

(2010) 08 PAT CK 0183
In the Patna High Court
Case No : CWJC No. 5488 of 2009

Kailash Prasad Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 76
Constitution of India, 1950 — Article 309

Citation : (2011) 3 PLJR 779

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Prayer of the Petitioner is for quashing of Order bearing Memo No. 886, dated 13.4.2009, issued in purported compliance of the Order dated 16.7.2007, passed in C.W.J.C. No. 4284 of 2007 by the Deputy Secretary (Respondent No. 6), communicating the decision of the Government, determining the inter se seniority between the Petitioner and the Respondent No. 11, holding Respondent No. 11 senior to the Petitioner. Further prayer is for quashing of the decision of the Central Government to revise the allocation of Respondent No. 11 from the State of Jharkhand to the State of Bihar vide Order contained in letter dated 22.8.2006 and for restraining the Respondents from giving effect to the Order contained in Memo No. 886, dated 13.4.2009, deciding inter se seniority between the Petitioner and the Respondent No. 11.

2. I.A. No. 5660 of 2010 was filed by the Respondent for analogous hearing of C.W.J.C. Nos. 5488 of 2009 with C.W.J.C. No. 5719 of 2000 and 9343 of 2000. C.W.J.C. No. 5119 of 2000 which were admitted for hearing on 14.5.2001. In these writ applications, the prayer of the Petitioner Ram Babu Choudhary (Respondent No. 11) was for granting junior selection grade of the Inspector of Boiler with effect from an earlier date. Respondent No. 11 has taken a plea that the decision in earlier admitted cases will have bearing on the relief prayed by

the writ Petitioner, as such in order to avoid multiplicity of litigation, cases be heard analogous.

3. Considering that the relief prayed in earlier writ applications has no nexus with the relief prayed in the present writ application, the prayer for analogous hearing is rejected.

4. I.A. No. 2202 of 2010 has been filed by the Petitioner for amending the relief by making an additional prayer for quashing of notification vide Memo No. 1/ Shram V0 STHA0(3)3005/2004 SHRA0S0-418, dated 3.3.2010, whereby the Respondent No. 11 has been given additional charge of Chief Inspector of Boilers, Bihar. The application is allowed. The additional relief will form part of the main writ application.

5. The Department of Labour Employment has framed Bihar Labour Service (Technical) Rules, 1969, in exercise of powers conferred under Article 309 of the Constitution, vide notification dated 26.6.1969, to regulate recruitment and condition of service of persons, appointed in Bihar Labour Service (Technical). This service consist all posts of Chief Inspector of Factories, Deputy Inspector of Factories, Inspector of Factories and Chief Boiler Inspector.

6. Petitioner as well as Respondent No. 11, both were appointed in the erstwhile united State of Bihar on the post of Inspector of Boilers in the Department of Labour Employment and Training, Government of Bihar. Petitioner was appointed on 1.5.1997 and Respondent No. 11 on 12.5.1983.

7. The State of Bihar was reorganized under Bihar Reorganization Act, 2000 w.e.f. 15.11.2000, creating successor States of Bihar and Jharkhand. On the appointed date, i.e., 15.11.2000, the Petitioner was posted and working in the successor State of Jharkhand on the post of Inspector of Boilers and Respondent No. 11 was working in the successor State of Bihar as In-charge Chief Inspector of Boilers. Options were invited from the employees, working in the united State of Bihar, serving in either of the two successor States, in order to finally allocate their cadre to the State of their options or otherwise. The Respondent No. 11 had opted for State of Jharkhand, probably for the reason that only post of Chief Inspector of Boilers was at Dhanbad in the successor State of Jharkhand. The Petitioner, on the other hand, had opted for the State of Bihar. In the joint cadre of united State of Bihar, Ram Babu Chaudhary (Respondent No. 11) was senior to the Petitioner, as he was appointed in the year 1983, 14 years earlier to the Petitioner, appointed in the year 1997. Service of Ram Babu Chaudhary was allocated to State of Jharkhand as per his option, vide notification dated 20.6.2002, but immediately thereafter on 22.7.2002, he filed a representation against tentative allocation of cadre before the Central Government, for revision of allocation, stating that being allergic to coal dust, the weather in Jharkhand State is unsuitable for him. During the pendency of his representation for revision of allocation of cadre, Respondent No. 11 was made In-charge Chief Inspector of Boilers on 16.10.2004. But, vide Order dated 23.7.2005, he was

relieved for giving joining at Jharkhand State. In compliance of the relieving Order, Respondent No. 11 gave his joining at Jharkhand State, but challenged the Order, allocating Jharkhand State by filing C.W.J.C. No. 4325 of 2005. During the pendency of the writ application, the Deputy Secretary, Government of India, issued letter dated 22.8.2006, revising the earlier cadre allocation of Respondent No. 11. Though, the Order, revising cadre of Respondent No. 11, was issued on 22.8.2006, but he was not being relieved by the Jharkhand State. The writ application was disposed off considering the Counter Affidavit filed by the Jharkhand State, giving assurance regarding implementation of the Order, dated 22.8.2006, by issuing relieving Order in favour of Respondent No. 11. The Respondent No. 11 was relieved vide Order dated 14.3.2007 and he gave his joining in the State of Bihar in pursuance of the Order dated 22.8.2006.

8. The Petitioner objected the revision of allocation of Respondent No. 11 and represented before the Secretary, Government of India, Ministry of Personnel, Public Grievance and Pension on 14.9.2006 and also on 4.12.2007 with a request to recall the Order. Since the representation filed by the Petitioner was not being considered, as such he filed C.W.J.C. No. 4284 of 2007 for quashing the Order dated 22.8.2006 of the Central Government, revising allocation of cadre of Respondent No. 11 and also for restraining the joining of Respondent No. 11. in the State of Bihar. Alternative prayer of the Petitioner was that, if joining of Respondent No. 11 is accepted, he should be placed at the bottom of the seniority list. The writ application was disposed of vide Order dated 16.7.2007, directing the Respondent authorities to dispose of pending representations of the Petitioner within three months from the date of the Order and until disposal of the representations, status quo, as existing on the date, was to be maintained. Petitioner at the relevant time was working as In-charge Chief Inspector of Boilers, since a post had already been created in the State of Bihar in the year 2002 itself.

9. Since the direction of High Court regarding disposal of pending representations of the Petitioner within three months stipulated time was not being implemented by the Respondents and on the strength of status quo Order, the Petitioner was continuing on the post of Chief Inspector of Boilers, Respondent No. 11 filed MJC No. 2820 of 2008, claiming that his rights are being prejudiced. The representations filed by the Petitioner (Annexures-16 and 14 to the writ application) were disposed off vide Order dated 13.4.2009, contained in Memo No. 886-, holding the Respondent No. 11 senior to the Petitioner. This Order is under challenge in the present writ application.

10. The Petitioner has objected to the revision of allocation of cadre of Respondent No. 11 on several grounds, inclusive the ground that on account of revised allocation, he will suffer his seniority in the State of Bihar. The Respondent No. 11 cannot allowed to retain his seniority in view of the revised guidelines of the Personnel Department.

11. The counsel for the Petitioner, assailing the Order dated 22.8.2006, has

contended that once the exercise of final allocation of candidate to the successor States was completed upon issuance of Order relating to allocation of cadre, the Central Government became functus officio and left with no power to review its decision. The settled law in this regard is that power of review is statutory power and has to be derived from the relevant statute. There being no such provision in Bihar Reorganization Act, 2000 that the Central Government could not have exercised the review jurisdiction and in this view, the Order dated 22.8.2006, completely being in disregard of the statutory provisions, is illegal and without jurisdiction. Once the exercise of final allocation of cadre has been completed between the two States, the request of Respondent No. 11 should have been rejected. The Order dated 22.8.2006 is also fit to be quashed for the reason that Respondent No. 11 directly filed his representation before the Central Government without filing it before the State Advisory Committee, so the representation of the Respondent No. 11 should not have been considered by the Central Government on this account also. It has also been contended that the request of Respondent No. 11 being a solitary request and not a mutual request for transfer, it could not have been entertained by the Central Government. Only in case of mutual request, Order could have been passed by the Central Government seeking consent of successor States. In this regard, counsel for the Petitioner has given reference of letter, bearing Memo No. 3479, dated 21.5.2005, issued by the Special Secretary, Government of Bihar. The Order dated 22.8.2006 has been assailed on the ground that the Central Government has no role to play in such kind of transfer without seeking consent of the successor States, as such it is completely illegal and without jurisdiction.

12. Counter Affidavits have been filed on behalf of the Union of India, the State of Jharkhand, the State of Bihar, Department of Labour Resources and Respondent No. 11. Supplementary Counter Affidavit has also been filed on behalf of Respondent No. 11.

13. The Union of India in its Counter Affidavit has emphasized that the Order dated 22.8.2006 has been passed in accordance with Section 76 of the Reorganization Act, which vests the power of revision in the Union of India. It has been admitted in the Counter Affidavit that normally options once exercised is irreversible, but in some special circumstances, it is considered and for that there is provision under the Act itself. In case of widow, a female employee whose spouse is working in another successor State, in case of employee, who was not given any opportunity to exercise option, or whose option could not be considered inadvertently or there being some personal reason relating to health, the decision regarding cadre allocation can be revised.

14. The case of Respondent No. 11 for revision of cadre was considered on medical ground, even though considering his option earlier, he was not allocated Jharkhand cadre. So far inter se seniority in between the Petitioner, Respondent No. 11 and other employees are concerned, it was to be decided by the State of Bihar, following procedure in case of mutual transfers as contained in State

Government's letter, bearing No. 3/R-1-106/72-15784 ka, dated 26.8.1972.

15. The State of Bihar in its Counter Affidavit has not assigned any specific reason for retaining the seniority of Respondent No. 11 over the Petitioner. Simply, it has been stated that considering the seniority of Respondent No. 11 in the united State of Bihar, his seniority has been retained by the impugned order.

16. The Respondent No. 11 has challenged the maintainability of the writ application on the ground that the issue of allocation or re-allocation of cadre is primarily an issue in between two successor States. Employees, whose services have been allocated as per their own options, have no locus to challenge the allocation or re-allocation of other employees unless the other employee is going to be displaced or suffer allocation of his cadre. In the present case, Petitioner has neither been dislocated nor going to suffer the allocation of cadre, as such he cannot have any grievance against the Order dated 22.8.2006, reallocating the cadre of State of Bihar in favour of Respondent No. 11.

17. In reply to it, the counsel for the Petitioner submits that the Order dated 22.8.2006, reallocating Bihar State to Respondent No. 11 is going to affect the seniority as such he has cause of action to challenge it.

18. In reply to the submission made by the Petitioner's counsel regarding the jurisdiction exercised by the Union of India, revising the cadre allocation of Respondent No. 11, it has been submitted that the objection raised by the Petitioner is misconceived. Since the Respondent No. 11 had not represented against the final allocation of cadre, rather against tentative allocation, the Central Government has rightly considered and rectified the cadre allocation in the final allocation Order. Power of correction being inherent under the Act with the Central Government, the competence of Central Government cannot be questioned. No jurisdictional error is there in the Order dated 22.8.2006, allocating the cadre of State of Bihar to Respondent No. 11."

19. I find substance in the submission made by the counsel appearing for Respondent No. 11.

20. The Order, tentatively allocating cadre was issued on 20.6.2002 and immediately thereafter on 22.7.2002, a representation for revision of cadre was filed by the Respondent No. 11: During the pendency of the representation, Respondent No. 11 was relieved to give joining at Jharkhand State. In this view, the cadre allocation was not finalized till the representation was not disposed off. The representation was finally disposed off by issuing Order dated 22.8.2006. Section 76 of the Reorganization Act vests such power in the Union of India, which has got final jurisdiction in the matter of allocation/re-allocation of the cadre. I do not find any error or illegality in the Order dated 22.8.2006 allocating cadre of State of Bihar to Respondent No. 11.

21. The counsel appearing for the Petitioner has also submitted that the Petitioner's representation was allowed by the Central Government not on its

own merit but considering the requests made by a number of Members of Parliament.

22. Considering this submission, I perused the records connected with the revision of cadre of Respondent No. 11 and found that four Members of Parliament had requested for revision of cadre of Respondent No. 11, but there requests were rejected and they were duly informed. The final Order, dated 22.8.2006, revising cadre of Respondent No. 11, has been passed on no other consideration than the medical grounds, considering it a legitimate claim of a Government employee. The medical grounds has been considered as a special circumstance by the Central Government and option of Respondent No. 11 was revised and his cadre changed.

23. In this view, I do not find any reason to hold that the Order revising cadre of Respondent No. 11 is either illegal or without jurisdiction. This being a case of revision in some special circumstance, for which there is inherent power vested to the Union of India u/s 76 of the Reorganization Act. I do not find any illegality in the Order.

24. "Counsel appearing for the Petitioner has further contended that re-allocation of Respondent No. 11 from the State of Jharkhand to the State of Bihar would amount to enhancement of the cadre strength in Bihar, which is impermissible. It has also been submitted that such exercise could not have been carried out without concurrence of the Finance Department, Government of Bihar, as it would entail enhancement of financial liability. No such objection has been raised in the Counter Affidavit filed by the Respondent State of Bihar.

25. Counsel appearing for Union of India has also submitted that in special circumstance, even special posts can be created, but so far the case of Respondent No. 11 is concerned, since no such objection raised by the State of Bihar, as such Petitioner has no locus to raise such objection.

26. Another issue raised by the Petitioner relates to inter se seniority between the Petitioner and the Respondent No. 11.

27. The counsel for the Petitioner submits that Respondent No. 11 had earlier given option for Jharkhand State only for the reason that no post of Chief Inspector of Boilers was available in the State of Bihar and a single post was available at Dhanbad in the successor State of Jharkhand. The post of Chief Inspector of Boilers was created in the year 2002 itself in the successor State of Bihar, till that time Respondent No. 11 had already given his option for Jharkhand State and also allocated the Jharkhand State. The Respondent No. 11 taking false plea of medical ground filed application for revision of his cadre, which should not have been allowed, as the Petitioner became senior-most in the State of Bihar and made In-charge of Chief Inspector of Boilers.

28. Counsel appearing for Respondent No. 11, on the other hand, submits that Petitioner being 14 years junior to Respondent No. 11 cannot claim to be senior.

The Respondent No. 11 was appointed in the year 1983 and Petitioner in the year 1997. The Respondent No. 11 was confirmed on the post on 12.5.1985, granted time bound promotion in the pay scale of Rs. 3,000-4,500/- w.e.f. 12.5.1993. The pay scale of Rs. 3,000-4,500/- was revised in the pay scale of Rs. 10,000-15,200/-, he became eligible for the post of Chief Inspector of Boilers on account of his seniority and also because he was holding a post in the pay scale of Rs. 10,000-15,200/-. This was much before the joining of the Petitioner as Inspector of Boilers. The Respondent No. 11 was made In-charge of Chief Inspector of Boilers on 16.10.2004, i.e., prior to being relieved for giving joining at Jharkhand State. His cadre was revised since medically Jharkhand State was not suited to him. Once his cadre has been revised and he has joined at Bihar he is entitled for holding the post of Chief Inspector of Boilers as he was holding that post prior to tentative allocation of cadre.

29. One of the prayers of the Petitioner is that since Respondent No. 11 has been allowed to join the cadre of State of Bihar, he should be placed in the bottom of the seniority list in the cadre and should not be allowed his normal seniority in the united State of Bihar. The counsel for the Petitioner has placed reliance on the resolution of Home Special Department, Government of Bihar, dated 17th of December, 2009, issued in the light of the decision of the Government of India providing guidelines in the matters of change of cadre. The guidelines under Clause-III provide that no claim of seniority shall be maintained on account of revision of allocation. In other words, the transferred persons would become junior most in the cadre in the State concerned in the recruitment/ promotion year.

30. The counsel appearing for Respondent No. 11, in reply to this, has submitted that even on the basis of the guidelines, the seniority of Respondent No. 11 over the seniority of Petitioner, shall remain maintained. The guidelines of Government of Bihar (Home Special) Department, only indicates that no claim of seniority shall be maintained of such employee, whose cadre has been revised, considering his option in his recruitment or promotion year. It does not mean that the person concerned will be placed at the bottom of the seniority list of all employees. The person concerned will lose his initial seniority, so far the employees of his recruitment or promotion year are concerned. In the present case, the Respondent No. 11 was appointed in the year 1983, whereas Petitioner was appointed in the year 1997. There being the gap of 14 years in between the two. The Respondent No. 11 will remain senior to Petitioner, even if, he is put at the bottom in the seniority list of employees of his recruitment/promotion year.

31. Counsel appearing for the Respondent No. 11 submits that the year in which the Petitioner was appointed on the post of Inspector of Boilers, Respondent No. 11 was already confirmed and promoted in the pay scale of Rs. 10,000-15,200/-, which is the pay scale for promotional post of Chief Inspector of Boilers.

32. I find substance in the submission made by Respondent No. 11, even if, the Respondent No. 11 will lose his seniority" on account that he will be put at the

bottom of the employees recruited or promoted in the year of his appointment/promotion. The Respondent No. 11 in no case will be placed at the bottom of the combined seniority list. In this view of the matter, the impugned seniority list, prepared by Respondent authorities of the Department, showing Respondent No. 11 senior to the Petitioner is not erroneous, there is no illegality and needs no change.

33. I do not find any merit in this application. It is dismissed.