
(2009) 04 JH CK 0129
In the Jharkhand High Court
Case No : Writ Petition (S) 1404 of 2009

Nirmal Shashi Tirkey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Citation : (2009) 57 BLJR 2152

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Pandey Ashok Nath Roy, for the Appellant; J.C to A.G., for the Respondent

Judgement

D.N. Patel, J.—Counsel for the petitioner seeks permission to delete respondent Nos. 5 to 10.

2. Permission as prayed for to delete of the name of the respondent Nos. 5 to 10, is granted, because they are not necessary party.

3. Present petition has been preferred for getting correct notional date of promotion on post of Inspector. Learned Counsel appearing on behalf of the petitioner mainly submitted that in violation of law, promotion of the petitioner has been denied in the year 1997 on the post of Inspector from the post of Sub-Inspector.

4. Counsel for the petitioner vehemently submitted that initially when the matter was taken up in the year 1997 for promotion on the posts of Inspector, the cases of all the Sub-Inspectors who were junior and senior to petitioner were considered by the concerned respondent authority and they have been promoted in the year 1997 on the post of Inspectors, but the case of the petitioner was not considered only for the reason that the service records of the petitioner was not available with the concerned respondent authority and for no fault of petitioner, the case of the petitioner was considered subsequently and the petitioner was promoted on the post of Inspector with effect from 24th June, 1999 and,

therefore, the petitioner lost his seniority by two years and other juniors of petitioner who were Sub-Inspector, have become senior to the petitioner. This aspect of the matter has now been already decided by the order to this Court dated 10th July, 2008 in W. P. (S) No. 3106 of 2008, which is at Annexure-10 to the memo of the present petition in similarly situated another case. In that case also, the service records of that petitioner was not available and therefore, direction was given to the effect that the case of petitioner ought to be considered and promotion should be given with effect from the date from which cases of the petitioners and others were considered initially.

5. It is submitted by the counsel for the petitioner that petitioner's case ought to have been considered with the effect from the year 1997 i.e. the date on which the seniors and juniors to the petitioner all were considered in the year 1997 for promotion to the post of Inspector from the post of Sub-Inspector. Due to mistake of the respondents, promotion of the petitioner was not considered because of non-availability of the service records of the petitioner in the year 1997, otherwise petitioner's case would have also been considered, for the post of Inspector in the same year i.e. in the year 1997 and, therefore, instead of 24th June, 1999 petitioner ought to have been treated as promoted on the post of Inspector with effect from the year 1997.

6. I have heard counsel for the respondent who has submitted that as the service records were not available at the time of promotion in the year 1997, the case of the petitioner could not be considered for promotion. Nonetheless, latter on the case of the petitioner was considered and now he has been promoted on the post of Inspector with effect from 24th July, 1999.

7. In view of the aforesaid submissions and looking to the decision rendered by this Court dated 10th July, 2008 in W. P. S. No. 3106 of 2008 and also looking to the fact that in the year 1997 the case of the petitioner was discarded or was not considered only on the ground that service records of the petitioner was not available and petitioner is promoted subsequently with effect from 24th June, 1999. Non-availability of service record of petitioner, in the year 1997 was not a fault of petitioner. There is no other reasons, for not to consider the case of petitioner in 1997. Subsequently service record of petitioner was traceable therefore, he was promoted with effect from 24th July, 1999 on post of Inspector, but, juniors of petitionsrs were already promoted in 1997, only because their service record was available. Thus, petitioner ought to be given promotion with retrospective date. Thus, notional date of promotion must be given to petitioner so as to maintain seniority even in promotional post of Inspector. Petitioner is not claiming salary of post of Inspector from 1997, In view of these facts, I hereby direct the respondents to consider the case of the present petitioner for promotion with effect from year 1997 i.e. with effect from the date of promotion of juniors to the petitioner (when all of them were Sub-Inspector) were promoted to the post of Inspector. This process will be completed by the concerned respondent authority of correction the date of

promotion on the post of Inspector, within a period of 12 weeks from the receipt of the order of this Court.

8. The petition is accordingly disposed of in view of the aforesaid direction.