

Philbius Barla Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-22-2015

Appellant : Philbius Barla

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.S. No. 475 of 2012
Philbius Barla, Son of John Barla, Resident of Flat No.1-C, Pushpanjali Apartment,
Near Morhabadi Stadium, P.O. & P.S. Bariatu, District- Ranchi. ..Petitioner Versus
1. The State of Jharkhand.

2. Principal Secretary, Personnel, Administrative Reforms and Rajbhasa
Department, Project Building, P.O. & P.S. Dhurwa, District-Ranchi.

3. Ratia Manjhi, Son of not known to the petitioner and at present holding the post
of Settlement Officer, Hazaribagh, P.O. & P.S. Hazaribagh, District-Hazaribagh.

4. Moti George Lakra, Son of not known to the petitioner, at present holding the
post of Deputy Secretary, Revenue Department, Project Building, P.O. and P.S.
Dhurwa, District- Ranchi.

5. Bablu Murmu, Son of not known to the petitioner, at present holding the post of
Deputy Director, Panchayati Raj, North Chhotanagpur Commissioner Office,
Hazaribagh, P.O. P.S. & District-Hazaribagh.

6. Pushkar Singh Munda, Son of not known to the petitioner, at present holding the post of D.D.C. Khunti, P.O. P.S. Khunti, District-Ranchi.Respondents -----
Coram:HONBLE MR. JUSTICE RONGON MUKHOPADHYAY For the Petitioner :
Mr. Anil Kumar Sinha, Sr. Advocate : Mr. Birendra Burman, Advocate : Mr. Saurabh Shekhar, Advocate For the Respondents : Mr. Sumit Prasad, S.C. 1 -----
17/22.07.2015 Since the petitioner has filed an interlocutory application (I.A. No. 2786/2015) for deleting the name of respondent nos. 3 to 6 as no challenge has been made to their promotion, this writ application has proceeded on the basis of the averments made by the petitioner and respondent state only. The petitioner in this writ application has prayed for quashing the order dated 13.01.2012 as contained in Memo No. 366, passed by the respondent no. 2, whereby and whereunder, the representation submitted by the petitioner in terms of the order passed by this Court in WPS No. 4584 of 2009 has been rejected. The brief facts leading to filing of the present writ application is that the petitioner having been successful in the examination conducted by the Bihar Public Service Commission was allotted the Bihar Administrative Cadre and in pursuance thereof he was -2- appointed to the post of Deputy Collector in the month of August, 1993. After bifurcation of the State, the petitioners cadre has finally been allocated to the State of Jharkhand and presently he is posted as District Welfare Officer, Jamshedpur. A meeting of Departmental Promotion Committee was held on 1.12.2004 for considering the case of promotion to the Junior Selection Grade in the rank of Sub- divisional Officer, wherein the petitioner was found fit to be considered to the post of Junior Selection Grade. Subsequent thereto, the recommendation of the Departmental Promotion Committee was accepted and the petitioner was granted regular promotion in the rank of Sub-divisional Officer vide Notification dated 6.5.2005. The case of the private respondents was once again taken into consideration after confirmation of their services by the competent authority and accordingly pursuant to the meeting of the Departmental Promotion Committee held on 4.7.2005 and on the subsequent recommendations made therein, the private respondents were also granted regular promotion vide notification as contained in Memo No. 3690 dated 19.07.2007. For considering the case of other employees including the private respondents for promotion to the Senior Selection Grade in the rank of Additional Collector, a meeting of the Departmental Promotion

Committee was convened and on the basis of the said meeting, the private respondents have been granted regular promotion in Senior Selection Grade vide Memo dated 31.08.2009, whereas the case of the petitioner was never considered and he was not promoted in Senior Selection Grade. Being aggrieved, the petitioner preferred a representation before the authorities but since the same was not being considered, the petitioner was constrained to file a writ application being WPS No. 4584 of 2009, which was disposed of on 19.10.2011 directing the petitioner to file a representation along with the copy of the order with respect to promotion to the post of Senior Selection Grade and the authorities were directed to take a decision in the matter relating to the promotion to the post of Senior Selection Grade within a period of three months. Pursuant to the order passed in WPS No. 4584 of 2009, the impugned order dated 13.1.2012 as contained in Memo No.366 was passed by the respondent no. 2, wherein the representation of the petitioner claiming for promotion to the Senior Selection Grade -3- with effect from the date when the juniors were promoted, was rejected. Heard Mr. Anil Kumar Sinha, learned senior counsel for the petitioner and Mr. Sumir Prasad, learned Standing Counsel No.

1. Mr. Anil Kumar Sinha, learned senior counsel for the petitioner, has submitted that the petitioner being senior in the feeder cadre, which is in the rank of Junior Selection Grade, have been granted promotion with effect from 6.5.2005 and since the private respondents have been granted regular promotion with effect from 19.07.2007, accordingly, the petitioner is entitled to be promoted in the Senior Selection Grade at least from the date the juniors in the feeder cadre have been granted such promotion. It has, therefore, been submitted that in terms of the statutory Rules of 1978, a member of the Bihar Administrative Service (Executive Branch), who has completed eight years in the junior selection grade, will be entitled for consideration in the Senior Selection Grade and since the petitioner has already completed eight years continuous service from his date of appointment, he is eligible to be considered for the Senior Selection Grade. Mr. Anil Kumar Sinha, learned senior counsel, while referring to the impugned order as contained in Memo No.366 dated 13.01.2012, has submitted that the author of the impugned order has taken recourse to a purported departmental proceeding, which has been initiated in terms of Resolution No.3166 dated 13.06.2011, which

was much after the period during which the petitioner became eligible for being considered for promotion to the Senior Selection Grade. It has, therefore, been submitted that the impugned order dated 13.01.2012 is itself based on frivolous grounds as the respondents have not at all taken into consideration the fact that the due date of promotion emerged much earlier to the initiation of the departmental proceeding against the petitioner. Mr. Sumir Prasad, learned Standing Counsel No. 1, on the other hand, has defended the impugned order as contained in Memo No. 366 dated 13.01.2012 by submitting that the persons, against whom, the petitioner is claiming parity/seniority were all placed on a higher podium in the gradation list and merely because the petitioner has been given Junior Selection Grade prior to the private respondents, the same does not automatically entitle him to the Senior Selection Grade on the ground of being senior in the cadre to that of the -4- private respondents. Mr. Sumir Prasad further submits that based on the promotion granted earlier in the feeder post, the petitioner cannot have any claim for seniority as the petitioner in over all seniority list ranks much below than that of the private respondents. It has further been submitted that in terms of the rules, the private respondents had completed eight years of continuous service much before the petitioner and in such circumstances, the Departmental Promotion Committee had rightly recommended such persons as being eligible for promotion in the rank of Additional District Magistrate. The fact of the case reveals that the petitioner was granted promotion to the Junior Selection Grade with effect from 6.5.2005 whereas the persons, who subsequently became senior in view of the promotion to the Senior Selection Grade were granted promotion in Junior Selection Grade with effect from 19.07.2007. It would, thus, reveal that in the feeder post of Junior Selection Grade, the petitioner became senior to the private respondents. In this context, learned senior counsel for the petitioner has referred to an order passed on 6.8.2012 in WPS No. 6187 of 2003, wherein while considering denial of promotion on the basis of seniority list prepared initially, it was held as follows:- " In my considered view while considering for the Super Time Scale seniority on the post of Senior Selection Grade should be considered while in the present case Super Time Scale was denied to the petitioner banking upon the seniority list prepared initially". The Hon'ble Court while quashing the order of denial of Super Time Scale to the petitioner of the writ

application under reference had given a direction to promote him to the Super Time Scale with effect from the date, his junior was promoted. Pursuant to the order passed in WPS No. 6187 of 2003, a Notification was issued on 20.02.2013, wherein the said order was complied with. While rejecting the contention of the petitioner that in view of his seniority in the feeder cadre on account of promotion to the Junior Selection Grade prior to the promotion of the private respondents the same was never considered by the respondent no. 2 as it is not reflected in the order. Moreover, the order passed in WPS No. 4584 of 2009 substantiates the claim of the petitioner. In such circumstances, it cannot be said that the impugned order dated 13.01.2012 is in -5- accordance with law so far as consideration for promotion of the petitioner to the Senior Selection Grade on account of his being senior to the private respondents in feeder cadre is concerned. The impugned order also speaks of a departmental proceeding initiated by Resolution No. 3166 dated 13.06.2011 and reference has been made to the judgement of the Hon'ble Supreme Court in the case of K.V. Janki Raman. Admittedly, when the promotion of the private respondents in Senior Selection Grade was considered in 2009 by the Departmental Promotion Committee, the departmental proceeding sought to be initiated was never in existence. In the context of the fact as to whether a subsequent departmental proceeding initiated after the claim for promotion became ripe can be taken into consideration by the authority, it would be apt to refer to the certain judgments of the Hon'ble Supreme Court. In the case of Bank of India & Anr. Vs. Degala Suryanarayan, reported in (1999) 5 SCC762 it was held as follows:-

"4. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India v. K.V. Jankiraman SCC at pp. 114-115 : AIR at p. 2013). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the

adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986. In the case of Union of India & Ors. Vs. Dr. Sudha Salhan (Smt.), reported in (1998) 3 SCC394 it was held as follows:- "6. The question, however, stands concluded by a three-Judge decision of this Court in Union of India v. K.V. Jankiraman in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the sealed cover procedure cannot be adopted. The recommendation of the - 6- Departmental Promotion Committee can be placed in a sealed cover only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final -- orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to". An employee has a right to be considered for promotion but he cannot claim promotion as of right. Right to be considered for promotion is obviously different and distinct from right to promotion. Since this Court, as has been indicated above in WPS No. 6187 of 2003 had categorically held that denial of promotion cannot be on the basis of seniority list prepared initially, the petitioner of the present case,

who was granted Junior Selection Grade much prior to the private respondent nos. 3 to 6, cannot be denied on the ground that the private respondents were much senior to the petitioner in the basic cadre. The scenario, which has been enumerated above, thus leads to a conclusion that the authorities must reconsider the claim for promotion of the petitioner to the Senior Selection Grade from the date, the private respondents were granted such promotion. Accordingly, while setting aside the impugned order as contained in Memo No. 366 dated 13.01.2012 passed by the respondent no. 2, the matter is remitted back to the respondent no. 2 to take a fresh decision on the claim of the petitioner by passing a reasoned and speaking order after considering the entire aspects of the case coupled with the discussions made here in above and take a final decision in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order. This writ petition is disposed of. Pending I.As, if any, also stand disposed of. (Rongon Mukhopadhyay,J) Rakesh/

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