

W. P. (S) No. 4086 of 2018

In the matter of an application under Article 226 of the Constitution of India

Chandra Prakash Asthana Petitioner

Versus

1. The State Of Jharkhand Through Its Chief Secretary
Project Building PO & PS Dhurwa, Ranchi
 2. The Principal Secretary, Deptt. of Personnel, Administrative Reforms
and Rajbhasa, Govt. of Jharkhand, PO and PS Dhurwa, Ranchi
 3. Principal Secretary, Law and Justice Deptt., Govt of Jharkhand,
PO and PS Dhurwa, Ranchi
 4. High Court of Jharkhand at Ranchi through The Registrar General
Jharkhand High Court PO and PS, Doranda, Ranchi
- Respondents

For the Petitioner : Mr. C. P. Asthana, in Person
For the Respondents-State : Mrs. Darshana Poddar Mishra, AAG I
For the Respondent No. 4 : Mr. Anil Kumar, Senior Advocate

Present:

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE RAJESH SHANKAR**

Dated: 10.09.2021

R. Mukhopadhyay, J. Heard Mr. C. P. Asthana, the petitioner in person, Mrs. Darshana Poddar Mishra, learned AAG I and Mr. Anil Kumar, learned senior counsel appearing for the respondent no. 4.

2. In this writ application, the petitioner has made the following prayers:

- a. For the issuance of an appropriate writ/writs, order/orders, direction/directions or a writ in the nature of Mandamus for directing upon the respondents to forward the application of the petitioner for consideration for the appointment as Judicial Member of the Central Administrative Tribunal and other posts;
- b. For directing and commanding the respondents to dispose of the alleged inquiry pending against the petitioner;
- c. For directing upon the respondents to forward letter no. 46 of 2018 C dated 04.08.2018 which was sent to the Hon'ble Court

against the vacancies for Judicial Member, Central Administrative Tribunal to the Secretary, Department of Personnel and Training, New Delhi with CCR so that, it may be received in the concerned office of Secretary before the expiry of the extended period i.e., 14.08.2018;

d. For directing upon the respondents to grant the petitioner super-time scale in the cadre to the petitioner as the petitioner fulfills all eligibility criteria as prescribed for the grant of super-time scale.

3. The petitioner had filed an interlocutory application bearing I.A. No. 11267 of 2019 for amending the writ application. The same was allowed vide order dated 07.09.2020. Since the amendment at paragraph d (2) in I. A. No. 11267 of 2019 did not find place in the order dated 07.09.2020, a clarificatory petition was filed through I. A. No. 4891 of 2020. The clarification as sought for was concluded to be justifiable and accordingly the petitioner was permitted to file the amended writ application by also incorporating paragraph d (2) as mentioned in I. A. No. 11267 of 2019.

4. Consequent to the amendment(s) having been allowed by this Court as stated above, the prayers which have been incorporated are quoted hereinunder:

d.(i) For the issuance of appropriate writ/writs, order/orders, direction/directions or a writ in the nature of Certiorari quashing the order dated 30.11.2017 whereby and whereunder the representation of the petitioner dated 24.06.2016 regarding adverse entries in ACR has been rejected in complete mechanical manner without considering the reply of the petitioner;

d.(ii) To recall and quash the minutes dated 17.01.2018 and 14.02.2018 passed by the Hon'ble Screening Committee and Hon'ble Standing Committee whereby it has been resolved not to grant super-time scale to the petitioner and the said recommendation has subsequently been expunged by the Hon'ble Standing Committee vide its minutes dated 14.02.2018, but the copy of the same was not supplied to the

petitioner. As such in view of the above mentioned facts to quash the minutes dated 17.01.2018 and 14.02.2018 of the Hon'ble Screening Committee and Standing Committee respectively;

- d.(iii) For the issuance of an appropriate writ/writs, order/orders, direction/directions or a writ in the nature of Certiorari quashing that part of the Memo no. 2916 dated 20.08.2019 i.e. the column no. 3 whereby it has been mentioned that vigilance matters are pending against the petitioner, irrespective of the order dated 10.01.2019 passed in I. A. No. 11466 of 2018 with I. A. No. 204 of 2019 whereby it was held that there is no disciplinary proceeding against the petitioner, moreover the remarks made against the petitioner is stigmatic in nature;
- d.(iv) To hold and declare that there is no disciplinary proceeding pending against the petitioner.

5. The facts of the case as enumerated in the writ application reveals that the petitioner on selection was appointed on 10.01.2002 vide notification dated 15.12.2001 to the Superior Judicial Service of Jharkhand along with 16 others and was posted as Additional District Judge, Hazaribagh. After completion of 5 years of service as Additional District Judge, the petitioner was granted selection grade vide notification dated 12.08.2008 w.e.f. 10.01.2007. Prior to the selection and appointment of the petitioner in the Superior Judicial Services, the petitioner was working as an Assistant Prosecuting Officer in the State of Jharkhand since 25.04.1988 to 09.01.2002 and was given Selection Grade in that service and after being relieved, the petitioner joined as Additional District Judge, Hazaribagh. The petitioner on being transferred from Hazaribagh had joined Ranchi as Additional Judicial Commissioner on 22.04.2005.

The petitioner was granted Selection Grade w.e.f. 10.01.2007 after completion of 6 years of service. The petitioner was also promoted and transferred as District Judge, Jamtara where he joined on 11.06.2007. The petitioner during his tenure as District Judge, Jamtara got cut down some trees including two Malabar Plum trees (Jamun) from the premises of the court to rid of foul smell and prevent the presence of snakes, as per the

version of the petitioner. Such act led to an inquiry conducted by the successor District & Sessions Judge, Jamtara at the instance of the Registrar Vigilance. The inquiry report concluded that there was no procedural illegality committed in the said process. It further noted that the proceeds of the auction was also found to have been deposited in the Jamtara Treasury.

The petitioner was thereafter transferred to Dhanbad as Presiding Officer, Labour Court on 31.07.2010. He was also given the additional charge of office and judicial powers of Labour Court, Bokaro and Deoghar. The petitioner claims that while posted as such, he had to work under trying conditions due to poor infrastructure, lack of adequate class III and class IV employees and the basic necessities for holding court, but in spite of the obstacles he faced, he had rendered a satisfactory performance which was endorsed by the Presiding Officer, Central Government Industrial Tribunal.

6. The petitioner has stated that he had received a letter from Registrar Vigilance on 17.04.2013 intimating him about certain allegations received against the petitioner and seeking his comments. On the same, a detailed reply was submitted by the petitioner on 29.04.2013. However, the petitioner was not communicated the outcome of the said reply.

The petitioner while posted as Principal Judge, Family Court, Garhwa had applied for the post of Judicial Member, Central Administrative Tribunal and his application was to be forwarded by the Registrar General of the High Court. However, his application was not forwarded since an allegation matter was pending against the petitioner as intimated to him vide letter dated 12.05.2014.

The petitioner on 27.06.2014 had submitted a detailed representation against the refusal of forwarding the application for consideration of his appointment as Judicial Member, Central Administrative Tribunal, wherein reference was also made to his representation dated 29.04.2013. A prayer was made to dispose of any allegation pending against the petitioner.

The petitioner had once again on 18.07.2014 applied for the post of Presiding Officer, Central Government Industrial Tribunal cum Labour

Court, Ahmedabad and accordingly submitted his application to the High Court to transmit the same to the concerned authority. However to the dismay of the petitioner, he was informed by the Registrar General of the High Court that his application will not be forwarded.

On 20.09.2014, the petitioner had applied for transfer from Garhwa on account of the illness of his wife who was suffering from cancer for better medical treatment, but the same was also rejected vide letter dated 10.04.2015.

The petitioner was issued a letter by the Registrar General vide D.O. letter no. 168 enclosing allegation petition and calling upon the petitioner to respond within a fortnight. The petitioner had given a reply to the allegations followed up by representations giving clarification with respect to the complaints made by the members of the Bar.

The petitioner had received a communication from the Registrar Vigilance dated 30.11.2017 informing him that his representation dated 24.06.2016 regarding adverse entries made in the ACR for the assessment year 2013-14 and 2014-15 were rejected by the High Court. On the very next date, the petitioner was directed to submit a fresh reply either accepting or rejecting the allegations made against him. The same pertained to the reply submitted by the petitioner to a query made by the High Court vide letter dated 17.04.2013 and the allegation related to the period, the petitioner was posted as Presiding Officer, Labour Court, Dhanbad. The petitioner had submitted a reply denying the allegations and reiterating his earlier stance on the said subject matter.

Regarding the ACR for the assessment year 2015-16, the petitioner was informed that some adverse remarks were made and the petitioner was granted two months' time for submission of a representation for expunction of the adverse remarks. Accordingly, the petitioner had submitted his representation and since the same was kept pending, he had followed it up with another representation.

On 19.02.2018, the High Court of Jharkhand issued notification granting Super-time Scale to the eligible Judicial Officers. The petitioner addressed his grievance to the High Court by submitting a representation.

The petitioner had also made applications to the post of Judicial Member, Central Administrative Tribunal; Judicial Member, National Company Law Tribunal and Judicial Member, Railways Claims Tribunal, but none of the applications received a nod of approval from the High Court in forwarding them before the appropriate authorities.

7. The factual narration and the grievance of the petitioner having been done with as noted above, we now embark to consider the validity and legality of such grievance.

8. The petitioner had filed interlocutory applications for forwarding his application for the post of Member (Judicial), National Company Law Tribunal and Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Kanpur and Asansol being I. A. No. 204 of 2019 and I. A. No. 11466 of 2018 respectively which was disposed of vide order dated 10.01.2017 while holding that there is no proved mis-conduct against the petitioner and no disciplinary proceeding was also pending against him. It is to be noted herein that the petitioner has already superannuated on 31.01.2019.

9. The only grievance therefore which is still subsisting and which is the primary grievance of the petitioner in this writ application is the denial of Super-time Scale to him.

10. The respondent no. 4 has filed a counter affidavit from which it appears that certain factual aspects have overlapped. However, without sounding repetitive, some of the factual aspects have been discerned from the counter affidavit for better appreciation of the case.

11. The successor District & Sessions Judge, Jamtara had conducted an inquiry with respect to cutting down of Malabar Plum tree and Karam tree in the residence/premises of the Labour Court at Dhanbad and Jamtara and on submission of the inquiry report, the Standing Committee vide minutes dated 20.09.2011 had issued warning to the petitioner to be careful in future and not to indulge in activities unbecoming of a judicial officer. The allegation made against the petitioner by one Mahendra Prasad Singh regarding illegal orders passed in M.J.C. No. 59 of 2010 was dropped by the Standing Committee in its minutes dated 03.12.2012 consequent to the acceptance of the explanation submitted by the petitioner. Another allegation emanated from the

Labour Court, Bokaro of the petitioner illegally appointing his nephew on a contract basis as a Computer Operator in Labour Court, Bokaro. An explanation was called for from the petitioner and on the matter being referred to the Standing Committee, it vide minutes dated 11.12.2013 had given a warning to the petitioner not to repeat such act in future and any deviation will be viewed seriously. Another instance was depicted regarding the allegation of corrupt practices made by the Regional Secretary, Janta Mazdoor Sangh which was referred to the Standing Committee which had sought for a fresh reply from the petitioner and on submission of the same, the matter appears not to have been considered as yet. Some allegation petitions were also received from the stake holders of Civil Court, Garhwa and on consideration of the report submitted by the petitioner, the Administrative Judge had directed that no further action is required. It has further been stated in the counter affidavit that adverse entries were recorded in the ACR of the petitioner for the year 2013-14 and 2014-15 while the petitioner was posted as Principal Judge, Family Court, Garhwa and although the petitioner has submitted his representations for expunction of the adverse entries in the ACR, but the same was rejected.

12. This court had passed an order on 06.08.2021 directing the respondent no. 4 to file an affidavit regarding the claim of the petitioner on his eligibility for grant of Super-time Scale in the year 2012 itself. Consequent to the said order, an affidavit has been filed. The said affidavit reveals that the case of the petitioner for grant of Super-time Scale was considered by the Screening Committee in its meeting held on 07.08.2012, but he was not found fit to be granted such Scale though several other persons were recommended for grant of Super-time Scale. The recommendation of the Screening Committee was duly considered by the Standing Committee and it has been pleased to approve not to grant Super-time Scale to the petitioner. While considering whether to grant Super-time Scale to the petitioner two vigilance/allegation matters were also taken into consideration.

13. Mr. C. P. Asthana, the petitioner in person has stated that the factual aspects indicate that grave injustice was meted out to him. He has stated that the period of 3 years after the grant of Selection Grade to

him is relevant for consideration of his claim for grant of Super-time Scale as during the period 10.01.2007 to 09.10.2010 no vigilance/allegation matters were pending against him. He has further submitted that the allegation petition of Mahendra Prasad Singh dated 15.10.2011 casting insinuations upon the petitioner of passing illegal order was kept pending instead of disposing it of at the earliest, though ultimately it concluded in favour of the petitioner after the negative recommendation of the Screening Committee was made on 07.08.2012. According to Mr. Asthana, such factor should not have weighed in the minds of the Screening Committee since it was much after the completion of the necessary period which the petitioner has completed with a clean slate. Mr. Asthana submits that with respect to the allegations levelled by Surendra Gupta, Advocate, Civil Court, Bokaro regarding appointment made by the petitioner, the Standing Committee had warned the petitioner not to repeat such acts in future and any deviation will be viewed seriously, but such finding is vague and appears to have been taken being oblivious to the explanation submitted by the petitioner as no appropriate reasoning has been inscribed. Mr. Asthana submits that neither such warning is punitive in nature nor could it create any adverse impact on the career progression of the petitioner. Mr. Asthana adds that the ACR of the petitioner showed remarks "Good" for the period 2011-12 and 2012-13 and "Very Good" for the period 2013-14. He concludes his argument by stating that the petitioner deserves to be granted Super-time Scale from the date his junior namely, Sri Gautam Kumar Choudhary was granted i.e., w.e.f. 01.04.2012.

14. Mr. Anil Kumar, learned senior counsel appearing for the respondent no. 4 has initiated his argument by submitting that there is no arbitrary act on the part of the respondent no. 4 and claim of the petitioner has rightly been rejected on account of the adverse remarks made against him by the Standing Committee which had duly considered the allegations as well as the explanation submitted by the petitioner. He submits that the warning which had been given to the petitioner indicates that the Standing Committee had considered all aspects of the matter while making such adverse remarks. Learned

senior counsel while referring to the counter affidavit as well as various other affidavits filed by the respondent no. 4 submits that there has been a plethora of complaints received against the petitioner during his service career and all have been considered in accordance with law. It has been submitted that while considering the entitlement of the petitioner of being granted Super-time Scale, the Service Records, ACR, Vigilance files etc. have been considered by the Screening Committee and the Standing Committee. Mr. Anil Kumar, learned senior counsel adds that at the time of consideration of the eligibility of the petitioner to be granted Super-time Scale two vigilance/allegation matters were pending against him which dissuaded the Screening Committee as well as the Standing Committee to grant him such benefit. He concludes his argument by submitting that no deprivation has been caused to the petitioner, rather his contention and prayer made in this writ application does not merit any consideration.

15. We have also heard Mrs. Darshana Poddar Mishra, learned AAG I on behalf of the State of Jharkhand.

16. We have considered the factual and legal aspects of the case and the arguments advanced by the respective counsels.

17. The State of Jharkhand had issued a resolution dated 27.04.2006 regarding admissibility of Selection Grade/Super-time Scale of District Judges of Superior Judicial Services of the State. The promotion in Selection Grade Scale and Super-time Scale to the District Judges (grade) were made admissible on the following conditions:

(a) *District Judge Selection grade scale of Rs. 18,750-400-19,150-45-21,850-500-22,850/- shall be admissible on 25% posts of District Judge cadre on the basis of Superiority-cum-merit to those officers who have completed 5 years of continuous satisfactory service.*

(b) *District Judge Super Time scale of Rs. 22,850-5---24,850/- shall be admissible on 10% posts of District Judge cadre who have completed 3 years of continuous satisfactory service.*

(c) *Selection grade scale/Super Time scale shall not be automatically payable to District Judges of Superior Judicial Service rather it shall be sanctioned pursuant to the recommendation of the committee of Superior judges constituted by Jharkhand High Court on the basis of merit-cum-Superiority and evaluation of works of the concerned officers.*

(d) After issuance of the resolution by the Jharkhand High Court for the promotion in Selection grade scale/Super Time scale the proceeding of promotion shall be ensured only after marking the functional posts against the sanctioned posts in higher judicial service."

18. The criteria for grant of Super-time Scale therefore is completion of 3 years of continuous satisfactory service which has been supplemented by Clause 3 to the effect that the recommendation of the Committee of Superior Judges constituted by the Jharkhand High Court should be on the basis of merit cum superiority and evaluation of work of the concerned officers.

The petitioner who was appointed on 10.01.2002 in the Superior Judicial Service of the State of Jharkhand was granted selection grade w.e.f. 10.01.2007 after completion of 6 years of service. The petitioner claims that he was entitled for Super-time Scale from the date his junior Sri Gautam Kumar Choudhary was granted i.e. with effect from 01.04.2012. The petitioner seems to have represented the respondent no. 4 on several occasions to grant him Super-time Scale, but he did not receive any response. It is no doubt true that for three years after being granted selection grade, no adverse remarks were communicated to the petitioner and at the time of consideration of his eligibility to be granted such scale, two vigilance/allegation matters seems to have surfaced which ultimately jeopardized his claim. So far as the allegation made by Sri Mahendra Pd. Singh of Dhanbad is concerned, the explanation submitted by the petitioner to the Standing Committee was accepted and the matter was dropped which though was after the petitioner being adjudged unfavorably by the Screening Committee. In the other set of allegation, the petitioner was warned not to repeat such act in future and any deviation will be viewed seriously. This was decided by the Standing Committee vide minutes dated 11.12.2013. Therefore, on the date when consideration for Super-time Scale was made what remained were the allegations bereft of any finding. The various affidavits filed by the respondent no. 4 especially, the supplementary counter affidavit filed on 25.08.2021 does not specifically indicate the reasons for negation of the claim of the petitioner by the Screening Committee dated 07.08.2012 and has vaguely referred to the service history, vigilance file, ACR etc. of the

petitioner which would not satiate the claim of the petitioner. In fact the petitioner had represented the respondent no. 4 vide letter dated 18.04.2017 for expunction of the adverse remarks as communicated to him vide letter dated 12.12.2013 along with a prayer for grant of Super-time Scale, but nothing has been stated by the respondent no. 4 as to whether such communication was acted upon or not. In this context, we may refer to the judgment rendered in the case of *“Dev Dutt Vs. Union of India & Ors.”* reported in (2008) 8 SCC 725, wherein it has been held that, *“when the entry is communicated to him, the public servant should have a right to represent against the entry to the concerned authority and the concerned authority must decide the representation in a fair manner and within a reasonable period.”*

We have quoted this only to indicate that the representations submitted by the petitioner could have been disposed of expeditiously. The view expressed by the Hon'ble Supreme Court in *“Dev Dutt Vs. Union of India”* (supra) was approved in the case of *“Sukhdeo Singh Vs. Union of India & Ors.”* in Civil Appeal No. 5892 of 2006.

19. Another leg of argument of the petitioner in person is that the explanation submitted by him with respect to the allegation of illegal appointment made by the petitioner as per the complaint made by Surendra Gupta, Advocate, Civil Court, Bokaro was rejected without assigning any reasons and the petitioner was warned to desist from such act in future. We may in such context copiously quote from the case of *“Pitambar Patra Vs. Registrar General, High Court of Orissa”* reported in 2017 2 ILR(Cut) 1264, wherein it has been stated thus:

17. *“Coming to the necessity for assigning reasons in support of administrative or judicial orders, it is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due*

application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind. (See – State of Orissa v. Dhaniram Luhar, AIR 2004 SC 1794 and State of Rajasthan v. Sohan Lal & Ors. (2004) 5 SCC 573)."

20. The context in which the aforesaid finding was recorded was that the Transfer, Posting and Promotion Committee had not given any reason for not finding the petitioner suitable for promotion to Super-time Scale and even the Full Court had accepted such recommendation of the Committee without assigning any reasons. The same conclusion can also be arrived at in the present case as nothing has been brought on record to indicate assigning of reasons either by the Screening Committee or the Standing Committee negating the claim of the petitioner for grant of Super-time Scale.

21. We have noticed that during the intervening period post his rejection of claim, the overall performance of the petitioner appears to be satisfactory. Some adverse entries though were made in the ACRs of the year 2013-14, 2014-15 and 2015-16 which primarily revolves around some complaints made against the petitioner. One adverse entry was made in the ACR of the petitioner for the period 2015-16 to the extent that the "judgments were not so good written during 2015-16" which though indicate a satisfactory performance and cannot be termed to be an adverse entry. So far as the entries "Complaints Received" are concerned, we must bear in mind that in today's scenario, sending of complaints against a judicial officer seems to be the order of the day and our experience suggests that a majority of such complaints are frivolous. However, the same is besides the point. In absence of any supportive fact such recording in the ACR of the petitioner can hardly be considered adverse. At this juncture, it would be apt to quote a few lines from the

judgment in the case of “*R. C. Sood Vs. State of Rajasthan*” reported in 1994 supplementary (3) SCC 711, which reads thus:

“At a time when fairness and non-arbitrariness are the essential requirements of every administrative State action, it is moreso for any administrative act of judges. It is necessary that members of the subordinate judiciary get no occasion to think otherwise.”

22. As a consequence to the reasons stated above, we are of the considered opinion that denial of Super-time Scale to the petitioner was arbitrary and unjustified. We accordingly allow this writ application and direct the respondent no. 2 to grant Super-time Scale to the petitioner with effect from the date his junior Sri Gautam Kumar Choudhary was granted such benefit.

23. This writ application accordingly stands allowed. I. A. No. 4890 of 2020 also stands disposed of.

(Rongon Mukhopadhyay, J)

I Agree

(Rajesh Shankar, J.)

(Rajesh Shankar, J.)