
(1975) 06 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 29 of 1968

B.C. Negi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-06-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 335
DHANI Police Service Rules, 1965 — Rule 14, 17, 24, 5(1)

Citation : (1975) 4 ILR HP 401

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : B. Sita Ram, for the Appellant; S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is a petition by Shri B. C. Negi, Officiating Deputy Superintendent of Police, Criminal Investigation Department (Crime Branch), Himachal Pradesh, under Articles 226 and 227 of the Constitution of India, wherein he has called in question the order dated July 27, 1967, of the Ministry of Home Affairs appointing Respondents Atma Ram and Bhag Singh, Probationary Deputy Superintendent of Police in the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service (hereinafter to be referred to as DHANI Police Service) and further asking for a writ of Mandamus or Certiorari appointing the Petitioner as probationary Deputy Superintendent of Police in the DHANI Police Service in place of either of Respondents 4 or 5 with effect from July 27, 1967, and to the exclusion of Respondents 6 to 29, who are other officiating Deputy Superintendents of Police.

2. The case of the Petitioner is that he was unduly superseded by Respondents 4 and 5 as the latter were brought on probation in DHANI Police Service although the Petitioner was senior to them and possessed higher qualifications. According to Petitioner, he was appointed Prosecuting Inspector on July 7, 1957, and was confirmed as such on May 6, 1964. Thereafter he officiated as Deputy

Superintendent of Police against the duty post with effect from June 3, 1965. As against that the Respondent No. 4 Atma Ram was promoted as an Inspector in December, 1960, and was confirmed as such on June 24, 1966. He officiated against an Ex. cadre post of Deputy Superintendent of Police in a temporary organisation with effect from October 2, 1965. The Respondent No. 5 was similarly promoted as an Inspector in April, 1962 and was confirmed as such from June 24, 1966. From November 25, 1965, however, he held a temporary post of Deputy Superintendent of Police (Traffic) and his appointment was by way of local arrangement. With effect from July 27, 1967, under the impugned order of the Ministry of Home Affairs both the Respondents were appointed as probationary Deputy Superintendents of Police in the DHANI Police Service as a result to selection made by the Select Committee in pursuance of DHANI Police Service Rules, 1965. According to Petitioner, in spite of his higher seniority- cum-merit position the Selection Committee of which the Chief Secretary and the Inspector General of Police, Himachal Pradesh (Respondents 2 and 3) were the members, did not consider and recommend the case of the Petitioner. The result was that the Petitioner was not appointed, while Respondents 4 and 5 were straight-away appointed as probationary Deputy Superintendents of Police. In fact the Respondent No. 3 (Inspector General of Police) showed undue favour to Respondents 4 and 5 and gave them out of turn promotion. This was mala fide and prejudicial treatment given by the Respondents 2 and 3 to the Petitioner.

3. The case of the Petitioner is that rules 5(1) (b) (i) and 14 of the DHANI Police Service Rules, 1965, were not followed. The Respondents 4 and 5 were not eligible for appointment as probationary Deputy Superintendents of Police. Rather the Petitioner was eligible and should have been appointed in their place. The Respondents 4 and 5 were confirmed as Police Inspectors with effect from June 24, 1966, and, therefore, on July 27, 1967, they had not completed two years' substantive service against that post. As such, according to Petitioner, they could not be appointed under rules 5(1)(b)(i) and 14 as probationer Dy.S. Ps. In view of the merit and suitability, his non-selection was an error apparent on the face of the record. The Petitioner had an unblemished record of service and no adverse remark was ever conveyed to him. He possessed higher academic qualifications and in view of the earlier promotion and earlier confirmation as compared to the Respondents 4 and 5, it was he who should have been preferred by the Selection Committee. As such equal opportunity of service under Article 16 was denied to the Petitioner. There was also a case of discrimination made out.

4. The Petitioner further contends that Article 335 of the Constitution of India afforded protection to scheduled tribes in the matter of service. The Petitioner belongs to scheduled tribe and as such he deserved promotion as compared to the Respondents 4 and 5. A principle of natural justice was violated inasmuch as the Respondents 1 and 5 were given out of turn promotions and the Petitioner having higher seniority and merit was ignored and not appointed. The Petitioner submitted an appeal to the President of India but the same was rejected on

November 24, 1967, without giving any reason. The order was "non-speaking" and as such need be set aside. The Respondents 6 to 29 who are other officiating Deputy Superintendents of Police were made parties because they have not challenged the promotion of Respondents 4 and 5 and may perhaps have acquiesced in those promotions. As such the Petitioner claimed for a writ of mandamus or certiorari for his appointment as probationary Deputy Superintendent of Police in place of Respondents 4 and 5 after quashing the impugned notification dated July 27, 1967, of the Ministry of Home Affairs appointing Respondents 4 and 5 as probationary Deputy Superintendents of Police.

5. The Respondents 10, 14, 20 to 25 and 29 have filed separate returns, alleging that they are senior to the Petitioner as well as to the Respondents 4 and 5. As such they should have been appointed in place of the Petitioner or the Respondents 4 or 5. It is denied by them that they had in any manner acquiesced in the promotion of the Respondents 4 and 5. They have rather supported the petition but challenged the appointment of Petitioner as probationary Deputy Superintendent of Police in preference over them.

6. The Respondents 1 to 5 are the main contestants. Their case is, that the Petitioner was duly considered on merit by the Selection Committee but was found unsuitable as compared to Respondents 4 and 5 and that is why the Petitioner was not appointed as probationary Deputy Superintendent of Police. In fact the Respondents 4 and 5 possessed equal if not better qualifications as compared to the Petitioner. They were held superior in merit as compared to the Petitioner and were selected as such by the Selection Committee appointed under the DHANI Police Service Rules, 1965. In fact the decision of the Selection Committee is not justiciable. Rules 5(1)(b)(i) and 14 were duly observed and the Respondents 4 and 5 having put in more than two years' service as Inspector in the cadre were qualified for appointment as probationer Dy. S. Ps. It was not the requirement of the rule that the Respondents 4 and 5 should have put in two years' substantive service in the cadre of Inspectors. They were confirmed Inspectors with effect from June 24, 1966, and that was enough. In fact no rule was contravened and the Petitioner's grievance is based on mis-construction of rules. According to Respondents it is wrong to say that any rule of natural justice was impaired. No right of the Petitioner was infringed. According to Respondents no case is made out under Article 14 for discrimination. In fact equal opportunity was granted to the Petitioner and his case was duly considered by the Selection Committee. There is an alternative remedy of a civil suit which the Petitioner has not availed of. In the present writ petition disputed questions of fact arise and the Petitioner cannot be granted the relief sought for. A similar petition was previously filed but the same was withdrawn and it appears that the Petitioner is not himself sure of his position. It was stoutly denied that any mala fide conduct was shown or any favouritism was practised on the part of Respondents 1 to 3. The Respondents 1 to 3 contended that the Selection Committee found the Petitioner as "Good" while the Respondents 4 and 5 as "Very Good", with the

result that the Respondents 4 and 5 were recommended for appointment. The post of probationary Dy. S. P. was a selection post and merit was the sole criterion although seniority was given due consideration. As regards the scheduled tribe provision regarding service, it is pleaded that no right or guarantee is conferred upon any member of the scheduled tribe. The instructions are to be followed keeping regard to the efficiency of the service. It is, therefore, prayed that the Petitioner cannot get the reliefs asked for by him.

7. It is undisputed that the Petitioner was confirmed as Police Inspector on May 6, 1964, while the Respondents 4 and 5 were confirmed as such from April 24, 1966. The Respondents 1 to 3 further conceded that the service record of the Petitioner was "FAIRLY GOOD" and that no adverse entry was conveyed to him. Similarly it is not disputed that the Petitioner possesses higher academic qualifications. But the crux of the matter is that the case of the Petitioner was considered by the Selection Committee and he was found inferior in merit as compared to the Respondents 4 and 5 who nonetheless possessed equally meritorious record of service.

8. The pre-eminent contention of the Petitioner has been that rules 5(1) (b)(i) and 14 were contravened and the Respondents 4 and 5 were not even eligible for appointment. These rules may, therefore, be extracted and reproduced:

PART III--METHOD OF RECRUITMENT

5. Method of Recruitment.--(1) Save as provided in Rule 17, appointments to the Service shall be made by the following methods, namely:

XX XX XX XX

(b) the remaining such substantive vacancies shall be filled by

selection in the manner specified in Part v. of these rules from amongst--

(i) officers who are substantively borne on the cadre of Inspectors of Police, Prosecuting Inspectors or Police Prosecutors employed in the Union territory of Delhi, Himachal Pradesh or Andaman and Nicobar Islands, and

X X X X X X X X

PART V-RECRUITMENT BY SELECTION

14. Conditions of eligibility and procedure for selection.--(1) The Committee shall consider from time to time the cases of officers eligible under Clause (b) of Sub-rule (1) of Rule 5, who have served in the respective cadre or posts, as the case may be, for not less than two years and prepare a list of officers recommended for appointment after taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be based on merit and suitability in all respects for appointment to the Service with due regard to seniority.

X X X X X X X X

9. It is evident the method of recruitment as provided for in Rule 5(1) (b)(i) is by selection in the manner specified in Part v. of these rules from amongst officers who are substantively borne on the cadre of Inspectors of Police. Therefore, only those officers were to be considered who were substantively borne on the cadre of Inspectors of Police. These officers were eligible for recruitment. The manner of selection was prescribed in Part v. which specifically recites "Recruitment by Selection". Rule 14 clearly laid down that the officers eligible under Clause (b) of Sub-rule (1) of Rule 5 should have served in the respective cadre or post as the case may be for not less than two years. The rule never provided that they should have served in the respective cadre or post substantively for not less than two years. If the Respondents 4 and 5 were substantively borne on the cadre of Inspectors with effect from June 24, 1966, which undoubtedly they were, and had served in that respective cadre for not less than two years, they were eligible for appointment. The Respondent No. 4 was appointed in the cadre of Inspector in December, 1960, and similarly Respondent No. 5 was appointed in the cadre of Inspector in April, 1962. Both of them were confirmed as Inspector in the said cadre from June 24, 1966. Having served in the cadre of Inspector for a period of more than two years and being substantively borne on that cadre with effect from June 24, 1966, both of them were eligible for appointment as probationary Deputy Superintendent of Police under these rules. The mistake committed by the Petitioner is in fact one of interpretation of these rules. According to the Petitioner ,they should have been substantively borne on the cadre for not less than two years but that is not the requirement of Rule 14. The Petitioner calls for his assistance Rule 24 and submits that for officiating appointment under that rule the officer has to officiate for a period of not less than three years in any of the cadres mentioned in Clause (b) of Sub-rule (1) of Rule 5 and only thereafter he could be selected for officiating appointment under DHANI Police Service. If three years" period was required for officiating appointment, according to Petitioner, how could it be that a period of even less than two years was sufficient for probationary appointment which is higher in rank. The flaw in the argument is that the Petitioner does not take notice of substantive appointment of Inspector. An officiating Inspector is definitely inferior in rank as compared to substantively appointed Inspector. -Therefore, even if he is substantively appointed for a period of less than two years he is considered eligible for appointment as probationary Dy. S. P. in the DHANI service as compared to any officiating Inspector of three years or even more standing, who is not substantively appointed. Therefore, under Rule 24 if they have provided three years" service in the cadre of Inspector for officiating appointment, they have pointedly referred to those Inspectors who are officiating Inspectors in the cadres mentioned in Clause (b) of Sub-rule (1) of Rule 5. Thus there can be no comparison of Rule 24 with Rule 5 (1)(b)(i) or Rule 14. It is not difficult to hold in the circumstances that the Respondents 4 and 5 were eligible under the rules and their appointments cannot be questioned on that account.

10. Similarly the Petitioner was also qualified and was in fact considered for

appointment. No government servant has a fundamental right to promotion to any higher post. At the same time the matter of promotion is a matter relating to employment within the meaning of Article 16 and giving equality of opportunity in matters of promotion means considering the cases of all eligible for promotion. This was guaranteed in the case of the Petitioner because his case was considered by the Selection Committee but he was found unsuitable as compared to the Respondents 4 and 5. He could have no grievance against the selection because the service record of each individual officer was scanned through and the Committee made objective selection. This Court cannot be permitted to sit on judgment over the selection made by the Committee appointed under the rules. No act of mala fide or favouritism is proved against any member of the Committee. There is an affidavit of Shri Madan Gopal Singh-the then Inspector General of Police, who was a member of the Selection Committee and he denied that any undue favour was shown to the Respondents 4 and 5 or malice was exhibited against the Petitioner. Rather the contention of the Respondents 1 to 3 is that the Petitioner is equally good and his service record has been classified as "GOOD". However, the Selection Committee found the service record of the Respondents 4 and 5 as "VERY GOOD" and that accounted for their selection. In the circumstances the bald statement of the Petitioner that the Respondents 4 and 5 never officiated as Dy. S. Ps. against duty posts and even then the Petitioner was not appointed straight-away as Dy. S.P. in the DHANI Police Service will not carry any weight nor can it be stated that any principle of natural justice was violated or discrimination was made or equal opportunity was not given.

11. In *Union of India v. Mr. Bhim Singh and Ors.* 1971 (2) SLR 111 a Division Bench of this very High Court held that right to select includes the right not to select and the Court cannot probe into the mental process of Selection Committee as to what weight with the members in selection. This is, however, subject to the plea regarding mala fide which in the instant case is no doubt pleaded but not substantiated by the Petitioner. As regards the provision regarding scheduled tribe, it is abundantly clear that no right is created thereby in favour of the Petitioner. In the exigencies of service and keeping regard to efficiency, his case was considered along with others. He was found good but not as much qualified on merit as the others were. Therefore, it could not be stated that any right was guaranteed in favour of the Petitioner and that the same was denied so that the appointments of Respondents 4 and 5 need be quashed.

12. About the service record of Respondents 4 and 5 it was feebly contended during the course of arguments that the same was interpolated in the case of the Respondents 4 and 5. Such a plea was not taken in the writ petition. Besides that, prima facie no interpolation seems to have been done in the record. Moreover these are questions of fact which cannot be gone into in the writ petition. I have gone through the reports of the Selection Committee and for reasons disclosed by them, the Petitioner was not found fit to be included in the list of probationary Dy. S. Ps. However, he was included for officiating

appointments. No question of supersession is in fact involved and the Petitioner cannot be granted any relief on that account. His appeal was rightly rejected by the President of India. He had already filed one petition before and the same was withdrawn by him.

In this view of the matter I do not find any substance in the petition and the same is dismissed without making any order as to costs.