

(2005) 01 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4257 of 2004

Swapan Adhikari

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 JCR 508

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; N.N. Tiwari, J

Bench : Division Bench

Advocate : Ajay Kumar Trivedi, for the Appellant; J.P. Gupta, Sr. C.G.S.C. and Nidhi Jaiswal, JC to Sr. C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred by the petitioner against the judgment and order dated 12th March, 2004 passed by learned Central Administrative Tribunal, Patna, Bench at Ranchi in original application No. 351/2003, whereby and whereunder the Tribunal dismissed the application.

2. The brief fact of the case is that the petitioner was appointed as Deputy Directors of Mines and Safety under the Ministry of Labour, Government of India and was posted at Dhanbad. Thereafter, he was transferred from Dhanbad to Hyderabad. Subsequently, he was promoted to the next higher post of Directors of Mines and Safety on ad hoc basis and was posted at Dhanbad. In the meantime, an FIR was lodged by Central Bureau of Investigation against him at Bhubaneswar in which charge sheet was submitted on 20th November, 1994. The trial of the criminal proceeding started and more than thirty-six witnesses were examined. When the question of regular promotion was taken up, the Departmental Promotion Committee considered the cases of all the eligible regular Deputy Directors wherein, the name of the petitioner stood at serial No. 6 of the Seniority list. As the criminal case was pending against the petitioner, the Departmental Promotion Committee kept his case pending for consideration

under sealed cover. The rest eligible persons, who were found fit, including those who were at serial Nos. 2 to 5 and serial Nos. 7 to 10 were promoted to the next higher posts of Directors, Mines and Safety vide orders dated 7th April, 1996.

3. The present application was preferred by petitioner before the Central Administrative Tribunal, seeking restoration of seniority with effect from 7th April, 1996 In the cadre of Directors, Mines and Safety. The main plea taken was that the case of the petitioner including the persons, who were juniors to him, were already promoted to the higher post with effect from 7th April, 1996. Learned Central administrative Tribunal, having heard the parties, rejected the claim as the petitioner had not been promoted to the higher post on regular basis.

4. It appears that during the argument before the learned Tribunal, learned counsel appearing for the petitioner also challenged the ad hoc promotion. The learned Tribunal held that the petitioner having accepted promotion on ad hoc basis is stopped to challenge the same and cannot claim that the earlier promotion was regular in nature.

5. Learned counsel for the petitioner relied on a decision of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., But, the petitioner cannot get the benefit of the said case.

6. In the present case, the charge-sheet has already been submitted and the trial is pending in which more than 36 witnesses have been examined. His case was considered and the Departmental Promotion Committee kept it in sealed cover as the criminal case was pending. In the meantime, he has been granted ad hoc promotion to the higher post of Director, Mines and Safety. In the facts and circumstances, the petitioner not having been " promoted on regular basis, cannot pray for direction on respondents to provide him seniority w.e.f. 7th April, 1996 in the higher cadre of Directors, Mines and Safety. If he is acquitted in the criminal case, he may be granted consequential benefit of regular promotion to the higher post from the date his juniors have been promoted if such recommendation has been made by the Departmental Promotion Committee.

7. In the circumstances, we find no ground to interfere with the judgment and order dated 12.3.2004 passed in original application No. 351/2003 by the Central Administrative Tribunal, Patna Bench at Ranchi. There being no merit, the writ petition is dismissed.