
(2000) 01 PAT CK 0051
In the Patna High Court
Case No : C.W.J.C. No. 3906 of 1991

Lalan Prasad Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Citation : (2000) 2 BLJR 930 : (2000) 4 PLJR 38

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition has been filed challenging the validity of promotion of Respondent Nos. 4, 5 and 6 to the post of Havildar. (Armourer) made by memo No. 1277 dated 29.11.90 of the AIG(Q) Bihar, vide Annexure-1 to the writ petition. During the pendency of the case, on 10.12.91, the petitioner was also promoted to the post on being found fit by the Selection Board on 25.11.91. The grievance of the petitioner that the respondents were promoted to the post without considering his case, thus no longer subsists. The only dispute which remains to be resolved relates to inter-se seniority between the petitioner and the respondents. Having been promoted to the post earlier, the respondents are naturally to rank senior to the petitioner.

2. The petitioner was appointed as general constable on 30.10.71. He was selected as Armourer constable and on passing the pre-requisite course known as Preliminary Course absorbed in the cadre of Armourer constable on 31.1.1983. Respondent Nos. 4, 5 and who also passed the said course were also absorbed in the cadre of Armourer constable from the same date. All four of them were also confirmed on the post from same date, namely, 31.1.85. In the seniority list of Armourer constables the petitioner was placed at Sl. No. 15 while respondent Nos. 4, 5 and 6 were placed just below him at Sl. Nos. 16, 17 and 18. By virtue of his seniority the petitioner was nominated for the "Basic Training Course" held in 1986-87, but he did not join the course. Respondent Nos. 4 to 6

however, successfully completed the course in 1986-87 and on being recommended by the Selection Board on 30.6.88 were promoted to the post of Armourer Havildar. The petitioner also later joined and passed the course in the year 1989-90. According to the respondents, for promotion to the rank of Armourer Havildar, it is essential to pass the "Basic Training Course" under Rule 1248(e) of the Bihar Police Manual and thus though the petitioner was senior to respondent Nos. 4 to 6 in service, as he passed the course later, he cannot claim seniority over the respondents as Armourer Havildar.

3. Sri Y.V. Giri, learned Counsel for the petitioner, contended that the provision regarding promotion to the rank of Armourer Havildar is contained in Rule 1248(f) of the Police Manual which does not envisage any training or passing of the "Basic Training Course" and therefore, the respondents could not have denied the petitioner promotion to the post on the ground that he had not passed the said training course and hence cannot be treated as Junior. Alternatively, he submitted that as the petitioner was not relieved by the then Principal Secretary to the Chief Minister with whom he was attached as his personal body-guard, he should not be made to suffer on the ground that he did not join and pass the training Course, in the relevant year. According to the respondents, the selection of Armourers which is made from armed police in districts and BMP Units under Rule 1248(d) of the Police Manual, is followed by Preliminary Course of Training at the Central Arms Workshop under Rule 1248(e), the selected candidates on successful completion of the training course are absorbed as Armourer constables. But as no promotion to the rank of Havildar can be made without successfully completing the training course, in view of the provisions of Rules 684(iii) and 729(b) of the Police Manual, they are required to pass the Basic Training Course as provided in the later part of Rule 1248(e) of the Manual.

4. There is no dispute at the bar that if passing the Basic Training Course for promotion to the rank of Havildar (Armourer) is essential, a person who passed the course later, has to rank junior to the person who had passed the course earlier than him. The moot question for consideration thus is whether passing the Basic Training Course is an essential qualification for promotion to the rank of Havildar (Armourer).

5. Shri Giri submitted that Clause (f) of Rule 1248 deals with the promotion to the rank of Havildar (Armourer) and further promotion to the ranks of Sub-Inspector (Armourer) and Inspector (Armourer) but while the provisions of Chapter 23 of the Manual are made applicable to promotions from the rank of Havildar to Sub-Inspector and then to Inspector, all that is said about promotion to the rank of Havildar is that the Assistant Inspector-General (AIG) shall convene the Selection Board. According to the Counsel, there being no further provision as to the mode or manner in which such promotion is to be made, the AIG has no option but to give promotion to the rank of Havildar on the basis of seniority from amongst the Armourer constables. It is difficult to accept the

contention.

6. Rule 729(b) of the Manual contains general provisions regarding promotion to the rank of Assistant Sub-Inspector and Havildar. It inter alia, lays down that no constable who does not possess a certificate of competency of drill and cannot read and write Hindi with facility and has not passed the Senior Leader Course (SLC) provided in Rule 685, shall be promoted to the rank of Havildar, In special cases "specially brilliant detective constables" may be exempted from passing such course by the Inspector-General of Police, Rule 660-A which is referred to in Rule 729(b) provides for selection of candidates for the Senior Leaders Course by the Superintendent of Police and, where the case of a constable is not considered or rejected by the Superintendent of Police for such selection, by the Deputy Inspector-General of Police of the Range.

7. Shri Giri submitted that where special provision is made in the same statute, it must be deemed to be overriding the general provision and there being no corresponding provision regarding passing any training course as an essential qualification for promotion to the rank of Havildar (Armourer) in Rule 1248(f), like promotion to the ranks of Sub-Inspector/Inspector (Armourer), it must be held that the framers of the Manual did not intend to treat promotion to the rank of Havildar (Armourer) on the same, footing. He also referred to a Police Order which lays down the seniority in the higher rank is to be reckoned with reference to the date of initial appointment as Constable.

8. The submissions aforesaid completely overlook the provisions of Rule 1248(e) of the Police Manual. The said Rule contemplates two kinds of training (a) Preliminary Course of training upon passing which the selected constable is absorbed as Armourer, as was done in the case of the respondents as well as the petitioner, and (b) Advanced Course of Training-what is known is the Basic Training Course referred to above. Such advanced course of training being essential part of training of Armourers, it is obvious that if a person has not passed the said Training course, he cannot be treated as eligible for any further promotion. It is only from amongst such Armourer constables who have completed the Advanced Course of Training (Basic Training Course) that promotion can be made by the Selection Board under Rule 1248(f). Any other interpretation would be inconsistent with the provisions of Rules 729(b) and 660-A of the Police Manual. It would be fallacious to hold that for promotion of Havildar (Armourer) to the rank of Sub-Inspector or Inspector (Armourer), the Rules contained in Chapter 23 which includes Rule 729(b) are to be followed but, for giving promotion to the rank of Havildar (Armourer) they are to be ignored. The only difference lies in the nature and level of training. While in the case of general Havildar, the qualifying training course is the Senior Leader Course (SLC), in the case of Havildar (Armourer), the training course is known as Basic Training Course. It is pertinent to point out that the petitioner has not cited any example of a person being given promotion as Havildar (Armourer) without successfully completing the Advanced Course of Training (Basic Training Course).

In these premises, I have no hesitation in holding that for promotion to the post of Havildar (Armourer), passing the Basic Training Course is an essential qualification and those who do not pass such course are not eligible.

9. Coming to the alternative contention of the Counsel that as the petitioner was not relieved by the then Principal Secretary to the Chief Minister with whom he was attached, he could not have joined the training Course and therefore, should not be made to suffer the consequence of non-passing the course, the materials on record disclose the foil owing facts. The petitioner was granted exemption from attending the training course for a period of three months vide memo No. 6756/L2 dated 8.10.80 of the AIG (Welfare), Bihar. This was in response to the communication from the Principal Secretary to the Chief Minister vide his UOI No. 1267 dated 15.9.86. The petitioner was again granted exemption "for the present" vide memo No. 3285/L2 of the AIG (Personnel). This too was in response to the communication of the Principal Secretary to the Chief Minister vide his UOI No. 1151 dated 6.6.87. The Chief Ministers Secretariat appears to have made further correspondence vide UOI No. 1582 dated 16.10.86 presumably recommending permanent exemption from completing the Basic Training Course, in response to which the AIG (Personnel) vide his memo No. 575/L2 dated 25.3.87 informed the Principal Secretary to the Chief Minister that for promotion to the rank of Havildar (Armourer) three months' Basic Training Course was essential; if the petitioner wants to go in for training later, there was no difficulty in doing so but without completing the training course, he would not be entitled to promotion to that rank. These facts emerge from perusal of Annexure-A to the counter-affidavit and Annexures 4 and 5 to the writ petition.

10. It would thus appear that the consequence of non-passing the training course was made clear vide letter dated 25.3.87. However, the petitioner continued to stay put until 1989-90 when he joined the course. The submission of the Counsel that Without being relieved by the Principal Secretary, the petitioner could not have joined the training course has to be rejected in the circumstances, because if the petitioner had any grievance in the matter, it was open to him to approach a Court of law, if not before any administrative authority in the Department. Rule 660A of the Police Manual provides for making representation in case of non-selection. In the case of the petitioner, he was already selected, the submission that as he was not relieved, he could not join the course is rather difficult to believe. There is nothing to suggest that he lodged any, protest. It seems more plausible that the aforesaid requests for exemption-temporary or permanent-were made by the Principal Secretary to the Chief Minister with the tacit consent, of the petitioner. Perhaps, he was happy with his posting (on deputation) with the Principal Secretary which must have given him occasion to remain close to the powers-that-be. In any view, the consequence of non-passing the examination having been made known in March 1987 itself vide Annexure-4, if the petitioner waited for two more years, he was to thank himself. The plea of helplessness in the facts and circumstances appears to be taken for the purpose of making out a case and being far-fetched is fit to

be rejected.

11. As stated above, there is no dispute, at the bar that if passing the Basic Training Course is held to be essential qualification for promotion, those who complete the course later have to rank junior. The petitioner having had the opportunity to complete the training course and acquire qualification in good time, which he waived, he cannot claim seniority over the respondents.

12. In the result, I do not find any merit in this writ petition which is accordingly dismissed. There will be no order as to costs.