

(2004) 09 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 12929 of 2002

Navin Kumar Mishra

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-09-2004

Acts Referred:

Citation : (2004) 4 PLJR 796

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard. The petitioner who is posted as Assistant Commissioner of Excise (incharge) has filed this writ petition praying, inter alia, to direct the respondents to consider his case for regular promotion to the post of Assistant Commissioner of Excise with effect from August, 1994, as he was posted as an Assistant Commissioner of Excise (incharge) with effect from 29.6.1994 and continue to hold the said post without any interruption since 29.6.1994 till date.

2. The learned State Counsel on behalf of State-respondents has filed two counter-affidavits. In the first counter filed on 27.3.2003 State respondents have stated that the petitioner is facing a departmental proceeding and a post of Assistant Commissioner of Excise has been kept reserved for him and no sooner he is cleared in the departmental proceeding his case for promotion shall be considered.

3. Another counter-affidavit has been filed on 30.8.2004 whereunder the authorities of the State of Bihar have stated that though the petitioner has been cleared of the charges levelled against him in the departmental proceeding his promotion to the post of Assistant Commissioner of Excise can not be considered as after bifurcation of the State of Bihar under Bihar Re-Organisation Act, 2000, the Cadre Division of the Officers and Staffs of the Excise Department of the United State of Bihar has not yet been finalised.

4. State of Jharkhand has also filed a counter-affidavit whereunder the

authorities of the State of Jharkhand have stated that the Cadre Controlling authority is the State of Bihar and, as such, it is the responsibility of the authorities of the State of Bihar to consider the promotion of the petitioner and they have no objection if the promotion of the petitioner is considered by the State of Bihar.

5. During the hearing of the matter learned counsel for the State-respondents has brought to my notice an order of the Division Bench of this Court dated 22.7.2004 passed in the identical and connected case of Santosh Kumar Jamuar & anr. vs. State of Bihar & Ors (L.RA.No.577 of 2003) wherein this court considering the grievance of the writ petitioner/appellant who was/is posted as Joint Commissioner incharge observed as follows :-

So far the grievance of the appellants for consideration of their cases for promotion is concerned the State Government is directed to take steps immediately to finalise the matter of cadre division and, thereafter, consider the cases for promotion. In case, it is found that the appellants were entitled to promotion from earlier date and due to cadre division the matter was delayed then the Government will consider their cases for promotion from earlier date."

6. In view of the order of the Division Bench, I have no other option but to respectfully fall in line with the order of the Division Bench and direct that the case of the petitioner, who is awaiting the consideration of his promotion to the post of Assistant Commissioner of Excise since 6.8.1994, should be considered expeditiously after finalisation of the cadre. Exercises in regard to finalisation of the cadre should also be expedited and completed within a period of three months from the date of receipt/production of a copy of this order. The petitioner and similarly situate other employees should not be asked to wait indefinitely in the name of Cadre Division/Finalisation. So far the question of payment of salary during the intervening period is concerned, I direct the petitioner to make a representation before the Excise Commissioner, in the light of the judgment of the Hon"ble Supreme Court in the case of Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, , who should dispose of the same within a reasonable period preferably within one month from the date of the filing of the representation along with this order. In the light of the aforesaid observations/directions, this application stands disposed of. No cost.