
(2002) 12 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (Service) No. 996 of 2002

Sri Suraj Narayan Lala

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Bihar Service Code, 1952 — Rule 78

Citation : (2003) 1 JCR 377

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : A. Allam, Rajesh Lala, S. Srivastava, for the Appellant; P. Modi, GP-I, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner being not satisfied with pay fixation made and communicated vide letter No. 576 dated 28th July, 1997 issued by the Deputy Commissioner, Dhanbad, has challenged it.

2. According to petitioner, his pay has not been properly fixed as per statutory rule.

The case of the petitioner is that he was appointed as an Assistant (Clerk) in the Sub-Division Office on 19th December, 1955 and then appointed as U.D. Assistant (U.D. Clerk) on 10th May, 1957 in the newly created Dhanbad district. He was promoted to Junior Selection Grade in 1959 and Senior Selection Grade in the year 1976. He was granted promotion to the higher post of office Superintendent on 1st October, 1985 in the then scale of Rs. 850-1,360/- whereinafter he was appointed to the promotional post of P.A. to Deputy Commissioner, Dhanbad on 22nd April, 1988 in the then scale of Rs. 880-1,510/-.

It is stated that his pay fixation was made on the recommendation of IV Pay Revision-Fitment Committee w.e.f. 22nd April, 1988. But the P.A. to Deputy Commissioner being not satisfied with the revised scale of pay/fitment granted, the matter was referred to Pay Anomaly Removal Committee. On the

recommendation of Pay Anomaly Removal Committee, the State Government allowed the revised scale of Rs. 2,000-3,500/- in place of Rs. 1,640-2,900/-. Thereafter when the matter of fixation of pay of petitioner as per acceptance of report of Pay Anomaly Removal Committee was taken up, the Deputy Commissioner vide impugned letter No. 576 dated 28th July, 1997 communicated the pay fixation to the Secretary, Personnel and Administrative Reforms Department, Bihar Patna.

The grievance of the petitioner is that his pay has been wrongly recommended to be fixed as per Rule 78(a) of the Bihar Service Code though it is not applicable in his case.

3. The stand taken by the respondents is that the pay of the petitioner has been properly recommended to be fixed as per the Rule 78(a) of the Bihar Service code.

On the other hand, according to petitioner, the post of office Superintendent being non-gazetted post and the post of P.A. to Deputy Commissioner being a gazetted post. NOTE 3 below Rule 78 is applicable.

NOTE 3 below Rule 78 prescribes rules regarding fixation of pay of gazetted Government servant on appointment to certain higher post or on appointment from a non-gazetted to a gazetted post as per Appendix 6.

4. Counsel for the petitioner referred to circular contained in memo No. 3 PRO 2 - 121/72 - 6667 dated 20th July, 1973, wherein stipulation made to give 12% of pay (maximum Rs. 150/-) for fixation. When it was pointed out that the aforesaid circular for pay fixation was issued after the recommendation of IIIrd Pay Revision Committee, counsel for the petitioner relied on paragraphs 8 and 9 to Finance Department's Resolution No. 3/PAR 01-3/89-6021/F (2) dated 18th December, 1989 to suggest that the existing rules/orders enforce regarding fixation of pay on promotion from a lower to a higher post has been allowed to continue to be operative until further orders, except in cases of promotion from a normal replacement scale to a sub-scale of the same level.

5. Having heard the counsel for the parties and as it is for the experts to determine the question of pay fixation and in view of prima facie case made out on behalf of the petitioner, the case is remitted to the A.G. Bihar and Jharkhand, Patna to determine the issue whether the pay of petitioner has been properly fixed or not, within a period of three months from the date of receipt/production of a copy of this order.

The petitioner will represent before the A.G. (A&E) II, Bihar and Jharkhand, Patna enclosing the copy of the earlier order of pay fixation, if available, letter No. 576 dated 28th July, 1997 and the order of promotion to the post of P.A. to Deputy Commissioner, Dhanbad issued in the year 1988 so that the A.G. can take proper decision.

The Deputy Commissioner, Dhanbad is directed to forward all the details of

petitioner for this fixation of pay within a period of 15 days from the date of receipt/production of a copy of this order.

The parties will be governed by the pay fixation as may be made by the A.G., Bihar and Jharkhand, Patna.

6. The writ petition stands disposed of, with the aforesaid observations/directions.