

(2008) 09 JH CK 0092
In the Jharkhand High Court

Surendra Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Citation : (2008) 4 JCR 511

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application is for issuance of a writ of mandamus commanding upon the respondents to confirm the petitioner on the post of Chief Engineer with effect from 10.03.2006 in the Department of Drinking Water and Sanitation, Government of Jharkhand, Ranchi on the ground that he is the senior most Engineer in his cadre and the State Public Service Commission had found him eligible and had recommended and approved his promotion. A further prayer has been made for directing the respondents to promote the petitioner to the post of Engineer-in-Chief from the post of Chief Engineer with effect from 01.07.2008 which was the date, the post fell vacant.

2. Petitioner's case in brief is that he is the in-charge Chief Engineer in the aforesaid department. He was confirmed as Superintending Engineer on 01.08.2000. After the retirement of Sri Rajeshwar Prasad on 30.06.2008 from the post of Engineer-in-Chief, the post fell vacant and the petitioner being the next senior most, became eligible for his promotion to the aforesaid post.

3. The grievance of the petitioner is that despite there being no impediment whatsoever since after the cabinet vigilance clearance and the approval/recommendation of the State Public Service Commission having been made and the petitioner being the senior most, he was eligible for his promotion to the post of Chief Engineer but the respondents have deliberately failed and neglected to promote him to the higher post in spite of his repeated representations and on

the contrary, the respondents have taken a peculiar stand that without there being any order from the High Court, they would not initiate the process of promotion. The further contention of the petitioner is that by their inaction, the respondents have been causing detriment and loss of legitimate benefits since the petitioner would superannuate on 31st of July, 2008. Apprehending that the respondents are likely to appoint a person much junior in the rank and cadre to the petitioner, to the post of Chief Engineer and Engineer-in-Chief, the petitioner has prayed for an order restraining the Respondents from promoting any junior officer on the said posts.

4. Shri V.P. Singh, learned senior Counsel for the petitioner explains that it has been a regular practice on the part of the concerned respondents to deliberately delay the process of promotion of the eligible officers and the process is initiated only after orders are passed by the High Court. Referring to the Annexure-7 and Annexure-10 to the writ application, learned Counsel explains that the officers who were senior to the petitioner and who were denied timely promotion in the same manner as the petitioner, had to file writ applications and it was pursuant to the orders passed in the writ applications (Annexure-7 and Annexure-10) that the respondents had granted promotion to the concerned officers.

5. Learned Counsel explains further that the respondents have been taking frivolous and misleading grounds to delay the process of promotion to the petitioner and none of these can be tenable and legitimate. It is further submitted that even though the petitioner has superannuated with effect from 31.07.2008 but since he was eligible for promotion from the date when the higher posts fell vacant, he is entitled at least to the consequential benefits of such promotion to the higher posts from the due dates.

6. A counter affidavit has been filed on behalf of the respondents denying and disputing the claim of the petitioner. Specific denial to certain averments made by the petitioner are as follows:

(i) The petitioner was never posted in the post of regular Chief Engineer with effect from 10.03.2006. Rather, he was posted only as in-charge Chief Engineer in his own pay scale.

(ii) It is not a fact that the respondents had not initiated steps and process for promotion of the officers to the higher posts. In fact steps for obtaining the recommendation/approval of the J.P.S.C. was taken in advance by sending a proposal letter to the J.P.S.C. on 31.03.2007 itself even when the post was not vacant. Though the vacancy in the post of Chief Engineer occurred on the retirement of the then in-charge Engineer-in-Chief namely Shri Kedar Nath on 01.04.2007 but the recommendation of the J.P.S.C. could not be given effect to. The petitioner could not be considered for his promotion because of the fact that he was awarded a minor punishment of warning by the department vide departmental resolution dated 25.02.2008 on charges of negligence and causing delay in tender disposal. The punishment was entered in the Confidential

Character Roll of the petitioner for the year 2007-08. Such adverse entry in his Character Roll had debarred the petitioner for his promotion, till 31.03.2008.

7. Thereafter the department sent the concerned file for roster clearance to the Department of Personnel and Administrative Reforms, Government of Jharkhand and the same was still awaited. The file was returned recently by the Personnel Department with certain queries regarding roster clearance of the petitioner and the file is presently under active consideration of the concerned authorities of the respondents.

8. It is further explained that although considering the eligibility of the petitioner for his promotion and awaiting the roster clearance, the Departmental Establishment Committee held its meeting on 03.07.2008 and had even proposed to fill up the post of Engineer-in-Chief by posting the petitioner as In-charge Engineer-in-Chief, but the resolution of the Establishment Committee could not be given effect to on account of an objection raised by one Devendra Kumar Bhagat who had raised a dispute regarding inter-se seniority and information was therefore, sought for from the Department of Personnel and Administrative Reforms, Government of Jharkhand and on receipt of the information/guideline, the petitioner was posted as in-charge Engineer-in-Chief with effect from 31.07.2008.

9. . From the rival pleadings, the admitted facts which emerge are-

(i) The petitioner is the senior most Engineer in his cadre and rank.

(ii) The department has already taken up the petitioner's case for consideration for his promotion to the higher post but since the mandatory clearance including roster clearance is still awaited, no final decision could be taken in the matter.

(iii) The post of Engineer-in-Chief fell vacant with effect from 01.07.2008 on the retirement of the then incumbent Rajeshwar Prasad Singh.

(iv) The petitioner's case was taken up by the D.P.C. on 03.07.2008 and he was recommended for his promotion but it could not be given effect to due to objections raised by another officer.

10. The main grievance of the petitioner is that the respondents have intentionally and deliberately delayed initiation of the process of promotion of the petitioner to the higher post in spite of his being the senior most officer in the cadre and rank.

11. From the counter affidavit of the respondents, however, it does not appear that the petitioner's grievance is well founded. Under the Bihar Public Works Department Code Vol. II which lays down the service conditions of officers in the Engineering Service under the State Government, procedure for recruitment by promotion of officers in government service, has been laid down.

Rule 17 of the Code reads as follows:

17. Procedure for recruitment by Promotion.- (a) When the Governor has decided that any vacancy or vacancies in the service shall be filled by promotion, the Chief Engineer will nominate for promotion officers from the Bihar Engineering Service, Class II. The nomination will be made by seniority and merit combined but more importance will be attached to merit. The officers nominated by the Chief engineer shall be arranged in order of preference and the number should ordinarily be 50 per cent in excess of the number of vacancies to be filled.

(b) The chief Engineer shall submit the list of such candidates to the governor who will direct such list to be sent to the Commission with all relevant papers including those for any officers whose supersession is proposed. After examination of the papers, the Commission shall submit their recommendations to the Governor. Rule 24 of the Code reads as follows:

24. Promotion to Administrative Grade: Promotion to the posts of Superintending Engineer and Chief Engineer shall be made by selection and seniority alone shall confer no claim.

12. It is manifest from the bare reading of the above provisions that mere existence of a vacancy in the higher post does not ipso-facto create a right in the government servant for his promotion to the higher post on the ground of his being the senior most, since seniority alone shall confer no such claim. The process for promotion has to be initiated by the Chief Engineer who will submit his nomination for promotion of officers on the basis of seniority and merit attaching more importance to merit.

13. From the facts stated in the counter affidavit of the respondents, it transpires that soon after the post of Engineer-in-Chief fell vacant on the retirement of previous incumbent, the process for promotion of the officers including the petitioner falling within the zone of consideration, was promptly taken up. In fact the recommendation of the State Public Service Commission was also obtained in advance. Yet, the petitioner could not be considered for his promotion on account of the fact that he had earned an adverse entry in his Confidential Character Roll which admittedly, put a bar against him for a period of one year till 31.03.2008. Even thereafter, the respondents pursued the matter for obtaining roster clearance which was still awaited. Furthermore, the matter was held up on account of the inter-se seniority dispute raised by another officer in the same department. It cannot, therefore, be said that the respondents were inert or had deliberately delayed the process for considering the petitioner's candidature for his promotion. The delay in filling up the vacant posts was apparently due to circumstances beyond the volition of the respondents. Such delay does not entitle the petitioner for any compensation.

14. In absence of any malafides or deliberate inaction on the part of the respondents, no liability or responsibility for the procedural delay in finally deciding the issue, can be attributed to them.

15. In absence of any merit, this writ application is dismissed even at the stage

of admission.