
(2015) 02 JH CK 0101
In the Jharkhand High Court
Case No : L.P.A. No. 72 of 2014

Sada Shiv Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2016) 1 AJR 119 : (2015) 2 JLJR 433

Hon'ble Judges : Virender Singh, C.J.; Aparesh Kumar Singh, J.

Bench : Division Bench

Advocate : S.N. Pathak, Senior Advocate, for the Appellant; Ajit Kumar, Additional Advocate General and Vikash Kumar, J.C. to A.A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, C.J.—The instant appeal is at admission stage. However, with the consent of the learned counsel for both the sides, we have taken it on board for its final consideration.

2. Being aggrieved of the judgment dated 02.01.2014 handed down by the learned Single Judge in W.P.(S) No. 2367/2005, dismissing the writ petition declining the relief of ACP Scheme to the appellant/writ petitioner (in short petitioner only), he is before us through the instant Letters Patent Appeal.

3. Petitioner was appointed as Sergeant in Police Department of State of Bihar on 17.09.1974 and was promoted to the post of Sergeant Major with effect from 04.06.1988. After bifurcation of the State of Bihar, he was allotted Jharkhand Cadre vide order dated 18.08.2002. He was denied Assured Career Progression (for short "ACP") by the State when became due on the ground that he was awarded punishment of "black mark" in year 1998 for an incident of 01.03.1996 and thereafter again he was awarded punishment of "black mark" in year 2002 for an incident which had taken place on 20.08.2000. The Board was constituted for grant and recommendation of ACP on 20.05.2003 and thereon 01.10.2004,

however, at the both the stages, ACP was denied to the petitioner on the ground of unsatisfactory service record. Being aggrieved of the said decision, he filed writ petition W.P.(S) No. 2367 of 2005.

4. It was pleaded before learned Single Judge on behalf of the petitioner that in terms of the decision rendered in Ram Anugrah Singh Vs. State of Bihar and Others, , three years as stipulated under Rule 726(III) of Jharkhand Police Manual (for short "Police Manual") should be calculated from the date of occurrence on which the wrong was done and not from the date on which punishment is awarded. However, the State relied upon the decision rendered in other case of Sri Girish Deo Pandey v. State of Jharkhand through Director General of Police, Ranchi and others reported in 2010(2) JLJR 331 wherein it is held that gap of three years shall be counted from the date of infliction of major punishment and not from the date on which the wrong was done. Learned Single Judge noticing that there was a contrary view on this issue, referred the matter to the Division Bench by framing the following question:--

"As to whether period of three years as prescribed under Rule 726(III) of the Jharkhand Police Manual shall commence from the date of the award of punishment or shall commence from the date of the incident for which police officer was punished on the subsequent date?" 5. The matter was thus considered by the Division Bench in which it was held that the ratio of the judgment in case of Sri Girish Deo Pandey (Supra) on the point of prospective operation of the punishment from the date of order of penalty shall be applicable only to the officers in the rank of Deputy Superintendent of Police and the said judgment was clarified accordingly. The matter was thus remitted before the learned Single Judge for deciding the issues and the factual aspect in the light of the answer made to the reference.

6. Admittedly, in view of the decision taken by the Division Bench in the reference matter, the decision taken in Ram Anugrah Singh (Supra) wherein it has been held that three years as stipulated under Rule 726(III) of Police Manual shall be calculated from the date of occurrence on which the wrong was done and not from the date on which punishment is awarded, would prevail in the case of the petitioner.

7. The learned Single Judge, however, after examining the case of the petitioner and the relevant documents on record, dismissed the claim of the petitioner for the benefit of ACP observing in Para 8 as under:--

"8. On a perusal of documents on record, I find that the petitioner was inflicted punishment in the year, 1995 besides the punishment order dated 17.01.1998 which was awarded to him for the incident dated 01.03.1996. The benefit under the A.C.P. Scheme became applicable w.e.f. 09.08.1999 and even thereafter the petitioner has been punished thrice besides, the penalty order dated 17.01.1998. In view of the aforesaid, this cannot be said that the service record of the petitioner was satisfactory. Adverting to the contention raised by the learned

Senior counsel appearing for the petitioner that, in case of the officers below the rank of Dy. S.P. every order of penalty would take effect from the date of occurrence and since the date of occurrence for penalty imposed in the year, 1995 has not been disclosed, the petitioner cannot be denied benefit under the A.C.P. Scheme, I find myself unable to accept the contention raised on behalf of the petitioner. The date of incident for which the petitioner has been punished in the year, 1995 would be within the knowledge of the petitioner and therefore, it is not open to the petitioner to take the plea that since the date of occurrence has not been indicated in the counter-affidavit, the penalty order passed in the year, 1995 cannot be taken against the petitioner for denying the benefit under the A.C.P. Scheme. I am also of the view that if every penalty order has to be viewed only with reference to the provision under Rule 726(III) of the Jharkhand Police Manual, it would result in ignoring other mandatory conditions for promotion. I am of the opinion that the provision under Rule 726(III) of the Jharkhand Police Manual is a condition in addition to other conditions which would be applicable for grant of promotion to a Government employee and therefore, a Government employee has to satisfy other eligibility criteria for grant of benefit under the A.C.P. Scheme. In fact provision under Rule 726(III) of the Jharkhand Police Manual is an additional disqualification for promotion for 3 years even if an employee fulfills other eligibility criteria. I further find that the decision taken against the petitioner rejecting the claim of the petitioner in the proceeding which took place on 01.10.2005 has not been challenged by the petitioner in the present proceeding and therefore, no relief can be granted to the petitioner." 8. We have heard Dr. S.N. Pathak, learned Senior Advocate appearing for the petitioner and Mr. Ajit Kumar, learned Additional Advocate General for the State respondent. With the assistance rendered by them, we have also gone through the entire records. Pursuant to direction contained in our last order, Mr. Ajit Kumar has also produced the relevant record relating to ACRs of the petitioner.

9. It needs to be mentioned here that ACR of 1993-94 is not traceable from the record. We, however, find ACR of 1995-96 (01.04.1995 to 15.05.1996) wherein in one of the columns relating to behaviour of the police official, in vernacular it is written and in another column No. 8 "below average" is mentioned but ultimately his ACR is recorded as "average", ACR of subsequent years i.e. 1997-98 and 1998-99 are also not available. Mr. Ajit Kumar has not been able to tender any explanation for the same. However, he states that whatever material was supplied to him he has placed before the Court for its perusal.

10. Another fact which needs to be mentioned here is that in the counter affidavit filed by the State and reproduced also in Para-5 of the impugned judgment, it is averred that the case of the petitioner was considered thrice, but Mr. Ajit Kumar, after perusing the record, states that the factual aspect of the matter is that his case was considered twice. It is not that relevant for us. What is disturbing us more is that without there being the ACRs for relevant years, especially the ACR of year 1993-94, the Board made up its mind to reject the

case of the petitioner finding it to be unsatisfactory. Except one of the ACR of five months only relating to year 1999 in all the columns the petitioner has been shown as "good officer" (in vernacular . We may state here that the ACR relating to year 2000, which is for a short period of five months and in the subsequent ACRs which are available on record, up to March, 2005, but for one ACR where he is shown to be "below average" which is for about 8 months indicating that he was involved in his personal problems, therefore, could not devote his complete time to his official task, all other ACRs available on record indicate that he is an efficient police officer. In one of the ACRs with effect from 01.04.2005 to 31.03.2006 where the Superintendent of Police, Sahebganj had recorded his ACR as "average", D.I.G. did not agree with the remarks of S.P. and gave his individual remarks that the job done by the petitioner were praiseworthy.

11. What appears is that the case of the petitioner was initially considered by the Board along with other 35 police officials on 20.05.2003 in which it was decided that all those police officials were not qualifying for ACP. It is thereafter the petitioner moved a representation on 12.09.2003 and his case was recommended by Superintendent of Police, Sahebganj on 01.09.2004 stating that he was entitled for ACP as he had completed his 24 years of service on 17.01.1998 but on account an incident of 01.03.1996, he could not avail ACP as three years had not lapsed by that time. It is further mentioned in the recommendation that if there is any punishment that is in connection with year 2001, therefore, the petitioner was qualifying for ACP. However, the Board which sat on 01.10.2004 once again rejected the case of the petitioner for the benefit of ACP Scheme.

12. The learned Writ Court, while declining relief to the petitioner, has referred to some punishment awarded to him in year 1995 besides the punishment order dated 17.01.1998 relating to an incident dated 01.03.1996. So far as incident dated 01.03.1996 for which the punishment was awarded on 17.01.1998, the said incident lost its effect in light of the reference answered by the Division Bench of this Court observing that the view taken in Sri Girish Deo Pandey (Supra) on the point of prospective operation shall be applicable only to the officers in the rank of Deputy Superintendent of Police. So far as punishment in the year 1995 is concerned, that would not stand in the way of the petitioner if one looks at the ACR. What appears to us is that the relevant record was not made available to the learned Writ Court and that whatever was reflected in the counter affidavit (reproduced in Para-5 of the impugned judgment) has become the basis of rejection of the benefit of ACP Scheme to the petitioner. The view taken by the learned Writ Court that the provision under Rule 726(III) of Police Manual is a condition in addition to other conditions which would be applicable for grant of promotion to a Government employee and therefore, a Government employee has to satisfy other eligibility criteria for grant of benefit under ACP Scheme, perhaps would not be applicable on the individual facts of the present case.

13. We may also observe here that the view taken by the learned Writ Court that the petitioner has not challenged the decision taken against him rejecting his claim in the proceedings which took place on 01.10.2004 (inadvertently mentioned as 01.10.2005 in the impugned judgment), therefore, no relief can be granted to him, again does not appear to be a correct view as the case of the petitioner before the learned Writ Court simplicitor was in the nature of mandamus commanding upon the respondents to give benefit of Assured Career Progression (ACP) from retrospective i.e. 09.08.1999 as by that time he had completed 24 years of service claiming himself to be eligible for the same from 01.03.1999 as incident of 01.03.1996 had already lost its adverse effect on completion of three years. He was not required to challenge the decision taken by the Board in its second meeting held on 01.10.2004 after his case was recommended by Superintendent of Police, Sahebganj.

14. Mr. Ajit Kumar has fairly conceded before the Court that the ACR prepared after ACP Scheme was made effective to an employee, perhaps would be of no consequence whereas in the present case, as we find, even that is not the situation as we have not come across any adverse remark in the ACR of that serious character which could become the stumbling block for considering the case of the petitioner at any stage may be in May 2003 initially when his case was considered or in the second meeting of Board held on 01.10.2004 after the case of the petitioner was recommended by Superintendent of Police, Sahebganj. Therefore, there appears to be no justification in withholding ACP benefit to the petitioner.

15. We have been informed that the petitioner, after having been promoted at a subsequent stage, has since superannuated, therefore, in the event of the relief being granted to him as asked for in the writ petition would make him entitled for monetary benefits only and not to any other relief.

16. As a sequel to the aforesaid discussion, we hereby set aside the impugned judgment and direct the respondents to give benefit of ACP to the petitioner from 09.08.1999, the date when the ACP Scheme was made applicable, finding himself to be eligible for the same from 01.03.1999 as prayed for in the writ petition. Needless to say that all the consequential benefits would automatically flow towards the petitioner in terms of the aforesaid direction. The appeal on hand thus stands allowed, in turn, the writ petition (W.P.(S) No. 2367 of 2005) also stands allowed as prayed for.

17. Let the entire exercise be carried out by the respondents within three months from the date copy of the judgment/order is made available to the respondents by either side.

18. The original record of ACR of the petitioner shall be returned to Mr. Ajit Kumar, learned Additional Advocate General by Court Master.