
(2007) 10 AHC CK 0100
In the Allahabad High Court
Case No : Writ Petition No.1790 (S/B) of 2002

Jagdish Singh Patni

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Citation : (2007) 10 AHC CK 0100

Hon'ble Judges : Pradeep Kant, J and Rajiv Sharma, J

Final Decision : Allowed

Judgement

1. Heard Sri Ramesh Pandey, learned counsel for the petitioner and Sri Ashok Shukla, learned counsel for the State.

2. This petition challenges the order passed by the State Public Services Tribunal dated 11.9.2002, by means of which the petitioner's claim for promotion on the post of Reserve Sub Inspector, from the date when persons junior to him, were promoted, has been rejected and consequently order dated 6.11.1999, passed by respondent has been upheld.

3. In short, case of the petitioner is that he was appointed as Platoon Commander on 18.2.1988 and was posted at II Bn. P.A.C., Sitapur and on which post he was confirmed. On 3rd February, 1995 Police Headquarters invited applications for promotion to the post of Reserve Sub Inspectors from the post of SubInspectors who were eligible for the post. The petitioner, though was eligible and had applied for promotion, but his name was not forwarded, despite repeated requests, whereas names of other fellow colleagues were forwarded. Repeated representations did not yield any result. Therefore, the petitioner filed a writ petition bearing W.P.No.8752 of 1996, which was disposed of with the directions, that the petitioner's representation be decided in two months. Since the petitioner's claim was rejected, therefore, he filed present claim petition before the State Public Services Tribunal. The State took the plea that since a criminal case was pending against the claimant and in 1995 integrity was not certified, therefore, his case was not forwarded for consideration. The Tribunal

accepted the said plea and dismissed the claim petition.

4. Sri Ramesh Pandey, appearing for the petitioner, has argued that there was no authority with the respondent to withhold the application of the petitioner and not forwarding his name. In case any criminal case was pending or integrity was not certified for any particular year, the said facts could have been considered by the authority competent to consider the promotion, particularly when specific marks have been allocated, which can be deducted in case integrity was not certified or any adverse material existed against the petitioner. His further submission is that in such cases seal cover procedure could have been adopted.

5. Relying upon judgment in which one of us (Hon. Pradeep Kant, J.) was a member in Writ Petition No.375 (S/B) of 2004, State of U.P. and others v. Jagdish Singh Patni and another, the learned counsel for the petitioner submitted that in that case it has been held by the Court that forwarding of the name could not have been stopped because of any enquiry being pending against the incumbent and that in the matter of pending enquiry, the candidature is to be considered by adopting procedure of seal cover. Aforesaid writ petition was filed by the State of U.P. and others against the order passed by the Tribunal in favour of the respondent. His claim for promotion for the post of Reserve Inspector 36 Course was not considered on the ground that some enquiry was pending against him. The Tribunal in that case allowed the claim petition and directed that petitioner's case be considered and in case he is found suitable for promotion, he may be given all benefits from the date juniors to him were given.

6. The instant case relates to 35 Course of SubInspector. The case of the petitioner was not forwarded for being considered and he was not considered. We are informed that criminal trial has resulted into his acquittal and his integrity has been certified. Be that as it may, these questions would be considered as existed on the date of consideration by the authority concerned who will consider the promotion. We find that for the reason given in the W.P. No.375 (SB) of 2004, referred to above, and in view of the Government Order dated 3rd February, 1995 the case of the petitioner could not have been withheld from consideration and his application ought to have been forwarded so that his case could have been considered by the authority concerned. That having not been done the rejection order suffers from manifest error of law. We, therefore, while quashing the order of Tribunal dated 11.9.2002, dispose of the writ petition with the direction that the case of the petitioner for his promotion to the post of Reserve Inspector for 35 Course be considered afresh in the light of the relevant Rules and in case the petitioner is found suitable for promotion, he may be given all benefits with effect from the date when junior to him has been given in 35 Course. The petitioner has already been promoted in 36 Course.

7. The petition is allowed.

(Petition allowed)