

**Tapan Kumar Vs. Bihar State Electricity Board and ors.**

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**Court :** Jharkhand

**Decided On :** Aug-01-2006

**Reported in :** [2006(4)JCR63(Jhr)]

**Judge :** Amareshwar Sahay, J.

**Acts :** Indian Oath Act

**Appeal No. :** C.W.J.C. No. 2987 of 1999 (R)

**Appellant :** Tapan Kumar

**Respondent :** Bihar State Electricity Board and ors.

**Advocate for Def. :** A.K. Jha, Adv.

**Advocate for Pet/Ap. :** A. Allam,; Nehala Sharmin and; S. Kumar, Advs.;

**Disposition :** Application allowed

**Judgement :**

**Amreshwar Sahay, J.**

1. Originally this writ application was filed by the petitioner with a prayer to quash the memo of charges contained in letter dated 20.12.1997 (An-nexure-4), the enquiry report dated 7.6.1999 (Annexure 6) in which the Enquiry Officer held that one of the charge against the petitioner was proved and also to quash the letter

dated 10.8.1999, i.e., the second show-cause notice issued by respondent No. 2 (Annexure 7) where by the petitioner has been asked to show-cause as to why he should not be punished on the basis of the enquiry report dated 7.6.1999 and for direction that he be promoted to the next higher scale by giving promotion on the basis of the Judgment passed by the Division Bench of this Court in CWJC No. 2518/1991 (R), contained in Annexure-3 to this writ application but since during pendency of this writ application an order of punishment of dismissal from service was passed by the Disciplinary Authority and, therefore, the petitioner has also challenged the said order of dismissal from service dated 10.1.2000 by annexing the said order as Annexure-14 to the writ application.

2. According to the petitioner, he was appointed by the respondents on the post of Overseer on 11.2.1965 and was posted at Patratu. In the gradation list, prepared by the respondents, the name of the petitioner was placed at Sl. No. 167. The further case of the prosecution is that the Selection Committee by its order dated 29.1.1965 considered that the petitioner belonged to scheduled caste community and, therefore, he was required to be given preferential treatment. One Ram Yatan Paswan, who was also a member of Scheduled Caste and was junior to the petitioner who was placed at Sl. No. 217 in the gradation list, i.e., below the petitioner, was given promotion to the post of Assistant Engineer and then to the post of Executive Engineer by ignoring the claim of the petitioner.

He represented the matter but since no relief was given to him and, therefore, he filed a writ application before Ranchi Bench of Patna High Court being CWJC No. 2518 of 1991 (R) wherein he prayed for granting him promotion to the next higher post and he also challenged the promotion given to Ram Yatan Paswan respondent No. 4 therein on the ground that he was junior to him but was wrongly given promotion. The said writ application was heard by a Division Bench and was disposed of by judgment dated 21.8.1997 contained in Annexure 3 to this writ application. From perusal of Annexure-3, i.e., the judgment of this Court, it appears that the Division Bench had noticed the fact that in spite of the fact that the petitioner was asked to submit his Caste Certificate issued by the competent authority, i.e., the Deputy Commissioner, Ranchi since he was a permanent resident of Ranchi but he did not produce the said caste certificate and, therefore,

his case for promotion could not be considered. It further appears from the said judgment that however, subsequently, the Deputy Commissioner, Ranchi by his letter dated 28.2.1990 confirmed that the petitioner belonged to 'kanjar' community and was a member of the Scheduled Caste community.

3. The Division Bench held that the case of the petitioner could not be considered since the petitioner failed to submit caste certificate, which was essential for placing him in the category of reserved candidate and, therefore, for the said lapses he himself was responsible to a great extent. Further, since, the Deputy Commissioner, Ranchi by letter dated 28.2.1990 confirmed that the petitioner belonged to the member of Scheduled Caste and, therefore, the Division Bench, on the basis of the statement made by the counsel for the respondents that the Board was prepared to consider the case of promotion of the petitioner to the higher rank, disposed of the writ petition directing the Board to consider the case of the petitioner for his promotion to the higher rank on the basis of the letter issued by the Deputy Commissioner, Ranchi dated 28.2.1990 confirming that the petitioner belonged to the category of Scheduled Caste. However, the Division Bench refused to quash the order of promotion given to respondent No. 4 Ram Yatan Paswan.

4. The grievance of the petitioner is that since he filed a writ application, i.e., CWJC No. 2518/1991 (R) before this Court claiming his promotion which annoyed the officials of the Board and, therefore, with a mala fide intention a departmental enquiry was initiated against him for the following two charges:

(1) That he got issued Caste Certificate dated 28.2.1990 from the Deputy Commissioner, Ranchi by misleading him and by making false affidavit on oath by filing an affidavit in order to get promotion.

(2) After thorough enquiry it came to the light on 25.11.1997 that the petitioner had submitted the Caste Certificate belonging to the member of Scheduled Caste by filing false affidavit and by giving a wrong residential address in the affidavit and, therefore, the caste certificate was forged one. Accordingly, he, by submitting the forged caste certificate, committed fraud with the Board which was condemnable and, therefore, was an offence punishable under the Indian Oath Act. A copy of

charge has been annexed as Annexure-4 to this writ application.

5. According to the petitioner, though he protested against the initiation of such departmental enquiry but he was forced and compelled to face the proceeding. The Enquiry Officer submitted his report, contained in Annexure-6, whereby he exonerated the petitioner from the second charge whereas he held that the first charge against the petitioner stood proved.

6. On the basis of the said enquiry report, a second show-cause notice was issued to the petitioner on 10.8.1999 contained in Annexure 7 to this writ application whereby the petitioner was asked to show-cause as to why he be not punished for the charge No. 1 established against him and subsequently by Annexure 14 dated 10.1.2000, the petitioner was awarded punishment of dismissal from service during the pendency of the present writ application.

7. Mr. Allam, learned Counsel appearing for the petitioner has submitted that both the two charges were interlinked with each other. The petitioner was exonerated from second charge by the Enquiry Officer wherein he held that the petitioner had not given any wrong residential address rather from the evidence adduced by the petitioner it appeared that the address was not incorrect, therefore, in such a situation for the second charge also the petitioner should have been exonerated.

8. Mr. Allam, further submitted that there was no controversy with regard to the caste of the petitioner that he belonged to the member of Scheduled Caste community since he was appointed as Overseer in the year 1965 in the reserved category itself but only with a mala fide intention the dispute with regard to his caste certificate was raised after about 20 years of his service that also after the judgment of this Court passed by the Division Bench in CWJC No. 2518/1991 (R) to harass the petitioner. Mr. Allam, by referring the caste certificate, contained in Annexure-8 to this writ application stated that in the said certificate the Deputy Commissioner has put his counter signature after the signature of the Sub-Divisional Officer. It is nowhere stated in the said certificate that the same was issued on the basis of any affidavit submitted by the petitioner.

9. On the other hand Mr. R. Krishna, learned Counsel appearing for the Jharkhand State Electricity Board submitted that the Deputy Commissioner, Ranchi had raised some suspicion regarding the issuance of the caste certificate in favour of the petitioner. The Deputy Commissioner had issued letter on 24.11.1997 wherein he had mentioned that the petitioner had stated wrong residential address and the residential address of the petitioner was got verified and it was found that the address was not correct and, therefore, it appeared that the caste certificate was issued on the basis of the wrong affidavit filed by the petitioner. The sub-Divisional Officer had issued the certificate and on that certificate he (Deputy Commissioner) had put his counter signature.

10. Considering the rival contention of the parties and also the entire material placed before me, I find that since the petitioner was initially appointed in the year 1965 in the reserved category itself being a member of Scheduled Caste and, therefore, raising doubt about his caste, i.e., as to whether he belonged to the community of Scheduled Caste or not that also after 20 years of his service, was absolutely unjustified and illegal. It may be correct that for getting the promotion to the higher post it was necessary for the petitioner to produce Caste Certificate issued by the Deputy Commissioner of the place of which he belonged and, in fact, by issue of letter dated 28.2.1990, the Deputy Commissioner, Ranchi had confirmed that the petitioner belonged to the member of Scheduled Caste and this fact was also noticed by the High Court in its earlier judgment dated 21.8.1997 passed by the Division Bench in CWJC No. 2518/1997 (R). Even at that stage no dispute of any kind was raised with regard to the caste of the petitioner. Therefore, there was no justification for the respondents to raise the dispute regarding caste of the petitioner after the judgment of this Court passed in CWJC No. 2518/1991 (R) wherein the respondents were directed to consider the case of<sup>^</sup> promotion of the petitioner.

11. In any view of the matter, the suspicion raised by the Deputy Commissioner in Annexure A to the counter affidavit regarding genuineness of the caste certificate issued to the petitioner on the ground that wrong residential address was given by the petitioner in his affidavit has also becomes non-existent since now after the departmental proceeding the said charge could not be established against the

petitioner and he was exonerated from said charge that he made, any wrong statement with regard to the residential address. Therefore, the whole basis of the suspicion of the Deputy Commissioner as raised in Annexure A to the counter affidavit becomes of no consequence. It is held that the whole charge against the petitioner was baseless consequently the departmental enquiry as well as the Enquiry Report and the order of punishment against the petitioner for his dismissal from service cannot be sustained in law.

12. In view of the discussions and findings above, this writ application is allowed. The enquiry report as contained in Annexure 6, dated 7.6.1999, the second show-cause notice dated 10.8.1999 (Annexure 7) and the resolution dated 10.1.2000 contained in Annexure 14 to the writ application dismissing the petitioner from service, are hereby quashed and the respondents are hereby directed to reinstate the petitioner in service with all consequential benefits and the petitioner is also entitled to be considered for promotion accordingly. Jaharkhand State Electricity Board is directed to consider the case of the petitioner for promotion in the light of the judgment passed by the Division Bench of this Court in CWJC No. 2518/1991 (R).

In the facts and circumstances of the case there shall be no order as to costs.