

(2013) 11 JH CK 0036

Jharkhand High Court

Case No: Writ Petition (S) No. 2941 of 2013

Rajan Ramaswamy

APPELLANT

Vs

Union of India, Secretary,
Ministry of Home Affairs,
Government of India, Central
Industrial Security Force (C.I.S.F.)
and Assistant Inspector General
(Personnel), CISF

RESPONDENT

Date of Decision: Nov. 13, 2013

Citation: (2014) 1 AJR 234 : (2014) 1 LJLR 54

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Sujit Narayan Prasad, for the Appellant; Faizur Rahman, C.G.C. for the Union of India, for the Respondent

Final Decision: Allowed

Judgement

S. Chandrashekhar, J.

The petitioner has approached this Court with the following prayers:

(a) For issuance of an appropriate writ/writs, order/orders, direction/directions or writ in the nature of certiorari quashing the communication dated 3rd September, 2012 by which claim of the petitioner for promotion to the post of Senior Commandant has been rejected on the ground that the Departmental Promotion committee has considered the names of candidates up to Sl. No. 49 for the year 2011-12 and since name of the petitioner appears at Sl. No. 60, hence his case has not been considered for the year 2010 - 11, however name of junior to the petitioner has been considered for the year 2012-13 and in the mean time, the petitioner has since been retired, hence his candidature has not been considered.

(b) For issuance of an appropriate writ/writs, order/orders, direction/directions commanding upon the respondents for granting promotion to the petitioner to the post of Senior Commandant with effect from the date of vacancy and place him above other candidates who have already been granted promotion to the post of Senior Commandant.

(c) For issuance of an appropriate writ/writs, order/orders, direction/directions commanding upon the respondents to forthwith release the entire arrears of difference of salary from the due date of promotion till date of superannuation i.e. 31.01.2012.

(d) For issuance of an appropriate writ/writs, order/orders, direction/directions commanding upon the respondents to fix and finalise his pension on the basis of enhanced pay scale along with all consequential benefits and to release entire arrears of difference of pensionary benefits in consequent upon the same along with interest.

Heard learned counsel appearing for the parties and perused the documents on record.

2. The short question involved in this case is, whether a calendar year would be the vacancy-year or a financial year would be the relevant vacancy-year and thus, in a particular year the vacancy would be deemed to have occurred on 1st day of January or on 1st day of April.

3. In the writ petition the petitioner has specifically raised a plea that even for the vacancy year 2012-13, the persons junior to the petitioner have been considered however, the claim of the petitioner has been ignored.

4. A counter-affidavit has been filed in which a plea has been taken that, since the petitioner retired from service with effect from 31.01.2012, his candidature for promotion in the rank of Senior Commandant was not considered for the vacancy year 2012-13. In paragraph 8 of the counter-affidavit another plea has been taken by the respondents that, in view of the office memorandum dated 14.08.2003, the claim of the petitioner could not have been considered as, he superannuated from service even prior to commencement of the vacancy-year. Paragraph 8 and 17 of the counter-affidavit are extracted below:

8. That in reply to statement made in paragraph-3(A) of the writ petition it is humbly submitted that petitioner was not in the zone of consideration for the vacancy year 2011-12. Similarly the petitioner was also not considered for promotion to the rank of Senior Commandant for the vacancy year 2012-13 as he retired from service w.e.f. 31.01.2012 before the commencement of vacancy year 2012-13 i.e. 01.04.2012 to 31.03.2013 financial year based vacancy year, in accordance with instruction issued by DoP & T dated 14.08.2003. Therefore, there was no point of considering his case for promotion to the rank of Senior commandant for the vacancy year 2011-12 and

2012-13 as per instructions contained in DoP & T OM dated 14.08.2003. The said OM has a stipulation that while preparing the eligibility list for reference to DPC for preparation of a panel for promotion against vacancies arising in ensuing vacancy year linked to financial year, eligibility as on the crucial date of 1st January is to be checked only in respect of those officers in the feeder grade who are not due to retirement before the date of commencement of the relevant financial year based vacancy year. Since the petitioner retired from the service before commencement of vacancy year 2012-13, the question does not arise to consider him for promotion to the rank of Senior commandant for the vacancy year 2012-13.

17. That in reply to statement made in paragraph 9 of the writ petition it is humbly submitted that the averment made in this para is wrong hence denied. The petitioner was promoted to the rank of Commandant w.e.f. 02.04.2009 and as per Recruitment Rules for the post of Senior Commandant, "Officers with a total 15 years "Group "A"/Gazetted service including 02 years regular service as commandant in the pay scale of 12,000-16,500 and being in medical category SHAPE-I are eligible for consideration for promotion to the rank of Senior Commandant in CISF. Since the petitioner completed 2 years regular service as Commandant in the pay scale of Rs. 12,000-16,000 only on 01.04.2011, he was not eligible for consideration for promotion to the rank of Senior Commandant for the vacancy year 2010-11 and 2011-12. As the petitioner completed two years service as Commandant on 01.04.2011, he was eligible for consideration for promotion against the vacancy of year 2012-13 but could not be considered because of his retirement prior to the commencement of vacancy year.

5. The learned counsel appearing for the petitioner has submitted that, since in the office memorandum dated 14.08.2003, no such direction for linking the vacancy-year with the financial year has been reflected, the plea taken by the respondents in the counter-affidavit, is contrary to the established norms and practice. He has further submitted that even The Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the word "year" has been defined as commencing on the 1st day of January and to end on the 31st day of December. He has relied on a decision of the High Court of Punjab and Haryana at Chandigarh in "Praveen Kumar v. Union Public Service Commission and Others" (CWP No. 15798 of 2009) wherein, it has been held,

20. The sole question which emerges for determination of this Court is whether the age of eligibility is required to be considered with reference to January 1st of the year for which the select list is prepared or any other date. A plain reading of the expression "year" in Regulation 2(1)(I) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. A further perusal of Regulation 5(3) would make it evident that the Committee is debarred from considering the cases of such officer of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54

years is required to be determined on January 1st of the year for which the select list is prepared. In the present case, 4 vacancies are of the year 2006 and one vacancy of earlier years became available in the year 2006 on account of non-joining of Shri Joginder Lal Jain, PCS. It has been rightly contended that the emphasis in Regulation 5(3) is on the expression "the year for which the Select List is prepared", which would mean that meeting of the Committee may be held in a subsequent year but the eligibility of the officers in so far as his age is concerned would remain intact. It has to be judged with reference to the year for which the select list is prepared.

6. In view of the aforesaid, I am of the opinion that since the date on which the DPC was convened i.e. 31.01.2012, the petitioner was in service and the juniors to the petitioner have been considered for promotion in the rank of Senior Commandant, the claim of the petitioner could not have been denied on the ground which has been taken in the counter-affidavit, that is, the petitioner superannuated from service even prior to commencement of the vacancy-year which would commence from 01.04.2013. In view of the aforesaid, this writ petition is allowed to the extent that, the claim of the petitioner for promotion in the rank of Senior Commandant would be considered for the vacancy year 2012-13 and the petitioner would be granted all consequential monetary benefits.