(2003) 11 JH CK 0007

Jharkhand High Court

Case No: Writ Petition (S) No. 4484 of 2003

Satyadeo Singh		APPELLANT
	Vs	
State of Jharkhand and Others		RESPONDENT

Date of Decision: Nov. 25, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 1 JCR 152

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: R. Krishna and Prashant Vidharthy, for the Appellant; M.K. Laik, P.K. Prasad, A. Allam and Ram Krishore Prasad, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
The petitioner has prayed for quashing the impugned letter No. 5095, dated 24.7.2003 issued under the signature of the Chief Secretary, Government of Bihar, Patna whereby decision has been taken not to issue Integrity Certificate in favour of the petitioner. It appears that the petitioner earlier moved Patna High Court in CWJG No. 12587 of 2001 for the grant of Integrity Certificate as required by the Government of India and Union Public Service Commission for considering his ease for promotion to Indian Administrative Service. The writ petition was dismissed on 28.11.2001 holding that grant of Integrity Certificate depends upon the subjective satisfaction of the authority concerned and thereafter no interference can be made with the decision of the Government in the matter of grant of Integrity Certificate. Aggrieved by the said order the petitioner filed Letters Patent Appeal being LPA No. 75/02. The Division Bench disagreeing with the view taken by the learned single Judge held as under:

"The learned single Judge has dismissed the writ application on the ground that the grant of the integrity certificate depends upon the subjective satisfaction of the authority concerned and if the authority concerned has not granted the same then no direction can be issued by the writ Court.

We are unable to agree with the view taken by the learned Single Judge. No doubt, grant of an integrity certificate is an administrative decision but the same has to be taken on certain relevant considerations. The authority cannot refuse to grant the integrity certificate on whimsical or arbitrary ground.

It appears that inspite of the representation filed by the appellant, the authority concerned has not considered the matter regarding grant of integrity certificate to him. In that view of the mater, we are disposing of this appeal with a direction to the State Government to decide the question of grant of integrity certificate within a period of six weeks and communicate its decision within two weeks thereafter.

With the aforesaid direction this appeal stands disposed of.

Let a copy of this order be handed over to Mr. S.K. Ghosh, learned AAG-II.

2. Pursuant to the aforesaid direction the case of the petitioner for grant of Integrity Certificate was considered by the Government of Bihar and by the impugned letter dated 24.7.2003 refused to grant Integrity Certificate on the ground that during his service period he was put under suspension and was inflicted with punishment of stoppage of increment in a departmental proceeding.

3. Mr. Tara Kant Jha, learned Senior Counsel appearing for the petitioner assailed the impugned decision of the Government of Bihar refusing to issue Integrity Certificate as being illegal, arbitrary and malafide. Learned counsel submitted that the authorities have committed serious illegality in rejecting the representation of the petitioner for issuance of Integrity Certificate on the basis of punishment which relates back to the year 1989-90. Learned counsel submitted that after the aforesaid punishment the overall assessment of the petitioner have been found to be very good for the last 5 years of his working and the petitioner was given promotion to senior selection grade and therefore the old remarks already lost its force. Learned counsel submitted that whenever the petitioner was given promotion to the higher post the respondents issued Integrity Certificate even after the aforesaid punishment and therefore, refusal to grant Integrity Certificate is nothing but to accommodate another person.

4. Mr. A. Allam, learned counsel appearing for the State of Bihar firstly raised the preliminary objection with regard to the maintainability of the writ petition. According to the learned counsel in view of Section 14 of the Administrative Tribunal Act, the remedy available to the petitioner is to approach the Central Administrative Tribunal and this Court has no jurisdiction to entertain the writ petition. Learned counsel submitted that there are justified grounds for refusing the issuance of Integrity Certificate in favour of the

petitioner.

5. From perusal of the impugned order, it appears that respondents refused to grant integrity certificate on the ground that the petitioner while posted as Chief of Administration, Bihar State Food and Civil Supplies Corporation in 1989 he gave proposal for appointment of two persons including his son for appointment. On that ground, he was put under suspension and a departmental proceeding was initiated against him in 1990 and the same was concluded in 1995 with punishment of withholding of two increments and displeasure.

6. Petitioner challenge the said order of punishment by filing CWJC No. 860/97. The Patna High Court by order dated 22.4.1997 refused to interfere with the said order holding that punishment awarded to the petitioner is a minor penalty. The order dated 22.4.1997 reads as under :

"The petitioner has been awarded a minor penalty of stoppage of two annual increments with cumulative effect and in the facts of the case I am not inclined to interfere in the matter. As regard the other part of the order, communication of "displeasure" is not a penalty in terms of the relevant Rules.

The writ petition is, therefore, dismissed."

7. It has not been disputed by the respondents that in 1999 petitioner was promoted to Super Time Scale of Bihar Administrative Service with effect from 1.10.1994. In the year 2000 petitioner was given further promotion to the post of Additional Secretary after the case of the petitioner was found fit by the Departmental Promotion Committee and he was given regular promotion to the rank of Additional Secretary with effect from 20.1.1998 vide notification No. 1975, dated 9.3.2000. By another notification as contained in Memo No. 1976 dated, 9.3.2000 petitioner was found fit by the Promotion Committee and was granted regular promotion to the rank of Special Secretary. It has been categorically stated by the petitioner that while promoting him to the rank of Deputy Secretary, Joint Secretary, Additional Secretary and Special Secretary, the government considered service record of the petitioner, all the past confidential report, clearance from Vigilance and Lokayukt. At all the stage of promotion, respondents issued integrity certificate. It further appears that in 2000 Select Committee/competent body considered the candidates of State Administrative Service for promotion to Indian Administrative Service and in the select list of 1998, 1999 and 2000 name of the petitioner was placed at the top of the list but it was made subject to grant of integrity certificate by the State Government. However, while making recommendation to the Government of India the name of the petitioner was stopped for want of integrity certificate.

8. The petitioner has annexed a copy of the guidelines issued by the Government of India vide its letter dated 27.10.1999 relating to issuance of integrity certificate to the State Civil Service Officers for promotion to the rank of Indian Administrative Service. The letter

dated 27.10.1999 is worth to be quoted herein below :

"To,

The Chief Secretary

Government of Bihar

Department of Personnel & A.R.

Patna

Attn : Shri Anjani Kumar, Addl. Secretary.

Subject : Issuance of "Integrity Certificate" to State Civil Service Officers for promotion to I.A.S.

Sir,

1 am directed to refer to State Government Letter No. I/C 1020/99 Ka-6276, dated the 26th July, 1999 on the above subject and to say as follows :

2. It is observed that clarification has been solicited by the State Government on the following issues namely :--

(a) Whether the Integrity Certificate to be furnished on the eve of consideration for promotion to the IAS in respect of the State Civil Service Officers, any foreseeable actions under the PC Act, 1988 through the competent actions under the PC Act, 1988 though the competent Court, is to be taken into account or not;

(b) Whether the integrity certificate is to be based upon the entries in the relevant calumns in the ACRs or upon the general perception derived from the ACRs; In other misbehavior, negligence of duties, violation of Government orders etc. will have a bearing on the issue of integrity or not, if the officers integrity is reported to be "beyond doubt" in the integrity columns;

(c) In case of persons already provisionally included in the Select List, under what conditions their integrity should be certified or withheld?

1. The issue relating to grant of integrity certificate and inclusion of State Civil Service officers on a provisional basis in the Select List for promotion to IAS is governed by the statutory provisions contained in the proviso to Regulation 5(5) of the IAS (Appointment by Promotion) Regulations, 1955 and the Explanation there under, framed inter alia taking into account the judgment of the Hon"ble, Supreme Court in its judgment in K.V. Janaki Raman"s ease. The issue raised in the reference as above as such stand clarified as under ad seriatim :

(a) It will be in order to withhold integrity certificate on account of any foreseeable action under the Prevention of Corruption Act by the competent Court. The fact as to whether or not charges under the PC Act have been framed against the officer concerned by the Court in terms of the provisions in the PC Act should alone form the basic criterion in order to arrive at a conclusion on the grant or denial of the integrity certificate to the officers concerned.

(b) Adverse remarks in the ACRs on the account of misbehavior etc. should not be the basis for dental of integrity certificate in favour of the State Civil Service Officer. The selection committee will duly consider the adverse remarks as one of the aspects while doing the overall relative assessment of the service records of the officer concerned. The grant of integrity certificate should be related to the entries in the ACRs in the integrity column and its logical conclusion as also the situations dealt with in the Explanation below proviso to Regulation 5(5) of the IAS (Appointment by Promotion) Regulations, 1955 as amended from time to time.

(c) In case of a person already provisionally included in the Select List, his integrity certificate should be issued or withheld depending on whether the conditions leading to the inclusion of his name as provisional in the Select List continue to exist or not.

2. Receipt of this clarification may kindly be acknowledge.

9. From perusal of the aforesaid guidelines, it is manifest that integrity certificate can be withheld if the officer in any way is involved in respect of charges under the Prevention of Corruption Act. Adverse remarks in ACRs should not be the basis for denial of integrity certificate in favour of the State Civil Service Officers. The Guidelines further clarified that the grant of integrity certificate should be related to the entries in the ACRs in the integrity column.

10. It is well settled that when Government servant is promoted to a higher post on the basis of merit and selection, adverse entries or minor punishment, if any, made in the service book loose its significance and those remain on record as part of his past history. As noticed above, after considering the minor punishment inflicted to the petitioner his case was considered by the respondents in the year 1990 and petitioner was promoted to super time scale of Bihar Administrative Service with effect from 1994. In the year 2000 again petitioner was given further promotion to the post of Additional Secretary after the case of the petitioner was found fit by the Departmental Promotional Committee and he was given regular promotion to the rank of Additional Secretary with effect from 1998. In 2000 by another notification, petitioner was found fit by the Promotion Committee and he was granted regular promotion to the rank of Special Secretary and in all stages promotion was effected after issuance of integrity certificate by the Government.

11. In the instance case as noticed above, the Select Committee in its meeting held on 16/17.5.2001 considered the cases of many officers including the petitioner and directed

for preparation of select list of 1998, 1999 and 2000 respectively for promotion" to Indian Administrative Service Cadre. The copy of the said minutes has been annexed as Annexure 6 to the writ application. From the minutes it appears that after overall assessment of the service record, the Committee selected the petitioner and other officers suitable for promotion for the year 1998. The relevant portion reads as under:

"The Committee considered the officers whose names are Included in Annexure I, who fulfilled the conditions of eligibility for the year 1998. The Committee examined the service records of the eligible officers up to the year 1996-97 as the crucial date of eligibility is 1.1.1998. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in the Annexure I. While assessing their suitability for promotion of the IAS the Committee did not take into consideration the adverse remarks in the ACRs of the Officers which were not communicated to them.

On the basis of the above assessment, the Committee selected the following officers as suitable in all respect for promotion to the IAS and placed their names in the order as indicated below :

Sl. No.	Name of Officers (S/Shri)	Date of Birth
1.	Satyadev Singh	30.12.45
2.	Shriram Pandey	30.6.45
3.	Vijendra Kumor Sinha	1.11.44
4.	Hira Lal Ram Bihari	10.5.47
5.	Sohan Ram	15.11.44
6.	George Fetter Anthony Kujur	12.4.44

7.	Ramcshwar Prasad No. 1	4.11.42
8.	Ramdhanl Tiwari	1.5.44
9.	Dalit Paswan	8.4.42
10.	M.A. Iqbal	5.3.44
11.	Anirudh Prasad Srivastava	7.2.45
12.	Nand Klshore Prasad	5.1.44
13.	Shrl Bhushan Jha	2.7.44
14.	Dhirendra Misra	26.2.44
15.	Raghunandan Prasad	1.6.44
16.	Prabhunarayan Vidyarthi	22.4.44

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12. Similarly, for the year 1999 the Committee again considered the case of the petitioners and issued a select list in which petitioner''s name was placed at the top. The decision reads as under :

''The Committee considered the officers whose names are included in the Annexure II, who fulfilled the conditions of eligibility for the year 1999. The Committee examined the service records of the eligible officers up to the year 1997-98 as the crucial date of eligibility is 1.1.1999. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in Annexure II. While assessing their suitability for promotion to the IAS the Committee did not take into consideration the adverse remarks? in the ACRs of the officers which were not communicated to them.

On the basis of the above assessment, the Committee selected the following officers as suitable in all respect for promotion to the IAS and placed their names in the order is indicated below :

Sl. No.	Name of Officers (S/Shri)	Date of Birth
O(A)	Satyadev Slngh	30.12.45
O(B)	Hira Lal Ram Blhari	10.5.47
O(C)	Sohan Ram	15.11.44
O(D)	George Fetter Anthony Kujur	12.4.44
O(E)	Rameshwar Prasad No. 1	4.11.42
O(F)	Ramdhuni Tiwari	1.5.44
O(G)	M.A. Iqbal	5.3.44
O(H)	Anirudh Prasad Srivastava	7.2.45
O(I)	Prabhunarayan Vidyarthi	22.4.44
1.	Dinanath Mandal	14.1.45
2.	Kumar Arun	10.3.46
3.	Nand Kumar Singh	3.1.46
4.	Ramjeet Singh	12.2.45
5.	Saiyed Ehsaan Ahmed	4.11.45

6.	Arun Kumar Singh	28.8.46
7.	Girindra Narayan Thakur	3.9.45
8.	Janaradan P. Verma	3.1.45
9.	Naveen Kumar Sinha	15.3.45

13. The Committee again considered the officers for promotion for the year 2000 and took the following decision :

"The Committee considered the officers whose names are Included in the Annexure III, who fulfilled the conditions of eligibility for the year 2000. The Committee examined the service records of the eligible officers up to the year 1998-99 as the crucial date of eligibility is 1.1.2000. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in Annexure III. While assessing their suitability for promotion to the IAS, the Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them.

On the basis of the above assessment, the Committee selected the following officers as suitable in all respect for promotion to the IAS and placed their names in the order as indicated below :

Sl. No.	Name of Officers (S/Shri)	Date of Birth
O(A)	Satyadev Singh	30.12.45
O(B)	Hira Lal Ram Bihari	10.5.47

O(C)	Sohan Ram	15.11.44
O(D)	George Petler Anthony Kujur	12.4.44
O(E)	Ramdhani Tiwari	1.5.44
O(F)	M.A. Iqbal	5.3.44
O(G)	Anirudh Prasad Srivastava	7.2.45
O(H)	Prabhimarayan Vidyarthi	22.4.44
O(I)	Nand Kumar Singh	3.1.46
O(J)	Ramjeet Singh	12.2.45
O(K)	Janaradan P. Verma	3.1.45
1.	Rishi Shankar Singh	3.7.46
2.	Mohan Lal Rai	5.8.45
3.	Amrendra Narayan Singh - 1	8.12.49
4.	Amrendra Narayan Singh - 2	19.7.46
5.	Manikant Azad	1.2.47

6.	Keshari Nath Jha	27.12.47

The names at S. No. O(A) to O(K) have been included in the List under 2nd proviso to Regulation 5(5) of the IAS (Appointment by Promotion) Regulations 1955 and the same are provisional subject to clearance in the disciplinary proceedings/grant of integrity certificate by the State Government.

14. As discussed above it is well settled that once an employee is promoted to the next higher post, his adverse remarks will be deemed to have been washed out. Applying this principle to the case of the petitioner, it can reasonably be said that after the petitioner had been allowed to cross efficiency bar in the year 1999 to supper time scale of Bihar Administrative Service, again by two notifications the petitioner was promoted to the post of Additional Secretary and Special Secretary to the Government, the adverse remark and the order of punishment were no more available to be taken into consideration for adjudging the suitability of the petitioner for promotion. Same principle appears to have been reasonably applied by the Select Committee while selecting the petitioner and placing him at the top for promotion of the Indian Administrative Service. This aspect of the matter has not been considered by the respondents while refusing to issue integrity certificate. In my considered opinion, therefore, the matter needs reconsideration by the Government of Bihar. The impugned decision of the Government of Bihar refusing to grant integrity certificate cannot be sustained in law.

15. For the reason aforesaid this writ application is allowed and the impugned order is quashed. The respondent-State of Bihar is directed to reconsider the case of the petitioner in the mater of grant of integrity certificate and take a decision as expeditiously as possible within a period of three weeks from the date of receipt of a copy of this order.