
(2002) 07 PAT CK 0142
In the Patna High Court
Case No : C.W.J.C. No. 8795 of 1999

Ramayan Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Citation : (2002) 4 PLJR 56

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : S.N. Jha, Asim Jha and Ajay Kumar, for the Appellant; J.P. Karn, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—All things considered in so far as the present petition was concerned it was initially filed when the Central Administrative Tribunal declined to modify an interim order in the matter relating to a claim registered as O.A. No. 432 of 1999. The modification was sought by an application No. M.A. 223 of 1999. The matter was between Ramayan Mishra v. Union of India and Ors. The order by which the Tribunal declined to grant and/or modify its earlier order is dated 20 August 1999, Annexure-1 to the present petition. It is thus that the court had noticed in its order dated 25 June 2002 on a statement by the Petitioner's counsel of a review petition pending before the Tribunal. Counsel for the Union of India contended that it is not a review petition but the original case itself is pending and the present petition has been filed against an order of Tribunal declining to modify an ad-interim order. Since then it appears that the original case itself has not been decided.

2. By an interlocutory application the Tribunal's order dated 21 September 2001 in the original case registered as O.A. No. 432 of 1999 has been appended on the record of this petition. One thing the court needs to clarify that this order was available on 25 June, 2002 when a mention was made to adjourn the case.

3. Whether it is the case of the Petitioner Ramayan Mishra or others like him, there have been a number of orders of the Central Administrative Tribunal including certain matters which were referred to the full Bench of the Tribunal, in which the Petitioner Ramayan Mishra was not a party.

4. It is not disputed that at one stage Ramayan Mishra had been assigned duties as a Head Ticket Collector. Perhaps as a cause of restructuring amongst the various cadres or because of the availability of posts the Petitioner saw reversion as Senior Ticket Collector. This reversion was not as a result of any departmental inquiry or any allegation against the Petitioner. At times, it happens that when there is a rationalization of different cadres then regard being had to the availability of posts all who are working on a post higher than the one to which they are reverted cannot be accommodated. This is a necessary corollary of cadre restructuring.

5. In this context, the court noticed the observation of the Tribunal in paragraph 3 in its decision dated 21 September 2001, Annexure 8 to the interlocutory application. The Tribunal noticed that two persons M/s. Arun Kumar Jaiswal and Akhilesh Kumar were given regular promotion to the grade of Head Ticket Collector overlooking other senior candidates. The Tribunal mentioned that the irregularities were corrected by reverting three persons to their earlier grade of Senior Ticket Collector and the Petitioner Ramayan Mishra was one of them.

6. The issue then thus come down to the aspect whether the Petitioner was junior to M/s. Arun Kumar Jaiswal and Akhilesh Kumar or senior to them. The record as presented originally with the petition to which no counter affidavit has been filed, as of date though the petition has been pending since 1999, bears out that Ramayan Mishra was appointed on 16 March 1981 and on the other hand M/s. Arun Kumar Jaiswal and Brajesh Kumar were appointed on 30 June, 1981 and 6 October 1982, respectively. There does not appear to be any error in the list of compilation of seniority or the date of appointment which was made by the railway administration, Samastipur dated 10 September, 1993 appended as Annexure 4 to the petition. Then the Tribunal in it's order dated 21 September 2001, Annexure 8 has also made an observation that "Therefore, the applicant would be called for selection test for promotion to the grade of Head Ticket Collector which is going to be held soon and on his being successful his seniority would be fixed with proforma benefits, vis-a-vis, to his juniors. Hence, the prayer is made to dismiss the OA filed by the applicant." The prayer to dismiss the claim is a submission of the railway administration.

7. But on record it is found that Ramayan Mishra is senior to two of the persons who have been given promotion. This is a matter of record. The error is manifest and is otherwise apparent on the face of the record.

8. The court feels this is not a matter which should be remitted to the Tribunal as the seniority list of the railway administration is accepted. No counter affidavit has been filed. It appears that the juniors have been given promotion and the

Petitioner though senior has been left out. Even the railway administration made a submission before the Tribunal acknowledging that he will be promoted soon. The fact that Ramayan Mishra is a candidate who should have received promotion is not in issue. In the circumstances, he should have been given promotion prior to the juniors who have already seen the fruits of promotion.

9. As the Tribunal did not notice the seniority list, and clearly there is no reference to it in its order dated 21.9.2001, the order suffers from a manifest error which is causing injustice and upon a writ of certiorari it is quashed.

10. Learned Counsel appearing for the railway administration Mr. J.P. Karn has assured the court that this matter will be taken up by the railway administration and he will advise them accordingly that Ramayan Mishra be given his due place in accordance with his seniority as has been tabulated by the railway administration itself in Annexure 4.

11. The petition is allowed with costs.