Vikram Singh Gaur Vs Union of India and Others

Court: Jharkhand High Court

Date of Decision: June 30, 2011

Citation: (2011) 3 JCR 433

Hon'ble Judges: Prakash Tatia, Acting C.J.; P.P. Bhatt, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. The petitioners are aggrieved against the order passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 94 of 2001 (R)

and O.A. No. 95 of 2001 (R) whereby the petitioners'' applications have been dismissed. Both the petitioners submitted above O.As to challenge

the reallocation of the cadre pursuant to the bifurcation of the Cadre of Indian Forest Service of the erstwhile Bihar Cadre consequent to

reorganization of the State of Bihar and creation of State of Jharkhand by which ultimately petitioners have been allocated Bihar Cadre whereas

the petitioner Vikram Singh Gaur''s contention is that he had opted for the Jharkhand Cadre and was eligible for allotment of the Jharkhand Cadre

and had the option of the petitioner Vikram Singh Gaur reached to the Union of India, which had not been sent inadvertently by the State of Bihar,

the petitioner Vikram Singh Gaur would have been given the Jharkhand Cadre. Whereas the petitioner Kirti Singh had opted for Jharkhand Cadre

but inadvertently his option was shown as opted for Bihar Cadre.

2. Brief facts of the case are that the petitioner, in W.P.(S) No. 251 of 2002 Vikram Singh Gaur, an officer of the rank of Indian Forest Service

and who was in the Bihar Cadre initially in unified State of Bihar, was asked to give his option in view of the creation of the State of Jharkhand by

enacting the Bihar Reorganization Act, 2000 for which a letter was issued by the Government of Bihar on 13.09.2000 inviting option from the

members of All India Civil Services of Bihar Cader so as to know their choice of the State where they can be, if possible, adjusted by giving the

proper allocations of the Cadre in the States either in Bihar or in new State Jharkhand where they could have been accommodated. As per

communication (Annexure-1/1) dated 13.09.2000, the willing persons were required to give their option by 18.09.2000. The petitioner''s (Vikram

Singh Gaur) contention is that he submitted his option letter (Annexure-3) which was duly received by the competent officer in the State of Bihar

on 30.09.2000 but inadvertently it was not sent to the Cenral Government, The State of Bihar also forwarded a list of the officers along with

forwarding letter Annexure-4 dated 03.10.2000 to the Central Government and name of the petitioner in W.P.(S) No. 6005 of 2001 Kirti Singh

has been shown at Sl. No. 69 whereas writ petitioner in W.P.(S) No. 251 of 2002 Vikram Singh Gaur''s name has been shown at Sl. No. 79. The

writ petitioner Kirti Singh was shown to have opted for Bihar Cadre and according to him, in fact he had opted for Jharkhand Cadre but

inadvertently it has been mentioned that said petitioner Kirti Singh has opted for Bihar Cadre. So far as writ petitioner Vikram Singh Gaur is

concerned, against his name it has been mentioned that no option received from Vikram Singh Gaur whereas according to the petitioner Vikram

Singh Gaur, he submitted his option which was duly received by the State Government opting for State of Jharkhand but again by mistake, in the

list it has been mentioned that no option form received. In the same list (Annexure-4), name of the Respondent No. 5 in W.P.(S) No. 251 of 2002

Sri Arvind Kumar Pandey is at Sl. No. 80 against whose name option has been shown as for Jharkhand which too was wrong as Shri Arvind

Kumar Pandey gave his option for Bihar. The petitioner''s further contention is that he had opted in time for Jharkhand Cadre which is further

apparent from the communication sent by the Principal Chief Conservator of the Forest, sent to the Government of Bihar vide letter dated

24.10.2000 (Annexure-5). The relevant portion of the register wherein there is entry of receipt of the said letter dated 24.10.2000 by the

Government of Bihar is also placed on record as Annexure-6. However, according to the petitioner, firstly, option form was not sent to the Central

Government by the State of Bihar and secondly in the list of the officers sent by the State of Bihar to the Government of India showing their option,

by mistake option of the petitioner Vikram Singh Gaur was not shown and option of Kirti'' Singh was wrongly shown. The Union of India,

believing that petitioner Vikram Singh Gaur did not submit option form and believing that another petitioner Kirti Singh as well as respondent A.K.

Pandey both submitted option for Bihar while distributing the Cadre in the State of Jharkhand and State of Bihar, wrongly allocated Bihar Cadre to

both the petitioners Kirti Singh and Vikram Singh Gaur vide notification dated 14.11.2000 and Jharkhand to A.K. Pandey.

3. Furthermore, there was one officer S.B. Gaikwad who was member of Schedule Caste but inadvertently his name was included in the list of

general category candidates and, therefore, because of that reason also some representation was submitted to the Government of India upon which

the Government of India accepted the representation and placed S.P. Gaikwad in the block of the members of Scheduled Caste resulting into

changes because of which also the position of these two petitioners Vikram Singh Gaur and Kirti Singh changed to their disadvantages and they

were wrongly allocated Bihar Cadre but that mistake was corrected upon receiving of representation by the Central Government.

4. For distribution of Cadre among the officers of I.F.S. blocks of four persons were created according to category wise so that persons coming at

Sl. Nos. 1, 2 and 4 may be allocated Jharkhand Cadre and person coming at Sl. 3 of that block may be allocated Bihar Cadre. Therefore, as per

the scheme of allocation of cadre, it transpires that the option were though invited from the officers of the Indian Forest Service so as to know their

choice for the State but allocation of cadre was according to the formula of putting the four officers in one block, category wise, and giving cadre

of Bihar to the person falling at Sl. No. 3 In each block and cadre of Jharkhand to the persons falling at Sl. Nos. 1, 2 and 4. However, the

Government of India permitted mutual transfer according to the option submitted by the officers within the block. Therefore, petitioner Vikram

Singh Gaur in W.P.(S) No. 251 of 2002, claimed that since in his block respondent No. 5 submitted 1 is option for Bihar Cadre and he was

willing to go to the Bihar Cadre and writ petitioner Vikram Singh Gaur was willing to remain in the Jharkhand Cadre and he had submitted his

option in time, therefore, the Union of India should have allocated Jharkhand Cadre to the petitioner and Bihar Cadre to the respondent No. 5. So

far as Kirti Singh is concerned, he submitted his option in time opting for State of Jharkhand but inadvertently State of Bihar conveyed the Union of

India that petitioner Kirti Singh opted for the Bihar Cadre and if the correct option of Kirti Singh would have been sent to the Union of India then

the Union of India itself would have allocated the Jharkhand Cadre to the writ petitioner Kirti Singh.

5. The petitioners'' further contention is that in some other matters, writ petitions were filed in the High Court and because of directions issued by

the High Court in the Review Petition No. 19 of 2004. vide order dated 01.04.2002 the Union of India reconsidered the disputes with respect to

the wrong allocations of the cadres to the various officers, which may have been on entirely different grounds, but while doing so cases of both the

petitioners were also considered by the Union of India realising the mistake committed by the Union of India for these two petitioners also,

reallocated the cadre to both the petitioners in the Jharkhand Cadre and Sri A.K. Pandey (respondent No. 5 in W.P.(S) No. 251 of 2002) and

Sri A.N. Sharan were allocated the Bihar Cadre. However, some persons who were aggrieved against the correction of mistake by the Union of

India as mentioned in para 5 of the notification dated 13.04.2004 (Annexure-20) submitted contempt petition before this Court pointing out that

the Union of India has misinterpreted the order dated 01.04.2002 and 17.09.2004 passed by this Court. Because of only grievance against the

para 5 of the notification dated 13.10.2004 raised by the applicants in contempt petition, the Union of India withdrew entire notification dated

13.10.2004 vide order dated 4.8.2005(Annexure-21) instead of withdrawing only para 5. Therefore, it is clear that the Union of India itself was

satisfied with the petitioners'' representation that they were wrongly allocated the Bihar Cadre as well as the two persons Sri A.K. Pandey and

A.N. Sharan were also wrongly allocated Jharkhand Cadre and on being satisfied the Union of India passed the order correcting mistake but

withdrew it vide order dated 04.08.2005 by wrongly interpreting the order of this Court. It is also submitted that even if there would not have been

any order of any Court directing the Union of India to correct the mistake which it has committed for these two petitioners, then also, it was the

duty of the Union of India itself to correct the mistake and not to perpetuate the mistake for want of any order from Court of law.

6. Learned counsel for the State of Jharkhand tried to support the stand of the Union of India by submitting that the petitioners have not acquired

any right because of asking for their option by the Union of India and allocation of the cadre is in the discretion of the Union of India.

7. Learned counsel for the Union of India submitted that after considering the representations of these two petitioners, the Union of India passed

corrigendum in the form of Notification dated 13.10.2004 (Annexure-20) but since there was order of this Court in relation to certain officers

whose names have been included in the order dated 13.10.2004 and when contempt proceedings were initiated against the officers of the Union of

India, the Union of India was permitted to take a fresh decision upon which the notification dated 13.10.2004 was withdrawn by another order

dated 4.8.2005 (Annexure-21). However, learned counsel for the petitioners could not justify the withdrawal of decision of Union of India taken

for the petitioners for their allocation of the Jharkhand Cadre to the petitioners.

8. We have considered the submissions of the learned counsel for the parties and perused the facts of the case and the earlier judgment of this

Court dated 26.2.2002 delivered in the case of Ashutosh and others v. Union of India and Others. W.P.(S) No. 6006 of 2001, wherein the facts

have been taken into consideration which occurred due to mistake committed by wrong placement of one of the officers namely S.B. Gaikwad,

which altered the position of some officers as to allocate the cadre in the State of Bihar to the persons who should have been given Jharkhand

Cadre and allocation of the Jharkhand Cadre to the persons who should have been given Bihar Cadre. The Division Bench of this Court vide

order dated 26.02.2002, after taking note of this mistake resulting into the changing of position of the officers from Bihar to Jharkhand and

Jharkhand to Bihar, found that the Union of India itself corrected the mistake by putting said Sri S.B. Gaikwad in the list of the officers meant for

members of the Schedule Caste and that resulted into again reshuffling of the officers by putting them at right places in the Bihar Cadre and in the

Jharkhand Cadre and, therefore, the writ petitioner''s grievance was wrong and dismissed the writ petition preferred by said Ashutosh and others.

It appears that a review application was filed by the writ petitioners seeking review of the said order passed in W.P.(S) 6006 of 2001. While

dismissing the review petition vide order dated 01.04.2002, reiterating that the Division Bench by earlier order only considered only one aspect of

the matter and rightly dismissed the writ petitions whereas the applicants have based their claim on the basis of stand taken by the Union of India in

the reply which can give a separate and distinct cause of action to the said applicants for which a review is not proper remedy and those applicants

were permitted to submit their representations.

9. In view of review order, those review petitioners submitted their representations. It appears, these review petitioners, based on separate

grounds was decided separately and petitioners'' representations having their own separate grounds were decided separately but for both in place

of two separate notification only one notification containing two separate reason dated 13.10.2004 was issued. That again created confusion. In

W.P.(S) No. 6006 of 2001, these two writ petitioners were not party in the review proceedings nor they had any claim before the Union of India

based on similar facts and circumstances as of the writ petitioners of W.P.(S) No. 6006 of 2001 or the review petitioners of Review Petition No.

10 of 2002 is the admitted position. The representations of present two writ petitioners were separately considered and, therefore, in the same

notification dated 13.10.2004 in para-6, a separate order was passed deciding the representations of the present two writ petitioners and this

order which has been passed along with the cases of other officers in different facts and circumstances resulted into further mistake by the Union of

India by withdrawing the notification dated 13.10.2004 in toto ignoring the fact that the representations of these two writ petitioners were

independent and which has been decided separately and even if they have been decided along with the cases of the officers named in para-5, even

then the order passed in favour of these two writ petitioners was separable order and if in view of the order passed in the contempt petition the

notification dated 13.10.2004 was required to be withdrawn, then that was required to be withdrawn for the officers who had grievances against

the order dated 13.10.2004 and should not have been withdrawn for these two petitioners.

10. We called the record of the contempt petition No. 947 of 2004 and found from the fact stated in the contempt petition that in contempt

petition Shri Chitranjan Sahay, Banshidhar Singh, Pradeep Kumar, M.P. Singh and Sanjeev Kumar were the applicants and their grievance was

that since their shifting attained finality in view of the order dated 26.02.2002 passed in W.P.(S) No. 6006 of 2001 and order dated 01.04.2002

passed in Civil Review No. 10 of 2002 then finally by order dated 17.09.2004 passed in Review Petition No. 19 of 2004 preferred by these

applicants, the Union of India committed contempt of Court by issuing notification dated 13.10.2004 reallocating the ""present petitioners from

Jharkhand Cadre to Bihar Cadre, in breach of letter and spirit of judgment of this Hon"ble Court....."".

11. We found from the notification dated 13.10.2004 that by this order the position of applicants who moved contempt petition have been

changed by passing order separately in para 5 of the notification dated 13.10.2004 and these officers'' names are given in second block of para-5.

The reason for changing cadre of these officers who were the petitioners in the contempt petition, named above, is also given in para 5 which is a

separate and distinct reason whereas, in the cases of the petitioners, the representations of these petitioners were considered separately and

thereafter, on the basis of the one of the ground raised by the petitioners which is similar to the ground which has been accepted by Division Bench

of this Court in W.P.(S) No. 6006 of 2001 and considering the another mistakes referred above while passing the order dated 26.02.2002, the

Union of India accepted present petitioner"s representations. The petitioners'' case on one count alongwith other is also the same that because of

the wrong allocation of the cadre to Sri Gaikwad, their position altered to No. 3 in the block resulting into allocation of Bihar Cadre and that

should have been corrected and in addition to above, since there was option of the petitioner Vikram Singh Gaur already for Jharkhand Cadre and

option of respondent No. 5 for Bihar Cadre then also it was just and proper and legal for the Union of India to allocate the Bihar Cadre to the

respondent No. 5 and Jharkhand Cadre to the petitioner Vikram Singh Gaur. So far as another writ petitioner Kirti Singh is concerned, it is not in

dispute that he had submitted his option for Jharkhand Cadre but inadvertently it was noticed as option for Bihar Cadre and if the mistakes were

corrected by the Union of India by application of mind then there was no reason for altering their position by order dated 04.08.2005 merely on

the basis of the order dated 07.07.2005 passed by the High Court in contempt petition No. 947 of 2004 and they should have withdrawn that

order relating to only the persons who were affected by this order dated 13.10.2004 and those who were the applicants in the contempt petition.

12. It appears that while taking decision to withdraw notification dated 13.10.2004, the Union of India failed to differentiate between the different

cases dealt with by notification dated 13.10.2004 as the present writ petitioners" cases were different and dealt with differently in para 6 of the

notification as compared to cases of the persons whose cases have been considered in para 5.

13. It is clear from the facts referred in detail by us in preceding paragraphs that all these mistakes occurred due to the fact that while sending the

names of the officers with their option form for allocation of Bihar or Jharkhand Cadre, the mistake was committed by the State of Bihar and,

therefore, all mess has happened.

14. The learned Tribunal proceeded on the ground that the respondent No. 5 in W.P.(S) No. 251 of 2002 withdrew his option and, therefore, the

decision of the Union of India was right in not allocating the cadre to the petitioner Vikram Singh Gaur to Jharkhand but the respondent No. 5 has

submitted the reply in this writ petition and petitioner Vikram Singh Gaur contended that the respondent No. 5 has admitted that he submitted his

option for Bihar Cadre which was within time and he could not have withdrawn the option after the cut of date i.e., 14.11.2000, and admittedly,

after he got the Bihar Cadre by mistake, tried to withdraw the option by sending letter dated 15.06.2001 which was not considered nor it could

have been considered by the Union of India while deciding the case of the petitioner which has been decided by ignoring these two facts. It is

apparent that this aspect has not been appreciated by the Tribunal.

15. In view of the above reasons, both these writ petitions are to be allowed and are allowed and the notification dated 04.08.2003 (Annexure-

21) is quashed to the extent withdrawing the notification dated 13.10.2004 in relation to these two writ petitioners whose cases have been

separately dealt at para-6 and the Union of India is directed to pass consequential orders, if needed.