

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No.274 of 2019

Ram Awadhesh Kumar Singh Petitioner.

-Versus-

1. The State of Jharkhand through the Principal Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand, Ranchi.
2. The Deputy Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand, Ranchi.
3. The Under Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand, Ranchi.
4. The Inspector General of Police (Human Rights), Jharkhand, Ranchi.
5. The Under Secretary, Police Headquarters, Jharkhand, Ranchi.
6. The Superintendent of Police (Rail), Jamshedpur.
7. The Superintendent of Police (Rail), Dhanbad.

..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Chanchal Jain, Advocate

For the State : Mr. Indranil Bhaduri, S.C.IV

Order No.07

Date: 22.03.2024

1. The present writ petition has been filed for quashing the letter no. 5760 dated 24.10.2017 (Annexure-12 to the writ petition) issued by the Under Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand-respondent no. 3, whereby the claim of the petitioner regarding exemption from passing departmental examination (Accounts) has been rejected in view of the provisions contained in para nos. (2) & (4) of the letter no.4674 dated 15.05.1992 issued by the Department of Personnel and Administrative Reforms of the erstwhile State of Bihar. Further prayer has been made for issuance of direction upon the respondents to pass an order of exempting the petitioner from passing the departmental examination. The petitioner has also prayed for issuance of

direction upon the respondents to make necessary changes or correction as may be expedient after issuance of exemption order in terms with letter no.4674 dated 15.05.1992 and thereafter to make payment of arrears of pension as well as other retiral benefits on accrual of annual increments which were denied due to non-passing of the departmental examination.

2. Learned counsel for the petitioner submits that the petitioner joined the police service on the post of Sub-Inspector of Police in the year 1981 and he was promoted to the post of Inspector in the year 2006. Subsequently, he was promoted to the post of Deputy Superintendent of Police vide notification as contained in memo no.1772 dated 25.03.2015 and he joined as Deputy Superintendent of Police (Rail), Chakradharpur on 02.05.2015 from where he superannuated from service on 31.03.2017.
3. It is further submitted that for the purpose of getting further annual increments, the petitioner had to pass departmental examination in accounts for which he appeared twice, however, unfortunately could not pass the said departmental examination (accounts) on the both occasions. Thereafter, the petitioner made representation before the respondent no. 3 on 21.12.2016 through the Superintendent of Police (Rail), Jamshedpur-respondent no.6 seeking exemption from passing the said departmental examination in terms with letter no.674 dated 15.05.1992 issued by the Department of Personnel and Administrative Reforms of the erstwhile Government of Bihar,

which provides necessary guidelines under which circumstances, a government employee can be relieved/exempted from passing the departmental examination. The respondent no.6 vide letter no. 855 dated 29.12.2016 also requested the respondent no.3 to take necessary action on the petitioner's representation whereupon the said respondent vide letter no.1590 dated 22.03.2017 requested the Inspector General of Police (Human Rights), Jharkhand, Ranchi- the respondent no.4 to provide information along with recommendation as to whether the petitioner was inflicted with any punishment during his service period. In response to the said letter, the Under Secretary, Police Headquarters, Jharkhand, Ranchi-the respondent no.5 vide letter no.518 dated 04.04.2017 requested the respondent no.6 to provide information as to whether any punishment was inflicted upon the petitioner during his service period, whereupon the said respondent vide letter no.210 dated 13.04.2017 provided information that the petitioner was not inflicted with any punishment while posted as Deputy Superintendent of Police (Rail), Chakradharpur. Thereafter, the respondent no.5 vide letter no.1069 dated 31.07.2017 informed the said fact to the respondent no.3.

4. It is also submitted that the petitioner having not received any communication from the respondents as to whether his claim was allowed or rejected, he filed a writ petition being W.P.(S) No.3278 of 2018 which was disposed of by a co-ordinate Bench of this Court vide order dated 07.08.2018, directing the

respondent-the Principal Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand, Ranchi to take a decision on the pending representation of the petitioner in view of the resolution dated 15.05.1992, particularly clause - 3 thereof. Thereafter, vide letter no.5978 dated 31.10.2018 issued by the respondent no.2, the petitioner was informed that his claim regarding exemption from passing departmental examination (Accounts) was rejected by the respondent no.3 vide letter no.5760 dated 24.10.2017.

5. It is further submitted that the petitioner was Deputy Superintendent of Police and his service book/service record was in possession/custody of the Department of Home, Prison & Disaster Management and, therefore, the fact as to whether he was inflicted with any punishment, could have been verified at the departmental level itself without any delay.
6. It is also submitted that the case of the petitioner is identical to the case of one Anjani Kumar Singh who was also promoted with the petitioner to the post of Deputy Superintendent of Police by the same notification. They both had appeared in the departmental examination but could not pass the same. Moreover both of them had made applications separately seeking exemption from passing the departmental examination few months before their superannuation. However, the department was responsive in the case of Anjani Kumar Singh who was going to superannuate on 31.08.2016 and his application was allowed on the date of his retirement without making any enquiry, whereas in the case of the petitioner, the

department delayed his matter on the pretext of making enquiry and he was made to superannuate from service without granting exemption.

7. It is further submitted that apart from Anjani Kumar Singh few other officers i.e. Dinesh Prasad Shukla, Awadhesh Kumar Singh & Dilip Kumar Verma also superannuated on 31.08.2016 and all of them were granted exemption from passing departmental examination on the date of their superannuation vide order as contained in memo no.4718 dated 31.08.2016 passed by the respondent no.3. Thus, the action of the respondent-authorities is violative of Article 14 of the Constitution of India.
8. It is also submitted that superannuation cannot be a ground for not allowing exemption from passing the departmental examination. There is no bar under law particularly the direction as contained in letter no.4674 dated 15.05.1992 to grant exemption to the petitioner from passing departmental examination with retrospective effect. As per the Departmental Examination of Gazetted Officers Rules, 1961, there is no requirement of passing departmental examination (Accounts) by the personnel/ officers below the rank of Deputy Superintendent of Police. Moreover, the petitioner was promoted to the post of Deputy Superintendent of Police vide notification dated 25.03.2015 and in order to get increment, he appeared in the said departmental examination twice, but was not declared successful. At the time of promotion, the petitioner was aged about 58 years and was about 59½ years

old at the time of being declared unsuccessful. Thus, it is amply clear that the petitioner was neither required under law to file application on attaining the age of 50 years nor he committed delay in filing the application dated 21.12.2016 seeking exemption from passing the said departmental examination.

9. On the contrary, learned counsel for the respondent-State submits that the petitioner was not granted exemption from passing departmental examination (Accounts) since he had superannuated from service. Admittedly, he retired from service on 31.3.2017 and as such there was no question of grant of exemption from passing departmental examination (Accounts) with effect from the date prior to 31.03.2017.
10. It is further submitted that in fact the petitioner has prayed for grant of exemption from passing the said departmental examination with retrospective effect, which is not permissible in the eye of law. The exemption from passing the departmental examination can only be granted on the request of an employee and on fulfillment of eligibility criteria. The petitioner made a representation on 21.12.2016 for grant of exemption from passing the departmental examination being well aware of the fact that he was due to retire on 31.3.2017 and thus the delay, if any, in disposal of his representation was due to delay in filing the same by him and the concerned respondent authorities were not responsible for the same.
11. According to learned SC IV, the petitioner is trying to allege delay on the part of the respondents overlooking the fact that he himself was responsible for the delay, since it was open to

him for making such application on attaining the age of 50 years. However, he waited for filing the representation till the time when his retirement was due after three months.

12. Heard learned counsel for the parties and perused the materials available on record.
13. Thrust of the argument of the learned counsel for the petitioner is that the petitioner had filed an application for grant of exemption from passing the departmental examination immediately after becoming unsuccessful in the said examination and as such he cannot be made to suffer for the delay committed by the respondents in seeking information as to whether the petitioner was inflicted any punishment during his service tenure that too when his service book was in the possession of the department itself which could have been verified in time. It has further been contended that a similarly situated person, namely, Anjani Kumar Singh was granted exemption from passing departmental examination on the date of his retirement, whereas the petitioner was denied the same, which is violative of Article 14 of the Constitution of India.
14. On the contrary, the contention of the respondent-State is that the exemption from passing departmental examination cannot be granted retrospectively. Since the petitioner retired from the service during pendency of his representation filed for grant of exemption from passing the departmental examination (Accounts), the same was rejected. The learned counsel for the respondents has invited the attention of this Court to Para

(2) of the letter no.4674 dated 15.05.1992 and has submitted that as per the said para, the order of exemption will be effective from the date of its issuance and not retrospectively.

15. To appreciate the contentions of the parties, it would proper to refer Para (2) of the letter no.4674 dated 15.05.1992 which reads as under:

“2. जिस तिथि से विमुक्ति का आदेश निर्गत किया जाएगा उसी तिथि से विमुक्ति का आदेश प्रभावी होगा।”

16. On bare perusal of the aforesaid provision, it appears that the authority concerned has to specify as to from which date the exemption from passing the departmental examination will be effective. This Court is not convinced with the argument of learned counsel for the respondents that the order of exemption cannot be granted retrospectively. Had there been the word “को” in place of the word “से” the argument of the learned counsel for the respondents would have some force, however the word “से” mentioned in the aforesaid Para (2) of the letter no.4674 dated 15.05.1992 means that the date with effect from which the order of exemption is issued, the same will be effective from such date.

17. So far the contention of the petitioner regarding violation of Article 14 of the Constitution of India is concerned, it would be appropriate to refer a chart showing case of the petitioner vis-à-vis Anjani Kumar Singh, which is given herein below:-

Petitioner	Anjani Kumar Singh
Promoted to the post of DSP vide notification as contained in memo no. 1772 dated 25.03.2015	Promoted to the post of DSP vide notification as contained in memo no. 1772 dated 25.03.2015
Appeared in the departmental examination held on 04.02.2016 and 09.09.2016 but failed	Appeared only once in the departmental examination held on 04.02.2016 but failed.
Date of superannuation – 31.03.2017	Date of superannuation - 31.08.2016
Filed representation for exemption from departmental examination on 21.12.2016	Filed for exemption from departmental examination on 27.07.2016
Exemption representation rejected on 24.10.2017 i.e. after retirement from service.	Exemption representation allowed on 31.08.2016 i.e on the date of superannuation

18. It would be evident from the aforesaid chart that the petitioner had filed representation for grant of exemption from passing departmental examination on 21.12.2016 i.e. about three months prior to his superannuation, whereas Anjani Kumar Singh had made his representation on 27.07.2016 i.e. about one month prior to his superannuation. The application for grant of exemption of the petitioner was delayed on the pretext of verifying the fact as to whether he was punished in his service tenure and in the meantime he retired from service, whereas no such verification was made in the case of said Anjani Kumar Singh and his representation for grant of exemption was allowed on the date of his superannuation.

19. Thus, this Court finds substance in the argument of the learned counsel for the petitioner that the respondent-authorities have discriminated the petitioner as against a similarly situated officer which is not permissible in the eyes of law. Had the respondent authorities been prompt and responsive, the

petitioner's representation for grant of exemption would have been considered and allowed before his superannuation. The respondent-authorities cannot blame the petitioner for the delay committed by them in processing his application.

20. In view of the aforesaid discussion, this Court is of the view that the petitioner is also entitled to be granted exemption from passing departmental examination from the date of his retirement. The impugned letter no.5760 dated 24.10.2017 issued by the Under Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand-respondent no.3 is hereby quashed and the concerned respondent is directed to forthwith grant exemption to the petitioner from passing the departmental examination (accounts) with effect from the date of his retirement and to make payment of arrears of pension and other retiral benefits accruing therefrom.
21. The writ petition is, accordingly, allowed.

Sanjay/

(Rajesh Shankar, J.)