
(2007) 09 PAT CK 0088
In the Patna High Court

Ram Chandra Prasad Sah and Another and Om Prakash
Sharma and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Bihar Police Manual, 1978 — Rule 865
Bihar Reorganisation Act, 2000 — Section 72

Citation : (2007) 09 PAT CK 0088

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—The petitioners in both writ applications are holding the post of Inspectors (N) in the Special (Branch of Bihar Police. They have challenged the decision of the Central Government to allocate their services to the State of Jharkhand on recommendation of the State Advisory Committee. The impugned orders have been challenged by the petitioners on the ground that the post (of Inspector (M) with the Special Branch is not State level post, as such petitioners are not liable to be allocated to Jharkhand state for the specific reason that the exercise of Cadre division between two States is confined only to State level posts Petitioners have also challenged the opinion of the Advocate General, Bihar, based on which the Advisory Committee, recommended for allocation of their Cadre to the State of Jharkhand. The petitioners in C.W.J.C. No. 12848 of 2006 have prayed for quashing order No. 75 (b) dated 12.9.2006 and Order No. 75 (Jh) of Central Government, dated 12th September, 2006 whereas petitioners in C.W.J.C. No. 9115 of 2006 have prayed for quashing Letter No. 1591 dated 18.9.2002 and Order dated 24.12.2005.

2. All four petitioners were appointed as Typist Assistant Sub-Inspector (M) ON different dates and thereafter promoted to the post of Sub-Inspector (M) vide order of the Deputy Inspector General of Police/ Special Branch, Bihar, Patna.

3. Petitioners' case is that prior to 1.4.1970 Subordinate Cadre was existing in the Special Branch and the members of the Subordinate Cadre were also the members of Bihar Non-Gazetted Employees Association. In order to agitate their demands the members of this Association went on strike in between 11th to 25th July, 1968 and in order to resolve the dispute meeting was held between the higher officials and the agitating members. The resolution was to create and executive (M) Cadre from among all the persons working in Subordinate Cadre of the Special Branch. The employees of the newly created Executive (M) Cadre were decided to be vested with all powers, function and facilities of the police. They were also to be guided by one Rule under the Bihar Police Manual/ i.e. Police Act 5 of 1961 and not by the Secretariat Circular. The Government approved this decision and an order was issued limiting the cadre strength of executive (M) of 120 persons. By Letter dated 7th of October, 1969 issued under the signature of the Under Secretary, Political Police Department, Government of Bihar Ministerial Cadre of the Special Branch of C.I.D. was reorganised as Executive (M) Cadre. Some of the Lower Division Clerks of the Intelligence Department were posted as Junior Sub- Inspector (M) in the new Executive Ministerial Cadre. Petitioners were also appointed by way Of promotion as sub-Inspector (M) in the Executive Ministerial Cadre.

4. In pursuance of the Bihar Reorganisation Act, 2000, employees of the Executive (M) Cadre were asked to give their options for allocation of their Cadre in Bihar and Jharkhand. The petitioners opted for Bihar. In spite of that 5 Inspectors (M) and 17 Sub-Inspectors (M) were provisionally allocated to Jharkhand. The petitioners represented against tentative allocation/fellotment. But finally the petitioners were allocated to the State of Jharkhand Cadre ignoring their representation, where they have raised their objections on the ground that their posts not being of the State level Cadre their services cannot be transferred to the Jharkhand State. Only such posts which are of State level are transferable u/s 72 of the Reorganisation Act for Cadre allocation. The petitioners Claim to be the member of Ministerial Cadre and their stand is that they cannot be transferred even in the State of Bihar without there being compliance of the provision of Rule 865 of the Bihar police Manual Rule 865 deals with transfer of Ministerial Staff which states that:-

Ministerial officers will generally remain in the district of appointment and may have to be moved only in case of promotion for which orders shall be issued by I.G. of Police.

The Rule also contemplates that:-

the Range Deputy Inspector General shall have power to transfer any ministerial officer from one district to another in his range and by arrangement with another Deputy Inspector General to another range.

Further the petitioner have also given reference of Rule 862(b) of the Bihar Police Manual which provides that:-

The Intelligence Department may have a separate Cadre known as Ministerial Executive Officers.

5. Members of Ministerial Executive Officers of Intelligence Department is a separate Cadre and not State Cadre. As such their services cannot be allocated to the Jharkhand State.

6. Counter affidavits have been filed on behalf of the state of Jharkhand, state of Bihar and State Advisory Committee. Supplementary affidavit has also been filed by the State of Bihar. Jharkhand State in its counter affidavit has stated the allegations made by the petitioners relate to the State of Bihar and the State Advisory Committee, and not concern with the State of Jharkhand.

7. The State Advisory Committee in its counter affidavit has stated that the petitioners have filed their representation against allocation of their service to the Jharkhand State. The representation of the petitioners were sent to the Central Government for taking final decision and issuance of orders. The common grievance of the petitioners is that their Cadre do not belong to the State levels which are liable to be apportioned between the two states. The State Advisory Committee on this point held meeting and asked for the opinion of the State of Bihar. Finally the opinion of the Law Department was sent by the State of Bihar to the Central Government.

8. The opinion was that the members holding post of Sub-Inspector (M) are within the State of Bihar and as such they can not resist transfer to the successor State of Jharkhand if so directed by the Central Government/ on the advice of the Law Department. The petitioners have been allocated to the. Jharkharid State.

9. Counter affidavit has been filed on behalf of respondent No. 4 wherein it has, been stated that the petitioners are the members of Ministerial Executive officers of Intelligence Department which is a separate Cadre and are governed under the Police Act V of 1861.

10. In this respect Rule 409 (C) in Chapter -15 is relevant which deals with the functions of the Criminal Intelligence Department. The petitioners belong to the Intelligence Department and under Rule 409 the Controlling authority is Deputy Inspector General of Police. Rule 409 envisages that the ministerial officers with executive ranks shall be posted in Intelligence Department who will form a cadre of their own and shall be appointed under Police Act 5 of 1861, Rule 409 (e) specifies that the employees of the two departments shall be deputed, transferred, promoted, etc. like employees of Police ranges according to rules given in Chapters like 23,24 and Appendix 72 etc. Rule 735 of Police under Chapter 23 deals with the pay and allowances of officers of the State Services and ministerial officers and the allowances to certain officers of the technical department are given in appendix 44 and 44A. Under Appendix 44 A pay and allowances of Subordinate Police, Ministerial Officers and other employees are referred. At Serial No. 13 reference of Assistant Sub-Inspector of police (M).

11. In the counter affidavit filed on behalf of the respondent No. 4 it has been emphasised that the posts which are being held by the petitioners though in the cadre of Ministerial Officers but is not a District Cadre. Rule 862(a) specifies that the Ministerial establishments of the officer of the Inspector General and Deputy Inspector General of ranges and units (including the D.I.G., C.I.D. and the F.P. Bureaus attached to the department) are functioning in practice as one joint cadre. Those in the offices of Superintendents and Commandants form a different and lower cadre.

12. In the district cadre, there shall be upper division and lower division grades in districts/units which are different from corresponding grades in the joint cadre of I.G./D.I.G. Apart from this there are routine clerks, typists and record suppliers and their scales are identical with that of L.D. grade in districts whether they are appointed in districts/units or in the offices of Inspector General or Deputy Inspector General.

13. Rule 862 (b) Note (1) and (2) provides that (b) The Intelligence Department may have a separate cadre known as Ministerial Executive Officers.

(1) Executive officers, i.e., those who are recruited under Police Act may be utilised fully in wings of some offices dealing with crime matters as far as possible whether in the offices of Superintendent or in the offices of C.I.D. or Range D.I.G. In the reserve police also, executive officers are posted.

(2) Section Officers and Registrars are Gazetted ranks and not in the category of ministerial officers but have been dealt in this chapter as some of the rules are common to them.

14. Mr. S.K. Ghosh, Additional Advocate General No. 1 has contended that the petitioners are members of the State Cadre which is apparent from the rules and provisions under the Police Manual Rules and Appendix. The Executive ministerial officers of Special Branch were placed in the equivalent Cadre of Police Officers as Deputy Inspector General. These posts were created for the whole State of Bihar including Jharkhand before separation. They were not confined to any specific Zone. So far as the post of Sub- Inspector (M) is concerned/Rule 865 of the Police Manual is not applicable in their case. Rule 865 is applicable in the case of ministerial officers who are generally remain in the districts of appointment. Petitioners were appointed under Rule 409 while assistants are employed in Criminal Investigation Department. This appointment was under police Act 5,1061. Their salary, allowances and other conditions of service are governed under Appendix 44 (A) which relates to the State level Cadre officers. Simply because petitioners were initially appointed as Assistant Typist in the Intelligence Department they cannot claim even after their promotion to the State Cadre of Sub-Inspector (M) that still their services are of district Cadre and not transferable.

15. Mr. Chitranjan Sinha, Counsel for the petitioner in order to substantiate the case or the petitioners placed reliance on some of the official documents of the

department. Such no tings cannot be a deciding factor for deciding this question relating to the cadre of the petitioners.

16. The relevant rules of the Police Manual such as Rule 409(c) and (e) Rule 735 read with Appendix 44A add Rule 862 (b) Note (1) and (2) of the Police Manual. It is clear that the petitioners do not belong to the district Cadre. They have a separate cadre of their own known as ministerial executive officer and theirs and they have been appointed as per Rule 865 their salary allowances etc. are fixed under Appendix 44(A) which relates to the salary and allowances of the State Level Officers. In this view rightly the department had asked for their option for cadre allocation in pursuances of the Bihar Re-Organization Act, 2000. The opinion of the Advocate General is very clear and specific on this point which is based on different rules of the Bihar Police Manual.

17. I do not find any reason for disagreeing with this opinion which indicates that the services of the petitioners being transferable throughout the State as well as the specific provisions under the Police Manual indicative of the fact that the Posts of Sub-Inspector (M) and in the Special Branch of Police though is State level Cadre and fit for cadre allocation u/s 72 of the Bihar Re-Organization Act.

This application is dismissed.