posted by order dated 15.11.1996 and he joined as H & MI Gr. II on 16.11.1996. The petitioner, who participated in the said written examination and also in the viva-voce and was unsuccessful, if really aggrieved over the selection of D.B. Ghosh, ought to have challenged the said selection at the relevant time and at that time itself, but that was not to be so. But the petitioner, without raising any objection for the same, participated in further selection, for which written examination was held on 23.7.1997 and he was selected and he also participated in viva-voce held on 10.11.1997 and was empaneled and promoted, vide order dated 19.12.1997. The petitioner has acquiesced to the selection held in the year 1996 in which D.B. Ghosh was empaneled and promoted and in the year 1997 the petitioner was empaneled and appointed. The petitioner having then not raised objection regarding the selection held in 1996, it is not open to the petitioner to turn around and claim seniority over D.B. Ghosh or claim promotion from the date on which D.B. Ghosh joined as H & MI Gr. II. Merely because the petitioner was appointed as Health Inspector in 1984 and the said D.B. Ghosh in 1991, the petitioner cannot claim seniority over D.B. Ghosh based on the original seniority of the date of joining. The post of H & MI Gr. II being a selection post, the

petitioner cannot claim seniority based on his original date of his joining as Health Inspector. The Tribunal has, thus, rightly held that D.B. Ghosh, on being selected and promoted as H & MI Gr. II earlier than the petitioner, had become senior to the petitioner and the petitioner cannot claim seniority over D.B. Ghosh. We, thus, find no reason warranting interference with the impugned order of the Tribunal. The writ petition, being devoid of any merit, is dismissed.