

(2009) 10 JH CK 0021

Jharkhand High Court

Case No: None

Sri Ram Briksh Tiwari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Oct. 28, 2009

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amakeshwar Sahay, J.

Heard the parties and with their consent, this writ petition is being disposed of at this stage itself.

2. The petitioner is aggrieved by the Order contained in the proceedings of the Departmental Promotion Committee dated 05.05.2003, i.e. Annexure-7/2, by which the petitioner has been given Senior Selection Grade w.e.f. 01.02.1989 whereas, the petitioner has claimed the said benefits of Senior Selection Grade from 01.06.1988. Further claim of the petitioner is that on completion of four years" from the date he became entitled for Senior Selection Grade i.e. from 01.06.1988, he is entitled to Super Time Scale from 01.06.1992 which has been denied to him and, therefore, prayer has been made to direct the respondents to give him the Super Time Scale from 01.06.1992.

3. The petitioner had moved this Court earlier by filing C.W.J.C. No. 1290 of 1993 (R) making a grievance that he was not being given seniority, promotion and monetary benefits with effect from the date from which he was actually entitled to such promotion. The said writ petition was disposed of by Judgment dated 25.02.2002, as contained in Annexure-5 to this writ petition, with a direction to the respondents, particularly respondent Nos. 2 and 3 to take final decision preferably within a period of one month in the matter of promotion to the petitioner to Junior Selection Grade/Senior Selection Grade post with effect from the date when juniors to the petitioner were promoted and also for payment of monetary benefits. When the

said order was not complied with, the petitioner filed an application for initiating proceedings for contempt against the concerned respondents, which was registered as Contempt Case (C) No. 775 of 2002. It appears that after filing of said application for contempt, the respondents held a meeting of the departmental Promotion Committee and took a decision for recommending the case of the petitioner giving Senior Selection Grade with effect from 01.02.1989 and accordingly, a Notification dated 08.05.2003, as contained in Annexure-7/3, was issued by the respondents/State of Bihar, giving Junior Selection Grade from 01.06.1984 and Senior Selection Grade with effect from 01.02.1989. It is these two Annexures i.e. the proceedings dated 05.05.2003 (Annexure-7/2) and the Notification dated 08.05.2003 (Annexure-7/3) are under challenge in this writ petition.

4. The admitted facts which were taken note of in the Judgment dated 25.02.2002, as contained in Annexure-5, are reproduced hereinbelow:



4. From the pleadings of the parties, undisputed facts emerge are that petitioner joined Forest Service in 1957 and in 1975, he was put under suspension on certain charges and a departmental proceeding was initiated against him. In 1977 the departmental inquiry was concluded and the petitioner was exonerated from all the charges leveled against him and suspension order was revoked with effect from the date of suspension and he was paid all the arrears towards his monthly salary. Because of the pendency of the departmental inquiry, the case of the petitioner for promotion was not considered in 1976 and one Nawal Kishore Prasad, junior to the petitioner was promoted in the Bihar Forest Service Cadre. The case of the petitioner for promotion was kept in abeyance. After the revocation of order of suspension, petitioner filed representation claiming his promotion with effect from 1976. In the year 1981, the case of the petitioner for promotion was considered and he was given promotion in the Bihar Forest Service Cadre. It is also admitted fact that seniority of the petitioner was restored with effect from the date when officers junior to the petitioner was promoted, but he was not given monetary benefits. In paragraph 19 of the writ application, it has been categorically stated that petitioner passed departmental examination in the year 1984. Petitioner's case is that one Bibhuti Bhushan Sinha also passed departmental examination alongwith the petitioner and was junior to him, was given promotion in the Junior Selection Grade with effect from 1987 vide Notification dated 15.11.1991. A copy of the notification has been annexed as Annexure-9 to the writ application. By that notification many persons junior to the petitioner were promoted to Junior Selection Grade. These statements have not been controverted by the respondents in their counter-affidavit. It is simply stated in para-20 of the counter affidavit that only those officers would be promoted to Junior Selection Grade post who are confirmed in the said post. Since, petitioner was not confirmed in the cadre of Bihar Forest Service, he was not given promotion. In para 21 of the counter-affidavit, it is stated

that the case of the petitioner is under consideration before the State Government. In para 24 of the counter affidavit, vague statement has been made that the petitioner has now been confirmed and his case alongwith others for promotion to Junior and Senior Selection Grade Post is under active consideration of the Government. It appears that subsequently petitioner was given promotion to Junior Selection Grade in the post of Assistant Conservator of Forest with effect from 1986 instead of 1984, as claimed by the petitioner.



5. On consideration of the above facts, in the aforesaid Judgment, as contained in Annexure-5, direction was made by this Court to take a decision in the matter within a period of one month as already stated hereinabove.

6. It appears that after the aforesaid direction, the respondents shifted the date of Junior Selection Grade from 1986 to 01.06.1984 but they gave Senior Selection Grade from 01.02.1989 which, according to the petitioner, should have been from 01.06.1988 i.e. on completion of four years. The petitioner prays for shifting the date of Senior Selection Grade from 01.02.1989 to 01.06.1988 and further claim that on completion of four years from 01.06.1988 i.e. the date in which he is entitled to Senior Selection Grade, he should be given Super Time Scale from 01.06.1992 about which nothing has been said in the impugned Notification (Annexure-7/3).

7. The petitioner claims that as per the Circular dated 04.04.1985, issued by the Government of Bihar, which provides interalia that a Government servant whose seniority is restored with retrospective effect, would be given promotion with effect from the date his junior has been promoted, the pay of such persons is fixed in such a manner so that he may be treated on higher pay on which he is entitled on the retrospective date of promotion, the person may not be entitled to get arrears of pay for the period from retrospective date of promotion and the date on which he has joined on the promotion post but from the date of joining, he would be entitled to same salary and grade as given to the juniors.

8. The petitioner has retired from service as an Assistant Conservator of Forest from Deoghar on 31.07.1992. According to him, when pursuant to the Notification dated 10.12.1985, the State of Bihar has declared him to be senior to Shri Nawal Kishore Prasad and his seniority has been fixed below Anirudh Prasad and above Shri Nawal Kishore Prasad and, therefore, he is entitled for basic grade of pay on the post of Assistant Conservator of Forest w.e.f. 21.12.1976 and not from 31.12.1981, i.e. the day on which the petitioner was in fact promoted. He is entitled to be promoted with effect from 1976. Further, according to the petitioner, the aforesaid Nawal Kishore Prasad was promoted to the Junior Selection Grade from 01.06.1984 and he has been given Indian Forest Service Cadre since 13.08.1986 and, thereafter, he retired from service in the year 1991. In this view of the fact, the petitioner claims that when he has now been promoted to Junior Selection Grade with effect from 01.06.1984

then he should have been given Indian Forest Service (I.F.S.) Cadre also or equivalent Cadre in the Bihar Forest Service and he should have been granted Senior Selection Grade from 01.06.1988 and, thereafter. Super Time Scale from 01.06.1992 i.e. after completion of four years from 01.06.1988. The petitioner alleges that he has been given Senior Selection Grade with effect from 01.02.1989 along with one Mohan Mishra, who is junior to him by five persons.

9. In the counter affidavit filed on behalf of the State of Bihar, it has been stated that regarding notional benefits in pay due to shifting of appointment day of the petitioner on the post of Assistant Conservator of Forest in the year 1976, the petitioner may submit his representation giving details, which shall be disposed of in accordance with law. Regarding shifting date of promotion in Junior Selection Grade and Senior Selection Grade, it is stated that in the Junior Selection Grade, Shri Nawal Kishore Prasad, who was immediate Junior to the petitioner in Bihar Forest Service, was granted promotion w.e.f. 01.06.1984 and, therefore, the date of promotion of the petitioner in Junior Selection Grade has been shifted to 01.06.1984. It is further stated in the counter affidavit that no juniors between the petitioner and Shi Mohan Mishra has been granted promotion in Senior Selection Grade. Shri Mohan Mishra was granted promotion in Senior Selection Grade w.e.f. 01.02.1989 and, therefore, the petitioner has been promoted in Senior Selection Grade w.e.f. 01.02.1989. It is also stated that there was a time-gap (KALAWADHI) of four years for promotion from Senior Selection Grade to Super Time Scale and, therefore, the petitioner became eligible for promotion to Super Time Scale on 01.02.1993 but before that date, the petitioner superannuated from service on 31.07.1992 and, therefore, his case for promotion in Super Time Scale was not considered.

10. From the stand taken by the respondents-State of Bihar in their counter affidavit, it is clear that the date of promotion to Junior Selection Grade has now already been shifted from 1986 to 01.06.1984 because of the fact that Nawal Kishore Prasad, "the immediate junior to the petitioner, was also given the Junior Selection Grade from that date i.e. 01.06.1984. There is no dispute of the fact that the aforesaid Nawal Kishore Prasad was given Senior Selection Grade on completion of four years from the date he was given Junior Selection Grade i.e. from 01.06.1988 but so far as the case of the petitioner, it appears that by issue of Annexures-7/2 and 7/3, the respondents - State of Bihar have given him promotion to the Senior Selection Grade from 01.02.1989 i.e. the date on which one Mohan Mishra was given Senior Selection Grade. It is not clear either from impugned Annexures-7/2 and 7/3 as well as from the counter affidavit as to why the petitioner, who was also entitled to the benefits of Senior Selection Grade from 01.06.1988 as was given to Nawal Kishore Prasad then why he has been given the Senior Selection Grade from 01.02.1989 i.e. the date on which other much junior Mohan Mishra was given Senior Selection Grade.

11. In this view of the matter, in my view, the claim of the petitioner for shifting his date of promotion to Senior Selection Grade from 01.02.1989 to 01.06.1988 is fully justified and he is held to be entitled to Senior Selection Grade w.e.f. 01.06.1988.

12. Now with regard to the claim of the petitioner for Super Time Scale, according to the respondents, the petitioner became entitled to Super Time Scale in the year 1993 counting four years from 01.02.1989, the date from which he has been given Senior Selection Grade. The petitioner superannuated from service on 31.07.1992 itself and, therefore, the said claim of Super Time Scale was not given to the petitioner. I have already held above that the petitioner is entitled to Senior Selection Grade from 01.06.1988 and, therefore, if four years is counted from that date, the petitioner becomes entitled to Super Time Scale from 01.06.1988. The petitioner was very much in service at that time, therefore, in my view, the denial of Super Time Scale to the petitioner for the reasons stated in the counter affidavit, cannot be sustained.

13. In view of the discussions and findings above, the respondent Nos. 1 and 2 are hereby directed to pass fresh order/orders and issue fresh Notification/Notifications giving the benefits of Senior Selection Grade and Super Time Scale to the petitioner from the date indicated in this Judgment and, thereafter, pass appropriate consequential order and calculate the amount of arrears payable to the petitioner and refix the pension in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order.

14. Consequently, this writ petition stands allowed but without any costs.