

(1990) 03 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No's. 4400 of 1987 and 3591 of 1989

Jai Prakash Narain Singh and Baidehi Saran Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 15-03-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1990) 38 BLJR 903 : (1991) 2 LLJ 508

Hon'ble Judges : Uday Sinha, J; S.C. Mookherji, J

Bench : Division Bench

Advocate : Mahendra Kumar Singh and Ram Chandra Jha, in CWJC No. 4400/1987 and S.P. Mukherji, in CWJC No. 3591/1989, for the Appellant; Kishna Kumar Singh and Harhar Roy, Advs for Respondent No. 6 in CWJC No. 4400/1987 and J.P. Shukla, G.P.I. and Jugul Kishore in CWJC No. 4400/1987 and Suresh Chandra Giri and M.P. Sharma for Respondent No. 4 in CWJC No. 3591/1989 and S.N. Jha, S.C. II and Ramesh Kumar, J.C. to S.C. II in CWJC No. 3591/1989, for the Respondent

Final Decision : Allowed

Judgement

Mookherji, J.—C.W.J.C. Nos. 4400 of 1987 and 3591 of 1989 have been heard together, as common question is involved, and are being disposed of by this judgment.

2. The petitioners and intervenors have sought for quashing the orders as contained in Annexures 2,3,4,5,6,7 and 8 by which, respondent S.N. Dubey (hereinafter to be referred to as "respondent" only), presently employed as Deputy Superintendent of Police, has been promoted out-of-turn to the said post on ad hoc basis with retrospective effect from. 25th October, 1975 for gallantry in respect of an incident of the year 1971, placed above several others and subsequently confirmed on that post against all the rules and procedure laid down for promotion of police officers of different categories.

3. Short facts. The petitioner of C.W.J.C. No. 4400 of 1987 is a direct recruit to

Bihar Police Service with effect from 19th January, 1978 and is presently posted as Sub-Divisional Police Officer, Hajipur on the post of Deputy Superintendent of Police. He has been confirmed on that post in the year 1981. Intervenors 2 to 18, except No. 15, are also direct recruits and No. 15, is a promotee. Petitioner of C.W.J.C. No. 3591 of 1989 was initially appointed as Sub-Inspector of Police with effect from 1st January 1959. Respondent was recruited as Sub-Inspector of Police in the year 1965 and continued as such up to the year 1978 and confirmed as Inspector of Police with effect from 23rd March, 1982. In the year 1971, the name of respondent was recommended for President's Police Medal, which was rejected by the Government of India and communicated to the Home Secretary as contained in Annexure-1.

4. It is stated that if the names of officers are recommended for President's Police Medal, normally five to ten out of that get it as the recommendation of the State Government is not a condition precedent for getting the President's Police Medal. Respondent was recommended for President's Police Medal for gallantry thrice, one for his service of the year 1971, the second of the year 1975 and the third for his gallantry of 28th March, 1982. But he got President's Police Medal for his gallantry of 28th March, 1982 only. The Rules 646/724 (a), 649 (2) and 660-C of the Bihar Police Manual, 1978 (hereinafter to be referred to as "the Rules") have been quoted to show the procedure for promotion of Inspectors, Reserve Inspectors and Sub-Inspectors to the post of Inspector as also the out-of-turn promotion of officers of particular categories mentioned in Rule 660 (C).

5. It is further stated that on the basis of assurance given in the Legislative Assembly with regard to respondent, a Sub-Committee recommended for promotion of respondent out-of-turn, but the Department did not accept it, as the said promotion would have been against the Rules since his case for gallantry of 1971 was rejected by the Central Government. The then Chief Minister of Bihar sent a note-sheet to the Chief Secretary which runs as follows:

"Mukhya Sachiva,

Manniya Vidhayak ka Patra Sanlgna Hai, Yah Vastava men bahut hi gambhir bat hai ki Mukhamantri dwara diya gaye Aadesh ka Anupalan Nahi ho. Esliye Aapse Sawanam dekene aur Ashawashan Samittee Ke Nirnaya awam Uchcha Nayayalya Ke Aadesh tatha us per mere Dwara diye gaye Aadesh Ka Anupalan ek Saptah ke bhitari Sunisshit Karayi Jai. Ki gai Karyawahi se mujhe bhi Awgat Karayi Jaya tatha Aadesh Ka Anupalan Abi tak kyon nahi kiya gaya, eske Sambandh me jimmebari Nirdharit Kar Apne Mantavya ke sath mere Aadesh ke liye Sanchika Upasthapit ki Jaye."

Thereafter, the respondent moved this Court in C.W.J.C. No. 5112 of 1986 and the following order was passed on 7th January, 1987:

"In spite of the fact that Mr.J.P. Shukla, Government Pleader No. 1 took one week's time only on 2nd December, 1986 to enable him to seek full instruction in the matter, it is unfortunate, if not highly regrettable, that he has not yet been

able to get any instruction even after the lapse of one month for reasons best known to the concerned respondents. We need not, however, make any comment on the sad commentary of the bureaucracy in this State (in the State of Bihar). While disposing of this application at this stage itself, we direct the concerned respondents to look into the matter and pass appropriate orders in accordance with law with regard to the petitioner's grievances, keeping in view the recommendations of the Assembly Subcommittee, within a period of three weeks from today, failing which, perhaps, this court may be constrained to take punitive measure in this matter. This application is, thus, disposed of with the aforesaid directions."

The respondent again moved, this Court in M.J.C. No. 48 of 1987 for issuance of contempt against the authorities for not complying with Court's order and on 13th July, 1987 a notice was issued which is still pending.

6. The respondent filed the writ for giving him out-of-turn promotion as Inspector of Police with effect from 20th May, 1971 in terms of Rule 660 (c) which was the date of his gallantry and was recommended by the State Government for President's Police Medal, but it was rejected by Annexure-1. The Joint Secretary, Home (Police), by a notification dated 24th April, 1987 as contained in Annexure-2 issued order promoting him to the post of Deputy Superintendent of Police with retrospective effect from 25th October, 1975. This order as contained in Annexure-3 was issued violating the provisions of the Rules as no recommendation of Selection Board was obtained before issuance of order as contained in Annexure-2 nor any other formality(s) as required had been followed. After the issuance of contempt notice in July 1987, the State Government issued an arbitrary order on the pretext that the same is being issued under the orders of the High Court giving retrospective promotion to the respondent with effect from 25th October, 1975 and thereby, making him senior to more than 350 Deputy Superintendents of Police and in this process, respondent was made senior to petitioners and intervenors on the post of Deputy Superintendent of Police. This order was issued under notification dated 28th August, 1987 as contained in Annexure-3. By virtue of this notification respondent superseded a large number of Deputy Superintendents of Police, under whom he had worked as Sub-Inspector/Inspector of Police for quite a long time. In this way, respondent was promoted to the post of Deputy Superintendent of Police with effect from 25th October, 1975 although promoted as Inspector in the year 1978 and confirmed on that post with effect from 28th March, 1982 against the rules, which provides a person cannot be promoted on next higher post without being confirmed on the lower post, or a person cannot be promoted to a next higher post with effect from a date prior to his confirmation in the lower grade.

7. The promotion of respondent was made without any consideration by any committee in terms of Rule 660 (C), violating all the rules as provided in 646, 724-A and the procedures of the Department. The petitioners are, therefore,

apprehensive that on account of the seniority given to respondent, he may have a better chance to be selected for Indian Police Service, if the notification as contained in Annexure-3 is not quashed.

8. That the cases of a number of persons similarly situated had been rejected in the past by the Government of India for President's Police Medal but in the case of respondent a discriminatory attitude has been adopted by the State Government which clearly shows about the mala fide action of the Government and its Officers.

9. That on 26th August, 1987 i.e. two days before the issuance of the order as contained in Annexure-3, the Home Secretary, Government of Bihar issued a letter to the Director General-cum-Inspector General of Police to give promotion to respondent in the cadre of Inspector out-of-turn and just two days after, an order (Annexure- 3) was issued giving him retrospective promotion as Deputy Superintendent of Police even without giving him any paper promotion on next grade of Inspector of Police prior to the date of promotion as Deputy Superintendent of Police (Annexure-4). The effect of Annexure-4 is that respondent has been placed in the gradation list of Bihar Police Service cadre corrected up to 1st April, 1984 after Serial No. 87 making him senior to about 350 officers of Bihar Police Service which is violative of Articles 14 and 16 of the Constitution.

10. In the counter-affidavit, the respondent has not disputed his appointment as Sub Inspector of Police in the year 1965 but it is stated that the direct recruit petitioners in the rank of Deputy Superintendent of Police cannot challenge his out-of-turn promotion as Inspector of Police with effect from 20th May, 1971 and his subsequent promotion by way of consequential benefits and therefore, the writ petitions are premature, as ad hoc promotion as Deputy Superintendent of Police has not yet been regularised by the Police Service Commission and hence, the apprehension of the petitioners that he has a better chance for being considered for selection to Indian Police Service is meritless. The promotion of respondent on the basis of the report of Sub-Committee of Bihar Legislative Assembly having not been challenged cannot now be questioned. This Court in C.W.J.C. No. 5112 of 1987 only directed the concerned authorities to look into his grievances and pass appropriate order in view of the report of the Sub-Committee and thereafter, the matter was considered by the State Government and after full consideration, a decision was taken as contained in Annexure-A.

11. That the case of the writ petitioner of C.W.J.C. No. 4400 of 1987 had also been sent to the Union Public Service Commission for consideration for inclusion of his name in the select list whereas the name of the respondent has not been sent as his promotion is on ad hoc basis which shows that no legal injury has been caused to the writ petitioners.

12. In the supplementary counter-affidavit, it is stated that respondent had represented to Government for his out-of-turn promotion from Sub-Inspector to

Inspector from 20th May, 1971 in the year 1984 (Annexure- E) whereupon, the department recommended for promotion and the Chief Minister also informed the Chief Secretary about the assurance given on the floor of Assembly and it was accordingly ordered that in the light of decision taken by the Assurance Committee he (respondent) should be promoted within a week and an information be sent to concerned Minister (Annexure-F), but in spite of that when no order to that effect was passed, the respondent had to move this Court and an order was passed.

13. In the another supplementary affidavit, the petitioner of C.W.J.C. No. 4400 of 1987 has stated that after admission of the case, respondent has been able to get officiating promotion on the post of Deputy Superintendent of Police with effect from 25th October, 1975 although he continued as the Sub-Inspector of Police up to the year 1978 and confirmed on the post of Inspector with effect from 28th March; 1982 (Annexure-5) by which he has been made senior to petitioner who joined the post of Deputy Superintendent of Police on 19th January, 1978 and thereby, the settled principle that no body can be promoted on any post with retrospective effect affecting the right of seniority of other persons of the cadre in which the person concerned is being promoted has been violated. That there is also no sense in giving promotion to respondent on officiating basis without working on the said post.

14. In the second supplementary application, the petitioner has challenged the gradation list of Bihar Police Cadre as on 1st April, 1988 as unjustified wherein respondent has been placed at Serial No. 53 and the petitioner at Serial No. 83 (Annexure-6).

15. Another supplementary application has been filed challenging the two notifications dated 18th of February, and 24th of February, 1980 respectively, whereby respondent has been given promotion to the post of Deputy Superintendent of Police with effect from 31st May, 1974 with a direction that the gradation list of Deputy Superintendent of Police be deemed to have been corrected and the respondent is confirmed on the post with effect from 2nd July, 1988 (Annexures 7 and 8). This has been done with a view to get him selected in Indian Police Service superseding the claim of about 350 Deputy Superintendents of Police, That respondent got President's Police Medal for his gallantry of 28th March, 1982 when he was Inspector of Police and there is no provision for out-of-turn promotion of any Inspector on the post of Deputy Superintendent of Police even after getting any gallantry. Accordingly, a prayer has been made to quash the orders as contained in Annexures 7 and 8.

16. On behalf of respondent Nos. 1 to 5, the State of Bihar and another official, a counter-affidavit has been filed. The Government notifications issued from time to time has not been disputed and it is further stated that because of late recommendation for President's Police Medal for the acts of gallantry of the years 1971 and 1975, the case of the respondent No. 6 was rejected. He has, however, been awarded President's Police Medal for his gallantry act done on

28th March, 1982. Further, it is stated that, in compliance of the order and directions of this Court, the Director General's Board recommended for promotion of respondent and accordingly, he was promoted as Deputy Superintendent of Police on ad hoc basis by a notification No. 2399, dated 24th April, 1987 and the proposal for regular promotion has been sent to the Bihar Public Service Commission which is necessary for giving regular promotion. The order of this Court was duly considered keeping in view the recommendation of the Assurance Committee of the Legislative Assembly and accordingly, a direction was issued to the Director General to regularise his promotion in the rank of Inspector. The Government is competent to relax the rules, in case where great hardship is likely to be caused to it as employees, who deserve promotion or other benefits.

17. The main controversy between the parties lies within a very narrow compass. Challenge to the out-of-turn promotion of respondent is the main issue in both the writ applications and his placement in the gradation list of Bihar Police Service making him senior to the petitioners.

18. An objection to maintainability of the applications has been raised on behalf of respondent that the petitioner of C.W.J.C. No. 4400 of 1987 and other direct recruits cannot challenge respondent's out-of-turn promotion which has been given to the respondent in terms of Rule 660-C of the Manual. They are also not going to suffer in any manner on account of respondent's promotion as Inspector of Police and the consequential benefits arising therefrom in the matter of further promotion. On this issue, it has been submitted on behalf of the petitioners that by virtue of out-of-turn promotion given to the respondent, and that also with retrospective effect from 1971, has put him in the gradation list much higher to a large number of Deputy Superintendents of Police which in any event he was not entitled to and thereby he superseded about 350 Deputy Superintendents of Police who were initially senior to him either as Sub-Inspector or as Inspector or as Deputy Superintendent of Police are bound to suffer. There is sufficient substance in this connection. In the circumstances, I regret this contention of the respondent must fail, and it is disposed of accordingly.

19. The only point that now arises for consideration is whether or not the out-of-turn promotion given to the respondent in terms of Rule 660-C of the Manual was justified. It is relevant to state here that this rule has been amended from time to time as contained in Annexure C wherein some other criteria and procedure have been laid down for giving out-of-turn promotion which was not available in the rule framed in 1971. In the instant applications, there cannot be any controversy that the rule that existed in the year 1971 has to be considered as the out-of-turn promotion from Sub-Inspector to Inspector of Police and then as Deputy Superintendent of Police with retrospective effect was given to respondent-for gallantry in respect of an incident of the year 1971. Rule 660-C at the relevant time existed as provided as follows:

"660-C. Out-of-turn promotion.-Notwithstanding anything to the contrary

contained in the aforesaid rules, Sub Inspectors, Sergeants, Assistant Sub-Inspectors, Jamadars, Havildars and Constables Who have received President's medal or equivalent decoration for distinguished service and whose records of service are so outstanding that they deserve out-of-turn promotion, or whose performance is so outstanding that they deserve out-of-turn promotion may be given such out-of-turn promotion by the competent authority as he deems fit and proper with the approval of the next higher authority."

The rule, it appears as distinguished merit of the police force giving to meritorious out-of-turn promotion by way of incentive.

20. It is not in dispute that the respondent after his appointment as Sub-Inspector of Police in the year 1965 continued as such upto the year 1978 and was promoted as Inspector of Police in the year 1978 and confirmed on that post with effect from 20th March, 1982. In November, 1978, the State Government recommended his case for police medal for the bravery shown by him respecting an incident that had taken place in 1971 while he was posted as Sub-Inspector of Police at Bakhtiarpur Police Station in the district of Patna. That recommendation was rejected by the Government of India (Annexure-1) on the ground that the recommendation was with regard to an incident which had happened about 8 years before. There cannot be any dispute that it is not obligatory on the part of Government of India to accept all the recommendations made by the State Government(s). The recommendations are made to Government of India for the President's Police Medal, but the same may or may not be accepted and as such, recommended police officer cannot claim as a matter of right that he is bound to get a police medal. It is not out of place to add here that subsequent to this recommendation, again the State Government recommended the case of respondent Dubey for his gallantry of 20th March, 1982 and this time he was recipient of a police medal by virtue of this recommendation. There is no controversy that the rule stipulates that the officers who are given out-of-turn promotion should be placed below the officers of the approved existing list of respective rank prepared by Selection Board and the confirmation against substantive vacancy as and when vacancies arise in order of list.

21. The learned counsel for the petitioners has urged that under Rule 660-C as it existed in the year 1971, for the purpose of determining out-of-turn promotion outstanding records of service, getting award of the President's Police Medal and Indian Police Medal for gallantry and distinguished service shall be a must. In other words, according to the learned counsel, there could not be any out-of-turn promotion of the officers of the categories stated in Rule 660-C unless they are recipients of President's Medal besides other criteria fixed in that rule.

22. This position has been seriously disputed by the respondent mainly on the ground that firstly, had the respondent's case been recommended to Government of India in time, he would have been a recipient of a President's Medal for gallantry shown by him in an incident of the month of May, 1971 Further, it has been submitted that the State Government is competent to relax

rules in that regard and as a matter of fact, in his case, keeping in view several other factors i.e. assurance given by the Government on the floor of the Assembly, observations of this Court in a writ application filed by him and the hardship that would have been caused to him in event of denial of out-of-turn promotion, the State Government relaxed the rules which cannot be questioned by the petitioners.

23. Before I proceed further it would be proper to consider the observations made by this Court in C.W.J.C. No. 5112 of 1986 passed on 7th January, 1987. There is no dispute about it that on the floor of the Assembly the Government had given assurance that a decision in respect of out-of-turn promotion of respondent would be taken shortly and when no such decision was taken within a reasonable time, the respondent filed the said writ petition wherein the observations quoted already, while stating the facts of the case, were made. This order was passed when the Government Pleader failed to receive full instruction. Even after the observations when the Government did not take a decision, another application for contempt in M.J.C. No. 48 of 1987 was filed. It appears that on receipt of contempt notice, the State Government passed an order giving retrospective out-of-turn promotion on different posts.

24. The respondent has annexed certain communications of the Government in respect of his out-of-turn promotion. It would be proper to refer to some of those annexures, which are relevant for the purpose of deciding the vexed issues. Annexure-E is a letter issued from the office of the Director General-cum-Inspector General of Police, Bihar in April, 1984 to Joint Secretary, Home (Special) in which recommendation had been made for giving out-of-turn promotion to respondent for an incident of 20th May, 1971. In this letter it has been stated that had the recommendation for President's Police Medal been sent to the Government of India in time, Mr. Dubey would have received the same, but as there was delay on the part of the State Government in sending its recommendation, it was not accepted by the Government of India; but, for that, he should not suffer and an assurance to that effect has also been given by the Government on the floor of Assembly.

25. Annexure-A is a confidential memorandum of Home (Special) Department of August, 1987 in which the question raised in the Assembly has been mentioned and the assurance given thereof by the Government. Annexure-G is a buffsheet note of the Principal Secretary to Chief Minister, wherein a direction has been given to Secretary, Home (Police) to appraise the Chief Minister of the position relating to out-of-turn promotion of respondent, Annexure-F is a buffsheet note of the Chief Minister of September, 1986 addressed to the Chief Secretary to inform the Ministry of Parliamentary Affairs within a week about the position of the out-of-turn promotion of respondent so that the matter could be placed before the Assembly.

26. The main grievance of the petitioners is that in the case of the respondent the Department in any event could not have resorted to the provisions of Rule

660-C of the Police Manual. This rule shows that out-of-turn promotion to officers mentioned therein can only be given, who have received President's Medal or equivalent decoration for distinguished service and whose records of service are so outstanding that they deserve out-of-turn promotion. The learned counsel for the respondent has, however, submitted that the word "or" in the Rule is very significant, which shows that either the persons who have received President's Medal or equivalent decoration having good record of service or whose performance is so distinguished that they deserve out-of-turn promotion may be given out-of-turn promotion and therefore, it can be said that either the first part of the Rule or the second part which starts from the word "or" should be read together for the purpose of out-of-turn promotion. There is some difficulty in accepting this proposition, because the word "or" is directly connected with the criteria fixed after the word "and" meaning thereby, the Medal of the President or equivalent decoration is a must and that is not all. Besides that, the records of outstanding service have to be taken into consideration and in this clause an "or" has been given that either outstanding record of service or whose performance is so outstanding may be considered. Therefore, it can safely be construed that the word "or" should not be taken to be an alternative criteria for President's Police Medal 1 for the purpose of determining out-of-turn promotion.

27. The learned counsel for the State, Mr. Shukla, has, however, referred to the amended Rule 660-C wherein, several alternatives have 3 been given for out-of-turn promotion. It has already been pointed out that this amended provision is not applicable in the case of the respondent, as in his case, the criteria laid down in Rule 660-C as it existed then i.e. 1971 have to be followed.

28. Further, it has been submitted that the State Government have powers in special circumstances to relax the rules. The Government can, no doubt, relax some rule(s) in some special cases, but there must be rationale behind it. In the case of respondent, it will appear from the notes of the then Chief Secretary (Annexure 12) in C.W.J.C. No. 3591 of 1989 that the matter relating to out-of-turn promotion of respondent was thoroughly: examined and it was found that in the given circumstances, it would not be proper for the State Government to give him retrospective promotion with effect from 1971. From this annexure, it will further appear that in between the period of recommendation of the State Government for President's Police Medal to respondent and its rejection by the Government of India, some other officers were promoted and that was also one of the grounds for not considering his case so far as his out-of-turn promotion with effect from 1971 is concerned. The Chief Secretary in para 3 after indicating the procedures also stated that for the purpose of giving out-of-turn promotion, the President's Police Medal is a must. This note also shows that thrice the case of respondent in respect of three incidents of the years 1971, 1975 and 1982 respectively was recommended to Government to India for Police Medal, but two such recommendations of the years 1971 and 1975 were rejected. Further along with the case of respondent, 32 other cases of different police officers were recommended and out of them, only the case of one was accepted and the Chief

Secretary, therefore, rightly pointed out that it could not be construed that if the case of respondent Dubey had been sent in time to Government of India he would have received the medal. The note further shows that in the past, some of the officers who were given out-of-the-turn promotion had not received any medal and when that matter was pointed out the Government reviewed the cases of two officers namely, Ramdeo Prasad Sinha and Srinarain Sinha, and the out-of-turn promotion given to them was cancelled and similar other cases were referred to for review. It has also been pointed out that it would create problem, if the case of respondent in respect of an incident of 1971 is singled out and he is given out-of-turn promotion, because along with respondent some other cases were also tagged as detailed in paragraph 10 of the note and those cases were also rejected due to delayed recommendation. It was, therefore, rightly pointed out that if the cases of the officers who were also recommended along with respondent were rejected for out-of-turn promotion it would be highly improper to take out his case and to promote him (respondent) on a mere assumption that if his case had been recommended earlier he would have got the President's Police Medal. The note also shows that other points raised by him were not at all taken into consideration and an order was passed by the Chief Minister to promote him. In this connection, Annexure 12-A which is the order of the then Chief Minister on the note of the Chief Secretary may be quoted:

"Mahdhivakta ki 25.77 ti ki rai se Supreme Court me appeal dayar karna Vanchaniya nahin hai chuki usme koi point of law involved ki bat nazar nahin aati. Isi parishthiti me uchch nayalaya ke faisle ke Alok me aur VI.S. me diye Gaye Ashwasan ko dhyan me rakhte huye Sri Dubey ko pronnat kar dena vukrisangat hoga nayaysangat bho Sri Dubey ko pronnatidi Jaye."

29. It will thus appear that the observations of the High Court and that of the assurance given on the floor of the Assembly, were only taken into consideration only for purpose of giving out-of-turn promotion to respondent. The observations of the High Court, quoted above, would indicate that there was no direction that the respondent should be given out-of-turn promotion. The Government was only directed to consider his case in the light of the assurance given in the Assembly. In such a situation, the Government should have considered the case with reference to the provisions/rules upon which it relied for giving promotion to respondent and other facts and circumstances stated in the note of the Chief Secretary and passed an appropriate order, particularly when the recommendations of other officers along with respondent for Medal were also not accepted by the Government of India as appears from Annexure-12. In the circumstances, the respondent cannot also take the stand that the Government in the case of respondent had relaxed the rule as there is no indication in the final order passed by the then Chief Minister that either the rules had been relaxed or there was any special circumstances for which the rule had to be relaxed. Therefore, even if it be assumed that the Government had impliedly relaxed the Rules, it cannot be done so in the case of respondent ignoring the claim of the other similarly situated police officers.

30. There has been an argument that even after any person working as Sub-Inspector of Police received President's Police Medal for his gallantry cannot be promoted on any higher posts with retrospective effect superseding a large number of officers of higher ranks, because in terms of Rule 660-C, the officers so promoted should be placed below the officers of the approved existing list of respective rank prepared by the Selection Boards and be confirmed against substantive vacancies as and when vacancies arise in order of the list. In the case of respondent at each stage. he has been given retrospective promotion without following Rule 660-C. The Deputy Superintendent of Police, who had either been promoted in regular course while he (respondent) was not even confirmed on the post of Inspector or directly recruited as Deputy Superintendent of Police, had not been spared and in this way against the rules/procedures he superseded a large number of officers of the rank of Deputy Superintendent of Police. In other words, the direct recruits to Bihar Police Service employed as Deputy Superintendent of Police including a number of earlier promotees have been superseded by the respondent by giving him out-of-turn promotion on that post, firstly on ad hoc basis, then on temporary basis and lastly by confirming him on that post. In this connection Annexures 7 and 8 of C.W.J.C. No. 4400 of 1987 have been also referred to.

31. Question of relaxation of rule(s) as stated already cannot be allowed to be raised in the case of respondent because there is no specific order to the effect that as a special case, the procedures laid down in Rule 660-C were relaxed by the competent authority. Rather, the Government without considering the notes of the then Chief Secretary (Annexure-12) in the matter of respondent's out-of-turn promotion proceeded on an assumption that had his case been recommended in time for President's Police Medal, he (respondent) would have received it and, therefore, he should be given accelerated promotion. The Government had, no doubt, given an assurance relating to out-of-turn promotion of the respondent on the floor of the Assembly, but by no stretch of imagination, an order can be made in the matter of promotion of any particular officer against the established rules. There is also no paper to show that for giving out-of-turn promotion in terms of Rule 660-C, the Selection Boards had recommended his (respondent) case and the competent authority had considered it and with the approval of the next higher authority, the out-of-turn promotion was given. All departmental norms, without relaxing the rules wherever it were permissible, have been totally bypassed/ignored.

32. The award of President's Police Medal to the respondent in the year 1982 is of no help, because this was given for his work dated 28th March, 1982 when he was already on the post of Inspector of Police and thereby was not entitled to take the benefits of the then Rule 660-C of 1971 which was only applicable. In the circumstances, the respondent cannot take an advantage of the amended rule issued by a notification dated 4th February, 1989.

33. It has, however, been submitted on behalf of the respondent that consequent

upon the Order of out-of-turn promotion in the rank of Sub-Inspector of Police with effect from 20th May, 1971, the respondent's promotion in the rank of Deputy Superintendent of Police was modified on 25th October, 1975 and it was further modified on the recommendation of the Bihar Public Service Commission and accordingly, he was given seniority in the rank of Deputy Superintendent of Police with effect from 31st May, 1974 vide Government Notification No. 1877, dated 18th February, 1989 and, therefore, it cannot be said that he was given out-of-turn promotion in the capacity of Inspector or Deputy Superintendent of Police. Even it be accepted so, the position will not change, because the very basis of his first out-of-turn promotion from the post of Sub-inspector to Inspector, it was against the rules and other facts. Of course, if he had actually received 2 any President's Medal, which was a must, for gallantry of the year 1971, his case could have been considered in terms of Rule 660-C as it then existed in the matter of out-of-turn promotion and the consequential benefits arising therefrom.

34. Some other points had also been raised in course of hearing but in view of the limited issue, which is involved in these applications, it is needless to dwell upon those points.

35. In fine, out-of-turn promotion with retrospective dates given to respondent S.N. Dubey, over the heads of the petitioners and the intervenors, as shown in the chart, gradation list and the undisputed averments made in the respective applications are bad in law and fit to be quashed. Accordingly, the orders as contained in Annexures 2,3,4,5,6,7 and 8 are quashed. Respondent Nos.2 and 3 are directed to refix the seniority of the petitioners and intervenors and issue fresh orders promoting respondent No. 6 of C.W.J.C. No. 4400 of 1987 i.e. S.N. Dubey, as Inspector of Police and consequential benefits from such dates that he may qualify in accordance with law. Let a writ in the nature of certiorari and consequential mandamus issue. The applications are allowed. There shall, however, be no order as to costs.

Uday Sinha, J.

I am in complete agreement with the judgment just delivered by brother Mookherjee, J., and I would like to add a few words of my own.

37. The crux of the matter is whether Sachindra Nath Dubey (respondent) No. 6 in C.W.J.C. No. 4400 of 1987) was entitled to accelerated promotion. He has stolen a march over hundreds of his colleagues because he was given accelerated promotion effective from 20th May, 1971. The acceleratory or out-of-turn promotion was given to him only on the ground that he had been awarded President's Police Medal for gallantry and distinguished services. Rule 660-C of the Bihar Police Manual, 1978 provides that Selection Boards may recommend out-of-turn promotion to officers with outstanding records of service and competent authorities may order such promotion in deserving cases. Five criteria have been laid down for determining outstanding records of service. The first is,

Awards of President's Police Medal and Indian Police Medal, for gallantry and distinguished service. Mr. J.P. Shukla, learned Government Pleader No. I, was candid in stating that out-of-turn promotion was given to the respondent in terms of the said criteria. If this has been correct, there would not have been any occasion for this Court to interfere, but it is admitted on all hands that President's Police Medal or Indian Police Medal was never awarded to respondent No. 6. Learned counsel for respondent No. 6 as well as counsel for the State submitted that the State Government considering that the action of respondent No. 6 in handling some deceits was meritorious and deserved award of President's Police Medal, made such a recommendation to the Central Government, The matter stops short there. The Union Government refused to accede to the recommendation of the State Government for the Award of medal to respondent No. 6 as the recommendation had been made too late. The sum total thus is that no police medal was awarded to the respondent. The first criteria for determining outstanding record of service was not applicable to respondent No. 6. The other criteria laid down has no application in the present case as that is not the case either of respondent No. 6 or of the State.

38. Learned counsel for the respondents contended that the work of respondent No. 6 having been found commendable, the State Government had given assurances on the floor of the House to suitably reward respondent No. 6. The State Government has to obey that and, therefore, out-of-turn promotion was given. I regret, the submission has only got to be stated to be rejected. We are in a society where the Government is a Government of laws and not of men. An assurance in the House cannot prevail over written law. This Court cannot place an assurance in the House to the high pedestal, it is claimed. If the assurances are consistent with laws, they will carry value but if they are not consistent, the assurances cannot carry any value in a court of law. I am in complete agreement with brother Mookherji, J., that the award of out-of-turn promotion to respondent No. 6 Sachindra Nath Dubey from the rank of Sub-Inspector of Police to that of Inspector of Police was against law and has to be struck down. His case must be considered afresh on the footing that no Medal had been awarded to him. His promotion to the rank of Inspector must receive consideration on and from the date or dates his colleagues were considered. His promotion to the rank of Deputy Superintendent of Police also must be considered accordingly. These two writ applications are allowed accordingly.