
(2001) 07 JH CK 0061
In the Jharkhand High Court
Case No : CWJC No. 1872 of 1993 (R)

Jai Mangal Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Citation : (2001) 07 JH CK 0061

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : R. Krishna, S. Arun and S. Saurabh, for the Appellant; V.P. Singh, Sat Prakash and K.K. Singh, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the parties.

2. In this writ application the petitioner has challenged the gradation list by which the seniority of the petitioner vis-a-vis respondent Nos. 3 and 4 has been changed and pursuant thereto the respondent Nos. 3 and 4 have been promoted in senior selection grade without considering the case of the petitioner.

3. In 1967 the petitioner was appointed as a Work Charge Overseer under the respondents In pursuance of letter dated 14.4.1967. The petitioner Joined the work charge establishment on 25.4.1967. After joining the petitioner worked continuously without any breakage and was appointed on regular basis vide letter dated 16.5.1969. However, the pay fixation was done after regularising and taking into account the services of the petitioner with effect from 14.4.1967. The respondent Nos. 3 and 4, however, were appointed as a direct recruittee vide notification dated 16.5.1969 in the post of Overseer/Junior Engineer. The petitioner's case is that in 1974 the seniority list was prepared in which the petitioner's position was shown at serial No. 217 while respondent Nos. 3 and 4 at serial Nos. 224 and 227. IN 1979, 1981 and 1983 fresh seniority list were published and those lists also the petitioner was shown above respondent Nos. 3 and 4. However, in 1991 a fresh seniority list was again published in which the

position of the petitioner was changed and he was put at serial No. 116 whereas respondent Nos. 3 and 4 were put at serial Nos. 106 and 109. The petitioner's case is that the aforesaid seniority list dated 10.1.1991 is absolutely illegal, arbitrary and without jurisdiction. The petitioner filed a representation against the said seniority list but nothing was done. In the meantime, the respondent Nos. 3 and 4 were promoted to the post of senior selection grade without considering the case of the petitioner.

4. The case of the respondent-State in the counter-affidavit is that in 1968 the petitioner and the respondent Nos. 3 and 4 applied for the post of Junior Engineer in pursuance of the advertisement published on 4th March, 1968. After completion of the selection processes, the Selection Committee prepared a merit list in which the respondent No. 3 has been placed at serial No. 3 and respondent No. 4 at serial No. 6 and the petitioner at serial No. 14. It is stated that though the said merit list does not bear the signature of any member of the Selection Committee, the petitioner and respondent Nos. 3 and 4 were appointed vide Notification Nos. 203 and 205 dated 16.5.1969.

5. The respondent Nos. 3 and 4 have jointly filed, their counter-affidavit in which they have made out a case that pursuant to the advertisement they applied for the post of Junior Engineer and the petitioner being in service as work charge employee, applied through proper channel for the post of Junior Engineer. A merit list was prepared in which the respondent Nos. 3 and 4 were placed above the petitioner. In that view of the matter, the seniority list prepared in 1991 was perfectly legal and valid.

6. It is the specific case of the petitioner that he was appointed as work charge Overseer on 14.4.1967 and in pursuance of that he joined on 25.4.1967. In 1969 the petitioner was appointed on regular basis vide letter dated 16.5.1969. The pay fixation was done after regularising and taking into account the services of the petitioner with effect from 14.4.1967 and all the increments were given by fixing the pay scale. A copy of the said letter has been annexed as Annexure 2 to the writ application. This fact finds support from the contents of the appointment letter dated 16.5.1969 whereby the petitioner was given regular appointment after regularising his services in the work charge establishment and giving all increments. This fact has not been denied by the respondent-State in the counter-affidavit. While the respondent Nos. 3 and 4 have admitted that the petitioner was working in the work charge establishment and from there he was appointed in 1969 on the post of Overseer/Junior Engineer. The respondents also admitted that he being eligible for the post applied directly for appointment to the post of Junior Engineer. The only question, therefore, falls for consideration in whether the benefit of seniority shall be given to those, who were working in the work charge establishment prior to their appointment to the post of Overseer/Junior Engineer. In this connection the petitioner has annexed a copy of the circular as contained in Annexure 4 to the writ application. Clause 3(c) of the said circular provides that seniority of direct recruits shall be according to their

respective position as recorded by the competent authority at the time of their first appointment ad hoc earlier appointment to the post is not to be considered for determining inter se seniority. Sub-clause (v) of Clause 3 provides that incumbents of work-charged Establishment on their appointment to the regular service cadre will be treated as fresh recruits and they shall rank senior to the regular direct recruits of the same transaction.

7. From perusal of the aforesaid two provisions, it is clear that the persons on ad hoc or earlier appointment shall not be given preference over the persons who have been directly recruited and finds place above in the merit list. However, this circular very clearly provides that incumbents of work charge establishment on their appointment to the regular service cadre shall be treated as fresh recruit but they shall always rank senior to the regular direct recruit of the same cadre. Admittedly, the petitioner came from the work charge establishment where he was working since 1967 and, therefore, while finalising the seniority list the authority ought to have considered the clause preferred to hereinabove, The matter, therefore, needs consideration by the concerned respondents.

8. I, therefore, direct the concerned respondent, who is the competent authority, to consider the claim of the petitioner in the light of the observation made above and also in the light of the circular referred to in this Judgment and take a final decision with regard to seniority of the petitioner vis-a-vis respondent Nos. 3 and 4. If the decision is taken in favour of the petitioner then necessary order for his promotion with all monetary benefits shall be passed. It is needless to say that while determining the inter-se seniority of the petitioner vis-a-vis respondent Nos. 3 and 4 the competent authority shall give opportunity of hearing to the petitioner as also the respondents concerned.

9. Disposed of accordingly.