

(2004) 03 JH CK 0017
In the Jharkhand High Court
Case No : C.W.J.C. No. 3739 of 1997 (R)

Vidya Nand Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 246

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; Sheila Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The order as contained In Annexure 10 to this writ application is under challenge by the petitioner, whereby the petitioner was informed by the respondent No. 2, the Director General, C.R.P.F. that since the penalty was imposed upon him as a result of disciplinary proceeding in March, 1995, whereas the D.P.C. was held in 1994, hence, his case for promotion is required to be considered by the ensuing D.P.C. having regard to the penalty imposed upon him.

2. The petitioner as Assistant Sub-Inspector (Ministerial) was posted at 102 Batallian, Rapid Action Force, C.R.P.F., Bhubaneshwar (Orissa) from 1993-96.

3. The petitioner appeared before the Departmental Promotion Committee in the year 1993 for promotion to the post of Sub-Inspector (Ministerial) and he was declared fit for promotion to the post of Sub-Inspector.

4. In the year 1994, the petitioner was served with Articles of Charges and a Departmental proceeding was initiated against him on 05.03.1994 for misconduct and ultimately by Office Order dated 20.03.1995, the petitioner was held guilty of the two charges levelled against him and was awarded penalty of ceasation of 3 increments with cumulative effect by the respondent No. 4.

5. The petitioner preferred an appeal against the order of penalty imposed against him by the respondent No. 4, before the Inspector General of Police, Rapid Action Force, New Delhi, but the Appeal of the petitioner was also rejected by Order dated 09.08.1995 and the order imposing punishment against the petitioner was affirmed.

6. According to the petitioner after he was found fit to the post of Sub-Inspector by the Departmental Promotion Committee, vide Directorate's Promotion order dated 02.03.1994 he was allotted special sector by giving him promotion but he was not relieved for the new posting because of the pendency of the disciplinary proceeding against him. It is asserted by the petitioner that the penalty of ceasation of 3 Increments has already been undergone by him and it expired on 31.10.1997 and, therefore, in view of the fact that the petitioner was already promoted by an Officer order dated 02.03.2004, pursuant to the recommendation of the D.P.C. held in 1993 and hence, he is now entitled for release of his promotion order with effect from 01.11.1997, since the punishment imposed was complete on 31.10.1997 and, therefore, he was entitled to be promoted with effect from 01.11.1997. It has been submitted on behalf of the petitioner that order as contained in Annexure 10 dated 26.11.1997 to the effect that the case for promotion of the petitioner was to be considered by ensuing Departmental Promotion Committee is absolutely arbitrary, illegal and bad in law.

7. On the other hand, the stand of the respondent is that the claim of the petitioner that he had already been promoted by office order dated 02.03.1994 was absolutely wrong because his promotion was released by the Directorate subject to the vigilance clearance but prior to the release his promotion, the memorandum of charges dated 12.01.1994 was served on him and since he was not free from vigilance clearance due to that reason, he could not be promoted to the rank of Sub-Inspector (Ministerial) and, accordingly, his promotion was subsequently cancelled by order dated 23.05.1995. Further stand of the respondents is that the claim of the petitioner that he is entitled for promotion with effect from 01.11.1997 is also not correct because of the fact that vide dated 20th March, 1995, he was awarded stoppage of increments for 3 years with effect from 01.11.1995, i.e., the date from which the petitioner was entitled to the next increment after issue of punishment order, hence the currency of punishment was to expire on 31.10.1998 and not on 31.10.1997 as claimed by the petitioner.

8. From the facts as stated above, it appears that the petitioner filed the present writ application, claiming consideration of his promotion, when the penalty imposed against him was still In force and it was to expire only on 31.10.1998. The claim of the petitioner that the period of punishment has already expired on 31.10.1997 and, therefore, he is entitled to be promoted from 01.11.1997, cannot be accepted in view of the fact that the order of punishment of ceasation of 3 annual increments was to take Its effect from 01.11.1995, i.e., the date of

the next increment and, therefore, in my view, the petitioner is not entitled to the relief as claimed in the writ petition.

9. Accordingly, I find no merit in this application and, as such, is dismissed. However, in the facts and circumstances of this case, there shall be no order as to cost.