
(2009) 02 JH CK 0086
In the Jharkhand High Court

Karuna Kar Barik	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Citation : (2009) 02 JH CK 0086

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. M.K. Laik, learned senior counsel appearing for the petitioner and Mr. Mokhtar Khan, learned Counsel appearing for the respondent-Union of India.

2. In the instant application, the petitioner has prayed for quashing the order dated 31.12.1997 whereby the representation of the petitioner regarding fixation of seniority was rejected by the Director General, Central Industrial Security Force. The aforesaid order was passed deciding the representation of the petitioner in compliance of the direction of the Patna High Court in the order dated 18.09.1997 passed in C.W. J.C. No. 1696 of 1996 (R).

3. The relevant facts, not in dispute, are that the petitioner and respondent No. 4 were appointed as Security Guard in C.I.S.F. on 29.04.1972 and 31.07.1973 respectively. In the year 1983 both the petitioner and respondent No. 4 were promoted to the post of Assistant Sub-Inspector (A.S.I.) and consequently the provisional seniority list was published by the respondent placing the petitioner at serial No. 401 whereas respondent No. 4 was placed at serial No. 402. The petitioner vis-?-vis respondent No. 4 were confirmed to the post of A.S.I. and in the confirmation list also the petitioner was placed at serial No. 2 whereas the respondent No. 4 was at serial No. 3. There is no dispute up to this stage.

4. In the year 1985 the Departmental Promotion Committee took up the matter for promotion of A.S.I. to the post of S.I. The petitioner was provisionally

promoted with effect from 26.06.1985 and the services of both the petitioner and respondent No. 4 were regularized on the post of Sub-Inspector. The dispute arose only when the provisional list was published of those A.S.I.s who were given promotion to the post of S.I. In that seniority list the petitioner was placed at serial No. 444 whereas respondent No. 4 was placed at serial No. 343. Aggrieved by the said placement in the seniority list the petitioner filed representation and then moved the Andhra Pradesh High Court, where he was serving at the relevant time, by filing a Writ petition being Writ Petition No. 2987 of 1993 claiming seniority over respondent No. 4 and the said Writ Petition was disposed of by the Andhra Pradesh High Court in terms of Judgment dated 15.06.1994. The grievance of the petitioner in the writ petition was that since he was senior to respondent No. 4 on the post of A.S.I. and in the seniority list he was shown above respondent No. 4, he could not have been placed below respondent No. 4 in the provisional seniority list of S.I. published by the respondents. In the said Writ Petition before the Andhra Pradesh High Court the respondent took a stand that the Departmental Promotion Committee classified respondent No. 4 as "outstanding" whereas the petitioner was classified as "good" and hence as per the placement respondent No. 4 has been shown as senior. It was further stated that the criteria which was followed for giving grades while considering the cases for promotion was in accordance with the Government instructions dated 17.07.1976. The Andhra Pradesh High Court taking into consideration the Government instructions and guidelines held that the placement of the respondent No. 4 does not violate any Service Rules. However, the question was raised by the petitioner that while giving promotion the earlier guidelines issued by the Government was not considered which, inter alia, provides that the inter-se-seniority of those promoted in any rank on the basis of one selection shall be determined according to the order in which they are recommended for promotion by the Departmental Promotion Committee. However since this question was not raised by the petitioner before the Andhra Pradesh High Court while disposing of the Writ Petition the Court gave liberty to the petitioner to file representation raising that question and in turn the concerned respondent was directed to dispose of the representation. In compliance of the aforesaid order the representation so filed by the petitioner was considered by the respondents and the same was rejected on 29.11.1994 by passing a reasoned order. A copy of the said order has been annexed as Annexure 11 to the Writ Petition. In the representation the petitioner raised an issue that since he was already confirmed in the rank of A.S.I. with effect from 13.8.1981, the seniority will be decided on the basis of the said confirmation. The authority of the respondent namely, Director General, C.I.S.F., while rejecting the representation held that the Departmental Promotion Committee on scrutiny of the records found that both the petitioner and the respondent No. 4 were confirmed in the rank of A.S.I. on 13.8.1981. None of them had been confirmed in the rank of S.I. as the same was not required as per the instruction contained in the Government of India Circular dated 10.09.1985. According to the respondent, the relevant seniority of persons promoted to the various grades

shall be determined in the order of their selection for such promotions. Since the Departmental Promotion Committee on promotion to the rank of S.I. has placed the petitioner below respondent No. 4 in the seniority list as per the Government instructions, the petitioner is not entitled to any relief. The petitioner had challenged the aforesaid order by filing a Writ Petition in Patna High Court being C.W.J.C. No. 1696 of 1996 (R). The Single Bench of this Court disposed of the Writ petition by again directing the petitioner to file fresh representation and in turn the respondents were directed to consider the case of the petitioner. The order was passed on the assumption that the provisions of Government instructions relating to seniority as contained in the letter dated 17.07.1971 (Annexure 2) was not considered. In compliance of the aforesaid order the Director General, C.I.S.F. again considered the representation of the petitioner and rejected the same by passing the following order:

On examination of relevant records, it is found:

(i) (a) that the seniority of the petitioner and Shri A.R. Routh was fixed at SI. No. 401 and 402 respectively in the seniority list of ASI (CLK). Both of them were confirmed in the said rank w.e.f. 13.08.81. They were considered for promotion as SI (Min) by the DPC held in the year 1984 but could not be empanelled due to non-availability of vacancies. However, they were promoted as SI (Min) on ad-hoc basis vide FHQ letter dated 25.5.1985.

(b) The DPC of 1985 from ASI (CLK) to SI (Min) was conducted in the month of July, 1985 wherein ASIs/CLK upto PSL No. 538 were considered for promotion. The said DPC was convened in accordance with the instructions contained in accordance with the instructions contained at para V sub-para-2 of DP & AR O.M. 22011/6/75/Estt. (D) dated 30.12.76 reproduced in CSR Vol No. II which provides that DPC shall make grading in order of merit, rating them as "Outstanding", "Very Good" and "Good". As per the recommendations of the said DPC, the ad-hoc promotion of the petitioner was regularized wef 6.9.85 along with Shri A.R. Routh vide FHQ letter dated 24.2.86 firstly. Simultaneously promotion orders in respect of remaining personnel who were also found "Fit" in the same panel were issued by subsequent orders dated 10/11.4.86 and 23/24.7.86.

(c) The seniority of personnel promoted as SI (Min) on the basis of DPC held in 1985 was issued in order of gradation given by the DPC in terms of instructions contained in para-3 of MHA letter dated 17.7.76 which inter-alia states that inter-se-seniority of those promoted in any rank on the basis of one selection shall be determined according to the order in which they are recommended for promotion by the DPC. In the seniority list of SI (Min) from 1.1.85 to 31.12.85, personnel at PSL No. 342 and 343 were graded as "Outstanding", from PSL No. 344 to 402 were graded as "Very Good" and from PSL No. 403 to 454 were graded only as "Good".

(ii) The contention of the petitioner that personnel promoted subsequently were

drawn from different selections/panels and assumed the charge of SI (Min) later than him cannot be made senior to him, has no force because these personnel were from same panel of 1985 and their seniority was fixed on the basis of gradation recommended by the DPC i.e. "Outstanding" were placed on the top followed by officers categorized as "Very Good" and then "Good". The date on which they assumed the charge is irrelevant so far as fixing of inter-seniority is concerned. Since Shri Routh was graded as "Outstanding" and Shri Barik as "Good" by the DPC, the petitioner has been placed below Shri Routh. While disposing of the W.P. No. 2987 of 1993 of the petitioner in the same case, the above position was up-held by the Hon'ble High Court of A.P. vide judgment dated 15.6.94. The Hon'ble High Court also observed that the placement of the petitioner does not violate any service rule.

(iii) So far as confirmation of the petitioner in the rank of ASI (CLK) is concerned, as mentioned at para 2 (iii) above, it is clarified that no separate orders confirming him in the rank of SI (CLK) were issued. As regards confirmation in the rank of SI (MIN), it may be mentioned that as per the latest instructions contained in the Govt. of India, DP & Trg O.M. dated 28.03.88, confirmation is to be done only in the entry grade and there will be no confirmation on promotion. The officials confirmed in the lower grade are not required to be confirmed in the higher grade even in the cases where permanent vacancies were available from a date prior to 1.4.88 and confirmation was also due on a date prior to 1.4.88. Since all personnel including the petitioner have already been confirmed in the rank of ASI/CLK at the entry grade, therefore, there was no need to issue confirmation order in the higher rank which also falls in the same grade and line. As such, no confirmation orders in the rank of SI (Min) were issued.

4. Having regard to these circumstances, I do not find any merit in the representation submitted by the petitioner and do hereby reject the same.

5. Mr. M.K. Laik, learned senior counsel appearing for the petitioner mainly contended that since the petitioner was senior to respondent No. 4 at the entry point and also after promotion to the post of A.S.I. the same has to be maintained after promoting the petitioner to the post of S.I.

6. We are unable to accept the submission of the learned Counsel. Admittedly as per the Government instructions and guidelines inter-se-seniority of those persons promoted in any rank on the basis of one selection shall be determined according to the gradation given by the Departmental Promotion Committee. While considering the case of the petitioner and respondent No. 4 the Departmental Promotion Committee found respondent No. 4 much superior to the petitioner and therefore, graded "outstanding" whereas the petitioner was not graded "outstanding". Accordingly a list of promoted S.I. including the petitioner and respondent No. 4 was promoted wherein respondent No. 4 was shown above the petitioner. The Andhra Pradesh High Court in the earlier Writ Petition filed by the petitioner has also observed that placement of the petitioner below respondent No. 4 does not violate any Service Rules. It is well settled that

when a person is promoted or placed in a superior grade his seniority is determined with reference to the date of such promotion or placement unless the rules provide to the contrary. Seniority in the lower grade has no meaning for departmental seniority in the superior grade.

7. After having considered the entire facts of the case and the law discussed hereinabove, we are of the view that the order passed by the Director General, C.I.S.F. rejecting the representation of the petitioner cannot be held to be arbitrary or unjustified.

8. For the reasons aforesaid, there is no merit in this application, which is accordingly dismissed.