

(2003) 09 JH CK 0118
In the Jharkhand High Court
Case No : Writ Petition (S) No. 50 of 2002

Sheo Shankar Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 452

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sumir Prasad, for the Appellant; None, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. Sumir Prasad, learned counsel for the petitioner. Nobody appears on behalf of the State-respondents although this is a part heard matter appearing at serial No. 2.

2. Mr. Sumir Prasad concluded his arguments and therefore this Court, in the absence of any State-respondents, has no option but to proceed on the basis of the pleading made in the writ application.

3. The petitioner has prayed for issuance of a writ of mandamus commanding upon the respondents to consider his case for promotion and also to pay the difference of scale in respect of the promotional benefits of super time senior scale with effect from 1.8.1995 as also difference of salary of office Superintendent with effect from 1.8.1997 together with penal interest at the rate of 24% per annum.

4. The short facts which are necessary to be taken note of are that the petitioner was appointed as a Lower Division Clerk on 5.6.1958 in the Deputy Commissioner's office at Dhanbad. His services were confirmed on 5.7.1974 by the Additional Collector, Establishment, Dhanbad. On 2.7.1978, a meeting of the Establishment Committee was held and promotion was given to various other persons on the post of Upper Division Clerk from the date of their joining. The

petitioner's name was indicated at Serial No. 7 in the list of promotion along with three more persons namely Bharat Lal, Kedar Prasad Singh and Tarun Prasad Sinha. Subsequently, on 27.6.1985 by Annexure-3 a decision was taken once again showing the status of Assistants working in the Dhanbad Collectorate and the petitioner's name figured at Serial Number 86 showing his promotion on the post of Clerk as on 28.6.1971. Thereafter, the petitioner appears to have filed a representation before the Deputy Commissioner, Dhanbad on 27.7.1985 wherein he inter alia made a prayer that his position in the seniority list be corrected in as much as the other persons whose date of confirmation on the post of the clerk was much after the petitioner, were placed above his name. Mr. Sumir Prasad, in support of the aforementioned contention draws attention to Serial Nos. 81, 82 and 86 of Annexure-3 and submits that Kedar Prasad Singh was confirmed on 1.4.1978 and his initial date of appointment was 20.2.1961 and yet he had been placed at Serial No. 81 whereas the petitioner being senior to him has been placed at Serial No. 86.

5. Thereafter, on 10.7.1992, the petitioner along with others was granted promotion and given the benefit of 12-1/2% senior selection grade with effect from 1.8.1991. A photocopy of the Order is Annexure-4 to the Writ Application and it appears that the name of the petitioner figures at Serial No. 27 thereof. The petitioner, after having come to learn about the aforementioned Order of promotion, was again apparently aggrieved by the inclusion of the names of his junior who were placed above him such as Bharat Lal, Kedar Prasad Singh and Tarun Kumar Sinha. Upon perusal of Annexure-4, it appears that these persons were placed at Serial Nos. 21, 22 and 23 whereas the petitioner was placed at Serial No. 27. Accordingly, the petitioner again prayed for necessary corrections before the Deputy Commissioner, Dhanbad vide another representation dated 7.8.1992 (Annexure-5). In the meantime, the petitioner also cleared his 1st and 2nd papers of the Account Examinations on 26.6.1971 and 16.9.1965 respectively.

6. Thereafter, on 24.3.1991 the new district of Bokaro was created out of Dhanbad and options were called for from all employees working in the Dhanbad Collectorate to State and to give their options as to whether they would like to remain at Dhanbad or would like to be transferred to Bokaro. The petitioner opted for Dhanbad but the Deputy Commission, by his letter dated 29.9.1993 transferred him to Bokaro and directed him to join in the same capacity there.

7. The petitioner along with others, being aggrieved, filed CWJC No. 3414 of 1993 (R) wherein they prayed for quashing the Order of transfer. By Order dated 8.11.1993, that Writ Application was disposed off with a direction that the petitioners should join at Bokaro and as and when their seniority would be affected at Bokaro, they would have the liberty to raise that question at an appropriate time. Photocopy of that Order is marked An-nexure-6 to the Writ Application. Thereafter the petitioner joined at Bokaro and worked continuously till superannuation i.e. 30.9.1998. He has retired as Head Assistant,

Establishment Branch, Bokaro. In the mean time, the other persons who were junior to the petitioner and who were allowed to remain at Dhanbad, were given promotion in the super time selection grade vide Memo dated 31.8.1998 issued from the office of the Deputy Commissioner, Dhanbad. Even the Assistants were given super time selection grade as a result whereof they joined as Officer Superintendents. Those persons who were given this benefit were juniors to the petitioner and they included Kedar Prasad Singh and Tarun Kumar Sinha. The petitioner has brought on record the aforesaid Orders of promotion vide Annexure-7 and 8.

8. Mr. Sumir Prasad, learned counsel for the petitioner has submitted that in spite of a mistake committed by the respondents by placing below the aforementioned persons, (although such incorrect placement was duly brought to the notice of the concerned authorities), yet the respondents did not take any step for making necessary corrections. On the contrary, although the petitioner had given his options, for remaining at Dhanbad, he was nevertheless transferred to Bokaro, and those persons who were allowed to continue at Dhanbad were given benefits leaving out the petitioner.

9. In any event, the petitioner retired on 30.9.1998 and thereafter he filed a representation, on 26.10.1998 before the Deputy Commissioner, Bokaro and prayed that he should be given the benefits of super time scale with effect from 1.8.1995 and the scale of the Office Superintendent with effect from 1.8.1997. It appears that thereafter, the Deputy Commissioner, Bokaro, vide his Order dated 30.6.2000 has granted him the super time scale with effect from 1.8.1995 as prayed for by the petitioner. Therefore, to that extent Mr. Sumir Prasad submitted that the grievances of the petitioner has been redressed, but such redressal is only on paper and although super time scale has been given with effect from 1.8.1995, yet monetary benefits have not yet been released.

10. So far as the other grievances of the petitioner is concerned and that is with regard to the scale of Office Superintendent with effect from 1.8.1997, the same, according to Mr. Sumir Prasad has neither been considered nor any order has been passed.

11. A counter affidavit it has been filed in the instant case from the office of the Standing Counsel No. 3 purporting to be for and on behalf of the respondent No. 3 i.e. the Deputy Commissioner, Dhanbad. The basic contention is that since the petitioner was transferred to Bokaro, therefore, he was not entitled to anything from Dhanbad. This statement has been made at paragraphs 15 and 18. The rest of the statements made in the counter affidavit are recital of the case of the petitioner, historically.

12. Let it be recorded that the petitioner retired from Bokaro and therefore, the Deputy Commissioner, Bokaro is required to look into the grievances of the petitioner. However, the counter affidavit which has been filed in the instant case by the Deputy Commissioner Dhanbad is of bad taste. This Court does not

understand why statements have been made at para-graphs-4 and 5 to the effect that the Writ Application is misconceived, not maintainable and liable to be dismissed outright. This Court also does not understand as to why a statement has been made at paragraph 5 of the counter affidavit to the effect that the petitioner has suppressed facts and therefore the Writ Application is liable to be dismissed.

13. From a perusal of the entire Writ Application, this Court has not found any suppression of material facts. On the contrary, his demand for being granted super time scale with effect from 1.8.1995 was acceded to and granted by the Deputy Commissioner, Bokaro though after his superannuation, as would be apparent from Annexure 10 of the Writ Application. So far as Dhanbad is concerned, all that the petitioner wanted to state before this Court was that there were people junior to him at Dhanbad who were allowed to remain there while the petitioner was transferred to Bokaro. The petitioner merely wanted to state before this Court that those persons were given other benefits at Dhanbad while the petitioner was not given similar benefits at Bokaro. These were innocent statements of the petitioner which were neither made with any mala fide intention nor were suppression of material facts as alleged by the Deputy Commissioner, Dhanbad in the counter affidavit. This Court therefore deprecates such wrong statements made in the counter affidavit.

14. Mr. Sumir Prasad pointed out that notwithstanding the Order of the Deputy Commissioner, Bokaro having been passed on 30.6.2000 giving him super time scale with effect from 1.8.1995, no monetary benefit has yet been released in his favour. In that view of the matter, the Deputy Commissioner, Bokaro is directed to release the entire monetary benefits due and admissible, in favour of the petitioner within the shortest possible time but not later than four weeks from the date of receipt of a copy of this Order. The Deputy Commissioner will also consider and pass necessary orders in accordance with law on the claims of the petitioner in relation to his entitlement to the scale of Office Superintendent with effect from 1.8.1997 with the same period and to that extent therefore, the petitioner would also have liberty to include such claim in his representation indicated above.

With the aforementioned observations and directions, this Writ Application is disposed off. No order as to costs.