

(2007) 09 JH CK 0063
In the Jharkhand High Court

Humayan Azam and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Constitution of India, 1950 — Article 309
Police Act, 1861 — Section 12

Citation : (2007) 4 JCR 513

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—The question, which gives rise to filing of this writ petition, is as follows:

Whether the date of appointment of the petitioners in the cadre of Steno Sub-Inspector of Police would be treated as the basis of determination of seniority in the general cadre of Sub-Inspector of Police or the date of entry into the general cadre of Sub-Inspector of Police would be the determinative factor to fix their seniority?

2. The short facts are as follows:

(A) The petitioners were initially appointed as Steno Sub-Inspector of Police in the year 1982 (petitioner Nos. 1 to 3) and 1985 (petitioner No. 4) and after completion of minimum length of service in the post of Steno Sub-Inspector of Police, the petitioner Nos. 1 to 3 in the year 1989 and the petitioner No. 4 in the year 1991 were taken to general cadre of Steno Sub-Inspector of Police on reversion. Some of the Steno Sub-Inspector of Police, who joined the general cadre on reversion from the cadre of Steno Sub-Inspector of Police, claiming seniority on the basis of their initial appointment as Steno Sub-Inspector of Police, filed a writ petition CWJC No. 6371/1990. In that case, Patna High Court decided that the seniority has to be fixed on the basis of their entry into the

general cadre of Steno Sub-Inspector of Police and not from their initial appointment as Steno Sub-Inspector of Police. This was affirmed by the Supreme Court in SLP No. 568/1994.

(B) In pursuance of the said orders passed by the Division Bench of Patna High Court and the Supreme Court, the D.G.-cum- I.G., Bihar, issued the impugned memo No. 3537/P-2 dated 22.9.2003, stating that the Steno Sub-Inspector of Police, who joined the general cadre of Sub-Inspector of Police on reversion, can claim seniority only from the date of entry into the general cadre of Sub-Inspector of Police and not from the date of appointment as Steno Sub-Inspector of Police.

(C) Aggrieved by the same, the present petitioners, who were initially appointed as Steno Sub-Inspector of Police and subsequently joined the general cadre of Sub-Inspector of Police on reversion, have filed this writ petition seeking for quashing the impugned memo No. 3537/P-2 dated 29.9.2003.

3. Mr. Rajiv Sinha, learned Counsel appearing for the petitioners, would make the following contentions, assailing the memo impugned.

(I) The State of Bihar, vide its policy decision passed by the Cabinet, issued a Memo No. 3414 dated 4.9.1953 laying down the recruitment procedure, whereby the Steno Sub-Inspector of Police, on their absorption in the general cadre of Sub-Inspector of Police after completion of minimum length of service, will count their seniority from the date of their appointment as Steno Sub-Inspector of Police. The said memo is being followed from the year 1953. The memo impugned dated 22.9.2003 has been issued without cancelling the earlier memo and as such, it is not legal.

(II) Clause (5) of Appendix 42 of the Police Manual mentions that the seniority of all the Sub-Inspectors and Deputy Superintendent of Police in their respective ranks, whether recruited directly or promoted will be counted from the date on which they were actually recruited. On that basis, a policy decision was taken in the year 1953, in pursuance of which the memo dated 4.9.1953 was issued by the Under Secretary to the Government, giving direction that there cannot be a distinction among the sub-Inspector of Police in the general cadre and Steno Sub-Inspector of Police in another cadre in the matter of seniority. In the light of the same, the order impugned cannot be held to be valid.

(III) The present case relates to merger of Steno Sub-Inspector cadre into Sub-Inspector cadre after completion of 5 years as Steno Sub-Inspector subject of selection. The method of recruitment and the scale are same for these two cadres. Even then the impugned memo has been issued on 22.9.2003 without getting any approval of the Cabinet as required u/s 12 of the Police Act.

(IV) The judgment rendered by the Division Bench in CWJC No.6371/1990, which has been followed in CWJC Nos. 11211/2003 and 11667/2003, were not correctly decided as they did not take into consideration the policy decision of 1953, on

the basis of which the memo has been issued on 4.9.1953. Therefore, the memo impugned, which is said to have been issued on the strength of the decisions referred to above, cannot be sustained.

(V) Even assuming the impugned memo is legally and validly issued, the same is prospective and as such the benefits of seniority earned by the petitioners, who joined the general cadre of Sub-Inspector of Police long back, cannot be taken away by the impugned memo.

4. In reply to the above submissions, learned Counsel appearing for the respondents, namely learned Advocate General for the Government of Jharkhand, Mr. Suresh Kumar, learned JC to GA for the Government of Bihar and Mr. Kalyan Roy, learned Counsel appearing for the respondent Nos. 8 and 9, who have subsequently been impleaded and who were originally appointed as Sub-Inspectors of Police, would make the following contentions:

(a) Admittedly the impugned order was issued following the Division Bench judgment in the case of Bhagwat Prasad Singh and Ors. v. Bhudeo Tiwari and Ors. reported in 1995 (1) BLJ 11, which was affirmed by the Supreme Court by the order dated 14.2.1994. In the absence of any valid reason to establish that the case of Bhagwat Prasad Singh was wrongly decided, a different view cannot at all be taken, that too when Bhagwat Prasad Singh case was affirmed by the Supreme Court. Further the same principles have been reiterated in the subsequent decisions rendered in CWJC Nos. 11211/2003 and 1667/2003 by the other Division Bench.

(b) The circular or the memo issued in the year 1953 would not help the petitioners in view of the fact that the said memo issued is a mere proposal, which has been made by the Police Department. Admittedly, the same has not received any approval from the Government. As such, the said proposal is neither a statutory rule, nor can it be said that it was made under Article 309 of the Constitution of India.

(c) The clause (3) of the said circular issued in the year 1953 would clearly state that the proposal for amendment of Police Manual/Rules will be sent to the Government for approval in due course. However, there is no document available to indicate that the said proposal was sent to the Government and the Government granted approval. In other words, the memo issued in the year 1953 cannot have any statutory value or force in the absence of the Government approval as required under the provisions of the Police Manual.

5. In the light of the above rival contentions, let us now deal with the question, which has been raised in this case.

At the outset, it shall be stated that the very same question had been raised before the Division Bench of Patna High Court in the case of Bhagwat Prasad Singh and Ors. v. Bhudeo Tiwari and Ors. reported in 1995 (1) BLJ 11 and the same was dealt with elaborately. In that case, the petitioners, Steno Sub-

Inspector of Police of Police, who subsequently joined as general cadre of Sub-Inspectors, claimed seniority on the ground that keeping in view their date of appointment in the Government service, they should be placed senior to other persons who were directly appointed in general cadre of Sub-Inspector. In that context, the following question was framed in the said case:

The short question which has fallen for our consideration, in this writ application is as to whether the date of appointment of the petitioners in the cadre of Steno Sub-Inspectors of Police is to be treated as the basis for determination of their seniority in the cadre of Sub-Inspector of Police or their entry in the later cadre would be the basis for the said purpose.

6. Here also the petitioners claimed seniority on the basis of their initial appointment as Steno Sub-Inspectors contending that the date of entry into the general cadre of Sub-Inspector on reversion should not be the basis for fixing the seniority. In this case, the petitioners were appointed as Steno Sub-Inspectors of Police in the year 1982 (petitioner Nos. 1 to 3) and 1985 (Petitioner No. 4) respectively and joined general cadre of Sub-Inspector on completion of minimum length of service in the year 1989 (petitioner Nos. 1 to 3) and in the year 1991 (petitioner No. 4) respectively.

7. So the question for consideration in this case, in the light of the above facts, is similar to the question raised before the Division Bench dealing with the case of Bhagwat Prasad Singh reported in 1995 (1) BLJ 11.

8. The Division Bench in that case elaborately dealt with various provisions of rules of the Manual and on that basis came to the conclusion that the post of Steno Sub-Inspector and those of general cadre Sub-Inspector belong to two distinctly separate cadre and hence the service rendered as Steno Sub-Inspector in a separate cadre cannot be taken into account for determining the seniority in the cadre of Sub-Inspector on reversion to the main police line. The question framed, as referred to, was answered in the following manner:

Keeping in view the facts of the present case and the principles governing determination of seniority, it has to be held that for the purpose of determining inter se seniority of the petitioners and respondents No. 1 to 19, the respective dates of entry/appointment of these persons in the cadre of Sub-Inspector of Police can be the only relevant basis and neither the date of first appointment of the petitioners in another cadre nor the date of confirmation of the respondents on their respective post is of any consequence for the said purpose.

On the basis of the above findings, that writ petition was dismissed. There is no dispute in the fact that the said decision rendered by the Division Bench has been upheld in SLP No. 568/1994 by the order dated 14.2.1994.

9. Again the very same question came up for consideration before another Division Bench of Patna High Court in CWJC No. 11211/2003 and 11667/2003. It was represented by the counsel for the petitioners before the said Division Bench

that Bhagwat Prasad Singh case was not correctly decided and therefore, that decision needs reconsideration.

10. In the light of the said argument, the said Division Bench again proceeded to examine the relevant rules and various provisions of the Manual and concluded that the decision in Bhagwat Prasad Singh case has been correctly decided and the relevant rules were properly examined and right conclusion was arrived at to the effect that the post of Steno Sub-Inspector and those Sub-Inspector In the general cadre were in different cadres and as such the seniority cannot be claimed on the basis of initial appointment as Steno Sub-Inspector.

11. The gist of the conclusion arrived at by the said Division Bench is as follows:

(1) The posts of Steno Sub-Inspector/ Steno Assistant Sub-Inspector and those of Sub-Inspector/Assistant Sub-Inspector belong to entirely different cadres.

(2) Ordinarily, after serving as Steno-grapher for five years, Steno Sub-Inspector/ Steno Assistant Sub-Inspector would revert to the district work and on reversion, their seniority in the main police line would be reckoned from the date of their reversion.

Thus, it is clear that the very same question raised in this case has been decided by the two Division Benches of Patna High Court earlier and therefore, the question involved in the instant case is no longer *res Integra*, especially when the principles laid down by the Division Bench was upheld by the Supreme Court.

12. Now the learned Counsel for the petitioners again make an attempt to plead that the decision rendered in Bhagwat Prasad Singh case by the Division Bench of Patna High Court upheld by the Supreme Court as well as the decision in CWJC Nos. 11211/2003 and 11667/2003 have not been correctly decided since the said Division Bench did not take into consideration the memo No. 3414 dated 14.9.1953 issued by the Secretary to the Government, on the basis of which earlier the seniority was fixed on the basis of entry into the Police Department and not on the basis of the date of entry into the general cadre on reversion.

13. With regard to the said aspect of the matter, learned Counsel for the respondents would contend that the memo issued in the year 1953 is only a mere proposal, which has been made by the Police Department and the said proposal is neither a statutory rule, nor it has been framed under the provision of Article 309 of the Constitution of India and as such, the said memo issued in the year 1953, which has no statutory force, would not invalidate the memo impugned dated 22.9.2003.

14. This submission made by the learned Counsel for the respondents, in our view, merits consideration. Further, admittedly the memo impugned in the instant case has been issued on the basis of the order passed by the Division Bench of Patna High Court reported in 1995 (1) BLJ 11, Bhagwat Prasad Singh, confirmed by the Supreme Court. Therefore, it cannot be said that the impugned memo is without jurisdiction.

15. As indicated above, the point regarding the dissimilarity of two cadres has been decided in the earlier decisions as referred to above. Even then the same point has been raised by the counsel for the petitioners contending that both the cadres are same and there cannot be any discrimination between those cadres as, both belong to the same department and receive the same scale of pay.

16. Let us now deal with the said point. As referred to in the decision reported in 1995(1) BLJ 11. it would be appropriate to refer to various rules in the Police Manual in order to ascertain whether the post of Steno Sub-Inspector of Police and Sub-Inspector of Police were of same cadre or different cadres.

5 Chapter 1-A of the Bihar Police Manual (Vol. 1) sets out the details of ranks in cadres envisaged in the state Police Force Rule 7-A(3) deals with forces at the district level and clause (e)(i) provides that:

A circle is divided into police station. A sub-inspector holds the charge of each police station.

Rule 7-A(9) of this Chapter provides for miscellaneous forces which reads as under:

Rule 7-A(9) Miscellaneous Force.--(a) For accounts, correspondence and crime record, there are Accountants, Head Clerks, Upper Division Clerks and Lower Division Clerks, etc. who are attached with the office of Inspector-General, Deputy Inspector-General and Superintendent but they are not the members of the police force.

(b) There are Stenographers of the ranks of Sub-Inspector and Assistant Sub-Inspector who are posted in the confidential section of the Offices of Inspector-General, Deputy Inspector General, Superintendent. Assistant and Deputy Superintendent, etc.

17. From the above rule, it is clear that the post of Steno Sub-Inspector has been created for an entirely different purpose involving different nature of duties and posting. In view of the above, the Steno Sub-Inspector and Sub-Inspector of Police are essentially two groups of posts from different cadre. The Steno Sub-Inspectors would join the general cadre of Sub-Inspectors only on reversion after finishing minimum length of service. Therefore, it cannot be construed that the petitioners, Steno Sub-Inspectors, have been absorbed or confirmed in the general cadre pursuant to any merger.

18. One more aspect of the matter also indicates that these posts of Steno Sub-Inspectors and general cadre Sub-Inspectors are separate/distinct cadres. It is an admitted fact that in view of lack of promotional avenues in the cadre of Steno Sub-Inspector of Police, a Special Scheme was framed by the State Government to allow the Steno Sub-Inspector of Police to come to the general line of Sub-Inspector after completing minimum service of 5-7 years, subject to suitability and physical fitness. On being selected in the general line of Sub-Inspector of Police, Steno Sub-Inspector of Police was required to undergo the

requisite police training and only after successful completion of the training, he (Steno Sub-Inspector of Police) is inducted into the cadre of general line Sub-Inspector of Police to enable him to avail the promotional avenues thereafter. Thus, it is clear that the post of Steno Sub-Inspector of Police belongs to an entirely different cadre.

19. As per the general settled rule of seniority, the date of joining into the general cadre is a primary factor for reckoning the seniority of the incumbent. The relevant rule does not permit, any person to claim seniority into the cadre from any date earlier to the actual date of joining into the cadre.

20. Let us now refer to paragraph 2 of Appendix-42, which reads as follows:

Every year in the month of July, the Inspector General shall work out the number of vacancies in the ranks of Steno Sub-Inspectors and Steno Assistant Sub-Inspectors. On the basis of these vacancies, he shall decide to make direct recruitment by the procedure given hereinafter keeping in view the reservations for scheduled caste/tribe. He will also decide as to what quota should be fixed for promotion from the rank of Steno Assistant Sub-Inspector to Steno Sub-Inspector.

21. Paragraphs 14 and 15 of the same Appendix, being relevant in this context, are reproduced below:

14. The primary object to be aimed at is the provision of a body of trained stenographers, capable of reporting verbatim a speech delivered in Hindi, for which a speed varying from 120 to 160 words in a minute is necessary. Superintendents should bear this in mind and see that work is arranged with a view to attain that object. They should also ensure that stenographers are made to do regular daily practice by having passages dictated to them on days on which they have not, in the course of their duties, had to take down sufficient to keep them up to the mark.

15. The appointment of Steno Sub-Inspector/Assistant Sub-Inspector and typist Assistant Sub-Inspector shall be done by Deputy Inspector General under Police Act. They shall wear Police uniform but shall not use any of the powers of police so long as they work as Stenographers and typist.

22. Learned Counsel for the petitioners would submit that the seniority of Steno Sub-Inspector has been referred to para 5 of Appendix-42.

23. Let us refer to the said paragraph 5 of Appendix-42, which reads as under:

The standard of educational qualifications, measurements, age and physical tests shall be the same in case of Steno Sub-Inspector as if for Sub-Inspector (unarmed), vide Rule 658 and for steno or typist Assistant Sub-Inspectors those of constables, vide Rule 663. In suitable cases, relaxation in height and chest may be done by Dy. I.G. Administration up to 1" and by the Inspector-General upto 2". In case of scheduled caste/tribe, further relaxation may be done by 1".

All candidates shall be allowed to appear in test of shorthand dictation/typing and after that, they may be required to appear in physical test meant for respective ranks. However, suitable candidates may be exempted from these tests. The candidates shall be appointed by the Central Selection Board [Appendix-72(2)]. They will serve as stenographers for a period of 5 years, after which they will ordinarily revert to distinct work but before that they shall undergo the usual course of training at the Police Training College for ordinary Police Duties. The Inspector-General shall be at liberty to retain them as stenographers for a longer period where necessary.

24. The above paragraph would not show that there is any reference as to the point of seniority. It does not give the benefit of service rendered as Steno Sub-Inspector for fixing the seniority in the general cadre. Eligibility criteria being the same does not mean that Steno Sub-Inspector would compete with the general cadre and would be able to get automatic selection along with others for appointment of Sub-Inspector in the cadre. Their additional skill of stenography opens for them another door for joining police force as Steno Sub-Inspector. In order to give promotional chances, as mentioned above, a provision has been made for reversion in the main police line and only after that, their seniority will be considered in the main police line.

25. This is the reason. Patna High Court would observe in the decision referred to above that it is an admitted position that in the cadre of Steno Sub-Inspector/Steno Assistant Sub-Inspector is a closed cadre a single promotional avenue. If they were to remain there, they would spend their entire service tenure without a single promotion. In order to avoid this highly inequitable situation, as indicated above, a scheme was framed for their reversion into the main police line and in that event, their seniority in the main police line can be reckoned from the date of reversion for the simple reason that two posts were in completely different cadre.

26. As indicated above, police training is a condition precedent to join the general cadre. In other words, without completing police training in Police Training College, no officer can be posted in the general police cadre and till and then he cannot be entrusted with ordinary police duty.

27. As prescribed in Appendix-42 in the Police Manual, the appointment procedure for general cadre Sub-Inspector is different and separate and pay scale is also different. The service rendered as Steno Sub-Inspector in a separate cadre cannot be taken into account for determining the seniority in the cadre of Sub-Inspector on reversion to the main police line.

28. Annexure-3, which refers to Clause 15 of Appendix-42, prescribes the appointment procedure of Steno Sub-Inspectors which clearly specified that they cannot exercise the power of police wearing police uniform as long as they work as Steno Sub-Inspector. Only when they make entry into general cadre of Sub-Inspector, subject to fitness and suitability, that too, after undergoing police

training, they will be considered to be officers performing police duty. Till then, they belong to a different cadre and different category.

29. In the instant case, the petitioners have claimed their seniority from the date of their initial appointment in the cadre of Steno Sub-Inspector on the basis of the circular said to have been issued in the year 1953.

30. As indicated above, the said circular is not at all applicable to the present facts of the case because of the fact that the relevant rule, vide para 7 of Police Order No. 260/1997, with regard to fixing of seniority of Steno Sub-Inspector, has been rescinded by an order dated 22.9.2003. the impugned order. The impugned order which, as mentioned above, says that the seniority of Steno Sub-Inspector will be fixed from the date of their reversion into the general line of Sub-Inspector and not from the date of their initial appointment as Steno Sub-Inspector, was in conformity with the order passed by the High Court and affirmed by the Supreme Court.

31. In view of the discussion made above, it is to be held that the cadre (Steno Sub-Inspector) is different, nature of duty is different, appointment procedure is different and pay scale also is different and as such, they cannot claim seniority from the date of their initial appointment.

32. So our conclusion is as follows:

(I) The post of Steno Sub-Inspector/Steno Assistant Sub-Inspector is a separate cadre from that of Sub-Inspector/Assistant Sub-Inspector of general cadre as the appointment procedure, nature of duties and pay scale between these two cadres are entirely different.

(II) Ordinarily, the Steno Sub-Inspector, after joining stenographer cadre, would join distinct work on reversion after working for five years and even if they are retained by the Inspector-General of Police for a period exceeding five years, they will not lose their seniority in the general cadre on reversion after expiry of the said five years.

(III) The Steno Sub-Inspectors as such cannot claim their seniority from the date of their initial appointment as Steno Sub-Inspector but they can claim seniority only from the date of entry into the general cadre Sub-Inspector of Police, subject to suitability and fitness after getting police training.

So in view of the above findings, there is no merit in this writ petition, which is accordingly dismissed.

Narendra Nath Tiwari, J.

33. I agree.