
(2012) 04 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 6506 of 2012

Om Prakash Mahto and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Constitution of India, 1950 — Article 162, 166, 309

Citation : (2012) 4 PLJR 21

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Janardan Prasad Singh, Ashok Kumar Singh, Shashi Chandra Pandey, for the Appellant; Prabhu Narayan Sharma for the State, M/s Ramakant Sharma, Ravindra Kumar, Patanjali Rishi for the Vigilance, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners and the learned Senior Counsel appearing for the Department of Vigilance. The prayer by the four petitioners is to quash notification dated 23.3.2012 issued by the Deputy Inspector General (DIG) (Personnel) under the orders of the Director General of Police promoting inter alia the petitioners to the post of Sub-Inspector of Police and transferring such persons to the District Police.

2. Learned Counsel for the petitioner submits that they form part of the Vigilance Department Cadre. It is a separate cadre from the Police Department. Separate seniority list are maintained. The Vigilance Department functions under the Home Department of the State. The DIG has no jurisdiction to order transfer of persons in the vigilance cadre. Stress is laid on a letter dated 21.2.2012 issued by the office of the DIG (Personnel) explaining that the Vigilance Department constitutes of its own employees and those from the Police Department who may have been sent on deputation. That there was no justification for promotion of those in the vigilance cadre by orders issued from the Police Headquarters. Reliance was further placed on a notification dated 26.2.1981 issued by the

Cabinet (Vigilance) Department indicating that the Vigilance Department was to be headed by a Senior IAS Officer suggesting that it constitutes a separate cadre. Reliance was further placed on a letter dated 21.1.2011 from the Director General of Police that the Vigilance Department was an independent unit and did not fall under the jurisdiction of the Director General of Police. It was headed by an Additional Deputy Inspector General of Police Officer rank. It has its own setup. All communications with regard to their discharge of duties should be addressed to them and not to the police headquarters. The petitioners are conscious for the loss of promotion that may ensue. They are steadfast on the claim of the Vigilance Department being a separate cadre whatever the consequences may be.

3. Learned Senior Counsel for the Department of Vigilance denies existence of a separate cadre. There is one cadre of Police Personnel and those in the Vigilance Department constitute the cadre. Referring to the deliberations of the meeting dated 22.12.1994 he submits that it more than amply states that even persons appointed directly in the Vigilance Department constitute a part of the cadre of the State Police. He further relies on an order in CWJC No. 15535 of 2011 holding in general terms that in absence of any notification for a separate cadre no interference was called for.

4. Having considered the submissions made on behalf of the parties it appears that the respondents have been dealing with the issue loosely treating the employees of the Vigilance Department and the State Police as constituting different units in certain communications while in others they have denied it to be so. Creation of cadres is a formal exercise to be done in accordance with Rules. The petitioners do not make any assertion that appropriate notifications in accordance with law have been issued creating a separate cadre of the Vigilance Department. No documentary evidence has been placed in support of the same. The respondents have specifically denied creation of any separate cadre.

5. Rule 12 of the Bihar Service Code defines Cadre to "mean the strength of the service or a part of the service sanctioned as a separate unit. A reference may be made to Fundamental Rule 9 sub-clause (4) which defines cadre as "the strength of a service or a part of the service sanctioned as a separate unit".

6. In *M.G. Sharan and Others Vs. State of Bihar and Others*, , considering the manner in which a Cadre is created it was held as follows:--

32....It appears to me that cadre has not been formally constituted by the State Government for the R.V.P.D. It is true that there are various documents to indicate that from time to time the State Government treated R.V.P.D. as having a separate cadre; but, in my opinion, that is not enough. In order to confer legal right upon the petitioner, it is essential that cadre should also be legally constituted under Article 309 of the Constitution. It cannot be assumed that due to the notification contained under Annexures-C, C/1 and C/2 by which the new department was constituted under Article 162 read with Article 166 of the

Constitution of India, a separate cadre was created for the R.V.P.D. In my view, a cadre has to be expressly created as it is of vital importance for conferring fundamental rights upon the employees. It is true that although it may be under Article 309 of the Constitution, or it can be created by the State Government under the executive power conferred under Article 162 of the Constitution as observed by their Lordships of the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan and Another, , the relevant passage of which I have already quoted earlier. The learned Advocate General has also relied on it. But even under Article 162 of the Constitution, it is essential that the cadre should be formally constituted...

7. In Union of India (UOI) Vs. Pushpa Rani and Others, dealing with the concept of creation of a cadre it has been held at paras 23 & 26 as follows:--

23. In the service jurisprudence which has developed in our country, no fixed meaning has been ascribed to the term "cadre". In different service rules framed under proviso to Article 309 of the Constitution as also rules framed in exercise of the powers of delegated legislation, the word "cadre" has been given different meaning.

26. In State of Maharashtra vs. Purshottam it was held that "cadre" means unit of strength of a service or a part of it as determined by the employer.

8. In J.S. Yadav Vs. State of U.P. and Another, explaining the difference between different cadres within the same cadre and the need for the manner in which a cadre is created it was held at para 12 as follows:--

12. The aforesaid submission seems to be very attractive but has no substance for the reason that a cadre generally denotes a strength of a service or a part of service sanctioned as a separate unit. It also includes sanctioned strength with reference to grades in a particular service. Cadre may also include temporary, supernumerary and shadow posts created in different grades. The expressions "cadre", "posts" and "service" cannot be equated with each other. (See Union of India vs. Pushpa Rani and State of Karnataka vs. K. Govindappa). There is no prohibition in law to have two or more separate grades in the same cadre based on an intelligent differential. Admittedly, the post of District Judge and Additional District Judge in the State of U.P. is neither interchangeable nor inter-transferable. The aforesaid Rules merely provide for an integrated cadre for the aforesaid posts. Thus, the submission is liable to be rejected being preposterous.

9. In conclusion the Court holds that the petitioners have not been able to demonstrate that any separate cadre of persons in the Vigilance Department distinct from the Police Cadre has ever been created and notified in accordance with law. The writ petition is devoid of merit to the extent that it seeks relief on an unfounded premise that the Vigilance Department constitute a separate cadre. Unless and until a formal notification in accordance with law is not issued, the Police Personnel in the Department of Vigilance, belong to the cadre of the Police Department.

10. The last submission made on behalf of petitioners 1 and 3 relies on a news item published on 13.4.2012 in Hindi daily (Dainik Jagaran) that such Police Personnel who were to retire within two years have been kept out of the purview of transfer. The contents of a newspaper cannot constitute evidence in the eyes of law unless proved in accordance with law. That necessitates examination of the persons who made the publication disclosing his source of information. In absence of this procedure no credence can be given to the same in judicial proceeding. If the petitioners are of the opinion that there is any such administrative decision nothing prevents the concerned amongst them from representing in pursuance of such an administrative decision if it exists. In that event the Court expects the respondents to act even handedly, though the power may be discretionary. The writ application is dismissed except to the extent of the discussion made in the penultimate paragraph.