

(2012) 01 JH CK 0127
In the Jharkhand High Court
Case No : CWJC No. 3828 of 1995 (P)

Keshawa Prasad Singh

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 01 JH CK 0127

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V.P. Singh, A.K. Sinha and Rashmi Kumar, for the Appellant; Rajesh Kr. Mahtha, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ application, the petitioner has prayed for quashing the order dated 25.5.1995 (Annexure-1), whereby he was reverted from the post of Sub-Inspector of Excise to the post of Excise Clerk on the ground that his promotion was given after the age of 35 years. The short fact relevant in the instant case is that the petitioner was initially appointed as Excise Clerk on 10.12.1971. His date of birth was 12.6.1950 and he was aged about 21 years at the time of appointment. The Government of Bihar had framed rules for recruitment of regular Sub-Inspector of Excise providing, inter alia, that Sub-Inspector of Excise shall be appointed by the Commissioner of Excise either by direct recruitment by means of written examination or by promotion of the selected Assistant Sub-Inspector of Excise and Excise Clerks, below the age of 35 years. The petitioner, in course of his service, had appeared in the departmental examination meant for promotion to the post of Sub-Inspector of Excise and passed the same on 23.2.1983. On that basis, the petitioner was given promotion as Incharge Sub-Inspector of Excise w.e.f. 17.6.1983. He joined the post on 23.6.1983 at West Champaran. Suddenly, a letter was issued on 16.7.1983 reverting the petitioner from Incharge Sub-Inspector of Excise to the

post of Excise Clerk. The petitioner then preferred writ application being C.W.J.C. No. 3106 of 1983 challenging the said order. In the said writ application, operation of the order of reversion was stayed.

2. Subsequently, considering to the suitability and eligibility of the petitioner, he alongwith others was given regular promotion to the post of Sub-Inspector of Excise vide letter no. 5239 dated 18.11.1987. The petitioner, thereafter, had been regularly working on the post of Sub-Inspector of Excise. In view of the said regular promotion/the petitioner withdrew his said writ application on 22.11.1990 by filing an application stating the said fact. After withdrawal of the said writ application and after lapse of several years, a letter was issued to the petitioner dated 28.10.1994 asking him to show cause as to why he should not be reverted from the post of Sub-Inspector of Excise, to the post of Excise Clerk as on the date of promotion he was above 35 years of age.

3. The petitioner filed his reply dated 30.11.1994 stating, inter alia, that he had appeared in the departmental examination for the purpose of promotion when he was much below the age of 35 years. He successfully got through the examination and considering his eligibility, he was given promotion and made Incharge Sub-Inspector of Excise. The date of initiation of the said promotion was, thus, 23.6.1983 when the petitioner was aged about 33 years.

4. The respondents, however, without properly considering the petitioner's show cause reply issued the impugned order dated 25.5.1995, whereby the petitioner alongwith some other persons, was reverted from the post of Sub-Inspector of Excise to the post of Excise Clerk.

5. The order has been challenged by the petitioner in this writ petition mainly on the ground that the same is wholly arbitrary, illegal and unjustified, inasmuch as, the petitioner's first promotion as Incharge Sub-Inspector of Excise was on the basis of passing of the departmental examination meant for promotion to the said post by the Departmental Promotion Committee (DPC for short) when he was aged about 33 years. The petitioner was continuing on the post by the order of this Court till his promotion was regularized by the respondents by order issued vide Memo No. 5239 dated 18.11.1987.

6. Mr. V.P. Singh, learned Senior Counsel, appearing on behalf of the petitioner, submitted that the petitioner along with others has been sought to be reverted on the ground that the promotion was given after attaining the age of 35 years, which is not at all applicable in the case of the petitioner. The petitioner was initially given promotion when he was much below the age of 35 years. Learned counsel submitted that the crucial date of consideration is the date on which the DPC first considered him for promotion. The petitioner was made Incharge Sub-Inspector of Excise on the basis of his suitability, eligibility and selection by DPC. The petitioner, thereafter, continued on the post and in the meanwhile, the respondents issued regular promotion order dated 18.11.1987. In view thereof, reversion of the petitioner on the ground that he was given promotion on

attaining the age of 35 years is wholly unjustified and unfounded.

7. The writ petition is contested by the State-respondents by filing counter affidavit. It has been stated, inter alia, that the promotion of the petitioner was contrary to the promotion rule framed under Article 309 of the Constitution. According to the rule, for promotion to the post of Assistant Sub-Inspector of Excise, the candidate must have passed the prescribed departmental examination. He must complete 10 years of qualifying service of Excise Clerk (seven years of qualifying service) and he must be below 35 years of age. The petitioner was given promotion alongwith others by Memo No. 5239 dated 18.11.1987 after crossing his age of 35 years and, as such, his promotion was not proper and valid. The impugned order was, thus, rightly issued, reverting the petitioner and other persons to the post of Excise Clerk. There is no illegality or arbitrariness in the impugned order.

8. I have heard learned counsel for the parties and considered the facts and materials on record.

9. It is admitted fact that the petitioner was appointed as Excise Clerk on 10.12.1971 at the age of 21 years. He appeared in the departmental examination and passed the same on 23.2.1983. The DPC in its meeting held on 17.3.1983 had recommended the name of the petitioner alongwith others for their posting as Incharge Sub-Inspector of Excise. Accordingly, the petitioner alongwith others was posted as Incharge Sub-Inspector of Excise by letter issued by the department vide memo no. 3600 dated 17.6.1983. The said fact has been admitted and clearly stated in paragraph-5(d) of the counter affidavit filed by the respondents. It is also admitted fact that when the DPC considered the name and recommended for promotion and on the date when the petitioner was made Incharge Sub-Inspector of Excise, he was below 35 years of age and since thereafter he continued on the post. In the meanwhile, regular promotion order was issued by the department by memo no. 5239 dated 18.11.1987. It is relevant to mention that the said order of promotion was on the basis of the same consideration by the DPC and also that he was already made Incharge Sub-Inspector of Excise. The order dated 18.11.1987 was not based on any fresh consideration or any fresh recommendation by the DPC. By the said order dated 18.11.1987, the petitioner's selection by the DPC was continued and he was made regular Sub-Inspector of Excise.

10. In view of the above, I find substance in the submissions of Mr. V.P. Singh, learned counsel for the petitioner that at the relevant date of consideration and recommendation for promotion as also on the date of his selection for posting as Incharge Sub-Inspector of Excise on the basis of his qualification eligibility, the petitioner was below 35 years of age. Reversion of the petitioner on the ground that he was above 35 years age on the date of promotion is arbitrary and unjustified. Further, it is not disputed by the respondents that the petitioner was eligible for getting promotion to the post of Sub-Inspector of Excise as he had already passed the departmental examination meant for the purpose and he

possessed all requisite eligibility for the same. The petitioner was also allowed to continue on the post in 1983 when he was first made Incharge Sub-Inspector of Excise. Even after the order dated 18.11.1987, the petitioner was allowed to continue on the post till 1995 when the impugned order was passed. Taking into consideration the date when he was made Incharge Sub-Inspector of Excise i.e. in 1983, the petitioner was sought to be reverted after lapse of about 12 years, on the technical ground that the petitioner on the subsequent date of regular promotion had crossed the age of 35 years. The petitioner had explained before the respondents that when he was selected and recommended for promotion by DPC and he was made Incharge Sub-Inspector of Excise, on the basis of his eligibility and suitability, he was well within 35 years, but the same has not been considered by the respondents and order has been passed reverting him alongwith others, which is wholly unjustified and arbitrary.

11. It has been informed that the petitioner, in the meanwhile, has retired on 30th June, 2010, from the post of Sub-Inspector of Excise on attaining the age of superannuation.

12. Considering the above, this writ petition is allowed. The order dated 25.5.1995 is quashed so far it relates to the petitioner. Since the impugned order (Annexure-1) was stayed by this Court by order dated 21.6.1995 and the petitioner after attaining the age of superannuation has already retired, he shall be entitled to get all consequential benefits of his service period, admissible to the post of Sub-Inspector of Excise. He shall also be entitled to get the consequential retirement benefits accordingly.