
(2009) 02 JH CK 0048
In the Jharkhand High Court

Rajendra Pratap Sinha

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 2 JCR 210

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—In this writ application the petitioner has made the following prayers:

(a) To issue a writ of mandamus commanding upon the respondents and restraining them from downgrading the seniority of the petitioner from Sl. No. 143 to 160.

(b) To restore the seniority of the petitioner at Sl. No. 143 in the seniority list of Deputy Secretaries/Additional Collectors.

(c) To restrain the respondents to act upon the provisional seniority list issued vide Memo No. 1014 dated 20.02.2008.

(d) To quash the seniority list of the officers of Jharkhand State Administrative Service published vide Memo No. 1014 dated 20.02.2008.

(e) To take a final decision over the representation preferred by the petitioner and to publish the final seniority gradation list strictly in the light of the provisions of Bihar Reorganization Act, 2000 without adversely affecting the seniority of the petitioner.

2. The questions raised by the petitioner in this writ application is whether the respondents can alter the position of the petitioner in the seniority list on the ground of mutual transfer of his services between two successor states.

3. The petitioner's case in brief is as follows:

He was initially employed under the Bihar State Electricity Board and is presently working in the cadre of Jharkhand State Administrative Service on the substantive post of Additional District Magistrate (A.D.M.).

On account of reorganization of the erstwhile State of Bihar in the year 2000, the service of the petitioner was initially allocated to the successor State of Bihar.

Taking advantage of the benefit of the scheme enabling mutual transfer of service between employees of the two States namely the successor State of Jharkhand and the successor State of Bihar, as per the circular of Ministry of Personnel Public Grievance, Pension and Training, Department of Personnel and Training, Government of India vide its Circular No. 14/279/2002 dated 15.09.2004, the petitioner had also applied for his mutual transfer from Bihar to Jharkhand.

The petitioner's contention is that though the circular, while allowing the mutual transfer of service of employees between the two states had laid down six conditions for mutual cadre exchange of the employees between the two successor States, but none of the conditions made any stipulation regarding change of service conditions of the employees whose services are sought to be transferred on mutual cadre exchange. This, according to the petitioner, is also reflected in the Government's letter dated 21.05.2005 implying thereby that the seniority of such employees whose services were sought to be transferred from one successor State to another, will not be affected.

While granting permission for the petitioner's mutual transfer with one Mr. Kamaldeo Sharma, the Department of Personnel and Administrative Reforms, Government of Bihar vide its letter contained in Memo No. 8148 dated 19.07.2006, had observed that both the Government servants namely the petitioner and Mr. Kamaldeo Sharma have fulfilled all the six criteria laid down in the transfer scheme. Thus, while the petitioner's cadre was allotted to the State of Jharkhand, his colleague Mr. Kamaldeo Sharma was allotted the Bihar cadre. The further contention of the petitioner is that the gradation list prepared on the basis of the merit list published by the Bihar Public Service Commission in the year 1999, was accordingly maintained though with the only stipulation that the petitioner shall not claim seniority over his colleague Mr. Kamaldeo Sharma and vice-versa due to the mutual transfer, meaning thereby that the petitioner shall be placed according to his seniority as determined in the year 1999. In confirmation of the above, the petitioner's seniority in the provisional gradation list prepared by the State of Jharkhand, was placed at Sl. No. 143. Such provisional gradation list was in conformity with the order dated 20.12.2007 passed by the Department of Personnel and Administrative Reforms, Government of Jharkhand declaring that the seniority of the officers who have come to Jharkhand from Bihar, should be placed at the same position where it was placed in the year 1999 gradation list of undivided State of Bihar and the seniority shall

not be changed unless otherwise directed/instructed by the Home (Special) Department, Government of Bihar which is the Nodal Department for exchange of cadre.

The petitioner's grievance is that despite such settled situation, the respondent authorities, even without finalizing the earlier tentative gradation list, have published another provisional list on 20.02.2008 (Annexure-7) in which the petitioner's seniority has been displaced and positioned at Sl. No. 160. Being aggrieved, the petitioner had submitted his representation for correction of his placement in the seniority list in accordance with the original cadre of the State Administrative Service, but the same did not find favour with the respondent authorities.

4. It is this provisional gradation list (Annexure-9) which is under challenge by the petitioner.

5. Shri Rajendra Krishna, learned Counsel for the petitioner submits that the action of the respondents in publishing a provisional gradation list whereby the petitioner's seniority has been downgraded, is totally illegal, arbitrary and violative of the provisions of Article 14 and 16 of the Constitution of India. Learned Counsel explains that it appears that the respondent authorities have misconceived the mutual transfer of the petitioner as being a transfer within the State whereas the petitioner's transfer though mutual, is from one State to another in the same cadre. Learned Counsel contends that the decision of the Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand vide its letter dated 19.07.2008, cannot therefore apply to the case of the petitioner. Learned Counsel further argues that under the provisions of Section 72(2) of the Bihar Reorganization Act, 2000, the Central Government is the only competent authority to decide the allotment of services to the employees of the erstwhile State of Bihar between the two successor States. The provisions of Section 73 of the Bihar Reorganization Act, 2000 provides that the condition of service applicable immediately before the appointed date in case of any person deemed to have been allotted in the State of Bihar u/s 72 of the Bihar Reorganization Act, 2000 shall not be varied to his disadvantage except with the prior approval of the Central Government. Learned Counsel argues further that the allotment of the Jharkhand cadre to the petitioner was made by the Ministry of Personnel, Public Grievance, Pension and Training, Department of Personnel and Training, Government of India, under a special provision for mutual transfers and this was done without affecting the service conditions of the mutually transferred Government servants.

6. A counter affidavit has been filed on behalf of the respondents. The stand taken by the respondents is that the petitioner had accepted his mutual transfer with the stipulation that no claim of seniority will be accepted, as mentioned in the Home(Special) Department's letter No. 16643 dated 09.12.2006 and the relieving order dated 23.12.2006 issued by the Department of Personnel, Government of Bihar.

7. Sri M.K.Laik, Senior Standing Counsel-I would argue that the petitioner having once accepted his mutual transfer along with the condition that no claim of seniority will be accepted, the petitioner cannot now claim his original seniority. Learned Counsel adds further that the petitioner was allotted the Jharkhand cadre on mutual transfer, much after the final cadre division of the Government servants between the two states. The gradation list of 1999 was that of the officers of the undivided State of Bihar and therefore, the petitioner cannot claim his seniority on the basis of such gradation list.

Learned Counsel argues further that the petitioner has wrongly interpreted the notification dated 23.12.2006 issued by the Department of Personnel and Administrative Reforms, Government of Bihar by stating that the condition regarding the seniority was only limited to inter-se seniority between him and his colleague Mr. Kamaldeo Sharma. The aforesaid notification was actually an order relieving the petitioner from his office in Bihar and the only interpretation to the condition which could be made is that the petitioner on his transfer to Jharkhand cannot claim his seniority on the basis of the gradation list of 1999 and shall be guided for all purposes by the gradation list prepared by the State of Jharkhand.

As regards the petitioner's reference to the order dated 07.05.2007 passed by the Secretary, Department of Personnel and Administrative Reforms, Government of Jharkhand, learned Counsel explains that it was only a consent of the Secretary to the notings on the file forwarded by the then Deputy Secretary, Department of Personnel. In absence of any approval on such notings and on the corresponding consent of the Secretary, by the Government, the said consent has no binding effect on the State Government and therefore, the petitioner cannot take any advantage of the noting in the file approved by the Principal Secretary, Department of Personnel.

8. From the rival submissions the facts which emerge is that the petitioner had sought his mutual transfer from the successor State of Bihar to successor State of Jharkhand by exchanging his services with his colleague Mr. Kamaldeo Sharma. Such mutual transfer was allowed on the basis of a circular dated 15.09.2004 issued by the Central Government in the Ministry of Personnel, Public Grievance, Pension and Training, Department of Personnel and Training. Though by the circular, the benefit of mutual transfer was allowed but on certain conditions. As stated by the learned Counsel for the petitioner, in none of the six conditions laid down for mutual transfer from one successor State to another, has the conditions of service of the transferred employees been adversely affected. The conditions of service also included the seniority of the Government servants as per the original gradation list prepared by the erstwhile State of Bihar in accordance with the merit list published by the State Public Service Commission. It is apparent therefore that it is in exercise of its powers under the provisions of Section 72 of the Bihar Reorganization Act, 2000, that the Central Government has taken a decision to allot the Jharkhand cadre to the petitioner by way of mutual transfer with another employee namely Mr. Kamaldeo Sharma who was

allotted the Bihar cadre.

The provisions of Section 73 of Bihar Reorganization Act strictly stipulate that the conditions of service of the Government servants whose service are allotted to the successor State, shall not be changed. It further appears that it is on the basis of this consideration that while preparing a provisional gradation list, the office of the Personnel and Administrative Reforms Department, Government of Jharkhand had forwarded a proposal through the Deputy Secretary, mentioning therein that the seniority of the Government servants who were allotted the Jharkhand cadre shall not be affected and this was duly approved by the Secretary of the Department.

The respondents have accordingly published a provisional gradation list maintaining the petitioner's position in the seniority list at Sl. No. 143. This was apparently in consonance with the petitioner's seniority in the original gradation list prepared by the Bihar Public Service Commission.

The respondents have sought to alter this position by taking recourse to a notification dated 18.07.2008 issued by the State Government. On perusal of the notification, it appears that the same was in respect of the seniority of the Government servant who have come to Jharkhand on cadre allotment. It also appears that even though no specific direction in this regard was obtained from the Home Department, Government of Bihar, the State Government of Jharkhand had proceeded to take its own decision on the basis of the advice of the Advocate General, to the effect that where a person is transferred from one cadre to another on his own request, he loses his seniority and he is placed at the bottom of the cadre where he has been transferred on his own will.

9. In the facts of the present case, the above principle will not strictly apply in view of the fact that the petitioner's case is not one of transfer from one cadre to another. Rather, it is a case of allotment of his services to the successor State of Jharkhand by the acts of the Central Government, on the basis of a scheme for mutual exchange of services. It further appears that there was no condition stipulated for the exchange of services on mutual transfer to the effect that the petitioner would lose his original seniority. Even otherwise, the provisions of Section 73 of the Bihar Reorganization Act does not permit any change in the service conditions to the disadvantage of the Government Servant whose services have been allotted to any one of the successor States.

10. Considering the above facts and circumstances, I find merit in the grounds advanced by the petitioner. The petitioner is entitled to claim his seniority on the basis of the original gradation list and in accordance with the provisional gradation list initially prepared by the respondents where the petitioner's position was placed at Sl. No. 143. The respondents shall act accordingly. With the above observations, this writ application is disposed of.