
(2018) 08 JH CK 0040
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4849 of 2013

Ram Nakshatra Singh	Vs	APPELLANT
State Of Jharkhand		RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Jharkhand Service Code — Rule 236

Citation : (2018) 08 JH CK 0040

Hon'ble Judges : PRAMATH PATNAIK, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Sweta Singh

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J

1. In the captioned writ application, the petitioner has initially prayed for quashing order dated 10.10.2012 whereby the representation of the petitioner was rejected in relation to entitlement of time bound promotion and further prayer has been made for direction upon the respondents to forthwith grant time bound promotion to the petitioner, as has been done in the case of one Md. Ali Raja; further prayer has been made for direction upon the respondents to grant benefit of the 1st/2ndnd time bound promotion, which has been admitted by the respondents vide their own decision dated 10.10.2012, with all consequential benefits.
2. Before proceeding further, it would first be necessary to quote order dated 16.09.2014:
The first prayer in the instant writ petition in relation to rejection to his claim for time bound promotion is not made out as admittedly the

petitioner since his appointment on 18.07.1987 had completed only 8 years 5 months and 13 days till 01.01.1996, i.e. till the date of scheme for time

bound promotion was in vogue. Accordingly, the said prayer of the petitioner is rejected.

Â However, learned counsel for the petitioner submits that he would be entitled for second ACP on completion of 24 years of service, which has been

ignored by the respondents by refusing to reckon the period of his services from 02.09.2000 to 25.12.2007, which has been regularized as leave with

out pay due to absence of petitioner in the said period. However, the said ACP scheme is not on record.

Learned counsel for the petitioner, therefore is allowed to come prepared on the aforesaid aspect after two weeks.â??

3. The facts, which are necessary for adjudicating the matter, lie in narrow compass:

Â The petitioner initially joined Indian Army on the post of Â Sepoy and after retirement in the year 1987, he joined as Member of Flying Squad under

Forest and Environment Department on 17.07.1987 and since then he is discharging his duties with utmost satisfaction to the respondents-authorities.

During his service tenure, the petitioner was transferred from one place to another and while continuing as such, vide order dated 16.06.2000 the

petitioner was transferred to Saranda Forest Division, Chaibasa, but it is alleged that he did not join the transferred place and remained absent from

duty for about seven years i.e. from 27.06.2000 to 25.12.2007. However, after reporting to his duties, the said period was accepted as

â??Extraordinary Leaveâ?? i.e. leave without pay.

4. In the meantime, being aggrieved by not-grant of Time Bound Promotion, the petitioner has approached this Court by filing W.P. (S) No. 6868 of

2004, in the light of decision taken in the case of Md. Ali Raja Vs. State of Bihar & Ors passed in C.W.J.C No. 2857 of 1997 (R).Â The said writ

application was disposed of vide order dated 09.01.2012 with direction to the respondents-authorities to decide the claim of the petitioner by passing

speaking order. In compliance thereof, the respondents have passed order dated 10.10.2012, which is impugned before this Court.

5. Heard Mr. Sumeet Gadodia, learned counsel for the petitioner and Ms. Sweta Singh, A.C to learned S.C. I for the respondentsState.

6. Learned counsel for the petitioner submitted that none of the grounds urged by the petitioner before the respondents-authorities have been taken

into consideration before passing the impugned order. Further, the Honâ??ble Court while disposing of representation of the petitioner in the light of

order passed in W.P. (S) No. 6868 of 2004 vide order dated 09.01.2012 did not consider the laws laid in Md. Ali Raja Case (Supra) as directed by this

Court and even not a single whisper has been uttered with regard to Md. Ali Raja Case. Learned counsel for the petitioner further submitted that

transfer of the petitioner to Saranda Forest Division was an illegal transfer, against which, the petitioner approached this Court, which was disposed

of with direction to decide the claim of the petitioner. On merit of the case, learned counsel for the petitioner further submitted that in the impugned

order itself, the respondents have unequivocally stated at paragraph 4 that period from 27.06.2000 to 25.12.2007 has been regularized/sanctioned and

the said period was counted in his service as â??leave without payâ?? and further the respondents-authorities in impugned order has computed the

total years of service to be 25 years 2 months and 3 days but contrary to it, the impugned order has been passed making a contradictory statement that

the petitioner did not complete 20 years of service. It is established principle of law that one cannot be penalized twice especially in absence of any

established misconduct and/or in absence of any proceeding, and not-grant of claim amounts to arbitrariness.Â

7. Learned counsel for the petitioner further submitted that since the very first round of litigation, the petitioner has persistently claimed parity with the

case of Md. Ali Raja. In this regard, it has further been submitted that pursuant to the order passed by this Honâ??ble High Court of Judicature at

Patna, Ranchi Bench, Ranchi in the case of Md. Ali Raja, the pay anomaly occurring in the pay-scale of Md. Ali Raja was rectified from the date of

his initial appointment. In this regard, it has been submitted that though the petitioner, due to lack of understanding could not make prayer for

rectification of pay anomaly at the initial stage as has been done in the case of Md. Ali Raja, but by way of filing Supplementary Affidavit dated

10.10.2014 prayed for considering the case of the petitioner for removal of his pay-anomaly.

8. In support of his submissions, learned counsel for the petitioner referred to the decision rendered in the case of State of Punjab Vs. Dr. P.L Singla

as reported in (2008) 8 SCC 469.

9. As against this, learned counsel for the respondents-State submitted that claim of the petitioner for first time bound promotion has already been

judiciously disposed of by the Principal Chief Conservator of Forest by passing impugned order dated 10.10.2012 in compliance of order passed by this

Court.Â Moreover, the case of the petitioner stands on a different footing than that of Md. Ali Raza case as it is much before the proclamation of

Government resolution passed on 08.02.1999, hence case pertaining to Md. Ali Raza has no bearing in the instant case. Learned counsel for the

respondents further submitted that the petitioner, after adopting legal official procedure was transferred vide letter dated 03.02.1999 and relieved to

join new post, hence, it cannot be said to be illegal transfer.

10. Having heard learned counsel for the parties at length and on perusal of the documents available on record, I am of the considered view that the

petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements:

(i).Admittedly, the petitioner joined the services on 17.07.1987 as Member of Flying Squad under Forest and Environment Department and till the date

of passing of impugned order he has completed more than 25 years of service. But for the alleged absenteeism for the period from 02.09.2000 to

25.12.2007, the respondents-authorities treated that period as â??Leave Without Payâ? and on that basis the authorities denied the time bound

promotion/MACP.Â

(ii).The only question that now falls for consideration before this Court whether the period â??Leave Without Pay/Extraordinary

Leaveâ? can be considered as break in service and whether the Scheme of ACP/MACP does provide that the period counted in â??Leave Without

Payâ?? shall not be reckoned for the purpose of computation of total period of eligible service of an employee for grant of benefit of ACP/MACP.

(iii).For better appreciation of the matter, the relevant Rule 236 of the Jharkhand Service Code is quoted herein below:

236.Extraordinary leave may be granted to a Government servant in special circumstances:-

(i)when no other leave is admissible under these rules;

(ii)When, other leave being admissible, the Government servant concerned

applies in writing for the grant of extraordinary leave.

Â From plain reading of Rule 236 of the Service Code, it appears that it nowhere speaks that grant of extraordinary leave shall be treated as break in

service for the period extraordinary leave has been granted.

(iv).From plain reading of Scheme of ACP dated 14th August, 2002, it appears that it also nowhere speaks that period of â??leave without

pay/extrordinaryâ? shall not be reckoned for the purpose of computation of the total period of eligible service of an employee for grant of

ACP/MACP and in absence of such stipulation made in the Scheme of ACP, the period in question ought to have been counted for computation of

eligible service of ACP/MACP, pension etc.Â

11. For the reasons aforesaid, the impugned order dated 10.10.2012 is quashed and the respondents are directed to pass appropriate order, for grant of

ACP/MACP reckoning the period from 02.09.2000 to 25.12.2007 as continuity in service, within a period of twelve weeksâ?? from the date of

receipt/production of copy of this order.

12. So far prayer of the petitioner for rectification of pay-scale at par with Md. Ali Raza by filing supplementary affidavit is concerned, the petitioner

has not placed sufficient material to persuade this Court to accede to this prayer. However, the petitioner is at liberty to move the appropriate authority

staking his claim for rectification in pay-scale, if so legally advised.

13. With the aforesaid observations and directions, the writ petition stands disposed of. Resultantly, I.A. No. 1780 of 2015 stands disposed of.Â