

(2013) 10 JH CK 0028
Jharkhand High Court
Case No: WP (S) No. 2831 of 2013

Naresh Kumar Sahay

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Oct. 22, 2013

Citation: (2014) 1 AJR 795 : (2013) 4 JLR 514

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Atul Kumar, for the Appellant;

Final Decision: Disposed Off

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. The petitioner originally was aggrieved with the decision of the Departmental Promotion Committee dated 31.01.2013 whereunder he was not recommended for promotion to the post of Deputy Superintendent of Police from his present post of Police Inspector. He, in the writ petition, also sought an alternative direction to direct the respondents to promote him to the post of Deputy Superintendent of Police in the light of Police Order No. 99 while taking into account that he was eligible for such promotion and juniors to him had already been promoted.

3. The respondents have appeared and filed their counter affidavit. In their counter affidavit they have taken a stand that the petitioner was facing a departmental inquiry, in which he was awarded with a punishment of withholding of one increment, which amounts to two black marks by the order of penalty passed on 5.9.2012. They also took a stand that because of the resolution of the Personnel and Administrative Reforms Department, Government of Jharkhand, as contained in Memo No. 1698 dated 18.02.2012, Annexure-A to the Counter Affidavit, the provisions of Police Order No. 99 were superceded and the punishment imposed upon the petitioner was to take effect prospectively from the date of order of

punishment. This actually disentitled him from promotion when the Departmental Promotion Committee meeting held on 31.01.2013.

4. The petitioner filed a supplementary affidavit on 26.08.2013 and brought on record Memo No. 1989 dated 22.08.2013 issued by the office of Director General of Police cum Inspector General of Police, Jharkhand. According to the petitioner, it clarified the purport of the resolution as contained in Memo No. 1698 dated 18.02.2012 issued by the Personnel and Administrative Reforms Department, Government of Jharkhand earlier by making it clear that the said circular and the prospective effect of the punishment order would apply to the incumbent of service who are guided by the Civil Services Classification Control and Appeal Rules, which are referred to in Rule 824-A (b). It also clarified the relevant Clause (b) related to the post of Deputy Superintendent of Police. The aforesaid memo dated 22.08.2013 further clarified that the circular of 18.02.2012 would not apply to police personnel up to the rank of Inspector of Police, who are governed under the provision of Rule 824-A (e).

5. According to the petitioner in such a situation, the order of punishment would only take effect from the date of misconduct and not prospectively from the date of punishment order. Therefore, he should not be debarred from promotion. In such a situation he submits that the Superintendent of Police, Bokaro has, by Memo No. 6731 dated 01.09.2013, made a recommendation to the Director General of Police for considering his case for promotion to the post of Deputy Superintendent of Police as he is at Serial No. 21 in the gradation list and is likely to retire in the month of February, 2014. Learned counsel for the petitioner, therefore, submits that in such circumstances, he confines his prayer for a direction upon the respondent to consider his case for promotion from the date, which he is entitled and juniors have been promoted earlier, by holding a fresh Departmental Promotion Committee Meeting.

6. Learned counsel for the respondent-State, in response, has relied upon the statements made in the counter affidavit, wherein Annexure-A, dated 18.02.2012 being the resolution of the Department of Personnel and Administrative Reforms, Government of Jharkhand has been annexed. It is submitted that because of the order of punishment passed on 05.09.2012, the petitioner's case was not recommended in the Departmental Promotion Committee Meeting held on 31.01.2013. However, learned counsel for the respondents is not able to refute the subsequent clarification issued by the office of Director General of Police, Jharkhand as contained in Annexure-7, vide Memo No. 1989 dated 22.08.2013. In such circumstances, he submits that if the aforesaid circular dated 18.02.2012 has been clarified by the communication dated 22.08.2013, his order of punishment would not operate prospectively from the date of punishment and the petitioner should approach the respondents for reconsideration of his case in accordance with law.

7. I have heard learned counsel for the parties and gone through the relevant materials on record. From the facts, which are disclosed hereinabove and after hearing the counsel for the parties, it appears that in the Departmental Promotion Committee Meeting held on 31.01.2013, the case of the petitioner was not recommended on account of order of punishment passed against him in a departmental proceeding on 05.09.2012. However, it appears that the resolution dated 18.02.2012 has been clarified by the office of the Director General of Police on 22.08.2013 vide Memo No. 1989, Annexure-7. From perusal of Annexure-7, it appears that the resolution dated 18.02.2012, which provided for prospective operation of the punishment from the date of order of penalty has been clarified and held to be not applicable to such police personnel up to the rank of Police Inspector, who are governed under the provisions of Rule 824-A (e). The petitioner apparently seems to fall in the same category being officer of the rank of Police Inspector. A recommendation also appears to have been made by the Superintendent of Police to the Director General of Police, Jharkhand for consideration of the petitioner's case for promotion keeping into regard his seniority and the fact that he is likely to retire in the month of February, 2014 and also taken into account the clarification dated 22.08.2013 issued by the Director General of Police, Jharkhand.

8. In such circumstances, it would be appropriate to allow the petitioner to approach the respondent No. 2, Director General of Police, Jharkhand for reconsideration of his case for promotion to the post of Deputy Superintendent of Police in the light of aforesaid facts and documents and the clarification issued by the said office dated 22.08.2013. The respondent No. 2 and/or the competent authority shall, in such circumstances, consider the representation of the petitioner and if necessary convene a Departmental Promotion Committee Meeting on a suitable date where the case of the petitioner and other persons, who may be eligible and in the zone of consideration, may be considered and decided by the committee in accordance with law. This Court is not consciously laying down any time schedule for holding of any Departmental Promotion Committee Meeting. It is desirable that if the petitioner is able to make out a case for reconsideration, such committee may be convened without unnecessary delay. This writ petition is disposed of in the aforesaid manner.