
(2003) 07 JH CK 0137
In the Jharkhand High Court
Case No : CWJC No. 1470 of 1998 (R)

Gupteshwar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 317

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Jitendra Nath, for the Appellant; Manoj Kumar, JC to GP-II, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. Jitendra Nath, learned counsel for the Petitioner and Mr. Manoj Kumar, JC to GP-II.

2. The case of the Writ Petitioner in the instant case is that having passed the Writer's Constable Examination way back in the year 1970, he became entitled to rank senior to those persons who had not passed the said examination. Yet, the respondents for some reason or the other, promoted other persons who had not even passed the said examination and superseded the Petitioner. Consequently, the Petitioner at an earlier stage moved the then Ranchi Bench of the Patna High Court vide CWJC No. 3618 of 1996(R) and by Order dated 3.2.1997, he was given liberty to file a representation before the authority concerned who was directed to pass a speaking order within the certain period of time indicated in the Order which is contained at Annexure-1 to this Writ Application. After the aforementioned order had been passed by the then Ranchi Bench of the Patna High Court, the Respondent No. 2 passed the impugned order dated 23.9.1997 rejecting the claim of the Petitioner. The reason assigned in the said order is that the Petitioner had been given promotion on Range basis and therefore, it was not possible to maintain seniority at the State level.

3. Mr. Jitendra Nath, learned counsel for the Petitioner submits that the aforesaid

reason given by the Respondent No. 2 is totally misconceived and relies upon the contents of Annexure-4 which reads as follows :

^^-----blds vfrfj? lk{kj vkj{kh esa lkeatu gsrq foHkkxh; ijh{kk m?kh.kZ gksus ds i"pkr~ tks lk{kj vkj{kh esa leaftr gq, gSa os muls ojh; gksaxs tks foHkkxh; ijh{kk fcuk ikl fd;s gh ojh;rk ,oa lsok vfHkys[k ds vk/kkj ij l- vk- esa leaftr fd;s x;s gSa A ;g Hkh vkxzg gS fd blh fu.kZ; ds vuqlkj lk{kj vkj{kh;kSa dh ojh;rk fu/kkZfrj djrs gq, mUgSa izf"k{k.k esa ih- Vh- lh- Hkstk tk; ,oa izf"k{k.k esa iw.kZ m?khj.krk izkIr djus ds ckn gh lsok vfHkys[k larks"kizn jgus ij mudh izksUufr vFkok laiqf"V dh tk; A ;g vkns"k rRdkfyu izHkko ls dsoy mu ij ykxw gksxk tks v/kh lk{kj vkj{kh vFkok LFkkukiUu l- v- fu- gSa A jkT; ojh;rk lwph rS;kj gks tkus ij ;g dke jkT; Lrj ij vkj{kh eq[;ky; }kjk gksxk A rc rd ;g dke {ks=h; Lrj ij gksxk ijUrq ojh;rk fu/kkZj.k dk vk/kkj mi;qZ? funsZ"k gksxk A**

4. According to him, specific guidelines have been given in Annexure-4, relating to the manner in which successful candidates were to be dealt with in matters relating to seniority. Since the Petitioner had passed the examination, therefore he should have been given automatic promotion and/or seniority over and above those who had not passed the same.

5. From a perusal of the last two lines of the same Annexure-4, it has been stated that upon completion of the State seniority list, matters relating to promotion etc. would be dealt with at the Headquarter level but till then these would be done at the Range level subject to the Criteria mentioned in Annexure-4. The aforementioned criteria, according to Mr. Jitendra Nath obviously means that those who had passed the examinations indicated above would rank senior to those who had not passed.

6. In the Counter Affidavit, a stand has been taken at paragraph-10 that temporary vacancies were being filled up by giving adhoc promotions prior to 1988-89 and all these adhoc promotions were based in Range level of the concerned DIG as per seniority of the officers in their respective Ranges. It has further been stated that except Nayaim Ansari, other officers had also passed the same examination in the year 1970.

7. Pursuant to the order of the Writ Court passed on 3.2.1997, in CWJC No. 3618 of 1996 (R), the matter was dealt with by the Respondent No. 2 and he rejected the representation on the ground that such promotion at the relevant time were being given Range wise. However from the own saying of the Respondents, it is apparent that at least Nayaim Ansari had not passed the examination. But since he is not before this Court, no order should be passed against him unless he is given notice.

8. Mr. Jitendra Nath; learned counsel for the Petitioner relies upon a rule relating to promotion of Assistant Sub-Inspector which, according to him, is Rule 659 (e) of Bihar Police Manual (now said to be notified as Jharkhand Police Manual). He relies upon Rule 659 (e) which says that the duty of the Board at the level of the Range Deputy Inspector-General should have been only to prepare list of

selected candidate and nominate the same. He further submits that such list should ordinarily have been prepared in order of seniority and if any officer was placed higher in the list than his seniority, then reasons for such special nomination should have to be recorded. He further submits that as per the said Rule, copy of the proceedings should have been forwarded to Inspector General for information who was to see that wide disparities did not occur in matters relating to promotion etc. Rule 659 (e) reads as follows :

659(e) The Central Selection Board [Appendix 72(2)] shall, if necessary, interview the candidates nominated by the Range Deputy Inspector-General's Board and prepare a list of selected candidates for promotion. Names on this list should ordinarily be in order of seniority. If an officer is placed higher in the list than his seniority warrants the reasons for such special nomination shall be recorded. Promotions shall be confined to the selected list framed by the Central Selection Board [Appendix 72(2)] but vacancies shall be filled up rangewise according to seniority in the list by the Range Deputy Inspector-General.

A copy of the proceedings shall be forwarded to Inspector-General for information who shall endeavour to see that wide disparities do not occur in matter of promotion and confirmation in different ranges and adjustments may be made by suitable transfers of Assistant Sub-Inspectors."

9. From perusal of the pleadings, it does not appear as to whether Rule 659(e) was complied or not. The impugned order is also silent in this aspect and has not dealt with Rule 659 (e) in relation to the Petitioner.

10. Additionally, and as has already been stated the persons against whom the Petitioner claims to have been superseded have not been made parties and only the State respondents have appeared through the G.P.-II.

11. Consequently, this Court is of the opinion that the matter requires reconsideration at the hands of the concerned authorities in the light of the provisions contained in Rules 659(e) of Jharkhand Police Manual as also taking into consideration the Circular which has been brought on record vide Annexure-4 to the Writ Application.

12. The matter therefore, is remanded once again to the Respondent No. 2 for a fresh consideration to be made in accordance with law. It goes without saying that in the event the Respondent No. 2 finds that there was no fault on the part of the Petitioner, although he was entitled, then in that event, he must give adequate notice to all concerned persons and thereafter upon hearing them pass an order strictly in accordance with law. Let it be recorded however that this Court by passing this order has not, in any way suggested, that the Petitioner must be given seniority. All that this Court has Indicated is that in the absence of consideration of the matter vis-a-vis Rule 659 (e) read with Annexure-4, the matter requires reconsideration at the hands of the appropriate authority in accordance with law.

13. With the aforesaid observations and directions, this Writ petition stands disposed off. There shall however, be no order as to costs.