

(1991) 11 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8729 of 1988

Ram Anugrah Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Constitution of India, 1950 — Article 14
Police Act, 1861 — Section 12, 4
Police Rules — Rule 726, 828, 851, 853

Citation : (1992) 1 PLJR 502

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Rabindra Kumar Choubey, Nagendra Kumar Singh and Tej Bahadur Singh, for the Appellant; Ram Suresh Roy, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the Petitioner for quashing the order dated 18.8.1996 passed by the Respondent Deputy Inspector General of Police awarding major punishment to the Petitioner by withholding increment for three years (Annexure 7) as also the appellate order dated 28.9.1988 (Annexure 5) passed by the Inspector General of Police, B.M.P., Bihar (Respondent No. 5), by which he has rejected the appeal of the Petitioner. The Petitioner also claims that he has been illegally denied his right of promotion.

2. The Petitioner had entered in Bihar Police service on 11.3.1959. He has been working on the post of Inspector of Police (Armed) since 21.7.1976 in Bihar Military Police (B. M. P.). He was confirmed on this post in 1977. A disciplinary proceeding was initiated against the Petitioner, inter alia, on the charge that instead of purchasing tyres and tubes as per approved tender, Inchek tyres and tubes were purchased and relevant certificates in this regard were countersigned without proper varification. After due enquiry the Conducting Officer found the Petitioner guilty of the charge. In view of the enquiry report and the materials on

record the Respondent Deputy Inspector General of Police (B. M. P.) also held the Petitioner to be guilty of the charge and awarded him the punishment of withholding the increment for three years. This order is dated 18.8.1986 and has been filed as Annexure 7 to the writ application. Against this order the Petitioner preferred an appeal before the Inspector General of Police (B. M. P.) Respondent No. 5, but the same has been rejected by the order as contained in Memo No. 2367 dated 28.9.1988 (Annexure 11). The Petitioner has also been denied the promotion to the post of Deputy Superintendent of Police. The further case of the Petitioner is that keeping in view his seniority he became entitled to promotion in the year 1980 itself but the Promotion Committee took up the matter of promotion of Inspectors to the post of D. S. P. only in 1986. The Promotion Committee recommended the promotion of Inspectors junior to the, Petitioner, namely. Jamshed Alam, S.K. Sidiki and Permanand Pandey but did not consider the case of the Petitioner on the ground that he has been awarded major punishment in the present departmental proceeding on 18.8.1986. According to the Petitioner the said Committee did not consider case of the Petitioner for promotion, keeping in view the Police Order Amendment Slip 1400.

3. The Petitioner has challenged the validity of the order dated 18.8.1986 (Annexure 7) passed by the Respondent Deputy Inspector General of Police as also the appellate order (Annexure 11) passed by the Inspector General of Police (B.M.P.) on various grounds. One of the grounds for challenging the appellate order is that under Rule 851, the statutory appeal against an order of major punishment passed by the Deputy Inspector General lies to the Inspector General and therefore, the Respondent Inspector General (B.M.P.) had no jurisdiction to consider and dismiss the appeal of the Petitioner.

4. In reply to this question it has been submitted by the Respondents that the power to entertain and dispose of the appeals has been delegated by the Inspector General of Police to Inspector General (B.M.P.) pursuant to powers u/s 12 of the Police Act, 1861 (hereinafter referred to as the "Act") and as such, the Inspector General (B.M.P.) had acted within his jurisdiction in disposing of the appeal of the Petitioner.

5. For appreciating the issue involved, it would be proper to quote Rule 851 of the Rules framed under the Act, which provides for appeal in case of major punishment. The Rule reads as follows:

851. (a) No appeal shall lie except in cases of major punishments enumerated in rule 828.

(b) Against an order of dismissal, removal, reduction, withholding of promotion or periodical increment, suspension. with loss of pay, removal from any office of distinction or special emolument there shall be one appeal in each case as follows:

Against an order passed by a Superintendent, to the Deputy Inspector-General;

Against an original order passed by the Deputy Inspector-General to the Inspector-General;

Against an original order passed by the Inspector General to the State Government.

(c) The orders of appellate authority shall be final subject to provisions of rule 853.

(d) An order passed with the concurrence of any superior authority (other than the State Government) shall be considered to be an original order of such superior authority.

A reading of the aforesaid Rule clearly shows that in the facts of the present case the appeal lay only to the Inspector General since the original order of major punishment has been passed by the Deputy Inspector-General.

Section 4 of the Act deals with Inspector General of Police and it reads as under:

Section 4 Inspector General of Police etc. the Administration of the police throughout a general police district shall be vested in an Officer to be styled the Inspector General of Police, and in such Deputy Inspectors General and Assistant Inspectors General as to the State Government shall deem fit,

6. In view of the aforesaid provision it is crystal clear that in State there can be only one Inspector General of Police and in the State of Bihar, the Director General of Police has been designated by the State Government as the Inspector General of Police for the statutory purposes under the Act. The expression Inspector General as used in the above quoted Rule 851 has to be understood in which it has been defined u/s 4 of the Act. Neither the Act nor the Rules authorise the Inspector General of Police of the State to delegate its appellate powers in favour of any other police officer.

7. In this view of the matter, even if there was any delegation of appellate power by I. G. in favour of I.G. (B.M.P.), it was impermissible and bad in law. The reliance of the Respondents on Section 12 of the Act for justifying the delegation is wholly misplaced since Section 12 of the Act does not vest the Inspector General of Police with any such power of delegation. Even the approval of the State Government cannot make such delegation as valid. Admittedly the Inspector General (B.M.P.), Respondent No. 5, is not the Inspector General of Police of the State. In this view of the matter it has to be held that Respondent No. 5 had no jurisdiction to consider and reject the statutory appeal of the Petitioner and as such the order passed by him as contained in Annexure 11 has to be quashed. Now, the Director General of Police, Bihar (Respondent No. 4) will dispose of the appeal of the Petitioner in accordance with law.

8. The next important question which falls for consideration is as to whether in view of Rule 726 III of the statutory Rules framed under the Act the three years bar to admission in any of the promotion lists has to be counted from the date of

occurrence or from the date of punishment.

9. In the present case the promotion Board had denied promotion to the Petitioner on the ground that in view of the Amendment slip-1/86 issued on 7th April, 1986 the Petitioner was not entitled for being considered for promotion for a period of three years from the date on which he was awarded major punishment. The date of occurrence falls in the month of March 1981. The charge-sheet was issued on 2.4.1983 (Annexure 1) and though enquiry report was submitted to D.I.G. on 30.9.1984, but the order of punishment had been passed after about two years i.e. on 18.8.1986. No explanation has been given by the Respondents for this inordinate delay in initiation as well as the disposal of the departmental proceedings. In this factual background the Petitioner has challenged the validity of the aforesaid amendment slip on the ground that it is violative of Article 14 of the Constitution since it does not prescribe any predictable period for disentitlement to promotional prospects. For appreciating the submission of the Petitioner the relevant Rule 726 III is being quoted hereunder:

Rule 726 III. "Disqualification for admission to a promotion list or retention thereon. The infliction of any major punishment in any rank within the last 3 years may ordinarily be a bar to admission in any of the promotion lists.

A gap of three years is necessary after the infliction of major punishment before an officer is retained or considered or reconsidered for any promotion list. For special reasons to be recorded, this disqualification may be relaxed by the competent officer who gives the promotion.

10. Since this rule does not clearly provide as to when three years period of disability will start, therefore by police order 99, para 6 it was clarified that if any police officer is awarded any major punishment then for the purpose of the aforesaid rule, the period of three years should be calculated from the date of occurrence and not from the date on which he has been awarded the punishment so that the delinquent may not suffer adversely for unnecessary delay in disposal of the departmental proceeding. Similar view has been taken by the State Government in the Resolution dated 17th May, 1982 adopted by the Personnel and Administrative Reforms Department (Annexure 9). But by police amendment slip 1/86, para 6 of order No. 99 has been rescinded and in its place it has been provided that the period of three years will be reckoned from the date of awarding the punishment. In my considered view the date of punishment as the starting date for computing, the three years period of disability for admission to promotion list is wholly arbitrary, unreasonable and without any rational basis. The starting date for computation of a period of disability must be a certain and predictable date and it cannot vary from person to person because of laches negligence or inaction committed by others. In the case of *State of Maharashtra v. Jagannath* AIR 1989 SC 1133 it has been held by the Supreme Court that denial of promotional prospects to a person for the default of Government would be unjust, unreasonable and arbitrary. If such a provision is allowed to stand,

then even similarly situated persons can be treated differently for no fault of theirs. Therefore the amendment slip 1 of 86 is held to be irrational, unreasonable and discriminatory and as such violative of Article 14 of the Constitution and is quashed. In this view of the matter it is directed that the case of the Petitioner for his promotion should be considered in accordance with Rule 726 read with the explanation contained in paragraph 6 of Police Order No. 99 as issued originally, which is Annexure "8" to the writ petition.

11. The Petitioner will be entitled to raise all other pleas both factual and legal, which may be available to him for defending himself in the departmental proceeding before the appellate authority, who will consider the same on merits and dispose of the appeal by a reasoned order.

12. The writ application is accordingly allowed to the extent indicated above. There will be no order as to costs.