
(2003) 08 JH CK 0055

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2348, 2374, 2375, 2404, 2406, 2412, 2431, 2436, 2437, 2438, 2441, 2457, 2460, 2472, 2473, 2474, 2475, 2476, 2477, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2506, 2507, 2508,

Prakash Chandra Sinha etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72(2), 74, 75, 76

Citation : (2003) 4 JCR 165

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : A. Allam, A.K. Sinha, A.G., B.S. Lal, AAG, R.S. Mazumdar, G.A., D. Jerath, S.B. Gadodia, P.P.N. Roy, S.N. Prasad, Pandey Neeraj Rai, O.P. Mishra, D.K. Dubey, K. Murari, A.K. Upadhyay, Jitendra Nath, Sandhya Sahay, Manoj Tandon, A.R. Choudhary, K.P. Choudhary, R. Krishna, Rajiv Ranjan, A.K. Sahani and Gautam Rakesh, for the Appellant; P.K. Prasad, SCCG, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The Bihar Reorganization Act, 2000 brought in its wake the problem of cadre division in various services, including the All India Service in the undivided State of Bihar. In view of the bifurcation of the State the cadres had to be divided and separate allotment made in the reorganized State of Bihar and the State of Jharkhand. As per Section 72(2) of the Bihar Reorganization Act, 2000, as soon as may be after the appointed day, the Central Government had to determine by special or general order, the successor State to which every person, who immediately before the appointed day, was serving in connection with the affairs of the State of Bihar, the final allotment for service and the date with effect from which such allotment was to take effect. The appointed day was 15.11.2000, when the separate States came into existence. As regards the State Civil Services and the State Police Service, the Central

Government made the final allocation by way of notifications dated 26.4.2003 and 22.4.2003 respectively. Various writ petitions were filed essentially by persons disappointed at not being allotted to the State of Jharkhand. They challenged the notification on the ground that the cadre division was violative of Section 75 of the Reorganization Act, 2000, was arbitrary and unfair. The learned Single Judge called upon the Union of India, the State of Jharkhand and the State of Bihar to answer three questions which he thought arose for consideration. They are,--

(i) whether the final allocation of sanctioned posts has been made (a) category-wise, (b) cader-wise, (c) Grade-wise or not?

(ii) whether the final allocation of employees in one or other successor State has been made after allocation of sanctioned posts or not? and;

(iii) whether the principles of final allocation have been followed or not, particularly in respect to evenly distribution of the employees on the basis of age and seniority?

2. The learned Single Judge also referred the writ petition to a Division Bench for decision. He also directed that status-quo be maintained in respect of those in service who were to retire within one year of his order. He clarified it by saying that if any of the petitioners was at present working in the State of Jharkhand and was to retire by 31.5.2004, he/she should not be relieved to join the successor State of Bihar. Subsequent to the reference to the Division Bench, counter affidavits and supplementary counter affidavits were filed on behalf of the State of Bihar, the Union of India and the State Advisory Committee entrusted with recommending the cadre division.

3. Section 74 of the Reorganization Act, 2000 provides for continuance of the officers in the existing State of Bihar, to continue in the same posts as officers of the successor States of Bihar and Jharkhand, subject to the right of the competent authority, on and from the appointed day, to pass any order affecting the continuance in such post or office. Section 75 authorizes the Central Government to establish one or more Advisory Committees for the purpose of assisting it in regard to discharge of any of its functions under part VIII of the Reorganization Act and for ensuring fair and equitable treatment to all persons affected by the provisions of that part and the proper consideration of any representation made by such persons. It is needless to say that Part VIII makes provisions as to the Services in the Existing State of Bihar and distribution of officers to the successor States. Section 76 of the Act gives power to the Central Government to give direction to the State Governments of Bihar and Jharkhand for the purpose of giving effect to the earlier provisions of Part VIII and obliges the State Government to comply with such direction. There is no dispute that an Advisory Committee in terms of Section 75 of the Re-organisation Act was formed, consisting of the Chief Secretaries of the successor States and others. The Central Government issued directions in terms of Section 76 of the Act.

Additional directions were also issued to meet certain specified contingencies. The Advisory Committee followed some of the directions, but did not follow some others. Various representations were made by the officers. The Advisory Committee either recommended the acceptance or rejection of those representations. The Central Government, essentially accepted the recommendations of the Advisory Committee and completed the cadre division. Taking note of the relevant criteria, the division was in the proportion of 2 : 1, two to the successor State of Bihar and one to the State of Jharkhand. We may notice here that that proportion is not in dispute, or has not been questioned by any one. The essential grievance as regards the directives issued by the Central Government was that, whereas the guidelines of the Central Government directed the allocation of posts, the Advisory Committee did not do the same, but undertook the task of allocation of the officers; and though the directive by the Central Government was to bring about a cadre-wise, category-wise and grade-wise division, the same was not implemented. The complaint was that this has resulted in there being no even distribution of the officers, and thus resulted in some of the officers, who had opted for being allocated to the successor State of Jharkhand, being deprived of their legitimate right to get allotted to the State of their choice. There was no proper application of mind to the representations made and they have been rejected in a mechanical manner. Thus, the directive of Section 75(b) of the reorganization Act has been flouted.

4. During the course of hearing and in the light of the contentions raised, we directed the Union Government and the State Advisory Committee to produce all the relevant files before us for scrutiny. The relevant files were produced for our perusal. A supplementary affidavit was also filed on behalf of the Advisory Committee setting out the steps taken by the Committee and setting out the manner in which they went about completing the cadre division. Further arguments were also heard based on the supplementary counter affidavit filed by the State Advisory Committee and only thereafter the hearing was concluded.

5. One of the main grievances of the petitioners in the writ petitions is that their representations were not duly considered. They pointed out that u/s 75(b) of the Reorganization Act, there was an obligation on the Advisory Committee to properly consider the representations made and the Union Government and the State Advisory Committee have not complied with the directive.

6. We have gone through the files produced on behalf of the Union Government and the State Advisory Committee with particular reference to the representations made by the various Officers, both in the Police Service and the Civil Services. On going through the files, we are not in a position to agree with the submission of the petitioners that there was no proper advertence to or consideration of the representations made by them and that they have been rejected in a mechanical manner. It is seen that some representations were recommended for acceptance by the State Advisory Committee to the Union and some of the others, more in number, were recommended to be rejected. The

Union Government, by the large accepted those recommendations and accepted some representations and rejected the others. The representations of the petitioners in various writ petitions filed in this Court numbering about sixty were recommended to be rejected and they were rejected. What we find is that the grievance that the representations were mechanically dealt with and there was no application of mind and that there was no proper consideration of them cannot be accepted. On examining the records of the State Advisory Committee, we find that the representations made by the petitioners in these cases and others, have been dealt with individually, and by giving reasons, after obtaining the comments of the respective State on them, and with reference to the applicable guidelines. Thus, we find that the State Advisory Committee acted in terms of Section 75 of the Bihar Reorganization Act.

7. Learned counsel appearing for the Union Government and the State Advisory Committee, pointed out that in almost all these writ petitions, the writ petitioners belong to districts which formed part of the successor State of Bihar and they cannot really have any grievance for being allotted to their home State of Bihar. This is sought to be met by counsel for the petitioners that what is relevant is the domicile of the officers concerned and the officers have established their families in the areas which form part of the State of Jharkhand and the fact that they originally belonged to districts that form part of the successor State of Bihar has no relevance. We do not think that the aspect highlighted by the learned counsel appearing for the Union of India by itself would justify the rejection of the claims of the petitioners. At best, it can be used by him only as a persuasive argument to contend that it cannot be said that ultimately, any injustice has been done to those officers, since allotment to one's own home State cannot be considered doing injustice to an officer.

8. One of the important aspects relied upon by learned counsel appearing for the petitioners was that whereas information about the total number of the sanctioned posts in the Police Service was made available to the Advisory Committee, even on its own showing, the total number of the sanctioned posts in Civil Services was not made available to the Advisory Committee. The Advisory Committee has taken the stand that since the information was not made available, the Advisory Committee had to go by the officers posted in place. It is argued that the Advisory Committee consisted of the Chief Secretaries of the successor States and they cannot be heard to say that the information about the number of substantive posts were not made available by the existing State of Bihar. It is also pointed out that the number of posts involved is only around 650 and it is not possible to accept a plea that information regarding those posts were not even made available. It is submitted that this failure on the part of the Advisory Committee to insist on the furnishing of the relevant information has resulted in a directive of the Central Government being flouted and in injustice being meted to the officers. The only answer on behalf of the Advisory Committee and the Central Government is that the Reorganization Act had come into force on 15.11.2000. The two successor States had come into existence on

that day and about two years have lapsed since the birth of the successor State and the Advisory Committee could not wait indefinitely for completing the cadre division, since it had to be done as early as possible and even otherwise, it had been delayed somewhat. It was in that situation that the Advisory Committee ultimately decided to go ahead with the division based on the information relating to the officers in place and post occupied and that induced the Central Government to accept the proposal or the suggestion made by the Advisory Committee in that behalf. There was no lack of bona fides in this act of the Advisory Committee and this was done out of an anxiety to complete the division or bifurcation of the Civil Services as early as possible. We think that in the circumstances, the method adopted by the State Advisory Committee cannot be said to be unreasonable or unjust. It was suggested by counsel that the existing State of Bihar was a reluctant party to the whole proceeding, presumably in view of its un-happiness over the bifurcation of the State and in the existing State of affairs, an indefinite wait for information was not justified. We are not in a position to brush aside this submission.

9. There was a modified guideline prescribed by the Union of India, by which it suggested that the officers belonging to Scheduled Tribes be divided in such a manner that the successor State of Bihar was allotted only one per cent of them and the rest be allotted to the State of Jharkhand, since they belonged to the areas forming part of the successor State of Jharkhand. An attempt was made by learned counsel to contend that this direction to practically allot all the Scheduled Tribe Officers to the State of Jharkhand resulted in adjusting 31 such officers in the general posts allotted to the State of Jharkhand and this violates the rule of reservation. But since the allotment of officers on reorganization of a State is neither appointment nor promotion, we are not in a position to accept the argument that there has been violation of the rules of reservation. Obviously, the direction of the Central Government was to allot, as far as possible, the officers belonging to the Scheduled Tribes to the State of Jharkhand. Since the State itself was formed to include essentially all the Tribal areas, those officers could not be accommodated only against the posts reserved for Scheduled Tribes and since they had to be accommodated, they, or at least some of them, could be accommodated only against the general seats available. Their domicile could not be questioned and it was in that context that the Advisory Committee allotted them to the State of Jharkhand and recommended their adjustment against the general posts. We cannot say that the said decision is arbitrary or illegal. After all, we cannot lose sight of the fact that those Scheduled Tribe officers had some sort of preferential claim to be allotted to the State of Jharkhand. In that situation, that part of the allotment cannot be seriously questioned.

10. One other contention that was raised was that the division should have been batch-wise or category-wise. It was submitted that the officers of a particular batch, say 1971, should have been first taken and distributed in the proportion of 2 : 1 between the two States, taking note of all relevant matters including their preferences and representations and then, the distribution of officers recruited in

the batch of 1972 should have been taken for allotment and so on. It was pointed out that what is now being done is to accept the option of the seniors from various cadres, thus exhausting the options and leaving the juniors in the cadres in the lurch. It was pointed out that useless senior who got stuck in the lowest cadre had stolen a march over a more brilliant junior who was in the higher grade since he happened to be the junior-most, in the higher grade and did not get to have his option accepted, though the useless senior got his choice. This amounted to paying a premium for inefficiency or corruption which resulted in the senior getting stuck in the lower cadre. It was submitted that this method was unjust. The problem is explained in paragraph 8(E) of the additional counter-affidavit filed on behalf of the Advisory Committee on 28.7.2003, wherein it is pointed out that the allotment of Scheduled Tribe officers to the quota of Jharkhand State other than the one per cent allotted to the successor State of Bihar, resulted in an overall deficit in the number being allotted to the State of Bihar and the imbalances had to be made up by a corresponding addition to the general quota to be allocated to the State of Bihar and reduction in general quota to the State of Jharkhand. Of course, such an exercise might have resulted in some injustice to some officers or other but the Court cannot take note of such individual cases to find fault with the overall exercise undertaken by the Central Government on the basis of the Advice tendered by the State Advisory Committee. All that the Court can see is whether, by and large, a rational principle has been followed and that decision implemented without discrimination. So tested, we are not in a position to say that the exercise has not been bona fide or that it smacks of arbitrariness. After all it is not as if we are sitting in appeal over the decision of the Central Government based on the advice of the Advisory Committee. We are only exercising a certiorari jurisdiction and a jurisdiction with a view to ensuring that there is no patent injustice. Measured by that yardstick, we are inclined to think that a case for interference by this Court is not made out.

11. As rightly contended by learned counsel for the Central Government, we cannot take individual cases and individual grievances projected by about 60 out of more than 910 officers to decide whether the division is fair or reasonable. We can only consider the overall picture that emerges out of the exercise undertaken by the Central Government on the advice of the Advisory Committee. It is no doubt true, that the Advisory Committee has not strictly adhered to some of the directives originally issued by the Union Government. But then, the Union Government had itself issued supplementary directions and they had also to be implemented. More over the Central Government has ultimately ratified the cadre division in question. On the whole, it is not shown that the Advisory Committee has been actuated by any mala fides or influenced by any extraneous consideration in finalization of the cadre division as it is done. In this context, we must also remember that it is necessary to put an end to this division as early as possible. This exercise cannot continue indefinitely. It is almost three years now since the successor States come into existence and it has taken that much time

even to divide two Services having about only a thousand officers. Unless the Court is compelled to interfere on the basis of a clear illegality or Wednesbury unreasonableness, we feel that the Court should leave the bifurcation as it is. We may also notice that meanwhile, one or two of the petitioners have retired and some other petitioners are on the verge of retirement and one does not want to press his writ petition, i.e., WP (S) No. 2348 of 2003. As a common counter affidavit was filed in this case, the same was considered for disposal of all the analogous cases with the consent of the parties. However, WP (S) No. 2348 of 2003 is now dismissed, as not pressed.

12. We may also notice here that the petitioners have not impleaded in these writ petitions though who may be affected by our interference with the cadre bifurcation now accepted by the Central Government and the allotments made. The result of our interference would be to interfere with their allotments without giving an opportunity of being heard. This circumstance also inclines us to the view that interference may not be justified in the circumstances of the case.

13. There was some grievances by certain officers who claim that they should have been allotted to the State of Jharkhand in view of the illness suffered by them or the members of their families and the Central Government had issued a specific direction in that behalf. The case of the petitioner in WP (S) 2474 of 2003 was specifically pressed, but going through his representation and allegations in the writ petition, we find that he had not been hospitalized for the requisite period so as to entitle him to claim the benefit of the directive issued by the Central Government. On the whole, we are not satisfied that there has been any improper dealing with the representation of the officers on health grounds either relating to themselves or the members of their families.

14. What remains to be considered is the case of those officers who have had the advantage of the interim order passed, by this Court while admitting the writ petitions. This Court directed that the respondents will maintain status quo with respect to such petitioners who are going to retire within one year, which means, if any of the petitioners who is at present working in the State of Jharkhand and is to retire by 31st May, 2004, he/she should not be relieved to join the successor State of Bihar." It was brought to our notice that the petitioner in WP (S) No. 2565 of 2003 has retired on 31.5.2003, that the petitioner in writ petition No. 2584 of 2003 has retired on 31.7.2003 and that there may be others who may retire shortly. We think that notwithstanding the dismissal of these writ petitions, as far as this limited group of officers who have had the benefit of the interim direction issued by the learned Single Judge is concerned, they should be allowed to retire in the State of Jharkhand, so that their pensionary benefits and other retiral benefits do not get delayed because of the cadre division now brought about. We, therefore, think it equitable to direct that those who are to retire by 31.5.2004 and have had the benefit of the interim order of this Court (and no other) will be allowed to retire in the State of Jharkhand, and to that extent, there will be a limited interference with the cadre division. Strictly going

by our reasoning and the conclusion, such persons are also not entitled to any relief legally. But we have thought it proper to issue this direction in equity.

15. Learned counsel appearing for the petitioner in WP (S) No. 2348 of 2003 submitted that the writ petition was not pressed since the petitioner therein was now happy with the allotment as per the cadre division effected. But we have included that writ petition also for disposal with the other connected matters in view of the fact that the main pleadings of the parties are filed in that case and it was necessary to make that case also a part of the record without dealing with it individually and dismissing it as not pressed. In view of the fact that the said writ petition is not pressed. WP (S) No. 2348 of 2003 will stand dismissed, as not pressed.

16. In the result, subject to the directions made regarding those who have had the benefit of the interim order passed by this Court on 14.5.2003, and who are to retire by 31.5.2004, these writ petitions are dismissed. The parties are directed to suffer their respective costs.

R.K. Merathia, J.

17. I agree.