
(2020) 03 MAN CK 0011
In the Manipur High Court
Case No : Writ Petition (c) No. 1083 Of 2018.

Radhakishor Tongbram

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Citation : (2020) 03 MAN CK 0011

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : H. Prabirkumar, H. Samarjit

Final Decision : Allowed

Judgement

1. This writ petition has been filed by the petitioners to quash the proceedings of the Class-III Review DPC held on 22.10.2018 for promotion from Havildar to Jemadar in the Manipur Police Department and the consequential promotion orders so far as it concerns the private respondents 3 to 11 only and to direct the respondents to hold a Review DPC again and to consider the case of the petitioners for promotion to the post of Jemadar strictly in terms of the relevant provisions of the rules and directions given by this Court In W.P.(C) No.383 of 2016, dated 13.7.2017.

2. The case of the petitioners is that the petitioners and the private respondents 3 to 11 were appointed as Havildars on 12.3.2007, 1.12.2001, 12.3.2007, 22.9.2009, 18.1.2001 and 11.11.2004 respectively. The petitioners have satisfactorily completed their probation period and they have rendered more than 11 years regular service in the grade of Havildars. The petitioners and the private respondents have also passed the Pre-Promotion Selection Test of Havildar. On 1.12.2014, the respondent authorities published final seniority list of Havildars, wherein the names of the petitioners were shown at Serial Nos.1095, 1165 and 1359 respectively, while the private respondents were shown as Serial| Nos.273, 1096, 1474, 1236, 1329, 1990, 1969, 221 and 465 respectively.

3. According to the petitioners, the next promotional post of Havildar is the post of Jemadar. Under the recruitment rules for the post of Jemadar, the method of recruitment is 50% by promotion and 50% by direct recruitment. 85% of the promotion quota shall be filled up from Havildar having passed Pre-Promotion Selection Test and having completed the probation with 5 years regular service in the grade. 15% of the promotion shall be filled up from Havildars having satisfactorily completed the probation with 3 years regular service in the grade having passed the Pre-Promotion Selection Test and who have been recommended by the DGP by promotion by reason of their conspicuous acts of gallantry in discharge of official duties or who are outstanding sportsmen recognised by the all India Police Sports Control Board.

4. When 69 vacancies falling under the promotion quota for promotion) to the Jemadar were available as on 23.3.2015, the DGP, Manipur, prepared a self-contained Note for DPC for promotion from the Haviidar to Jemadar. In the said Note for DPC, the year wise vacancies of 69 vacancies falling under the promotion quota are shown and the relevant provisions of the recruitment rules are also reflected. Even though at least 10 posts out of 69 which is 15% sub-quota reserved for out of turn promotion and ignored the case of the petitioners even though they are similarly situated as the private respondents in every respect.

5. On 16.3.2016, DPC for promotion of Havildars to the post of Jemadar was held and the said DPC recommended only 55 candidates, including the private respondents as against the 69 available vacancies falling under the promotion quota. By an order dated 25.04.2016, the DGP conveyed approval for promotion of the recommended candidates to the rank of Jemadar on regular basis and directed the concerned appointing authorities to issue formal promotion orders. Consequently, the concerned appointing authorities issued formal promotion order which includes the private respondents.

6. Being aggrieved by the recommendation of 7 candidates made by the DGP, the petitioners filed W.P.(C) No. 383 of 2016 and the same was allowed by this Court on 13.7.2017 by holding that the promotion of the private respondents to the post of Jemadar is not sustainable in law and directed to hold a review DPC by considering the cases of the petitioners and the private respondents. When the concerned authorities failed to implement the orders of this Court, the petitioners have filed Contempt Case and during pendency of the Contempt Case, the concerned authority held the Class-III Review DPC on 22.10.2018 for promotion from Havildar to Jemadar. However, the result of the said Review DPC has not yet been declared and no appointment order had been issued on the basis of the recommendation of the said Review DPC. In fact, the case of the petitioners have not been considered in the said Review DPC dated 22.10.2018. Challenging the same, the petitioners have filed the present writ petition.

7. The second respondent DGP filed affidavit in opposition stating that pursuant to the directions issued by this Court in W.P.(C) No.383 of 2016, the DGP

constituted (i) an independent Committee under the Chairmanship of Smt. Vandana Karki, IPS, IGP (Training, HR & RTI) to review the earlier out-of-turn Committee's proceedings for 142 including three petitioners out-of-turn candidates sponsored by the concerned Units; (ii) increased the number of out-of-turn vacancies to 10 from 7. It is stated that the Committee submitted its review report on 28.8.2018 and based on which the DGP recommended the list of 10 candidates for 15% out-of-turn category based on their service records and achievements to the Chairman of the Review DPC on 22.09.2018.

8. Assailing the impugned order, the learned counsel for the petitioners submitted that despite clear and specific directions of this Court in W.P.(C) No. 383 of 2016, the Review DPC considered and recommended the private respondents only on the basis of the recommendation made by the DGP, Manipur. He would submit that except for increasing the number of out-of-turn vacancies to 10 from 7, all other actions taken by the DGP are contrary to the relevant rules as well as the order dated 13.07.2017 passed in the said writ petition.

9. The learned counsel further submitted that DGP or the independent Committee constituted by the DGP has no power or jurisdiction to undertake the exercise carried out by them and therefore, the same is liable to be quashed.

10. Per contra, the learned counsel for the respondent State contended that based on the Review report submitted by the Committee dated 28.8.2018 and based on which the DGP recommended the list of 10 candidates for 15% Out-of-turn category based on their service records and achievements to the Chairman of the Review DPC on 22.9.2018. The Chairman of the Review DPC then submitted its proceedings to the DGP on 22. 10.2018 recommending 59 Havildars for promotion to the rank of Jemadar, which includes the private respondents 3 to 11.

11. Thus Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. The case of the petitioners is that the respondent authorities failed to implement the orders of this Court in W.P.(C) No.383 of 2016 and despite directions issued by this Court in the said writ petition, the petitioners have not been considered instead the Review DPC considered and recommended the private respondents based on the recommendation made by the DGP, Manipur.

13. On the other hand, it is the say of the official respondents that the Review DPC conducted as per the directions of this Court and relevant recruitment rules and considering their status, recommended 59 Havildars for promotion to the rank of Jemadar and therefore, there is no illegality in the impugned order.

14. Admittedly, it is not in dispute that the petitioners are recipients of various gallantry awards. Thus, if their juniors were considered, there is no reason for the authorities to ignore their claim. Since the rules do not provide for giving preference or precedence to those who had been given gallantry awards earlier,

there cannot be any reason for ignoring the petitioners. The date of receipt of gallantry award will have relevance with reference to the year wise consideration of vacancies.

15. Earlier, when the DGP, Manipur approved for promotion of the recommended candidates to the rank of Jemadar on regular basis and directed the concerned authorities to issue formal promotion orders, the same has been challenged by the petitioners in W.P.(C) No.383 of 2016 in so far as the private respondents 3 to 11. By the order dated 13.07.2017, while setting aside the promotion order dated 25.04.2016 in so far as the private respondents herein, this Court observed as under:

"14. Under the above facts and circumstances and for the reasons discussed above, the present petition is allowed by holding that the promotion of the private respondents to the posts of Jemadar is not sustainable in law. However, their promotion is not interfered with and not disturbed for the reasons discussed above, and this Court directs the official respondents to consider the case of the petitioners along with private respondents again for promotion to the posts of Jemadar by holding a review DPC and in the event, the petitioners are also found to be suitable, they are to be given promotion and be assigned seniority on the basis of the inter se merit position so determined by the review DPC along with the private respondents. It goes without saying that if the petitioners are recommended for promotion to the posts of Jemadar by the review DPC, they are also to be given promotion from the date when the private respondents were given promotion to the posts of Jemadar. This exercise shall be completed within a period of 3(three) months from today.

With the above observation and direction, writ petition is allowed."

16. According to the official respondents, pursuant to the order of this Court dated 13.07.2017 passed in W.P.(C) No.383 of 2016, the DGP Manipur had constituted an independent Committee under the Chairmanship of Shri L. Kailun, IPC, Inspector General of Police (Zone-II), Manipur to review the earlier out-of-turn Committee's proceedings for 142 including the petitioners sponsored by the concerned Units and by the impugned proceedings dated 22.10.2018, the Committee recommended 59 Havildars for promotion to the rank of Jamadar, wherein the private respondents names were found place at Serial Nos.14, 20, 21, 22, 32, 38, 57, 58, 59.

17. In fact, in the said proceedings dated 22.10.2018, there is no whisper as to the consideration of the petitioners name for promotion to the post of Jemadar. Though this Court issued directions on 13.07.2017 to hold a review DPC, the official respondents have not taken care of and only after filing of the Contempt Case, the DGP constituted a Committee, which has approved the names of the private respondents recommended by the DGP. The same is clear on a reading go the impugned review DPC dated 22.10.2018, wherein in paragraph 4, it has been stated that as per the direction of the Hon'ble High Court of Manipur order dated

13.07.2017 passed in W.P.(C) No.383 of 2016 and Home Department letter Nos.20/1(44)/2016/H(LC) dated 19.04.2018 & 11.09.2018, Director General of Police, Manipur has furnished review recommendation in respect of 10 (ten) candidates for out-of-tum promotion under 15% category after careful study and examination of their service records and achievements and accordingly given the names of the private respondents and one L.Nilakumar Singh. As rightly argued by the learned counsel for the petitioners, not even there is no discussion qua eligibility and non-eligibility of the petitioners for promotion in the impugned review DPC dated 22.10.2018.

18. When this Court issued direction to the official respondents to consider the case of the petitioners along with private respondents again for promotion to the post of Jemadar by holding a review DPC, it is the bounden duty of the DGP and/or the review DPC to consider the case of the petitioners also. Nothing on record to show that the petitioners were put in notice by the review DPC while holding the meeting and also nothing on record to show that the petitioners were given opportunity to put forth their grievance before the review DPC. On a perusal of the impugned review DPC, there is no whisper qua issuance of notice to the petitioners. On the other hand, the review DPC has recommended the names of private respondents furnished by the DGP. More over, facing with the Contempt Case, the DGP or the Committee appointed by the DGP has issued the impugned review DPC recommending the names of the private respondents. There is no discussion about the non-eligibility of the petitioner for promotion to the post of Jemadar in the impugned review DPC.

19. It is clear that the DGP, Manipur and the review DPC have considered and recommended the case of the private respondents by totally ignoring the case of the petitioners in complete violations of the provisions of the relevant rules and orders of this Court passed in W.P.(C) No.383 of 2016, dated 13.07.2017. Therefore, this Court is of the view that the consideration and the recommendation of the private respondents by the review DPC in its review meeting held on 22.10.2018 by ignoring the cases of the petitioners, who are seniors to some of the private respondents, is illegal, arbitrary, discriminatory and nor in accordance with the orders of this Court earlier passed in W. P (C) No. 383 of 2016.

20. When, the DGP, Manipur and the review DPC has not considered the case of the petitioners in tune with the orders of this Court, the only course open to this Court is to remit the matter again to the authority concerned to consider the case of the petitioners along with the private respondents for promotion to the post of Jemadar.

21. In view of the above discussion, the writ petition is allowed by holding that the review DPC dated 22.10.2018 is not sustainable in so far as the private respondents 3 to 11 are concerned and the matter is remitted back to the official respondents to consider the case of the petitioner along with the private respondents again for promotion to the posts of Jemadar by holding a fresh

review DPC. While holding the fresh review DPC, the official respondents are directed to specifically state how the petitioners and the private respondents are eligible and not eligible for promotion to the post of Jemadar.

22. In order to avoid future litigation, if any, this Court directs the official respondents to afford sufficient opportunity to the petitioners and private respondents to put forth their cases during review DPC to be held. As directed by this Court in W.P.(C) No. 383 of 2016, in the event, the petitioners are also found to be suitable, they are to be given promotion and be assigned seniority on the basis of their inter se merit position so determined by the review DPC along with the private respondents. It goes without saying that if the petitioners are recommended for promotion to the posts of Jemadar by the review DPC, they are also to be given promotion from the date when the private respondents were given promotion to the posts of Jemadar.

23. The aforesaid exercise is directed to be completed within a period of three months from the date of receipt of a copy of this order. No costs.