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**(2008) 02 PAT CK 0055**  
**In the Patna High Court**

Nawal Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 27-02-2008

**Acts Referred:**

Bihar Jail Service Rules — Rule 3

**Citation :** (2008) 119 FLR 464 : (2008) 2 PLJR 258

**Hon'ble Judges :** Rajesh Balia, C.J.;Barin Ghosh, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

Rajesh Balia, C.J. and Barin Ghosh, J.—Heard learned Counsel for the parties.

This appeal is directed against the order of learned Single Judge dated 31.10.2007 dismissing the writ application filed by the appellant challenging his transfer from Special Central Jail, Bhagalpur to District Jail, Phulwarisharif.

2. Ordinarily, transfer matters are not considered to affect adversely an incumbent so as to require interference through judicial review. But since it appears from the documents placed before us as well as from the attending circumstances that the impugned order in the writ petition is not merely a transfer but relates to posting the officer to a post below the status of post to which he is entitled to be posted. The impugned transfer has direct relation with the status in service of the appellant. We have, therefore, considered the matter in some detail

3. The matter of status vis-a-vis the posting. in Jail Services as Superintendent in different categories of jails appears to be interconnected from the beginning.

4. Before the current situation arose, under the then existing Rule 3 of the Bihar Jail Service Rules, the Jail service consisted of two branches; namely, Senior Branch and Junior Branch. The rule specifically provided that the members of Senior Branch of service shall normally be employed as Superintendent of

Central Jail whereas members of Junior Branch shall be employed as Superintendent of District jails. The petitioner-appellant would be a member of Senior Branch, now the same status continued. Under Rule 3 he would be entitled to be posted as Superintendent of Central Jail in Bihar.

5. This was the basic premises on which the petitioner-appellant has challenged his order of transfer from Central Jail to District Jail considering it to be lowering his status in service.

6. The status of Superintendent of Central Jail and the status of Superintendent of District Jail became integrally interconnected under renewed pay scales which came into force with effect from 1.1.1996 as it appears from Annexure 4 issued on 15th February, 2007 detailing the existing posts of different pay scales in Jail Department prior to 15.11.2000 in the unified Bihar State and since 15.11.2000 on constitution of now State of Jharkhand as a result of Bihar State Reorganization Act, 2000.

7. The State Government in its Home Department has identified various posts to be manned by officers of different category on the basis of their pay scales. In all, 80 posts of Jail Superintendents were identified and its distribution was stated to be 40 posts of the Jail Superintendent, Sub-Jails in the pay scale of Rs. 6,500/-10,500/-; 30 posts of the Superintendents, District Jail in the pay scale of Rs.-8,000/- 13,500/-; 3 posts of Central Jail Superintendent and Principal, Jail Training Institute in the pay scale of Rs. 10,000-15,200/- and one post of Assistant Inspector General of Jails in the pay scale of Rs. 10,000-15,200/-. Thus, in all ten posts were identified to be manned by officers in the pay scale of Rs. 10,000-15,200/- in the Pre-Reorganization unified Bihar State.

8. In addition thereof, two posts were identified which were ex cadre posts, the Assistant Inspector General of Jails and Director, Probationers.

9. This cadre plus ex cadre strength of posts in Jail Department when divided on Reorganization of State with effect from 15.11.2000, seven posts of Jail Superintendents, Central Jail and Assistant Inspector General, Jail in pay scale of Rs. 10,000-15,200/- remained with the Bihar State and one post of Director in pay scale of Rs. 10,000-15,200/- remained in Bihar State. Likewise, twenty four posts of District Jail Superintendents and 22 posts of Superintendent of Sub-Jail in pay scale of Rs. 8,000 to 13,500/- and Rs. 6,500-10,500/- respectively came to the share of Bihar State.

10. Thus as a result of rationalization of system of classifying Senior Branch and Junior Branch of Jail Superintendents was substituted by classifying the various posts of Jail Superintendents in State to be manned by officers belonging to specified pay scale.

11. With this background the petitioner appellant had claimed that he is in pay scale of Rs. 10,000-15,200/- and was a candidate to be considered and appointed to man the Central Jail or any post equivalent thereto to be manned

by a person in pay scale of Rs. 10,000-15,200/-, His further case is that since his appointment in 1973 in the jail service, his-services were found satisfactory and out of eight posts available in the Bihar State none of the posts of Superintendent of Central Jail or the Director, Probationers or Assistant Inspector General are manned by an officer in the pay scale of Rs. 10,000-15,200/-. He further says that he is only person in the State in pay scale of Rs. 10,000-15,200/-. In these circumstances, his posting as Jail Superintendent in District Jail was lowering his status in service and therefore was illegal and contrary to rules.

12. The respondents have taken stand that since the cadre of Senior Branch and Junior Branch of the Jail Superintendents have been abolished and all Jail Superintendents are now at par, all posts have become interchangeable irrespective of their seniority or the pay scale. It was further submitted that it is within the domain of the State to make a posting on need base and not on the basis of status.

13. While rejoining learned Counsel for the petitioner-appellant has further submitted that his posting as Jail Superintendent of District Jail, not only means to lowering his status, as per the Government directives prevalent, a District Jail Superintendent has to work under the supervision and control of Superintendent, Central Jail, who in present case in all circumstances shall be a person junior to him and in the pay scale lower than the petitioner, This is because petitioner is the only person in the pay scale of Rs. 10,000-15,200/-, thereby the senior most in the cadre. If he were to discharge his duties as Superintendent, District Jail, he will be under the supervision of a person junior to him, who is maiming the Central Jail within whose jurisdiction the District Jail. Phulwarisharif falls. He brought to our notice order dated 3rd July, 2002 issued by Inspector General (Prisons) Bihar that it is one of the duties of the Superintendent of Central Jail to inspect regularly the District Jails and Sub-Jails within his jurisdiction and to submit his report in respect thereof to keep check on irregularities committed in respective District and Sub-Jails. It was contended by Mr. Kanth that notwithstanding the Government directives that annual appraisal report of jail shall be submitted by District Magistrate concerned, the inspection of the District Jail is to be carried out and report thereof is to be submitted by the Central Jail Superintendent. Hence it will be a clear case of putting petitioner in subordination to the officers junior to him and in the lower pay scale.

14. Faced with this situation, during the pendency of hearing the direction of I.G. (Prisons) dated 3rd July, 2002 was withdrawn vide order dated 15.2.2008.

15. However, before that petitioner appellant has been suspended vide order dated 6,12.2007, soon after dismissal of the writ application for not joining at the place of posting. A statement has been made at the bar by learned Counsel for the petitioner-appellant that though the suspension order refers to his remaining absent, without leave at the place of transfer, he had applied for leave which was due to him but the same had not been considered so much so that he has not

received any information about its grant or rejection. Learned Counsel for the respondents-State stated that leave application was not for Earned Leave but for Medical Leave. However, he was not in a position to deny about noncommunication of; its fate either way or its actual fate. It can well be inferred from these facts that without disposing off the petitioner's leave application his absence has been assumed to be unauthorized. This was not warranted.

16. The issue has been joined about the pay scale in which the petitioner actually is or he ought to be. As it becomes clear that so far as the question of manning the Central Jail is concerned as a Superintendent, Central Jail ordinarily to the extent of availability of officers in the pay scale of Rs. 10,000-15,200/-, a person in lower pay scale could not have been appointed notwithstanding the distinction between Junior Branch and Senior Branch having been abolished.

17. Learned Additional Advocate General relied upon, for the purpose of raising the issue about the correctness of the claim of the petitioner-appellant that he is in pay scale of Rs. 10,000-15,200/-, a letter dated 15.2.2008, Annexure C of counter affidavit in LPA received from Mr. Gaujam Guha, the Accountant General, addressed to Mr. Pondrik by way of Demi official letter in response to a query raised vide his letter dated 13.2.2008, i.e. to say query was raised and answered during the course of hearing. He opines that the petitioner-appellant should not have been given the benefit of higher pay scale of Rs. 3,000-4500/- in the revised scale of Rs. 10,000-15,200/- by this office, instead while fixing his pay in the revised pay scale-prior to Finance Department resolution dated 12.1.2004, his pay was fixed in the pay scale of Rs. 6,500-10,500/-. This is despite the fact that the statement of fixation of pay sent to this office by Sri Singh (the petitioner-appellant) the appellant's revised pay scale was of Rs. 8,000-13,500/-. Statement was countersigned by the Inspector General of Prisons.

18. In other words, the Accountant General opines that the petitioner appellant's fixation in the higher pay scale of Rs. 3,000-4,500 corresponding to the pay scale of Rs. 10,000-15,200/- with effect from 1.1.1996 was itself incorrect because of wrong understanding of the order dated 12.1.2004 or in other words, plainly speaking the Accountant General was doubting the correctness of the petitioner-appellant's fixation of pay in pay scale of Rs. 3,000-4,500/- on the strength of resolution dated 12.1.2004. He went on even to insinuate the bona fides behind extending the pay scale of Rs. 10,000/-15,200/- with effect from 1.1.1996 corresponding to existing pay scale of Rs. 3,000/- to Rs. 4,500/- immediately before 1.1.1996. Much has been sought to be made out of this statement obtained during the course of argument. To contest the petitioner's claim to be governed by the norms for categorizing post of Superintendent of Central Jails to be in the pay scale of Rs. 10,000/45,200/, since 1.1.1996 which was only given effect to by Finance (Department's order dated 12.1.2004 because of petitioner's promotion to pay scale of Rs. 3,000-4,500/- earlier to 1.1.1996 and retrospectively with effect from 1.4.1985. It was sought to be explained that

petitioner has been given scale of Rs, 10,000/-15,200/-, a corresponding new pay scale to previous pay scale of Rs. 3,000/-4,500/-; to which scale petitioner had never been promoted.

19. However, from the record, it appears that it is belated surge on the part of the respondents to justify the order of transfer as District Jail Superintendent, without any foundation and in utter disregard of order according promotion to pay. scale Rs. 3,000/4,500/- way back on 11.12.1995 on the recommendation of D.P.G. with effect from 1.4.1985.

20. We have on our record Annexure 2 annexed with the memo of appeal and also annexed with the writ application which is of 11th December, 1995, much before the pay scale of Rs. 10,000-15,200/- has come into force. This order has been issued with reference to the recommendation of the Departmental Promotion Committee. It shows that the petitioner appellant had been promoted to the post of Senior Branch officer in pay scale of Rs. 3,000-4,500/- with effect from 1.4.1985 and this order has not been doubted or challenged anywhere and remains in force. The petitioner appellant became entitled to the pay scale of Rs. 3,000-4,500/- with effect from 1.4.1985 as a Senior Branch officer as a result of order dated 11.12.1995 and consequently to subsequent corresponding revised pay scales as and when, they came in force. The Accountant General's letter appears to be based on incorrect information. The doubting of bona fides of extending pay scale of Rs. 10,000/- 15,200/- by the Accountant General was wholly uncalled for and beyond the scope of advice sought from him.

21. His entitlement, therefore, to be fixed in the corresponding pay scale of Rs. 3,000/-,-4,500/- with effect from 1.1.1996 cannot be doubted. It is not in dispute that under revised pay scale coming into force with effect from 1.1.1996 as a result of recommendation of Vth Pay Commission the corresponding pay scale to existing pay scale of Rs. 3,000-4,500/- of an officer in Senior Branch is pay scale of Rs. 10,000-15,200/-.(

22. Faced with this situation, it was sought to be explained by learned AAG with reference to revised pay scale order of 1989 that since four pay scales were converted into three tier pay scales and the petitioner-appellant was in second level of three tier pay scale, his pay fixation in pay scale of Rs. 3,000-4,500/- would be of no avail while fixing his pay scale in the revised pay scale of 1996. He was only entitled to be fixed in the second level of pay scale of the new three tier pay scale.

23. We are unable to sustain this contention also as it is demonstratively clear that petitioner-appellant has been given retrospective promotion in the pay scale of Rs. 3,000-4,500/- only. The consequence must follow to its logical effect from the date it has been given effect to.

24. The petitioner-appellant is placed in the pay scale of Rs. 3,000-4,500/- as on 1.4.1985. The document Annexure-6 on which the learned AAG relies, shows that the existing pay scales immediately before 1.1.1986 that is to say as on

31.12.1985 came to be revised with effect from 1.1.1986. The effect of the order dated 11.12.1995 was that the petitioner has to be considered in the pay scale of Rs. 3,000-4,500/-" with effect from 1.4.1985. Thus he was in pay scale of Rs. 3,000-4,500/- as on 31.12.1985. It could not have been lowered if not made higher.

25. We find from the document Annexure-6, that in various departments different pay-scales were there which came to be revised. For example, in Bihar Engineering Service the pay-scales prior to 1989 started with Rs. 2,200-4,000/- and were stepped up to Rs. 3,000-4,500/-, Rs. 3,700-5,500/-, Rs. 4,300-5,550/- and Rs. 5,100-6,300/-. In the jail Department the pay scales prevalent were at Item No. 3 which are Rs. 2,200-4,000/-, Rs. 3,000-4500/-, Rs. 3,700-5,000/- and Rs. 4,100-5,300/-. If the petitioner-appellant has been put as it appears from order dated 11.12.1995 in the pay scale of Rs. 3,000-4,500/- with effect from 1.4.1985, that was a senior pay scale then and as for order of 1989 with effect from 1.1.1986, it ought to be in the pay scale of Rs. 3,700-5,000/-, or to next higher scale. The promotion of petitioner having been made in the pay scale of Rs. 3,000-4,500/- is in pursuance of order dated 11.12.1995 with effect from 1.4.1985. The logical consequence would be that on commencement of 5th Pay Commission with effect from 1.1.1996 his fixation in the pay scale of Rs. 10,000-15,200/- is related to this transaction and not to the Government resolution dated 12th January, 2004.

26. We have therefore, no hesitation in coming to the conclusion that the petitioner-appellant's fixation in the pay scale of Rs. 10,000-15,200/- with effect from 1.1.1996 was not a bounty or favour given to the petitioner-appellant but was his entitlement in regular course from the date revised pay scales became effective as a consequence of retrospective promotion with effect from 1.4.1985.

27. Once we come to this conclusion, keeping in view the contest made by learned Counsel for the respondents about Dashrath Prasad Singh being a senior to the petitioner-appellant, it can at best provide two available officers in the pay scale of Rs. 10,000-15,200/- or one person senior to the petitioner-appellant available in the. Bihar State in the same pay scale. There is no dispute about the number of posts belonging to the category of post carrying pay scale of Rs. 10,000-15,200/- and about the fact that at best not more than two persons are. available to man the 8 posts falling in pay scale, of Rs. 10,000-15,200/- in Jail Department. The petitioner could not have been denied posting on the post in status commensurating with his pay scale. If the posting and the status are integrally interconnected, and persons in that pay scale are available, choosing the persons of lower pay scale to fill the post by keeping the person in pay scale of the post out is not permissible to man such post. That would be not only violative of the rules as well as the direction issued by the Government itself but will also be wholly arbitrary and unjust and counterproductive to the basic fiber of the public services which does not justify placing a senior officer under the superintendence of junior officers.

28. In this regard we notice that a Government notification dated 15th June, 1988 was issued directing that Central Jail Superintendent will at least once in six months, inspect every District Jail or Sub-Jail within its circle and submit his report to the Inspector General of Prisons. This directive of the State Government has not been withdrawn by any authority. The Inspector General of Prisons vide his letter dated 3rd July, 2002 was only inviting attention of all Jail Superintendents that the Central Jail Superintendents are not visiting and inspecting the District and Sub-Jails within their respective jurisdictions and not making reports timely. The withdrawal of this letter by the Inspector General, Prisons on 15.2.2008 does not result in withdrawal of Government resolution dated 15.6.1988 which unmistakably makes the Jail Superintendent of Central Jail as an authority to inspect District Jails and he continues to be that despite withdrawal of order dated 3.7.2002 by the I.G. (Prisons), Thus, in the totality of circumstances and the facts that have come on record, it is beyond any doubt that every District Jail is subject to inspection and reports to be submitted by Central Jail Superintendent.

29. Therefore, the posting of any officer of the Jail, District Jail is not merely a transfer order but is also attached with his status in the service and if that status is affected adversely the same become punitive. There being no reason for not giving a posting to the petitioner-appellant commensurating with the status in his service notwithstanding availability of such posts but giving him an inferior posting subject to inspection by an officer junior to him and in lower pay scale the impugned order posting petitioner at District Jail, cannot be sustained.

30. Learned Additional Advocate General has relied upon an earlier decision of a learned Single Judge in a writ application filed by abovementioned Dashrath Prasad Singh who was also in the same pay scale as the petitioner-appellant, challenging his posting as Superintendent of a District Jail but the same has been dismissed. He referred to the decision of the learned Single Judge dated 26th September, 2001 in C.W.J.C. No. 12525 of 2001 in which the petitioner had claimed that he is in the pay scale of Rs, 3,000-4,500/- which is the junior selection grade scale in the Senior Branch and accordingly he could have been posted in either of the Central Jails. Apparently, the reference was made to Rule 3 of Bihar Jail Rules, which classification has since then ceased to exist.

31. The respondents in their reply to said writ petition had submitted that the petitioner as a Superintendent of Central Jail, Bhagalpur was departmentally proceeded against alongwith other officers as several prisoners were released prematurely. It was further pointed out that the authorities having considered the case of the petitioner, have reduced him in the pay scale and in these circumstances since his services were not found satisfactory, he was shifted to a lower jail. ,,

32. Apparently, present is not a parallel case. It is not the case of the respondents that the petitioner-appellant has been shifted to a jail of inferior category because of unsatisfactory service at any point of time.

33. In these circumstances, the judgment of the learned Single Judge which is founded only on the reason that the distinction between Junior Branch and Senior Branch has been abolished, without taking into consideration the order of promotion dated 11.12.1995, the order of Government dated 15.6.1988 and dated 15.2.2007, which all were part of record before him cannot be sustained and is set aside. As a result of aforesaid discussion, the appeal as well as writ application succeed. The impugned order dated 26.7.2007 to the extent it relates to the petitioner-appellant's posting to a District Jail is quashed. The respondents are directed to post the petitioner-appellant at any of the posts commensurating with his status in service as per pay scale to which petitioner belongs within one week from the date of receipt of a copy of this order, or presentation of certified copy of the order before the competent authority.

34. In the circumstances that we have noticed above, the petitioner-appellant's suspension for not joining at his post at a place affects his status adversely, also cannot be sustained particularly keeping in view the consistent wrong stands taken by the respondents in the matter of grant of pay scale to the petitioner-appellant, by ignoring the document of his promotion on record and not rectifying the mistake which they have committed in the first instance but insisting upon the fact that petitioner-appellant must join the place without deciding his application for leave.

35. In the circumstances, petitioner-appellant's not joining after submission of leave application also cannot be said to be misconduct for which he can be condemned. Permitting the respondents to pursue the same will be permitting the respondents or premium on their own obstructive conduct of taking a wholly unsustainable stand about the pay scale of the petitioner, though documents stating during course of hearing and in derogation of an order of promotion in pay scale of Rs, 3,000-4,500/- on recommendation of DPC made on. 11.12.1995 with effect from 1.4.1985, and punishing the petitioner for resisting, his humiliation by seeking recourse to redressal forum.

36. The attention of the respondents is also invited to the policy about choice posting of an incumbent in the last year of the tenure which requires to be honored unless exceptional circumstances exist. The respondents shall take into account representation of the petitioner-appellant, if any made in this regard, subject to availability of the post and requirement of service.

With the aforementioned directions, the appeal is allowed. Writ application is also allowed as aforesaid.