
(1998) 12 PAT CK 0039
In the Patna High Court
Case No : C.W.J.C. No. 5447 of 1984

Ram Sewak Choudhary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 1 BLJR 513

Hon'ble Judges : Ravinandan Sahay, J

Bench : Single Bench

Judgement

Ravindra Sahay, J.—A dispute relating to inter-se seniority of three petitioners vis-a-vis respondent Nos. 6, 7, 8 and 9 reflected in the gradation list of Inspectors of District Commandant in the Home-guard Establishment which is subject matter of this writ petition which was filed in 1984. There is no dispute that three petitioners were senior to the respondents in the gradation list of Company Commanders. The petitioner and respondent Nos. 7 and 9 were appointed on 5.11.65 as Company Commanders. A gradation list prepared on 24.4.72, shows petitioner No. 1 at serial No. 34, petitioner No. 2 at serial No. 137 and petitioner No. 3 at serial No. 140 whereas respondent No. 7 at serial No. 144, respondent No. 8 at serial No. 279 and respondent No. 9 at serial No. (sic)

2. In 1972 petitioner Nos. 1 and 2 were appointed as Civil Defence Instructor which is equivalent to the rank of Inspector vide order contained in Memo No. 11/77, dated 23.10.72 (Annexure 3). The petitioner No. 3 was appointed as Civil Defence Instructor on 29.3.74 (Annexure 4). Respondent No. 7 Raj Gopal Prasad Sinha was appointed as Education Officer in the pay scale of Sargent, which is equivalent to the rank of Sub-Inspector i.e. the rank inferior to the petitioners. Respondent No. 7 was appointed on 13.10.73. In the year 1976, the post of Education Officer held by respondent No. 7 was upgraded to the rank of Senior Instructor (Subedar) vide notification dated 13.7.76 (Annexure 5). This respondent was not recommended by the Selection Board for being appointed in

the rank of Inspector in the Home-guard Establishment whereas the petitioners were appointed on the recommendation of the Selection Board. It is clear that respondent No. 7-Raj Gopal Prasad Sinha got the rank of Inspector in 1976 much later than the petitioners.

3. In the year 1978, Force Order No. 400/78 was issued from the Home-guard headquarter in respect of confirmation of Company Commanders with effect from 1.5.75. In the said list of confirmed Company Commanders, petitioner Nos. 1, 2 and 3 stand at serial Nos. 62, 65 and 68 whereas respondent No. 7 stands at serial No. 72 and respondent No. 8 at serial No. 202 (Annexure 6). The petitioners were officiating in the rank of Inspectors in Civil Defence Organisation which is subsidiary organisation of the Home-guard Establishment. In 1981, a Board was constituted for promotion of Company Commanders to the post of Inspectors. The said Board met in the month of April, 1981 and list of promoted officers was notified in Force order No. 671/81. In the said list the name of the petitioners stand at serial Nos. 39, 41 and 44 respectively whereas the name of respondent No. 7 stands at serial No. 144 and respondent No. 8 did not figure in the list (Annexure 7). These petitioners were shown senior to respondent Nos. 7 and 8 in the rank of Inspector.

4. Respondent No. 8 Krishna Mohan Singh, who was also junior to the petitioners was given seniority in the rank of Inspector with retrospective effect. This respondent was appointed in the year 1966 and in the year 1975 he was awarded President Home-guard and Civil Defence Medal and on the basis of the said Award he filed a representation before the authority concerned to give him out of turn promotion as envisaged in Rule 660-C of the Police Manual. According to the petitioners this rule is not applicable to the respondent. Rule 660 C of the Police Manual provides out of turn promotion who has been awarded President's Police Medal and Indian Police Medal. It is the petitioners' case that the Circular with regard to Home-guard Medal provides for monetary grant only. There is no provision for out of turn promotion. The petitioners state that this respondent No. 8 is only entitled for monetary grant and not entitled for out of turn promotion. He applied for out of turn promotion and he was given out of turn promotion. The result was that he became senior to the petitioners. The petitioners challenged Annexures 8 and 9 on the ground that no special Board was constituted for the purpose of giving out of turn promotion to Shri Krishna Mohan Singh.

5. It may be mentioned that the case of this respondent was rejected thrice. He was not found fit for promotion to the rank of inspector in 1981. The then Commandant General in his notes dated 27.12.80 has turned down the claim of Mr. Krishna Mohan Singh. In his note he has stated that he is too junior and cannot be allowed to supercede so many senior officers which would cause heart burning. Respondent No. 8 got the rank of inspector in his regular chain, not out of turn promotion. No recommendation was made by the Board to give him an out of turn promotion. It appears that despite clear cut provision in the Home-

guard Compandium, respondent No. 8 in collusion with the higher authorities of the department got an out of turn promotion vide order contained in Force order No. 1/82 with effect from 1.7.81.

6. Respondent No. 8 filed a fresh representation that he be given promotion with effect from 23.8.75. The matter was considered at the higher level and the Force Order No. 1/82 was partially amended and he was given promotion with retrospective effect from 23.8.75 vide Force Order No. 1362/83 dated 30.12.83 (Annexure 8). Consequently the Deputy Commandant General issued Force Order No. 381/1084, dated 19.4.84 whereby the said respondent has been given paper promotion from 23.8.75 to 30.6.81 and his seniority was fixed accordingly (Annexure 9). The petitioners prayed for quashing of Annexures 8 and 9. The petitioners have stated that several representations of respondents were considered and turned down. There was no new ground to reconsider his case.

7. Learned Counsel for the petitioners submitted that retrospective seniority could not be given to respondent No. 8 without giving opportunity to the petitioners who were affected by grant of retrospective seniority. It was submitted that no post was available in the year 1975 and, therefore, respondent No. 8 could not be accommodated. The petitioners have brought to the notice of the Court that the department in one hand was reverting senior inspector to the post of Sub-Inspector on the ground of non-availability of post of senior Inspector, on the other hand, promoting the junior officers to the rank of Inspector w.e.f. 1975. It was submitted that there has been miscarriage of Justice that the petitioners who were holding the post of Inspector from 1972 have been denied consideration for promotion to the post of District Commandant. The petitioners claimed that they have outstanding service record whereas petitioner No. 3 has been awarded gold medal from National Civil Defence College, Nagpur. The petitioners are getting the scale of inspectors from their respective date of joining. The petitioners have filed memorial for redressal of their grievances by the same was rejected.

8. A counter affidavit has been filed on behalf of respondent No. 4 stating that the seniority of the petitioners has not been finally fixed in accordance with Rule (5), Sub-clause (i) of the Bihar Home Guard Rules, 1953. Their fixation of seniority is in process. So far seniority of respondent Nos. 7 and 8 is concerned. It is stated that they were made senior in the rank of inspector by the Government on 13.7.76 and 23.8.75 respectively on selection basis, which was not notional fictitious. The Screening Committee has considered the case of respondent Nos. 7 and 8 for higher promotion in the rank of District Commandant.

Rule 660 of the Police Manual applies in the case of the respondents, in view of Section 21 of the Bihar Home Guard Act, 1947 which speaks as follows-

The provisions of the Bihar Police Manual shall apply as far as may be, to the Homeguards Force unless such provision is repugnant to any of the provisions of

Bihar Home Guard Act and Rules 1 to 20 and 22.

9. Respondent Nos. 8 and 9 had been given promotion under Rule 660-C of the Bihar Police Manual.

10. A counter affidavit has also been filed on behalf of respondent No. 8 on the line of counter affidavit of respondent No. 4 in which it has been stated that he was given retrospective effect promotion to the rank of inspector i.e. the date of the award of the Gallantry Medal i.e. 23.8.1975. Later on it was discovered that the post of inspector in the Force was found vacant from before. Accordingly further order was issued being F.O. No. 381/1984 directing retrospective promotion of this respondent on the rank of Inspector from 23.8.1975, the date of publication of the President's Gallantry Award In the extra ordinary issue of the Gazette of India against an existing vacancy.

11. In para 17 it has been held that it Is true that the Writ Petitioners were senior to this respondent but only the recruiting grade of Company Commander in the rank and status of Sub-Inspector of police, and the Writ Petitioners along with respondent No. 7 lost their seniority as a result of retrospective promotion of the petitioner initially ordered on 1.1.1982 retrospectively from 1.7.81 which later on was amended to reflect 23.8.1975 which was the date of the publication in the India Gazette of the President's order conferring the Gallantry Medal to this respondent.

12. During the pendency of the application respondent No. 9 Nirbhay Mishra a junior inspector to the petitioners vide Force Order No. 1044 dated 8.11.1988 was given retrospective promotion in the rank of inspector on the ground that said Mishra has been conferred President's Award and Home Guard Civil Defence Medal. Mr. Mishra has been placed just below respondent No. 7 Raj Gopal Sinha. Respondent No. 9 was added as a party and he has filed counter affidavit. He has also been given benefit of Rule 660-C of Bihar Police Manual.

13. Respondent No. 9 has filed a supplementary affidavit to the effect that on direction given by this Hon"ble Court in CWJC No. 98 of 1988, a final gradation list in the cadre of inspector. Home Guards has been published after deciding the objections filed by the officers concerned and in that gradation list the position of the petitioners vis-a-vis respondent No. 9 has been given. A tentative gradation list in the cadre of District Commandant has been published and objection has been invited. The gradation list has not been finalised.

14. During the pendency of the instant Writ Petition, the petitioner have filed an amendment petition seeking to challenge in inter-se seniority of District commandant (Annexure 16). In the said seniority list the respondents have been placed at serial Nos. 13, 14 and 20 whereas the petitioners have been placed at serial Nos. 23, 25 and 27 lie below the respondents 7 to 9 on account of either their out of turn promotion or on account of seniority of ex-cadre post. The matter relating to seniority of the petitioners has been left untouched in view of the pendency of the present writ petition.

15. The grievance for the redressal of which this writ petition was filed in 1984 no longer services. The petitioners had challenged the legality and validity of retrospective promotion given to the respondents in terms of Rule 660 C of the Bihar Police Manual Rules. The respondents have been enjoying the benefits of retrospective promotion of all these years. What is the present positions of the parties? Both the Petitioners and the respondents are officiating as District Commandant. A tentative gradation list has been circulated (Annexure 16) in which the petitioners are shown junior to the respondents.

16. As such I do not propose to express any opinion whether Rule 660-C of Bihar Police Manual Rules is applicable to the officers of Homeguards and whether out of turn promotion can be given to the officers who has earned Gallantry Award, Police Medal etc. The only question that survives for consideration is whether under Rule 660-C out of turn promotion with retrospective effect can be given. Admittedly, the respondents were promoted later to petitioners and they were given retrospective seniority over the petitioners.

17. In *Jai Prakash Narain Singh v. State of Bihar* and its analogous, CWJC No. 4400/87 and CWJC No. 3501/89 disposed of on 15th March, 1990, an argument was advanced that even after any person working as Sub-Inspector of Police received President's Police Medal for his gallantry cannot be promoted on any higher posts with retrospective effect superseding a large number of officers of higher ranks, because in terms of Rule 660 C, the officers to be promoted should be placed below the officers of the approved existing list of respective rank prepared by the Selection Board and be confirmed against substantive vacancies as and when vacancies arise in order of the list.

18. In that case out of turn promotion of respondents held to be illegal. There was no occasion to decide that under Rule 660-C retrospective promotion can be given to an officer which would adversely affect the prospect of a person who were admittedly senior to such officer proposed to be given retrospective promotion. Assuming Rule 660-C is applicable to the establishment of Home-guard there is no specific rule for grant of retrospective promotion. An officer cannot be given retrospective promotion over the head of person senior to such officer. Retrospective promotion can only be given in the case where promotion will not affect any person who is senior to the person proposed to be given promotion.

19. Respondents have not cited any authority of this Court of Supreme Court in support of their claim that retrospective promotion is permissible under service rules. In my opinion giving retrospective promotion amounts to violation of Articles 14 and 16 of the Constitution of India. The petitioners and respondent Nos. 7 to 9 are in the Cadre of District Commandant I do not know whether there is any further promotion above the rank of District Commandant. I, therefore, disposed of this application with a direction to the respondent Nos. 1 to 6 to reflex the seniority in the cadre of District. Commandant in the light of the observation made above and in accordance with law. There will be no order as to

costs.