
(2012) 12 JH CK 0002
In the Jharkhand High Court
Case No : WP (S) No. 4320 of 2005

Khem Bhadur Sarki

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Citation : (2013) 3 JLJR 255

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant;

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner has challenged the letter No. 1605 dated 23.9.2003 issued by the respondent No. 4, the Inspector General of Police, Jharkhand Armed Police, Govt. of Jharkhand, Ranchi by which petitioner's representation for promotion on the post of Inspector of Police has been rejected. The petitioner has come before this Court as according to the petitioner, similarly situated persons have been granted the promotion while the petitioner has been discriminated. The petitioner seeks further direction for consideration of his case for promotion on the post of Inspector of Police (Armed) with all consequential benefits w.e.f. 19.8.1992 from which his batch mates have been promoted.

2. According to the petitioner, he was appointed as constable (Armed Police) on 1.8.1972 under the Respondent-State of Bihar. He was promoted to the post of Sub-Inspector (A) Reserve w.e.f. 19.8.1992. Thereafter, he was allocated the Jharkhand Cadre and was posted at JAP-1, Ranchi as Sub-Inspector (Armed) Reserve. According to the petitioner he was awarded with many medals on account of his good performance of his duty and there is no complaint or departmental proceedings against him. Petitioner has also got Diploma degree in Athletics and has been working as N.I.S. Trained Coach. He has been denied promotion for the post of Inspector of Police (Armed) by the respondents vide letter No. 2244 dated 2.7.2002 and 32 persons have been given promotion to

the said post. The petitioner has given examples of 2 persons namely Rajendra Sah and Sultan Ahmad as serial Nos. 23 and 24 of the said promotional order alleging that they were his batch mates and have been promoted but the petitioner has been denied the same. The petitioner's representation to the respondents vide Annexure-2 dated 17.4.2003 has been rejected by the impugned order dated 23.9.2003 (Annexure-3). Counsel for the petitioner has assailed the impugned order on the ground that his case has been discriminated vis-à-vis other similarly situated persons. It is further case of the petitioner that his claim ought to have been forwarded for consideration to the promotion board constituted under the Director General of Police, Jharkhand but the respondent No. 4 instead rejected his case at his own level.

3. Respondents have appeared and filed their counter affidavit. Counsel for the respondent-State submits that vide order contained in memo No. 8972 dated 25.9.1989 of the Home Department, Government of Bihar, Patna literate cadre was constituted in Bihar Military Police. now Jharkhand Armed Police. In each company one post of literate Sub-Inspector, two post of literate Assistant Sub-Inspector and 4 posts of literate constable was created and sanctioned vide Annexure-A. It is submitted on behalf of the respondents that the petitioner himself filed an application for being inducted in the literate cadre and accordingly, he was inducted in literate cadre and promoted as Reserved Assistant Sub-Inspector with retrospective effect i.e. from 19.8.1987. As per his seniority after fulfilling the minimum "kalawadhi" period for promotion i.e. 5 years for general cadre, the petitioner was promoted as Reserved Sub-Inspector against 1 vacant post on 19.8.1992 in literate cadre. It is stated that the petitioner has been promoted as Reserved Sub-Inspector while other colleagues is still working on the post of Sub-Inspector. According to the respondents persons whose name have been referred to hereinabove by the petitioner have been granted promotion in their cadre and they did not come under the literate cadre, whereas the petitioner was inducted on his own request in the literate cadre. For promotion from the post of Sub-Inspector, Literate cadre to the post of Subedar the inter-se seniority prepared on the basis of date of passing of S.P.C. Examination is to be reckoned. It is stated that the petitioner has passed the S.P.C. examination on 24.3.1987 and accordingly, his seniority can be fixed from the date of passing the S.P.C. examination and in JAP-1 those Sub-Inspector who has passed S.P.C. examination on 10.4.1986 only have been given promotion on the post of Inspector as per rules. No person junior to petitioner or who has passed S.P.C. examination on or after 24.3.1987 have been given promotion on the post of Inspector. Therefore, the request of promotion by the petitioner through his representation has been rejected by the order passed by the Inspector General of Police, JAP-Respondent No. 4. It is further stated on their behalf that the seniority of the petitioner is limited to Gorkha Regiment only and the matter related to the promotion given to another N.I.S. Coach is not related with the petitioner as he has himself opted for literate cadre and the provision of N.I.S. Coach cannot be applied in the literate cadre. The seniority of Gorkha

Regiment-JAP-1 is, separate and limited to the said regiment whereas seniority list of JAP-II to JAP-XI is same and promotion have been given to these 32 officers vide order dated 2.7.2002, who are not related with JAP-1. The 2 persons named in serial Nos. 23 and 24 in para 13 of the writ petition are working in JAP-IV and JAP-VI respectively, while the petitioner is posted under literate cadre in Gorkha Regiment-JAP-I. Therefore, no case of discrimination is made out.

4. I have heard learned counsel for the parties at length and gone through the relevant materials on record. It appears that the petitioner has come before this court for grant of promotion on the post of Sub-Inspector in another JAP regiment. Respondents, in their counter affidavit has categorically stated that the seniority in Gorkha Regiment in literate cadre is limited to the said regiment i.e. JAP-I only and separate from that of other JAP-II to JAP-XI. Further, the petitioner had himself opted for literate cadre and have been granted promotion as per seniority in the year 1987 and again on 1992 as Reserved Sub-Inspector in literate cadre. Persons who have passed the S.P.C examination on 10.4.1986 only have been granted promotion and no persons junior to petitioner or who has passed S.P.C examination on or after 24.3.1987 have been given promotion on the post of Inspector. These facts have not been refuted by the counsel for the petitioner by filing rejoinder to the said counter affidavit. In these circumstances, the petitioner has failed to make out a case of discrimination and, therefore, petitioner cannot be granted any relief in the present writ application. Accordingly, this writ application, being devoid of any merit is dismissed.