

(2010) 02 RAJ CK 0098
In the Rajasthan High Court

Bhanwar Lal Khati, Prem Kumar Nagar and Rajendra Prasad Sharma APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Citation : (2010) 02 RAJ CK 0098

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—These three writ petitions were filed by petitioners, namely, Bhanwar Lal Khati, Prem Kumar Nagar and Rajendra Prasad Sharma, who have been serving as Constable in the respondent Department since 1962, 1977 and 1979, respectively, with prayer that respondents be directed to provide them benefit of pay scale of post of Electronic Data Processor from the date of their initial appointment with all consequential benefits; in alternative, prayer is made to provide them benefit of pay scale of Electronic Data Processor, which is applicable in National Crime Record Bureau as well as in other States, from the date of their initial appointment. Further prayer has been made that the respondents be directed to provide them benefit of promotion, which is being provided in other wings of Police, like - Finger Print Bureau and CID-CB, with retrospective effect as the petitioners were not called for qualifying examination.

2. Contention of Shri Tej Prakash Sharma, learned Counsel for petitioners, is that petitioners were initially appointed as Constable with the Superintendent-I, CID-CB, Rajasthan, Jaipur, vide order dated 06.05.1962, 04.03.1977 and 28.09.1979, respectively, in the pay scale of 250-360. They were posted in computer cell in the Office of Director, Rajasthan State Crime Record Bureau, Jaipur. Ever since their posting, they were being required to work as Data Entry Operator in the said Office, yet they are being paid salary of post of Constable. Even otherwise, they were entitled to promotion to the post of Head Constable as per Schedule appended to the Rajasthan Police Subordinate Service Rules, 1989, however,

their that right was curtailed. The petitioners requested the respondents time and again while working in the Rajasthan State Crime Record Bureau that they have limited chance of promotion and, therefore, either post of Head Constable should be sanctioned in that Bureau or they should be allowed benefit of pay scale of Electronic Data Processor, i.e. 1150-1500 for Group A and that of 1350-2200 for Group B post of EDP. In this connection, reference was made to the letter dated 06.05.1991 of the Deputy Secretary to the Government of India issued to Director General, National Crime Record Bureau, New Delhi. The petitioners submitted that they should be paid the pay scale of EDP on same pattern on which it was granted in National Crime Record Bureau.

3. It is contended that the Director, State Crime Record Bureau, Jaipur, recommended to the Government that post of Constable be upgraded to that of Head Constable; reference was made to letter dated 04.02.1991. The respondent No. 4 issued a letter on 21.09.1987 mentioning therein that 15 Constables, who have been working continuously from last 10 years and completed 10 years of service as Data Entry Operators in Computer Cell, should be provided facility of training for promotion to next higher post. The Director General of Police issued an order on 01.10.1988 agreeing to that proposal and it was directed that as and when qualifying examinations are conducted, they shall also be called in as per their eligibility on respective posts.

4. Despite issuance of letter by the Director General of Police on 01.10.1988, the Constables working in the State Crime Record Bureau were not called in the examination held in the years 1989, 1990, 1992, 1994 and 1995.

5. The petitioners have given reference to number of awards/certificates, which they received during their service. He also referred to the order dated 02.09.1996 issued by the Director General of Police addressing to Superintendent, State Crime Record Bureau, informing that posts of Data Entry Operators are lying vacant for which sanction has already been issued. It is contended that since the petitioners were discharging the duties on that posts, they should be regularised and paid the pay scale of that post. Moreover, the petitioners are also being deprived of consideration for promotion to the post of Head Constable and subsequently to the post of Assistant Sub Inspector. Despite categorical order issued in that regard by the Director General of Police on 01.10.1988, nothing has been done.

6. The petitioners also stated that the Deputy Secretary, Home Department, State of Rajasthan, by his letter dated 14.06.1991, invited proposal from the Director, State Crime Record Bureau, Jaipur, for giving post of EDP to the Constables working as Data Entry Operator in Computer Cell and also issued letter dated 06.02.1991 in respect of up-gradation of 12 posts of working Constables.

7. Shri B.S. Rajawat, learned Deputy Government Counsel, opposed the writ petition and submitted that there is no question of petitioners being either made

permanent on the post of Data Entry Operator or being absorbed on that post, because their substantive appointment was made on the post of Constable; they also cannot be granted pay scale of Data Entry Operator on same pattern on which the National Crime Report Bureau of the Government of India has granted to its employees.

8. The learned Counsel for the respondents submitted that in so far as proposal moved by the Deputy Secretary, Government of Rajasthan, vide his letter dated 14.06.1991, inviting proposal from the Director, State Crime Record Bureau, is concerned, the matter was still pending for consideration with the State Government at the time of filing reply to writ petitions. Regarding assertion made by the petitioners in the writ petitions (Para 18, 21 and 19, respectively) that despite specific instructions issued by the Director General of Police (Headquarters) vide order dated 01.10.1988, the Constables of the State Crime Record Bureau including the petitioners were not allowed to appear in the departmental examination held for promotion in the years 1989, 1990, 1992, 1994 and 1995, Shri B.S. Rajawat, learned Deputy Government Counsel, referring to the averments made in the reply to writ petitions, submitted that the petitioners, if wanted, could appear in the departmental examination to be held for promotion. The petitioners did not produce any authentic document on the basis of which it can be proved that they appeared in departmental examination held for promotion.

9. The learned Counsel for the respondents further submitted that petitioners' application for granting them pay scale of the post of Data Entry Operator could be considered only after receiving approval from the Government. The matter should be dismissed because the petitioners even otherwise have been granted selection scales on completion of 9, 18 and 27 years of service, respectively. In the last selection scale granted on completion of 27 years of service, they have been fixed in the pay scale of 5500-9000.

10. Having considered the arguments raised by the petitioners and heard learned Deputy Government Counsel appearing on behalf of the respondents, I find that reply submitted by the respondents on both counts is evasive and not certain.

11. First contention raised by the petitioners that they has been continuously working as Data Entry Operator and that the proposals have also been sent for upgrading post of Constable to that of Data Entry Operator or paying them pay scale of that post, the respondents have submitted that the said proposal was pending. Regarding the departmental examination conducted for promotion by the respondents in the years 1989, 1990, 1992, 1994 and 1995, contention of the respondents is that the petitioners did not appear whereas the petitioners repeatedly asserted in the writ petition that despite specific order issued by the Director General of Police on 01.10.1988, they were not allowed to appear in said examination so conducted for promotion; they were never called for appearing in said examination. Plea of the respondents that petitioners should be required to prove this fact by producing any authentic document that they were not included

in the departmental examination conducted for promotion, cannot be accepted because the petitioners have not asserted this fact qua themselves but also for other constables working in the Bureau.

12. It is surprising that if the petitioners did not appear why other Constables working with the Bureau also would not appear and, if that was so, the respondents could assert otherwise that while the petitioners on their own did not appear whereas other Constables appeared therein. It cannot be believed that if given a chance, petitioners and other Constables would forgo their right of consideration for promotion and would not entitle themselves to appear in the examination. The assertion made by petitioners that they were not called for appearing in the departmental examination held for promotion, has, therefore, to be believed. However, in so far as the up-gradation of post of Constable to that of Data Entry Operator or the matter of payment of salary in pay scale of Data Entry Operator is concerned, that plea of the petitioners cannot be accepted because it lies within the domain of employer and that it is not for the petitioners to decide at their own as to which post should be designated in what name and what pay scale should be given to which post.

13. The petitioners were appointed substantively as Constable; though, they have been working as Data Entry Operator but, in absence of duly sanctioned post, they could not be paid pay scale of that post merely because there existed provision like that in the National Crime Record Bureau. However, regarding right of petitioners of consideration for promotion to the post of Head Constable and subsequent higher post, that right cannot be curtailed merely because respondents have granted them selection scales on completion of 9, 18 and 27 years of service, respectively, which, in any case, was meant to compensate for inability of employer in not being able to provide them promotion within a span of every 9 years of service.

14. In the result, all the three writ petitions are partly allowed. The respondents are directed to conduct a special departmental examination for promotion, for the petitioners for the year 1989 and, if the petitioners qualify that examination, consider their case for promotion to the post of Head Constable, with effect from the date last candidate in said selection was so promoted in the CID-Crime Branch Range, and thereafter further consider their case as to when such last candidate was promoted on the post higher than thereafter and grant them all consequential benefits.

15. Compliance of this judgment shall be made within a period of three months from the date its copy is produced before the respondents.