

(2000) 03 GAU CK 0050
In the Gauhati High Court
Case No : Civil Rule No. 164 of 1992

Nepal Ch. Saha and Another	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Citation : (2000) 2 GLT 205

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.M. Lodh, A. Lodh, P. Senchoudhury and R. Dutta Gupta, for the Appellant; U.B. Saha and A.S. Lodh, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This Civil rule has been filed by Sri Nepal Ch. Saha and Sri Santosh Kr. Chowdhury, retired Inspectors, for issue of an appropriate writ directing the Respondent No. 1 and 2 to promote the Petitioners to the posts of Deputy Superintendent of Police with effect from 23.9.87 and to make the payment of the arrears of salary as may be payable on such promotion till the date of their retirement from service.

2. Sri A.M. Lodh, learned senior counsel for the Petitioners argued to justify the claims of the writ Petitioners on the following two fold grounds:

(i) That the Petitioners were entitled to promotion to the posts of Deputy Superintendent of Police under the provisions of the Recruitment rules of 1962 as per the. direction given by a Division Bench of this Court in Civil Rule No. 109 of 1987; and

(ii) That some of the Petitioners of the said Civil rule who were juniors to the writ Petitioners in service were promoted to the posts of Deputy Superintendent of Police to the exclusion of the writ Petitioners of the present petition.

3. Let me at the first instance deal with the judgment of the Division Bench

referred to above. The copy of the judgment has been annexed with the writ petition as Annexure-2. The excerpt relevant for this case is quoted below:

We accept this submission and disposed of the Petitioner accordingly with the result that if any of the Petitioners is found suitable for promotion, he shall be so promoted notionally from a date prior to the promotion of his immediate junior and from the date of order of promotion he shall be promoted on regular basis. Subsequent to this promotion, the Petitioners shall be governed by the Recruitment rules of 1962 for their future promotion as well.

4. It is pertinent to mention here that the writ Petitioners of the present writ petition were also the Petitioners in the above Civil rule. The Division Bench in clear and unambiguous term held that the Petitioners shall be governed by the Recruitment rules of 1962 for their future promotion as well. In pursuance of the aforesaid judgment, the writ Petitioners along with Ors. were promoted as Inspectors of Police. This notification dtd. 28.2.1990 shows that the Petitioners, Sri Nepal Ch. Saha and Sri Santosh Kr. Chowdhury were promoted along with Ors. notionally with effect from 13.2.1984 and on officiating basis from 28.2.1990. This, therefore, shows that they are entitled to consideration for promotion to the post of Deputy Superintendent of Police in accordance with the provisions of the Recruitment rules which were in force on or after the date of their promotion to the post of Deputy Superintendent of Police. Therefore, the submission of Mr. Lodh that the writ Petitioners are entitled to consideration for promotion to the posts of Deputy Superintendent of Police under the provisions of the Recruitment rules of 1962 is not sustainable in law. That apart, the Petitioners cannot stake their claim on the basis of the said judgment of the Division Bench which was passed primarily relying upon the decision of this Court in Civil Rule No. 168 of 1982. The decision in Civ. Rule No. 168 of 1982 came in for consideration before a Full Bench of this Court in Bholanath Bhattacharjee and Ors. Petitioners v. State of Tripura and Ors. Respondents (1994) 1 GLR 164. The Full Bench after a threadbare discussion did not accord approval to the decision of the Division Bench. Besides, it is pointed out by Mr. U.B. Saha, learned Govt. Advocate for the Respondents that the Recruitment rules of 1962 were not applicable for appointment to the post of Deputy Superintendent of Police. The situation emerging out from the above discussion shows that the Petitioners' first point for consideration for their promotion under 1962 rules fails.

5. It has been further pointed out by Sri Saha that Tripura Police Service rules, 1967 provides the manner and method for appointment to the post of Deputy Superintendent of Police which pertains to Class-II gazetted cadre. According to him, the Petitioners were not eligible for consideration for promotion under the said rules and as such, their cases were not considered by the State-Respondents. According to him, the Petitioners have already retired from service in the year 1990 and as such, their cases for promotion are not acceptable at this belated stage.

6. Rule 5 of the Tripura Police Service Rules, 1967 provides for filling up 50% of

the posts by promotion from amongst officers who are substantively borne on the cadre of Inspector of Police after selection in the manner specified in Part-V of the rules. Part-V provides for Recruitment by selection by a Selection Committee as indicated in Rule 13. Rule 14 prescribes eligibility criteria. It reads as follows:

14. Conditions of eligibility and procedure for selection:

(1) The Committee shall consider from time to time the cases of officers eligible under Clause (b) of Sub-rule (1) of Rule 5, who have served in the cadre of Inspectors of Police for not less than two years, and prepare a list of officers recommended taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be on merit and suitability in all respects for appointment to the service with due regard to seniority.

(2) The names of persons included in the list shall be arranged in order of merit.

(3) The list so prepared shall be forwarded by the Committee to the Administrator.

7. It would appear from the above provision that the officers who are substantively borne in the cadre of Inspector having not less than two years of service are entitled to consideration for selection on merit and suitable in all respect.

8. The Petitioners grievance in the instance case is that some of their juniors similarly situated were promoted to the exclusion of the writ Petitioners without any tangible reason for such exclusion. Mr Lodh has pointed out that even an officer namely Sarat Banik was promoted after the retirement (referred to annexure-3). According to him, it is a case of blatant discrimination and, therefore, the State-Respondents be directed to promote the writ Petitioners with effect from the date of their juniors similarly situated were promoted.

9. A reference to the statement in para-8 of the counter-affidavit filed by the State-Respondents would show that the State have accepted that the junior officers were promoted in super cession of the writ Petitioners. Nowhere it is stated by the Respondents that the writ Petitioners were unsuitable for promotion by-the Selection Committee and as such, they could not be promoted, rather it is admitted by the State-Respondents that the Petitioners' performances were satisfactory. Their plea is that some of the officers were promoted before the writ Petitioners because of their performances while the promotion of the writ Petitioners in normal course was delayed for not acquiring the requisite qualification/suitability. A bare reading of the statements in Para-8 would show that the defence set by the State is not sustainable. It is not the case of the Petitioners that the candidature of the Petitioners were before the Selection Committee which found them unsuitable for promotion. It is also not discernible from the records as to whether the officers juniors to the writ

Petitioners were promoted on the recommendation of the Selection Committee. The State is also silent on this point. Therefore, I have no option but to draw a conclusion that the matter relating to the promotion to the posts of Deputy Superintendent of Police have been dealt with by the Respondents whimsically and without least respect for the rules. It was unjust on their part to promote the junior officers in supersession of the writ Petitioners without undergoing the process of selection as envisaged in the Tripura Police Service Rules 1967. The matter would have been altogether different had the Selection Committee after scrutiny found the writ Petitioners unsuitable for promotion for lack of eligibility criteria i.e. whether borne substantively in the cadre of Inspector and also for lack of merit etc. That not having been done, and on the face of admitted position that other officers similarly situated and juniors to the writ Petitioners were promoted, there is no escape from an exercise to consider the case of the writ Petitioners as per provisions of Rules of 1967. This conclusion's irreversible as a case of blatant discrimination against the writ Petitioners has been established beyond all shadow of doubt.

10. In the result, the writ petition is allowed with no order as to costs. The Respondents are directed to consider the case of the writ Petitioners for promotion with effect from the date when their juniors were promoted in accordance with the provisions of the relevant rules and Laws, and to pass appropriate orders as they may find just and proper in the given circumstances of the case.