
(2016) 04 JH CK 0050
In the Jharkhand High Court
Case No : W.P.(S) No. 4096 of 2009

Mojibuz Zaman Khan

APPELLANT

Vs

State of Jharkhand & Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JBCJ 627 : (2016) 2 JCR 635 : (2016) 3 JLJR 4

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Dr. S.N. Pathak, Sr. Advocate, for the Appellant; Dhananjay Kumar Dubey, Sr. S.C-I, Neelam Tiwary, J.C to Sr. S.C.-I, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application the petitioner has inter alia prayed for quashing of order dated 14.03.2009 issued by Deputy Inspector General of Police (P), Ranchi and office order dated 30.03.2009 issued by Inspector General of Police, Dumka, whereby the petitioner has been reverted from the post of Steno Sub-Inspector to Steno Assistant Sub-Inspector of Police and further prayed to appoint the petitioner on the post of Steno Sub-Inspector of Police from the date of promotion given by the Board dated 01.07.2008 with all consequential benefits.

2. Bereft of unnecessary details, facts as disclosed in the writ application, is that the petitioner was initially appointed as Steno Assistant Sub-Inspector of Police on 30.07.1988 and in due course of time in the year 2006, the name of the petitioner was considered for promotion and his name in seniority list was shown at serial no. 16 vide memo dated 01.03.2006. Thereafter, a consent letter for promotion was sought for from the petitioner in the year 2008 vide memo dated 15.05.2008 and the petitioner exercised his option for the same cadre. It has been submitted that a Board for promotion on Sub-Inspector of Police was held on 11.07.2008 and the petitioner was considered for promotion on the post of

Steno Sub-Inspector. After promotion, the petitioner was posted in the office of Inspector General of Police, Dumka on 26.07.2008 and later he was sent on deputation to the office of Superintendent of Police, Pakur. But to the utter surprise, the Inspector General of Police, Dumka vide letter dated 30.03.2009 passed order of reversion of the petitioner purportedly in pursuance to letter dated 17.03.2009 issued by Inspector General of Police (Personnel), Jharkhand. Being aggrieved, the petitioner represented to Inspector General of Police but no order has been passed on the said representation.

3. Dr. S.N. Pathak, learned senior counsel for the petitioner submitted that the impugned order of reversion is illegal and against the provisions of law. Learned counsel further submits that before passing the impugned order neither any notice has been served upon the petitioner nor opportunity of hearing was afforded to the petitioner thereby the cardinal principles of natural justice has been violated. Learned senior counsel further submits that the promotion given by the Board cannot be changed/alterd or reversed by the D.I.G of Police (Personnel). Learned senior counsel further submits that in passing the impugned order Rule 824 of the Police Manual with Article 311 (2) of the Constitution of India has been violated.

4. During course of hearing, learned counsel for the petitioner referred to the judgment rendered in the case of Union of India & Ors v. Vijay Kumari (Miss) as reported in 1994 Supp (1) SCC 84.

5. Per contra a counter affidavit has been filed on behalf of respondents controverting the averments made in the writ applications. In the counter affidavit, it has been submitted that a meeting of Central Selection Committee was held on 01.07.2008 for considering the cases of the promotion from Steno A.S.I to Steno S.I of Police and minutes to this effect has been issued vide Memo dated 11.07.2008 and in the said meeting, the case of the petitioner along with other Steno A.S.I was considered and the petitioner was found fit for promotion. However, later on during review, it was found that in General Category two Steno A.S.I have been promoted in excess due to wrong calculation of roster and as soon as the error was detected, it has been rectified as directed vide memo dated 17.03.2009 by reverting two junior most Steno A.S.I, who were given promotion to the higher rank i.e. Omkar Prasad and the petitioner.

6. In support thereof, learned counsel for the State referred to the judgment rendered in the case of Arun kumar Kashyap v. State of Jharkhand and others as reported in (2008) 4 JCR 98 (Jhr), wherein the Hon''ble Court relying upon the judgment rendered in the case of Ram Ujarey v. Union of India as reported in 1999 (1) SCC 685 held that "It is by now well settled that any benefit given to a person by mistake is recoverable when the mistake is detected and such wrong benefit given to a person by mistake cannot confer any right on the recipient or act as an estoppel against the person who by mistake has granted such wrong benefit. It is also well settled principle of law that mistake, if committed in passing an administrative order, the same may be rectified and if such mistake is

apparent on the face of the record, the rectification thereof is permissible even without giving any opportunity of hearing to the aggrieved party".

7. Mr. Dhananjay Kumar Dubey, Sr. S.C. I further submits that as soon as the mistake was detected regarding the calculation of the roster, steps were taken immediately for reversion as two excess general candidates were promoted to the higher rank. Hence, the petitioner along with another person, Omkar Prasad being the junior most have been reverted to their former post. Since the order of reversion is reversion simpliciter, Article 311 (2) of the Constitution of India is not attracted. It has further been submitted that the petitioner has been granted A.C.P on completion of 12 years of his service and is getting monetary benefit of the higher rank, so there is no monetary loss to the petitioner.

8. After hearing learned senior counsels for the respective parties at length and on perusal of the records, I am of the considered view that the reliefs sought for by the petitioner is not legally tenable for the following facts, reasons and judicial pronouncements:

(i). Indisputably, in the meeting of selection committee, which was held on 01.07.2008, the matter of promotion from the post of Steno A.S.I to Steno S.I was considered and the petitioner along with others were found fit for promotion and accordingly, the petitioner was granted promotion. But, later on, when the matter was reviewed, it was detected that in General Category two Steno A.S.I have been promoted in excess due to wrong calculation of roster and as soon as the error was detected, it has been rectified as directed vide memo dated 17.03.2009 by reverting two junior most Steno A.S.I, who were given promotion to the higher rank i.e. Omkar Prasad and the petitioner. Therefore, it is a case of reversion simpliciter and not the punitive or stigmatic reversion so as to violate of Article 311 (2) of the Constitution of India.

(ii). It is well settled principles of law that a bona fide mistake can be rectified at any point of time and in the instant case, the petitioner has been aggrieved because of his reversion, which is due to wrong calculation of roster and not due omissions and commissions done by the selection committee. Therefore, the impugned order of reversion cannot be construed to be legally impermissible.

(iii). As disclosed from the pleadings made in the writ application, the petitioner has not been able to make out a case as to whether there has been any mistake committed by the selection committee and further it is also not the case of the petitioner that juniors to the petitioner have been promoted or juniors to the petitioner have been retained and only the petitioner has been reverted. Therefore, on this count also the impugned order of reversion cannot be construed to be legally impermissible so as to violative of Article 311 (2) of the Constitution of India.

(iv). It is settled principles of law that requirement to comply with the principles of natural justice varies from case to case. In the case at hand, since the mistake was apparent on the fact of record, the submission of learned counsel for the

petitioner that the impugned order is bad in law for non-compliance of principles of natural justice has no leg to stand.

9. Viewed thus, the impugned order dated 14.03.2009 issued by Deputy Inspector General of Police (P), Ranchi and office order dated 30.03.2009 issued by Inspector General of Police, Dumka, whereby the petitioner has been reverted from the post of Steno Sub-Inspector to Steno Assistant Sub-Inspector of Police do not warrant interference by this Court.

10. Hence, the writ petition, being devoid of any merit, stands dismissed.