
(2005) 02 PAT CK 0116
In the Patna High Court
Case No : CWJC No. 1926 of 2000

Ram Bhagwan Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Citation : (2006) 3 PLJR 367

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : S.K. Verma, Surendra Kishore Verma and Jitendra Kishore Verma,
for the Appellant;

Judgement

Barin Ghosh, J.—Heard learned counsel for the parties. On 17.12.1960, it is not in dispute, the petitioner was appointed by the Government of Bihar as Industrial Extension Supervisor in the Industries Department of the Government. In 1967 the petitioner was found to be surplus. At this stage, the Government did not decide to do away his services. On the contrary the Government directed him to be absorbed in the identical time scale on the post of Assistant Godown Manager in the Food and Civil Supplies Department with effect from 14th June, 1967. It is also not in dispute that the petitioner worked as such or in equivalent post from 14th June, 1967 till his retirement. In the year 1981 the Government propounded a policy for time bound promotion. The said policy prescribed that a person, who has been working on the same post for a period in excess of 10 years, shall be given one time bound promotion and if he is working in the self same post for more than 25 years, in addition to the first time bound promotion, he would also be entitled to a second time bound promotion.

2. Petitioner retired on 28th February, 1992. The period from 14th June, 1967, until 28th February, 1992, there is no dispute, had not stretched over 25 years. In fact, it is about 4 months less than 25 years. The Government has issued a letter dated 7th March, 1990 wherein it has been clarified that for any employee in one cadre or one post, whose time bound promotion is under consideration,

his date of appointment to that post will be taken as the date of appointment for calculation of 10/25 years.

3. In such view of the matter by the impugned decision, inasmuch as the petitioner has not completed 25 years of appointment in the post of Assistant Godown Manager or equivalent before his retirement, petitioner has not been granted the second time bound promotion. The policy of the Government is clear and the policy of the Government contained in the said clarification letter dated 7th March, 1990 is also, clear but the question is, in law, what was intended. Was it intended that the petitioner despite serving the Government in the same post for over 25 years would be denied the second time bound promotion only because he was absorbed in a similar post. In *Dwijen Chandra Sarkar & Anr. vs. Union of India* and Anr. reported in AIR 1993 SC 598, certain people were transferred from the Rehabilitation Department to the P&T Department not on their own request but in the public interest. It was clarified that the past services of such transferees in the Rehabilitation Department would not count in seniority. The Supreme Court held that the purpose of this rehabilitation was that the transfer of those transferees should not disturb the chance of promotion of those who were already working in the P&T Department and accordingly there cannot be any doubt for the purpose of their regular promotion to higher post in the P&T Department their seniority is to be counted only from the date of their transfer to the P&T Department. The Supreme Court then clarified that the position in regard to time bound promotion is different. It has explained that where there are large number of employees in any department and where the employees are not likely to get their promotion in the near future, because they are comparatively lower in the seniority list, the Government has found it is necessary that in order to remove frustration the employees are to be given a higher grade in terms of emoluments while retaining them in the same category and for that reason time bound promotion policy has been conceived. The time bound promotion, which was being considered by the Hon''ble Supreme Court in that case, is almost identical to the time bound promotion policy with which we are concerned here. Such time bound promotions would not affect the normal seniority of their higher up in the seniority list. Supreme Court observed that when the true purpose of a time bound promotion is to relieve frustration on account of stagnation, it may not be said that the Government wanted to deprive the people, who were brought into the P&T Department, of the benefit of higher grade and accordingly directed giving of time bound promotion to those transferees by taking into account the time they spent in the Rehabilitation Department of the Government. The underline principle of the time bound promotion as understood by the Supreme Court, being the true purpose thereof, it must be understood that what was clarified by the clarificatory letter dated 7th March, 1990 was that the time shall be counted from the date the person, who remained in the same post carrying the same benefits, was appointed. It is true that the word cadre has also been used there but that was meant to denote a person belonging to the cadre carrying the post in question. It would not be

appropriate to contend that if a person for any exigency has been transferred from one department to another department in the meantime in the same post carrying same benefits, he would not be entitled to time bound promotion. The word cadre must be understood in the backdrop of the policy itself, which provides that in order to relieve the Government employee from frustration, when he cannot get a promotion for he stand lower in the seniority list, to give him a promotion while retaining him in the same post and in the same cadre, despite such promotion, only to reach him some financial benefits. If it is understood that the expression cadre and post mentioned in the clarificatory letter dated 7th March, 1990 would mean that the person must work in the same department and in the same post that would be too harsh for a person who for public purpose has been transferred from one department to another department. In the instant case the cadre should mean the class of employee and i.e. Class 3, or Class 4 or Class 2 or Class I and apart from being in that particular class, he must be in the same post carrying the same monetary benefit, although the nomenclature of the post may be different. In those circumstances the impugned order is set aside with direction upon the respondents to reconsider the matter afresh in the light of the observations made above within 8 weeks from the date of the service of a copy of this order.