

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 128 of 2023

Neeraj Kumar Singh, aged about 52 years, s/o Sarvesh Prasad Singh, Resident of -T.N. Singh Road, Court Compound, Adampur, Bhagalpur, PO-Bhagalpur, PS-Bhagalpur, District-Bhagalpur, Bihar

... ... Petitioner

Versus

1. The State of Jharkhand through Chief Secretary, having its office at Project Bhawan, PO & PS-Dhurwa, District-Ranchi, Jharkhand
2. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Jharkhand, having its office at Project Bhawan, PO & PS-Dhurwa, District-Ranchi, Jharkhand

... ... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Saurabh Shekhar, Advocate

For the Respondents : Mr. Kunal Chandra Suman, AC to GP-II

Order No. 4 /Dated: 20th August 2024

The instant writ application has been preferred by the petitioner praying therein for quashing part of the notification dated 28.09.2022 (Annexure-7); whereby the petitioner has been granted promotion from the post of Sub-Divisional Officer (Grade-Pay of Rs. 66,00/-) to the post of Additional Collector and equivalent post (Grade-Pay of Rs.7600/-) only to the extent that promotion has been granted to the petitioner with effect from 28.09.2021 instead the promotion should be effected from the date when juniors have been granted promotion on 11.01.2016. So far as prayer no. 1(ii) is concerned, learned counsel does not press this prayer.

The petitioner has further prayed for a direction upon the respondent-authorities to consider his case for grant of promotion from the post of Additional Collector (Grade-Pay of Rs. 7600/-) to the post of Joint Secretary (Grade-Pay of Rs. 8700/-) applying appropriate clause of relaxation in the कालावधि specified as per the Government Resolution dated 04.04.2014 (Annexure-11 series) and the relaxation clause as provided in Government Resolution dated 24.10.2014 with effect from 30.11.2022 when the petitioner has completed 20 years of total service and one year of

service in feeder grade of Additional Collector, inasmuch as, the juniors have been granted promotion as per Notification dated 28.09.2022; whereby the petitioner was granted promotion to the post of Additional Collector.

Petitioner has also prayed for grant of benefit under 1st and 2nd MACP along with arrears of salary on completion of 10/20 years of service.

2. The brief facts of the case are that the petitioner joined the service on the post of Deputy Collector on 26.08.1997. A combined gradation list was prepared by the State of Jharkhand wherein the name of petitioner appears at serial no. 793; whereas one Akhilesh Kumar Sinha who is junior to the petitioner in the un-reserved category appears at serial no. 795. Thereafter, petitioner was promoted to the post of Sub-Divisional Officer in the Junior Selection Grade on 15.01.2010.

Subsequently, in view of a criminal case being Vigilance PS Case No. 09. of 2011, a departmental proceeding was initiated against the petitioner vide Government Resolution dated 19.08.2014. It is the case of the petitioner that he was considered for promotion on the post of Additional Collector but due to pendency of the departmental proceeding and criminal case the matter was kept in sealed cover. On 11.01.2016, a notification was published wherein several employees including Akhilesh Kumar Sinha who is junior to petitioner were granted promotion from the post of Sub-Divisional Officer to the post of Additional Collector but petitioner was not recommended by the Departmental Promotion Committee for the reason that his case was in sealed cover and further his Annual Confidential Report was not available.

The petitioner challenged the order of conviction and sentenced passed by the Court of District and Additional Sessions Judge II-cum-Special Judge and he was acquitted from all the charges in Criminal Appeal (SJ) No. 210 of 2020. The petitioner was ultimately exonerated from the departmental proceeding and granted promotion to the post of Additional Collector with effect from 28.09.2022; whereas his junior, namely, Akhilesh Kumar Sinha was promoted to the post of Joint Secretary on 30.11.2022. He

contended that though the petitioner was convicted by the first Court; however, the appellate Court has acquitted the petitioner and pursuant to that he was also exonerated by the Department in the departmental proceeding which was pending against the petitioner

3. Learned counsel further draws attention of this Court to Annexure-5 especially page no. 75 of the writ application and submits that the ground mentioned in the sealed cover indicates that only due to pendency of criminal and departmental proceeding his case was kept in sealed cover. Since the petitioner was acquitted in the criminal proceeding and subsequent thereto, he was exonerated in the departmental proceeding also; as such the petitioner is duly entitled for promotion from the same date when the juniors were granted promotion pursuant to the Departmental Promotion Committee (in short, DPC) held on 04.01.2016, however, the same has not been done.

4. Learned counsel further draws attention of this Court to Annexure-7 which is the impugned order where a ground has also been taken that the Annual Confidential Report (in short, ACR) of the petitioner was not available with the DPC and, therefore, there was no occasion for the DPC to give any opinion. He emphatically contended that there is no mention in the DPC meeting which transpired after the sealed cover was opened.

He contended that even otherwise, the duty of giving self-assessment to the superior officer came in vogue with effect from 14.08.2015; whereby in Clause (ए) it has been stated that the Self Performance Report has to be given by the employee every year between 1st April till 31st March. He contended that since the Notification itself came on 14th August 2015, therefore, it is deemed that the employee will start giving Annual Performance Appraisal Report (in short, APAR) from the very succeeding year and not of the current year because there is no reference of filing of APAR for a broken period that is from the date of Notification till the end of financial year; as such, even that ground taken in the impugned

order is *nonest* in the eye of law.

5. Learned counsel for the respondents opposes the prayer of the petitioner relying upon its counter affidavit especially paragraph nos. 16 & 29 which read as under:

"16. That it is most humbly stated and submitted that since the junior of petitioner namely Jitendra Kumar Deo, was granted promotion to the rank of Additional Collector or equivalent vide notification no. 6093 dated 28.09.2021, as such the petitioner was also granted notional promotion to the rank of Additional Collector and equivalent with retrospective effect from 28.09.2021 vide notification no. 6064 dated 28.09.2022.

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29. That with respect to the statements made by the petitioner in paragraph no.13 of the writ petition it is most humbly stated and submitted that the petitioner was not granted promotion by the Departmental Promotion Committee in its meeting dated 04.01.2016 on account of the fact of pendency of the departmental proceedings and criminal proceedings and also for the reason that the petitioner did not disclose his Annual Confidential Report which was essential for consideration of promotion.

30. It is most humbly submitted that in Para 2(1) and (ii) of Resolution No. 10483 dated 24.10.2014 of the Department of Personnel, Administrative Reforms and Rajbhasha there is a provision for Govt. employees who have completed 20 years of service and also completed one year of service in current post/rank that his promotion to next post/rank will not be hindered due to Kalawadhi."

6. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein, it transpires that in the DPC meeting, petitioner's promotion from the post of Sub-Divisional Officer to the post of Additional Collector could not be considered for the reason that a criminal case as well as departmental proceeding were pending against him and, accordingly, his case was rightly kept in sealed cover. However, the junior, namely, Akhilesh Kumar Sinha whose name appears at serial no. 54 at page 75 to the writ application; which also discloses the seniority position in the DPC and the said co-employee was admittedly below to the petitioner was recommended and promoted on 11.01.2016.

Subsequently, a development took place, inasmuch as, the petitioner was acquitted from the criminal case on 08.07.2020 and pursuant thereto; he was also exonerated from the departmental proceeding on 13.11.2020. Thus, as per the settled proposition, the sealed cover should

have been opened and the petitioner should have been granted promotion with effect from 11.01.2016 i.e. the date when juniors were granted promotion. However, the record transpires that the case of the petitioner for promotion to the post of Additional Collector has been considered and granted with effect from 28.09.2022.

7. It is evident from perusal of the impugned order dated 28.09.2022, a new ground has also been taken which was not existing in the Departmental Proceeding Committee Report dated 04.01.2016, inasmuch as, a new ground that the APAR of the petitioner was not available with the DPC on 04.01.2016.

In this regard, this court is of the considered opinion that on the one hand; this ground itself is incorrect. As stated hereinabove, the same is not existing in the finding of the DPC dated 04.01.2016, inasmuch as, the case of the petitioner was not considered only for the reason of pendency of criminal case and departmental proceeding and no other grounds have been mentioned. Therefore, once the petitioner was exonerated, he should have been given promotion from 11.01.2016 when the juniors were given promotion.

On the other hand; the issue of non-availability of APAR, as indicated in the impugned order, came in vogue with effect from 14.08.2015. It further appears that there is a specific clause (kha) that the government employee shall file ACR for every year for a period from 1st April to 31st March. This itself goes to show that the said notification has been practically made effective from 01.04.2016 to 31.03.2017 and admittedly the DPC was held on 04.01.2016 and perhaps due to this reason this APAR ground was not in the report of DPC.

8. Accordingly, having regard to the aforesaid discussions, the impugned order so far as it relates to the petitioner with regard to date of promotion is not acceptable and the same deserves to be, and is hereby, quashed and set aside. The concerned respondent is directed to give promotion to the petitioner from 11.01.2016; the date when the junior,

namely, Akhilesh Kumar Sinha has been granted promotion.

So far as prayer for consideration with respect to his promotion from the post Additional Collector to Joint Secretary is concerned; the respondents are also directed to consider his case for promotion to the post of Joint Secretary in view of the fact that the same Akhilesh Kumar Sinha has been promoted to the post of Joint Secretary on 30.11.2022. Accordingly, similar benefit be extended to this petitioner.

Further, the respondents will also look into the prayer of 1st and 2nd MACP of this petitioner and if found admissible, the same shall be extended to him. It is clarified that the entire exercise shall be completed by the respondents as early as possible but not beyond the period of four months.

9. Consequently, the instant writ application stands allowed in the manner indicated herein above.

(Deepak Roshan, J.)

Amit

AFR/