
(2004) 02 JH CK 0077
In the Jharkhand High Court
Case No : L.P.A. No. 639 of 2003

Om Prakash Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Citation : (2004) 2 JCR 267

Hon'ble Judges : P.K. Balasubramanyan, C.J; Tapen Sen, J

Bench : Division Bench

Advocate : Delip Jerath, Rajesh Lala and A.K. Das, for the Appellant; M.M. Pal and R.K. Mishra and Jyoti Prasad Sinha, J.C. to Sr. S.C.-I, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—At the very outset Mr. Delip Jerath, learned counsel for the appellant stated that he is now confining his appeal only to the respondent No. 6 as the respondent No. 5 is admittedly senior to the appellant.

2. This appeal is directed against the order dated 17.09.2003 passed by an Hon'ble Single Judge of this Court in W.P. (S) No. 4681 of 2003 disposing off the writ petition without dealing with the same on merits,

3. According to the petitioner, he is presently posted as Superintending Engineer - Incharge, Drinking Water and Sanitation Circle, Dhanbad. He was previously posted as Technical Advisor to the Superintending Engineer, Gumla in the Public Health Engineering Department {PHED for short}. This Department was subsequently renamed as Drinking Water and Sanitation Department.

4. The appellant has attempted to make out a case of supersession by the respondent No. 6 namely Badri Das and has submitted, with reference to Annexure-1, that by a letter dated 18.07.2001, the Commissioner-cum-Secretary of the PHED sent a letter wherein he forwarded a list of Executive Engineers who were eligible for promotion to the post of Superintending Engineer and, according to the petitioner, and as is seen from the enclosure to Annexure-1, he was shown

as the senior most Executive Engineer having being placed at serial No. 1 showing his seniority in the seniority list at No. 51. The respondent No. 6, on the other hand was shown at Serial No. 5 and in the seniority list his position was at Serial No. 63.

5. According to Mr. Delip Jerath learned counsel appearing for the appellant, it was on the basis of the aforesaid placement at Serial No. 1 that the appellant was posted as Superintending Engineer - Incharge, PHED, Dhanbad Circle and as a consequence thereof, he took over charge in that capacity vide joining report dated 25.07.2002 as contained in Annexure-2.

6. After creation of the State of Jharkhand, the appellant was allotted the Jharkhand Cadre. According to the appellant, the respondent No. 6 was allotted the Bihar Cadre. The other relevant factors which are necessary to be dealt with in relation to the submissions made by Mr. Delip Jerath is that the respondents, only in order to show favour to respondent No. 6, attempted to remove the appellant from the post of Superintending Engineer - Incharge and accordingly by a Notification dated 12.09.2003 (Annexure-7), transferred the respondent No. 6 from Deoghar and made him the Superintending Engineer - Incharge, Drinking Water and Sanitation Circle, Dhanbad in place of the appellant. This notification was issued on 12.09.2003 being Notification No. 3797. This was preceded by Notification No. 3787 of the same day (Annexure-8) by which the appellant was transferred from the post of Superintending Engineer - Incharge Drinking Water and Sanitation Circle, Dhanbad and was transferred to a lower Post of an Executive Engineer at Sahebganj.

7. This therefore has become a bone of contention between the appellant and the respondent No. 6. The appellant states that he could not have been reverted and he could also not have been placed under the respondent No. 6 because he was senior not only by Annexure-1 but also placed at a senior position in the 1999 seniority list which has been brought on record vide Annexure-10. The 1999 seniority list was published on 19.07.1999 and it showed the seniority of Assistant Engineers placing the appellant at Serial No. 51 and the respondent No. 6 at Serial No. 63.

8. Learned counsel for the respondent No. 6 places heavy reliance upon a document brought on record through the Supplementary Affidavit which appears to have been filed on 24.12.2003. In that Supplementary Affidavit, a notification dated 16.09.1987 being Notification No. 1425 has been brought on record and it shows the promotion of the respondent No. 6 as an Executive Engineer with effect from the same day. This notification however is suggestive of the fact that the promotion given to the respondent No. 6 was on the reserved category quota.

9. Upon perusal of the 1999 seniority list which has been brought on record by the Appellant vide Annexure-10 and which is not in challenge, it is apparent that the same is the final publication of the combined seniority list of the Assistant Engineers and in that list, the appellant has been placed at Serial No. 51 while

the respondent No. 6 has been placed at Serial No. 63. At this stage, it would be relevant therefore, to refer to the other letter dated 18.07.2001 (Annexure-1) by which the Commissioner-cum-Secretary of the Government of Bihar intimated the fact that the seniority list of the Executive Engineers which were under consideration for promotion showed the appellant higher in placement than the respondent No. 6. If the matter had ended at that stage then perhaps the Appellant would have had no grievances but however, all of a sudden in the year 2003 (i.e. 03.04.2003), a revised seniority list was issued wherein the appellant was shown to have been promoted on the post of an Executive Engineers with effect from 04.12.1992 and was placed below the respondent No. 6 on the basis of his promotion given on 16.09.1987 according to roster. It is on this issue that this Court has also been called upon, through an Amendment Application, filed by the appellant to decide the validity or otherwise of the aforementioned revised seniority list published on 03.04.2003.

10. It is true that the respondent No. 6 was given promotion by notification dated 16.09.1987. However, the fact remains that while both were in the cadre of Assistant Engineers, the appellant was placed at a higher position than the respondent No. 6 as noticed above. The Hon'ble Supreme Court of India in the case of "Ajit Singh Januja and others Vs. State of Punjab and others, , had inter alia laid down that the rule of reservation no doubt gives accelerated promotion but such an accelerated promotion cannot allow him perpetual seniority and a general candidate who was senior to him prior to such accelerated seniority must be allowed to regain his seniority on being promoted to the higher category.

11. Thus, by Annexure-9 which corresponds to Annexure-E and which is the notification dated 03.04.2003, although the appellant got promoted on the post of an Executive Engineer with effect from 1992, he must therefore be allowed to regain his seniority which he had held at the stage when both were in the cadre of the Assistant Engineers.

12. In that view of the matter, we are satisfied that the notification dated 03.04.2003 as contained in Annexure-9 must be set aside in so far as it relates to the appellant and the respondent No. 6 and the matter should be reconsidered afresh by the respondent authorities in the light of not only what has been stated above but also in the backdrop of an interim order of the Hon'ble Supreme Court of India passed on 08.04.2002 in Civil Appeal No. 61 of 2002 (Annexure-11).

13. This Court does appreciate as to how the respondents are following the policy of posting persons on higher posts by describing them as holders of those posts in the capacity of "Incharge Officers", There is to dispute that in the year 1999, the appellant was senior to the respondent No. 6 in the cadre of Assistant Engineers and therefore. If at all somebody was to be put incharge, it was only the senior person who should have been given that privilege. However, we refrain from issuing any mandatory direction in this matter and we leave it to the authorities to decide this issue.

14. For the foregoing reasons and considerations, we are also of the opinion that the appellant not have been transferred as an Executive Engineer and similarly, the respondent No. 6 should not have been described as a Superintending Engineer-in-charge because by doing so, an unwarranted complacency is created in the mind of the respondent No. 6 to the prejudice of the appellant who justifiably therefore , considers this to be an affront to his status. Although, both have not yet been promoted on the post of Superintending Engineer and although both still are Executive Engineers, the Notification dated 12.09.2003 in so far as it relates to the appellant cannot, *stricto sensu*, be considered to be an order of reversion but a genuine grievance can definitely be inculcated in the mind of the appellant when he finds that a person who was junior to him in the cadre of Assistant Engineers, has been asked to function as Superintending Engineering Incharge whereas he has been shifted out of that post and has been asked to work as an Executive Engineer. The entire exercise of the Government therefore appears to be irrational and unfair. Consequently, we are of the opinion that both the notification i.e. Notification No. 3787 dated 12.09.2003 as contained in Annexure-8 and the Notification No. 3797 dated 12.09.2003 as contained in Annexure-7 transferring the appellant to Sahebganj as an Executive Engineer and posting the respondent No. 6 as Superintending Incharge at Dhanbad in place of the appellant should also be set aside.

15. Consequently, these two Notifications as also Notification dated 03.07.2003 as contained in Annexure-9 are hereby set aside and the matter is remanded to the concerned authorities to reconsider the matter strictly in accordance with law after taking into consideration the observations made above as also judgment of Hon"ble Supreme Court of India referred to above.

The appeal is allowed. There shall however no order as to costs.