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Court : Jharkhand

Decided On : Jul-21-2004

Reported in : [2004(4)JCR200(Jhr)]

Judge : Narendra Nath Tiwari, J.

Acts : Service Law; [Constitution of India](#) - Articles 14 and 226

Appeal No. : CWJC No. 2142 of 1997(R)

Appellant : Ranjit Kumar

Respondent : Heavy Engineering Corporation Ltd. Through Its, Cmd and ors.

Advocate for Def. : R. Mukhopadhyaya, Adv.

Advocate for Pet/Ap. : R.K. Choudhary, Adv.

Disposition : Appeal allowed

Judgement :

N.N. Tiwari, J.

1. In this writ application the petitioner has prayed for quashing the order dated 20.2,1996 as contained in Annexure-12 passed by the respondent No. 5 and also

for issuance of writ of mandamus directing the respondents to give the same benefits of notional seniority to the petitioner as has been given to others similarly situated persons.

2. According to the petitioner, the said order as contained in Annexure-12 is wholly arbitrary and illegal and the same is not sustainable in law in view of the order dated 7.12.1995 passed in CWJC No. 2578 of 1994(R).

3. The case of the petitioner, in brief, is that he was initially appointed to the post of artisan (fitter) on 21.8.1965 and was in the service of respondent No. 1. Subsequently he was posted in HMBP, a unit plant of HEC Limited. The petitioner was, thereafter, given promotion to the post of Fitter 'B' grade with effect from 20.2.1971 in the scale of Rs. 444-701. According to the petitioner, in the year 1977 respondent-corporation issued instruction for rectifying the anomalies in seniority as relative seniority was used by promoting junior artisans superseding senior artisans. The said promotion order was issued with effect from 13.8.1977. The said date was thus fixed for giving notional promotion to all the superseded senior fitters. Grade A including the petitioner as he was also superseded by his juniors. In accordance with the said instruction, all eligible workers who were superseded, were granted notional seniority in Grade 'A' with effect from 13.8.1977 vide office No. 1135 to 1140 dated 19.12.1977 and office order No. 1157 dated 22.12.1977. However, the petitioner was not included in the said order and was not given notional seniority as were given to other similarly situated persons. According to the petitioner, a departmental proceeding was deliberately initiated against him only in order to deprive him of the notional seniority while giving the same to other similarly situated persons and the consequential benefits of refixation of pay at the appropriate scale. The pay of the other which was done in the cases of other workmen. According to the petitioner, the said departmental proceeding was concluded completely exonerating him vide office order dated 28.12.1979 as contained in Annexure-7 to the writ application. It is stated that pendency of the said departmental proceeding was quoted as a ground for not fixing his pay in Grade A from the date pay scale of the others were refixed. According to the petitioner, after his exoneration in the departmental proceeding, he filed a representation requesting the respondents to grant the benefits as has been given

to others similarly situated persons but the same was not considered. Then the petitioner had preferred writ application before the Patna High Court, Ranchi Bench, as then was, being CWJC No. 448 of 1994(R). The said case was disposed of directing the petitioner to file representation before the respondent No. 2. Accordingly the petitioner filed a representation but the same was rejected by passing a cryptic order dated 24.5.1994. The petitioner challenged the said order in the writ application, CWJC No. 2578 of 1994(R), which was disposed of vide order dated 7.12.1995 directing the respondents to consider the case of the petitioner and to give him benefit of notional seniority if the juniors to the petitioner have been given the same and the petitioner is not other disqualified. Annexure-12 is the order passed in purported compliance of the said order dated 7.12.1995 passed in CWJC No. 2578 of 1994 (R) which is under challenge in this writ application.

4. The respondents-corporation appeared in this case and filed counter affidavit refuting the claim of the petitioner and supporting the order contained in Annexure-12. In the counter affidavit it has been stated, inter alia, that the petitioner was not given promotion as he did not possess minimum qualifying marks and was not found suitable for promotion to Grade 'A' by the Departmental Promotion Committee. According to the respondents, the petitioner was charge-sheeted and disciplinary proceeding was pending against him at the relevant time and in that view he was not given promotion with effect from 13.8.1977.

5. Mr. R.K. Chowdhury learned counsel appearing for the petitioner at the very outset invited my attention on Annexure-12. Mr. Chowdhury urged that from a bare perusal of the said Annexure-12 it would be evident that same contains some facts regarding the direction of the High Court and thereafter giving notional seniority to other persons and then there is one line decision that the petitioner's case cannot be equated with them and the representation of the petitioner has been rejected. According to the learned counsel, the said order as contained in Annexure-12 is a cryptic order without any reason in support of its conclusion and the same is also violative of the order passed in CWJC No. 2578 of 1994(R). According to the learned counsel, the said order based on no reason violates the mandate of law as well as Article 14 of the [Constitution of India](#) and same is wholly arbitrary and

illegal. It was further urged that there are adequate materials on record which go to substantiate the claim of the petitioner. The reason for non-consideration of the petitioner's seniority with effect from 13.8.1978 was said to be pendency of the departmental -proceeding. According to him, the said departmental proceeding was tainted with bias and mala fide. It was deliberately initiated in order to illegally deprive the petitioner of his legitimate benefits, which ultimately ended in favour of the petitioner, exonerating him of all charges. And there was absolutely no justification for not considering the petitioner's case, equally treating him with other similarly situated persons.

6. Mr. R. Mukhopadhyaya, learned counsel appearing for the respondents on the other hand submitted that there is absolutely no infirmity in the impugned order as contained in Annexure-12. According to him, although the reasons have not been recorded in so many words in the order, it were well known to the petitioner. He has not, in any way, been prejudiced by absence of the ground for rejection of the representation, in detail. According to the learned counsel, the petitioner was facing charge of misconduct at the relevant time and as such he was not entitled for re-fixation of the seniority with effect from the date from which other persons were given the scale. According to him, since the petitioner was facing a departmental proceeding he cannot be said to be similarly situated persons who were given benefits and in that view there is no arbitrariness on the part of the respondents.

7. After hearing the learned counsel for the parties at length and on perusal of the records I find that undisputedly the Annexure-12 is a non-speaking and cryptic order which is not supported by any reason. In the said order some facts are stated followed by a conclusion but no speaking reason has been supplied for denying the petitioner's claim. Mr. R. Mukhopadhyaya learned counsel for the respondent tried to defend the said Annexure-12 but in different way. He could not meet the said objection of the petitioner as the impugned order thwarted his attempt.

8. In view of the above I find that the said order Annexure-12 does not stand to the test of Article 14 of the [Constitution of India](#) and being also violative of principle of

natural justice, is liable to be quashed. Pendency of a departmental proceeding cannot be a ground for non-consideration for promotion and/or fixation of seniority of an employee. It amounts prejudging an issue before an enquiry which is not permissible in law. In the instant case even the outcome of the departmental proceeding was in favour of the petitioner. Therefore, there was no justification for denial of the petitioner's claim on the ground of pendency of the departmental proceeding.

9. Accordingly this writ application is allowed and the order as contained in Annexure-12 is quashed. Since the matter is quite stale, the respondents are directed to issue appropriate order giving the petitioner the benefit of seniority and promotion of Grade 'A' w.e.f. 13.8.1977 as has been given to other similarly situated persons on the basis of guide line contained in Annexure-12. If the petitioner is found entitled to monetary benefits of his re-fixation of the seniority with effect from 13.8.1977, the same must be calculated and paid within three months from the date of receipt/production of a copy of this order. If the said monetary benefit is not paid within the said period of three months then the amount of benefit would carry interest at the rate of 6% per annum from the date the other has been given the said benefit till the date of the actual payment. There will be no order as to costs.

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