
(2005) 08 JH CK 0060

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4395 of 2004

Sunil Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72(2)

Citation : (2005) 4 JCR 376

Hon'ble Judges : S.J. Mukhopadhaya, J;Amareshwar Sahay, J

Bench : Division Bench

Advocate : A. Allam, J.P. Gupta, Asstt. S.G. CG, P.K. Sinha and Pandey Neeraj Roy, for the Appellant; H.K. Mehta, G.A., for the Respondent

Judgement

1. This writ petition has been preferred by the petitioner against Order No. 6(b)/2004, dated 23rd July, 2004, issued under the signature of Director (SR), Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India, New Delhi, whereby and whereunder, the petitioner has been allocated the successor State of Bihar under the orders of the Central Government, in exercise of powers, conferred u/s 72(2) of the Bihar Re-organization Act, 2000.

2. While the writ petition was pending, the Central Government issued Letter No. 14/279/2004-SR(S), dated 15th September, 2004 under the signature of the Director (SR), whereby and whereunder, certain guidelines have been given to reconsider the representation(s), preferred by the aggrieved persons after final allocation of the cadre. For proper appreciation of the guidelines, it is desirable to refer the contents of the letter, as quoted hereunder :

"1.1. New Additions.-This includes such cases where an incumbent's name does not figure either in the provisional allocation list or in the tentative final allocation list, but figures in the final allocation list issued by the Central Government. Attention in this connection is invited to this Department's letter No. 14/232/2002-SR(S), dated 1.11.2002 through which suitable instructions

were issued to the successor State Governments in respect of new additions asking them to invite representations from the above personnel and to forward their representations along with the departmental comments to the Central Government.

1.2. No Allocation.- This would include such cases where a person's name figures neither in the provisional/ tentative final allocation lists nor in the final allocation orders issued by the Central Government. However, being State Service Personnel, they are required to be finally allocated to one or the Successor States. The State Governments through their respective Departments may furnish details of such cases for consideration of the Central Government.

1.3. Change of allocation after Tentative Final Allocation List.-This would include cases where a person's name originally figured in the tentative final allocation list for one successor State and who did not prefer any representation but was finally allocated to the other successor State. Since personnel under this category were denied the opportunity to represent against their final allocation, their representations along with the departmental comments may be forwarded to the Central Government for consideration. .

1.4. Spouse in State/Sub-State Cadre.-This would include case of such spouses where one of them is in the State Cadre (those having all State Transfer Liability and where posts are not exclusively relatable to one successor State only) and the other spouse is in the sub-State cadre namely Tehsil Village, District etc. If one of the spouses is in the State Cadre and the other in the sub-State cadre, then the spouse in the sub-State Cadre would be allocated to that successor State to which the spouse in the State Cadre has been finally allocated. Central Government desires that in respect of the above, the successor State Governments may consider these cases at their own level, subject to written representations being received in this regard from spouses working in the sub-State cadres.

1.5. The Central Government desires that representations indicated in Paras 1.1 to 1.4 above, may not be forwarded in piecemeal manner but all representations pertaining to a particular Department may be processed and forwarded for consideration of the Central Government.

2. Mutual Transfer cases.-A large number of representations have been received from personnel requesting for consideration of their mutual transfer with another consenting State Service personnel. Since the Central Government has already issued final allocation orders, it finds no reason to entertain such requests. However, it is open to the successor State Governments to consider requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia either defining the terms and conditions for such consideration or by framing rules for this purpose."

3. Learned counsel for the petitioner submitted that apart from other grounds, the petitioner has also requested for mutual transfer vice one Si Kamlesh Kumar

Pathak. Representation of said Kamlesh Kumar Pathak, Assistant Engineer, Water Resources Department, dated 16th January, 2003 has also been enclosed as Annexure-19 to the writ petition.

4. Dr. J.P. Gupta, Assistant Solicitor General, Central Government, accepts that the aforesaid guidelines has been communicated vide letter dated 15th September, 2004, as clarified by the subsequent letter dated 31st May, 2005/1st June, 2005

5. In the facts and circumstances, the petitioner having represented the matter before the competent authority of the State Government, instead of deciding the claim on merit, the case is remitted with a direction to the competent authority of the State under whom the services of the petitioner has been placed, to decide the representation, as preferred by the petitioner, and forward it to the competent authority of the Central Government within a period of six weeks from the date of receipt/ production of a copy of this order. If any fresh notification u/s 72(2) of the Bihar Re-organization Act, 2000 is required to be issued, the Central Government may issue the same.

6. If, according to the Central Government, such order is to be issued by the concerned State, it will inform the same to the competent authority of the concerned State for issuance of appropriate order.

7. On the other hand, if any of the authorities rejects the claim, he will communicate the ground(s) to the petitioner within the aforesaid period.

8. The writ petition stands disposed of with the aforesaid observations and directions.