

(2010) 12 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 14508 of 2007

Ram Bachan Tiwari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Citation : (2011) 59 BLJR 2418 : (2011) 2 PLJR 812

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Pd. Singh, J.—The Petitioner was appointed as Khalasi in the Work Charged Establishment of the Water Resources Department on 1.6.1968. With effect from 26.4.1972, he was appointed as Assistant Sarang in the same Work Charged Establishment. The Petitioner services were confirmed, regularized and made permanent with effect from 1.4.1977. Subsequently by office order dated 2.3.1981, he was promoted to the post of Head Sarang in the same Work Charged Establishment. With effect from 1.4.1977, the date when the Petitioner was made permanent. It appears that by Circular dated 27.3.1987 of the Finance Department (Annexure-5) it was decided that time bound promotion will also be given from the said date i.e. 27.3.1987. The circular also provides that the period of functioning in the Work Charged Establishment shall also be counted for the purposes of total service upon they being taken into regular establishment. It appears that the Petitioner was subsequently granted first time bound promotion with effect from 2.3.1991, which was later recalled on the ground that the Petitioner having got promotion to the post of Head Sarang, he was not entitled to time bound promotion/Soon thereafter his promotion as Head Sarang was also sought to be taken back on the ground that it was not a promotional post available to him. Petitioner challenged the same before this Court in C.W.J.C. No. 12045 of 2004*, which was disposed of by judgment and order dated 10.8.2006 (Annexure-8). This Court while affirming the order taking away the time bound

promotion held that the Petitioner was rightly promoted as Head Sarang as a consequence whereof he was not entitled to first time bound promotion. Now, the Petitioner has moved this Court for grant of second time bound promotion as he has not received any promotion after 2.3.1981 when he was promoted as Head Sarang.

2. State has filed a counter affidavit and the facts, as noted above, have not been disputed. In the counter affidavit it is stated that as the Petitioner was appointed as Assistant Sarang on 26.4.1972, the twenty five years period for granting second time bound promotion would come on 26.4.1997 but the time bound promotion scheme came into end on 31.12.1995 and as such the Petitioner cannot be given second time bound promotion.

3. On behalf of the Petitioner it is submitted that taking this date 26.4.1997 (sic--1972?), as the date of initial appointment, is wrong. It has not been disputed that the Petitioner was appointed as Khalasi with effect from 1.6.1968 in the same Work Charged Establishment and that is the date of appointment as per circular of the Government itself dated 27.3.1987 (Annexure-5). Learned Counsel for the Petitioner further draws the attention of this Court to the service book of the Petitioner, which clearly shows that the Petitioner was appointed on 1.6.1968 in the Work Charged Establishment. Petitioner has further relied on judgment of this Court in the case of Mahendra Nath Choudhary v. The State of Bihar and Ors. being C.W.J.C. No. 9254 of 2006* decided on 6.5.2008 where referring to Clause 3(b) of this very circular, in question, i.e. circular dated 27.3.1987, this Court has held that for computation of second time bound promotion the initial appointment in Work Charged Establishment has to be taken into account. In my view, Clause 3(b) of the said notification is clear and from the service record of the Petitioner (Annexure-1) also it is clear that the Petitioner had been appointed on 1.6.1968. Thus, that being the date of initial appointment, the twenty five years period will have to be reckoned accordingly and as such the Petitioner would become entitled to the second time bound promotion in the year 1993, which is before the cutoff date. The Petitioner being in continuance in service from 1.6.1968 and having got only one promotion is thus entitled to the second time bound promotion as aforesaid. The contention of the State that his service has to be counted from 26.4.1972 thus cannot be accepted as correct. The initial date would be 1.6.1.968.

4. The writ petition is accordingly disposed of with a direction to the Respondent-Chief Engineer, Water Resources Department, Dehri to consider the grant of second time bound promotion to the Petitioner in view of the observations and direction given hereinabove at the earliest with all consequential benefits but not later than three months from the date of production of a copy of this order before him by the Petitioner.