
(2016) 11 JH CK 0092
In the Jharkhand High Court
Case No : Writ Petition (S) No. 896 of 2014

Kailash Rajak

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Constitution of India, 1950 — Article 16, Article 226
Jharkhand Mining Engineering Service Rules, 2011 — Rule 18

Citation : (2017) 2 AIRJharR 592

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Kanti Kumar Ojha and Mr. Rakesh Kumar, Advocates, for the Petitioner; Mr. Binod Singh, S.C. (L&C), for the Respondents

Final Decision : Dismissed

Judgement

Mr. Shree Chandrashekhar, J.—The petitioner, a 1984 appointee on the post of Assistant Mining Officer, claims promotion to the post of District Mining Officer and also in the rank of Deputy Director, Mines. Contending that Jharkhand Mining Engineering Service Rules, 2011 would not take away the vested right for promotion which accrued before 2011 Rules became effective, the petitioner has questioned the legality of the impugned order dated 18.12.2013.

2. Heard.

3. The brief facts narrated in the writ petition are, that after his appointment on 26.07.1984 on the post of Assistant Mining Officer the petitioner was made In-charge-District Mining Officer vide Notification dated 11.12.1990 and Departmental Promotion Committee (DPC) in its meeting held on 04.11.1999 forwarded a recommendation for his promotion w.e.f. 01.10.1992 to the post of District Mining Officer, however, subject to concurrence of the Department of Personnel, which was not granted. After the bifurcation of the erstwhile State of Bihar, in the DPC held on 06.07.2002, in view of pending criminal case for offence under Section 366A/34 IPC, promotion to the petitioner was again kept

pending. The petitioner has pleaded that vide judgment and order dated 24.11.2004 he was acquitted from criminal charges in S.C. Case No. 60 of 2000, still, he was not granted promotion from due date. It is pleaded that the Principal Secretary, Department of Mines and Geology, Government of Bihar in its letter dated 10.06.2009 forwarded a recommendation for promotion of six Assistant Mining Officers on the post of District Mining Officer, and in the said letter the petitioner was shown the senior most Assistant Mining Officer at Sl. No. 1. Not only that, in the seniority list of Assistant Mining Officer prepared by the State of Jharkhand also the petitioner has been shown senior most Assistant Mining Officer in SC category, however, he was deprived of promotion without any speaking order. Constrained, he approached this Court in W.P.(S) No. 3507 of 2010 for promotion on the post of District Mining Officer and for further promotion in the rank of Deputy Director of Mines with all consequential benefits. The writ petition was disposed of on 26.02.2013, with a direction to the Principal Secretary, Department of Mines and Geology, Government of Jharkhand to pass a speaking order on petitioner's claim for promotion. It is order dated 18.12.2013, whereby petitioner's claim for promotion has been declined, which has been assailed in the writ petition.

4. The learned counsel for the petitioner has referred to recommendations of DPC dated 04.11.1999 and 06.07.2002 and the recommendation of the Government of Bihar to contend that the petitioner cannot be denied promotion on the ground that under 2011 Rules essential technical qualification for the post of Assistant Mining Officer has been prescribed a degree in Mining Engineering, which was not the essential qualification for appointment to the post of Assistant Mining Officer when the petitioner was appointed in the year, 1984. It is contended that the petitioner has a vested right to claim promotion on the basis of the earlier recommendations of DPC. Percontra, Mr. Binod Singh, the learned State counsel contends that the previous recommendations for promotion of the petitioner were not given effect on account of his complicity in a criminal case, and when his case was considered by the Principal Secretary, Department of Mines by that time 2011 Rules were enforced and while so, no promotion contrary to the extant rules can be granted. It is further contended that promotion of eligible Assistant Mining Officers was notified through Notification dated 02.12.2010, however, the said notification was never challenged by the petitioner.

5. Before advertng to the rival contentions, it needs to be recorded that there were 20 sanctioned posts of District Mining Officers in the Directorate of Mines, Government of Bihar. Departmental letter dated 22.01.1979 provided that 50% post of District Mining Officers shall be filled up through direct recruitment and 50% post through promotion from Assistant Mining Officer. The State of Bihar accepted the recommendations of 5th Pay Commission and vide memo dated 08.02.1999 issued by the Finance Department conditions for promotion and qualifications were prescribed. A degree in Mining Engineering, w.e.f. 08.02.1999, was prescribed as the minimum qualification for the post of

Assistant Mining Officer. The petitioner do not possess a degree in Mining Engineering is an admitted position. The respondent-State has pleaded that educational and technical qualifications cannot be compromised in the public interest.

6. Under Jharkhand Mining Engineering Service Rules, 2011, there are 5 posts in the Mining Engineering Cadre viz; (i) Director, Mines (ii) Additional Director, Mines (iii) Deputy Director, Mines (iv) District Mining Officer (Class-I), and (v) Assistant Mining Officer (Class-II). Appointment to the posts of Assistant Mining Officer (Class-II) and District Mining Officer (Class-I) shall be through direct recruitment and by promotion of officers already in Government service. Procedure for recruitment by promotion has been dealt with in Rule 15 under Part-VI. In so far as, promotion to the post of District Mining Officer is concerned, Rules 15(2) and 15(3) provides as under :

15(2) "The quota for the recruitment by promotion to the post of District Mining Officer from the post of Assistant Mining Officer shall be 50% of the total sanctioned strength of the District Mining Officer. For direct recruitment of District Mining Officer, half of the positions shall be filled through open examination while the other half shall be filled through limited examination held by the Commission from among AMOs having service of 5 years or more, i.e., 25% of the posts will be filled by way of open examination and 25% will be filled through limited examination held by Commission.

Provided that in case of nonavailability of officer for promotion to the post of District Mining Officer the remaining quota shall be transferred to direct recruitment of District Mining Officer as per Part-V.

15(3) Promotion to the post of Deputy Director Mines and above shall be given to only those promoted officers who have acquired a degree in mining engineering or AMIE in mining engineering."

7. A conjoint reading of sub-Rule 2 and sub-Rule 3 to Rule 15 would make it clear that for promotion to the post of District Mining Officer from the post of Assistant Mining Officer requirement is 5 years" service as Assistant Mining Officer and it shall be filled up through limited examination held by the Jharkhand Public Service Commission. Rule 7 merely provides that no person shall be directly appointed to the post of Assistant Mining Officer and District Mining Officer unless, he holds a degree in Mining Engineering. Thus, promotion of Assistant Mining Officers, who were appointed before 2011 Rules were enforced and who do not possess a degree in Mining Engineering, to the post of District Mining Officer through limited examination on prescribed quota seats for promotion is not prohibited rather, prescribed. Only restriction under 2011 Rules is for direct appointment on the post of Assistant Mining Officer and District Mining Officer, without a degree in Mining Engineering. Sub-Rule 3 to Rule 15 further clarifies the position by providing that promotion to the post of Deputy Director, Mines and above shall be given to only those promoted officers who

have acquired a degree in Mining Engineering or AMIE in Mining Engineering. 2011 Rules nowhere provides that for promotion to the post of District Mining Officer, Assistant Mining Officers appointed prior to enforcement of the Rules must possess a degree in Mining Engineering. A bare reading of the impugned order dated 18.12.2013 would also reveal that claim of the petitioner for promotion to the post of District Mining Officer has been declined on the ground that no post of District Mining Officer under SC category was available. The contention raised by the learned counsel for the petitioner that petitioner has been denied promotion to the post of District Mining Officer on the basis of qualification prescribed under 2011 Rules, is factually incorrect. In the counter-affidavit, however, it has been pleaded that promotion to the post of District Mining Officer has been granted only to those Assistant Mining Officers who possess a degree in Mining Engineering. If that was the reason for denying promotion to the petitioner in the year 2010, it must be held that he was denied promotion illegally. However, this issue no longer remains significant, as he has already superannuated from service and ACP benefits for the promotional post of District Mining Officer has been granted to him. Moreover, the petitioner never challenged Notification dated 02.12.2010 by which promotion to the post of District Mining Officers was granted.

8. The next question is, whether the petitioner can be denied promotion to the post of Deputy Director, Mines on the ground that he does not possess a degree in Mining Engineering.

9. In "State of J&K. v. Shiv Ram Sharma" (1999) 3 SCC 653, a plea was raised that when the appointees had joined the service, the requirement of passing Matriculation was not needed for promotion, however, subsequently for promotion to a higher grade Matriculation was made a necessary qualification. The Supreme Court held that there is no indefeasible right in the appointees to claim promotion to a higher grade to which qualification could be prescribed and it also cannot be guaranteed that the rules framed by the Government would always be favourable to them. In "Roshan Lal Tandon v. Union of India" AIR 1967 (1) SC 1889, it has been held that rights and obligations in respect of an employment are not determined by the consent of the appointees, but by a statute and statutory rights may be framed and altered unilaterally by the Government. No doubt, it has been held that a vested right cannot be taken away by an amendment in the rules, however, it is equally true that there is no vested right for promotion. Whether claim for promotion to a higher grade had matured or not, has to be examined in the facts of the case and on the basis of vacancy which had arisen. The petitioner who was not promoted to the post of District Mining Officer cannot claim promotion in the rank of Deputy Director, Mines, only on the basis of his continuous service on the post of Assistant Mining Officer and/or District Mining Officer in officiating capacity. Under Rule 18, 5 years" continuous service on the post of District Mining Officer is necessary for promotion to the post of Deputy Director, Mines, which qualification the petitioner does not possess. Moreover, promotion is granted with due regard to merit,

seniority in service, reservation notification and roster decided by the Department of Personnel, Administrative Reforms and Rajbhasha and it is made on recommendation of the Departmental Promotion Committee. Petitioner's case for promotion to the post of Deputy Director, Mines did not mature, as he was not confirmed as District Mining Officer on a sanctioned vacant post.

10. When considered claim of the petitioner, in the light of the aforesaid discussion, I find no merit in the writ petition and accordingly, it is dismissed.