

(1982) 09 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 2329 of 1981

Rajendra Nath Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1982) 30 BLJR 495 : (1983) PLJR 100

Hon'ble Judges : S.K. Jha, J; Binodanano Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Jha and Binodanano Singh, JJ.—In this application under Articles 226 and 227 of the Constitution of India the petitioner, an officer of the Indian Administrative Service cadre (hereinafter to be referred to as "I.A.S."), has prayed for a suitable order OF direction to quash the order of the Government of India, respondent 2, dated 20th July, 1977, by which the petitioner's seniority was fixed as contained in Annexure 1, and for a suitable order or direction to issue to respondent 2 to grant the benefit of continuous officiation on cadre post to the petitioner and to allow him the year 1968 as the year of allotment in accordance with the relevant rules.

2. The relevant facts are not much in controversy. The petitioner originally belonged to the State Civil Service cadre. On 6-4-1973 his name was first included in the Select List for promotion to I.A.S. Even before his name was included in the Select List of 1973, he had been appointed to officiate on a cadre post of Deputy Secretary, Education Department, from 24th March, 1973. On this post he continuously officiated till 1-7-1975. In the meantime, another Select List for the year 1974 had also been prepared on 20th April, 1974 in which also the petitioner's name was included. On 1st July, 1975 (sometime in the afternoon) the petitioner joined the post of Deputy Secretary, Irrigation Department, another cadre post, on which he continuously officiated till 16th

December, 1975. In the meantime, the Select List for 1975 had also been prepared on 14th November, 1975. On 17th December, 1975 the petitioner was appointed by promotion to the I.A.S. The petitioner on the aforesaid facts, claims that his year of allotment and fixation of seniority must be made counting the period of his continuous officiation, while his name continued to remain in the Select List, right from 6th April, 1973 to 16th December, 1975 during which he was holding senior cadre posts.

When the petitioner's seniority was fixed under Annexure 1, he filed a representation before respondent 2 making out his grievance which is the basis of his claim in this writ petition. By an order dated 31st October, 1980 the representation of the petitioner was rejected. That order, however, reached the petitioner in the first week of November, 1980. Thereafter this writ application was filed on 20th July, 1981.

3. The contention of learned Counsel for the petitioner is that for the fixation of his seniority in the I A.S. cadre rule 3(3)(b) and Rule 4(4) of the I.A.S. (Regulation of Seniority) Rules, 1954 (hereinafter to be referred to as 1954 rules) are relevant. It is submitted that it is now settled by the decisions of the Supreme Court in the case of Harjeet Singh Ors. Vs. Union of India (UOI) and Others, and Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, that rule 3(3) (b) as well as rule 4(4) of the Indian Police Service (Regulation of Seniority) Rules, 1954. which are in pari materia with the corresponding rules of the 1954 rules, throw up the date of continuous officiation of an officer in a cadre post as the most important factor both for the purpose of assignment of year of allotment and for the purpose of assignment of seniority. For the purpose of assignment of year of allotment the date of continuous officiation in a senior post is the only relevant factor while for the purpose of assignment of seniority, first, the date of continuous officiation in a senior post, then the date of appointment to the service if the date of commencement of continuous officiation in a senior post of more than one officer is the same and, finally, the order in the Select List if the date of appointment is also the same, are the several relevant factors in that order. The submission put forth on behalf of the petitioner is well founded. A Bench of this Court had occasion to consider these two rules of the 1954 rules and following the decisions of the Supreme Court a Bench of this Court in the case of Nityanand Sinha v. State of Bihar 1982 BLJ 354, held that officiation of an officer in senior post after inclusion of his name in the Select List must be counted for determination of the year of allotment. In that case also the petitioner Nityanand Sinha has been continuously officiating in a cadre post from 26th April, 1973 although he was appointed to the I.A.S. on 29th October, 1977. i. e., about 2 years after the petitioner's appointment. For the same reasons, which weighed with the Supreme Court in the cases of Harjeet Singh (supra) and Amrik Singh (supra) and those, which weighed with the Bench of this Court in the case of Nityanand Sinha (supra), the petitioner has to be granted the reliefs prayed for.

4. The learned Advocate-General appearing for the State of Bihar, respondent 1, whose argument was also adopted by Mr. Kamla Kant Prasad, learned Standing Counsel for the Union of India, respondent 1, submitted that all these decisions are based on the point of true construction of the I.A.S. (Appointment by Promotion) Regulations, 1955 (hereinafter, for the sake of brevity, to be referred to as the 1955 Regulations). Our attention was drawn to Regulation 5 of the 1955 Regulations which prescribes the rule of preparation of the Select List. The learned Advocate-General laid great stress upon the Government of India's decision as contained in G.I., M.H.A. letter No. 27/381 64-AIS (III) dated 21-12-1964, which reads thus-

(sic)

The essence of holding Selection Committee meeting annually is that each annual proceeding is independent of the other. That is why, as soon as the proceedings of the new Selection Committee are approved by U.P.S.C. the proceedings of the earlier Selection Committee meeting become inoperative, No manner of continuity can, therefore, be imputed to the proceedings of the various Selection Committees.

Learned Counsel for the respondents, on the basis of this decision of the Government of India relating to Regulation 5 of 1955 Regulations, argued that the period of continuous officiation on cadre posts, to which the petitioner was appointed while he was included in the Select List of 1973 and 1974 should not be taken into consideration at all because the last List, namely, the Select List for 1975. which was prepared on 14th November, 1975 would, by fiction of law, supersede the two Select Lists of the earlier years, i.e., 1973 and 1974. This argument is fallacious. Regulation 5 of the 1955 Regulations merely prescribes that for the purpose of appointment by promotion from the State Civil Service the relevant Select List would be that which was in existence during the year of appointment. In other words, if the petitioner was appointed by promotion to the I.A.S. in December, 1975, he could not have been so appointed had his name not found place in the Select List dated 14-11-1975. But for the purpose of the year of allotment and assignment of seniority, Regulation 5 of the 1955 Regulations cannot stand in the way of the petitioner. For the purpose of fixation of his seniority and the order of allotment, as we have already observed above on the basis of the two decisions of the Supreme Court and a Bench of this Court, the relevant rules would be Rule 3(3)(b) read with Rule 4(4) of the 1954 Rules. It is futile to argue that the benefit of continuous officiation on a cadre post, while the petitioner's name was on the Select List of 1973 and 1974, would be washed away merely because his appointment was made in 1975 on the basis of the Select List of that year. It is not in controversy that the petitioner had been continuously officiating on a senior cadre post from 6-4-1973 when his name was first included in the Select List up to the date of his appointment on 17th December, 1975.

5. The learned Advocate-General also pointed out that due to the inadvertence

on his part as well as on the part of the Senior Standing Counsel for the Union of India Rule 3(3)(b), as quoted in Nityanand Sinha's case (supra), was not quite accurate according to the amendments up to date in the Explanations appended to that rule. It is true that on account of the mistake or the learned Counsel for the parties, the Explanations which had been substituted for the original Explanations were not made available to the Court. But that is of no consequence in so far as the merits of the case are concerned. Learned Advocate-General, in this context, invited our attention to the first Explanation now, admittedly, in existence, to Rule 3(3)(b) which reads thus-

In respect of an officer appointed to the Service by promotion in accordance with Sub-rule (1) of rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later:

Provided that where the name of a State Civil Service Officer was included in the Select List in force immediately before the reorganisation of a State and is also included in the first List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

It was argued on the basis of this Explanation that the inclusion of the petitioner's name in the Select List of 1975 being subsequent in point of time to the date when his continuous officiation commenced with effect from 6th April, 1973, the relevant date for the purpose of fixation of his seniority ought to be reckoned as 14th November, 1975 and the petitioner can be entitled to the fixation of his seniority by virtue of his continuous officiation on a cadre post only as on and from 14th November, 1975. The argument has been noticed only to be rejected. If there be any substance in this argument, it would lead to a reduction ad absurdum because, as a necessary corollary, it would mean that no officer of a State Civil Service included in the Select List having continuously officiated to act on a cadre post would be entitled to the benefit of any officiation prior to the year of his actual appointment. That would lead to the provisions of rules 3(3)(b) and 4(4) of the 1954 Rules being completely nugatory. It is worthwhile to mention in this context that we are not, in the present case, concerned with any rival claim of seniority between 2 promoted officers in the State Civil Service. All that the petitioner wants is that the benefit of his continuous officiating from the date from which he has been continuously officiating with effect from the date of inclusion of his name in the Select List ought to be reckoned for the purpose of the year of allotment as also for the purpose of fixation of his seniority.

6. In view of the law as settled by the Supreme Court, we have no hesitation in allowing this application.

7. The application is accordingly allowed. The order as contained in annexure 1, in so far as the petitioner is concerned, is quashed. We direct that a writ of

mandamus be issued to respondents 1 and 2 to fix the seniority of the petitioner keeping in view the date since when he started his continuous officiation in senior post of I.A.S cadre, i.e.. 6th April, 1973 (when his name was first included in the Select List although he had started his officiation from even before) and to fix his seniority accordingly in the I.A.S. cadre. There shall be no order as to cost.