
(1995) 06 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 12013 of 1993

Chandeshwar Singh and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-1995

Acts Referred:

Citation : (1995) 2 PLJR 562

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Judgement

N. Pandey, J.—The Petitioners have prayed for quashing of gradation list of Inspectors of Police (Operation) in the Bihar Police Radio published on 7.7.1988, contained in Annexure 1. Their further prayer is to direct the Respondents to revert such Inspectors of Police (operation) who have been promoted beyond the quota fixed for reservation. A prayer has also been made to command the Respondents to promote the Petitioners after making suitable correction in the gradation list and reversion of the Inspectors or Deputy Superintendent of Police who have been wrongly promoted either on the basis of seniority or on reversion or in excess to the quota earmarked for scheduled caste and tribe candidates.

2. At the very outset, it would be appropriate to notice that the gradation list in question was published as back as in the year 1988. The names of the Petitioners were also included in that list. It is not in dispute that on the basis of placement of the candidates in the seniority list, promotion etc. to higher grades were given from time to time. A question thus arises whether with respect to such candidates who having knowledge about publication of the gradation list and their position in that list, failed to approach this Court at that stage, can be allowed to challenge the same after lapse of so many years so as to unsettle position of several other candidates along with their position in the gradation list. It would be appropriate to notice that the Supreme Court as well as this Court by means of several judgments have deprecated such type of practice. Therefore, having regard to facts stated above, I am not able to persuade myself to

consider the grievance of the Petitioners with respect to their placements in the gradation list at this stage.

3. With respect to other grievances of the Petitioners that the Respondents authorities have given promotion in excess of quota reserved for scheduled castes and tribes, it has been contended that out of total strength of 31 posts of Inspectors in Police Radio Organisation 13 posts have been filled up by the candidates belonging to scheduled castes and scheduled tribes category. It is well known that out of total strength of cadre, 14% of the cadre strength are to be filled up from the candidates belonging to scheduled castes whereas 10% from scheduled tribes. It has been alleged that from a bare reference to the statement made in paragraph 2 of the supplementary affidavit dated 6.4.1994, and paragraph 5 of the reply to the counter affidavit dated 26.2.1994, it would appear that 13 posts have been allotted to the candidates belonging to the scheduled castes and tribes.

4. In view of the judgment of the Supreme Court in the case of R.K. Sabharwal and Ors. v. State of Punjab and Ors. (Writ Petition (Civil) No. 79 of 1979), it would be appropriate to notice that the controversy has already been settled whether the total number of posts in ratio of 14% and 10% have to be counted against total strength of the cadre or the vacancy notified at a particular time. In the aforesaid judgment, it was held that the moment posts earmarked for scheduled castes or tribes on the roster are filled up, the reservation is complete. The roster cannot operate any further and it should be stopped. Any post falling vacant in a cadre thereafter, is to be filled up from the category of reserved or general, due to retirement etc. of whose number the post fell vacant. It was held that the cadre strength is always measured by the member of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of post in a cadre. The concept of vacancy has no relevancy. Therefore, the moment, 14% of the cadre strength are filled up from the candidates belonging to the scheduled castes and 10% from scheduled tribes, the roster would immediately cease to operate.

5. Although in the relevant paragraphs as noticed above, the Petitioners have mentioned the names of different persons who have been promoted in excess of quota the Respondents through their counter affidavit have tried to make out a case that such promotions were not in excess of the quota. That apart, the Petitioners have themselves admitted that the Respondent Nos. 6, 7, 8, 10 and 13 were rightly promoted. Therefore, they have no grievance against these Respondents. Therefore, in view of the facts noticed above, it would be difficult for me to find out whether the other Respondents are holding posts within the permissible quota or it was in excess.

6. I have already indicated that ratio and guidelines have been laid down by the Supreme Court in the aforementioned case in filling up the vacancies on the basis of quota earmarked for the respective candidates. Accordingly, I direct the Respondents to examine the grievance of the Petitioners in the light of the ratio

laid down by the Supreme Court in the aforementioned case and find out whether such Respondents are holding posts in excess of their quota. If upon such examination, it is found that the Respondents appointment/ promotion was in excess of the quota, the authorities shall take steps for their reversion and to allot the same to the candidates to whom such vacancies belong.

7. With the aforesaid direction/observation, this writ application is disposed of.