
(2003) 09 JH CK 0098

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4106 of 2003

Vinay Kumar Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 226, 227

Citation : (2003) 4 JCR 667

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

Bench : Single Bench

Advocate : Ganesh Prasad Singh, Ram Nivas Roy and Deepak Kumar Prasad, Sheela Prasad, Addl. Central Government Standing, for the Appellant; Shamim Akhtar, SC II, Arvind Kr. Mehta, JC to SC II and Sanjay Kumar Singh, JC to GP I, N.C. Ganguli and T.K. Mishra, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by the petitioner for issuance of writ of mandamus, commanding and directing the respondents, specially, the State of Bihar and State of Jharkhand to furnish necessary documents to the Union Public Service Commission (for short UPSC) and Union of India to enable them to convene a meeting of the Selection Committee for preparation of year-wise select list from 2000-03 for promotion to the cadre of Indian Police Service from amongst the eligible Officers of the State Police Service.

2. According to the petitioner, he was initially appointed as Deputy Superintendent of Police (DSP for short) on 21st November, 1979 in the then State of Bihar. He got all his promotion in due time having been confirmed in the rank of DSP w.e.f. 21st November, 1982 and got Junior Selection Grade w.e.f. 1.4.1991 and Senior Selection Grade post w.e.f. 1.4.1994.

Further case of the petitioner is that he was posted as Commandant, Home Guard, Bihta (Bihar), vide Notification, No. 7088 dated 15th July, 1998, as on the

date, he is in the original scale of Addl. S.P. He was posted as S.P. (Administration) in the Office of the Zonal I.G. of Police, Darbhanga, whereinafter he was posted as S.P. Palamau and Commandant JAP-II, Tatisilva and presently posted as S.P. (vigilance), Ranchi.

3. The counsel for the petitioner submitted that the petitioner is eligible for promotion in the Indian Police Service. Under Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulation, 1955, a select list to be prepared for appointment by promotion from State Police Service Officers and the Selection Committee, as per Regulation, shall originally meet at the interval not exceeding one year to prepare select list out of the State Police Service Officers, but since after reorganization of the State, it has not been prepared in the successor State of Jharkhand. On the other hand, in the State of Bihar, such list has been prepared, all required data and names having been forwarded for consideration by the Selection Committee.

4. The counsel placed reliance on Supreme Court decision in the case of Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, .

5. A preliminary objection having been raised relating to maintainability of the writ petition before the Single Judge of the High Court, as there being already a forum for redressal of such grievance before the Central Administrative Tribunal.

6. Replying to such preliminary objection, the counsel for the petitioner made two fold submissions :--

(a) The prayer as made in the present writ petition, neither falls within the meaning of recruitment nor falls within the meaning of conditions of service, as per Section 14 of the of the Central Administrative Tribunal Act, 1985. Therefore, the High Court has jurisdiction to issue writ at this stage; and

(b) Even if there is a remedy before the Central Administrative Tribunal, there is no bar to decide the issue and to give direction under Article 226 of the Constitution of India.

7. From the Indian Police Service (Appointment by Promotion) Regulation 1955, it will be evident that the process of Appointment by Promotion (Recruitment) starts from the stage of Regulation 3, constitution of the Committee to make selection. As per Regulation 3, there should be a Committee constituted for the State Cadre under the Chairmanship of Commission and members as made thereunder. Each such Committee shall ordinarily meet every year to prepare a list of members of the State Police Service, as may be held by them to be suitable for promotion to Indian Police Service, as per Regulation 5. Therefore, the question of consideration by a Selection Committee comes into play only after the constitution of the Selection Committee. Once the Committee is constituted the first step/stand taken for recruitment by way of promotion to the Indian Police Service.

The jurisdiction power and authority of the Central Administrative Tribunal has been enumerated u/s 14, which shall exercise all the jurisdiction, power and authority exercisable immediately before the day the "CAT Act, 1985 came into effect in relation to Recruitment and matters concerning Recruitment to All Indian Service or to any Civil Services of the Union of India or a Civil post under the Union of India etc.

8. Thus, as prayer made by the petitioner is concerning Recruitment to an All India Service, the Central Administrative Tribunal has jurisdiction to deal with the matter.

9. So far as the jurisdiction of the High Court under Article 226 of the Constitution of India, vis-a-vis, the jurisdiction of the Central Administrative Tribunal is concerned, the matter stands already decided by a decision of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, . In the said case, the Supreme Court held that the power is vested in the High Court to exercise Judicial Superintendence over the decision of all the Courts and Tribunals within their respective jurisdiction and made the decisions of the Tribunals amenable to scrutiny by a Division Bench of the respective High Courts under Articles 226 and 227 of the Constitution of India.

10. For the reasons aforesaid, instead of filing a writ petition before a "Single Judge of this Court, the petitioner should first move before the Central Administrative Tribunal. Therefore, it is always open to the aggrieved party to move before the Division Bench of the High Court for scrutiny of the order/ judgment of the Central Administrative Tribunal, as may be passed.

11. The writ petition stands disposed of with aforesaid liberty to the petitioner.