

(2000) 06 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 4521 of 1998

Ramesh Chandra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Bihar Fire Service Act, 1948 — Section 22
Constitution of India, 1950 — Article 309

Citation : (2000) 3 PLJR 394

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : G.P. Singh, for the Appellant; A.K. Singh for State and Mr. Shanti Pratap for intervenor, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the petitioner, for the State and for the Intervener. Petitioner's case is that being a recipient of President's fire service medal for incidents of year 1991 and 1992 for gallantry work and distinguished service respectively he was entitled for a proper consideration for out of turn promotion to the post of Assistant State Fire Officer equivalent of Inspector of Police, as per provisions of Rule 660-C of the Police Manual. His grievance is that in spite of such distinguished service career and enabling provision in the Police Manual, his representations for such promotion had no effect and the claim of the petitioner was wrongly rejected by the DG Board vide letter contained in Memo No. 3579 dated 8.9.1995 (Annexure-10) only on the ground that the case of the fire service personnel for out of turn promotion was not in accordance with or covered by the rules.

2. The petitioner subsequently got regular promotion to the post of Assistant Divisional Fire Officer equivalent to Inspector of Police in 1996 on the basis of his seniority and in 1997 he was again awarded President's fire service medal for gallant service for an occurrence of 8.9.1995. According to learned counsel for

the petitioner, the decision contained in Annexure-10 denying out of turn promotion to the petitioner or the personnel of Bihar Fire Service is based upon misinterpretation of relevant rules and the petitioner's claim for out of turn promotion from an earlier date ought to have been considered on its merit on a proper understanding of the rules which permit such consideration. In support of his contention learned counsel for the petitioner relied upon rules 5 and 11 of the Bihar Fire Service Rules 1955 (hereinafter referred to as the Rules). A copy of the rules contained in Annexure-12 shows that the rules are statutory framed under the provisions of Bihar Fire Service Act, 1948 and under the proviso to Article 309 of the Constitution of India. Rule 5 merely provides that the officers and men of the Bihar Fire Service shall be entitled to the same pay and allowance, including uniform allowance, as are admissible to officers and men of the corresponding rank in the State police force. Rule 11 of the rules, however, is pertinent and provides as follows :

The provisions of the Bihar Police Manual, Bihar Service Code, the Bihar Travelling Allowance Rules or any Pension Rules, the Government Service Conduct Rules or any other rules or orders made or issued, from time to time by the State Government regarding conditions of service of the servants of the State Government shall mutatis mutandis apply to the members of the service in respect of those matters which are not covered by those rules or the rules made by the Inspector General of Police u/s 22.

3. By virtue of rule 11, as noticed above, the provisions of Bihar Police Manual are to apply mutatis mutandis to the members of the Bihar Fire Service in respect of matters not covered by the rules or the rules made by the Inspector General of Police u/s 22 of the Bihar Fire Service Act. It is not pleaded or argued on behalf of the respondents or the intervenors that the matter of out of turn promotion as provided under rule 660-C of the Bihar Police Manual is covered by any rules governing personnel of Bihar Fire Service. Hence, it has to be accepted, as contended on behalf of the petitioner, that rule 660-C of the Bihar Police Manual applies to personnel of Bihar Fire Service by virtue of rule 11 of the rules. It appears that by a letter dated 28.11.1994 (Annexure-7) the State Government in the Department Home (Police) also took an independent decision to apply rule 660-C of the Bihar Police Manual for grant of out of turn promotion to the personnel of Bihar Fire Service wherever such personnel have been awarded President's medal for gallantry/distinguished service. learned counsel for the petitioner appears to the right in submitting that in view of undisputed equivalence and parity between President's medal for gallantry and distinguished service to the police personnel and to the personnel of fire service, the decision contained in Annexure-7 is merely a surplus and rule 660-C of the Bihar Police Manual was already applicable to the personnel of Bihar Fire Service by virtue of rule 11 of the rules. Appendix-67 relating to rule 1088 of the Police Manual annexed as Annexure-18 to the writ application, refers to and contains provisions for grant of President's medal for gallantry and distinguished service to the police service as well as the fire service and the same also supports the

contention of the petitioner regarding equivalence of the President's medal for two services. The use of the term "mutatis mutandis" in rule 11 clearly shows that although rule 660-C of the Police Manual does not mention the personnel of the fire service but still it shall apply to them also and the necessary changes have to be read into rule 660-C of the Police Manual. The contrary stand taken on behalf of the respondents state as appear in paragraph 3(a) and (c) of the counter affidavit on behalf of respondent no. 4 that rule 660-C of the Bihar Police Manual mentions only the police personnel and President's Police medal etc. therefore, it cannot have any application to personnel of the fire service who are recipient of President's Fire Service Medal, is held to be misconceived and untenable in law.

4. On behalf of the intervenor it was submitted that he is senior to the writ petitioner as appears from seniority list of Fire Station Officers. It was further submitted on his behalf that petitioner's claim, for out of turn promotion has already been rejected by the concerned committee vide order contained in Annexure-10. The relief claimed by the petitioner has no relation to the inter se seniority between him and the intervenor and so far as decision contained in Annexure-10 is concerned, as found earlier, the said decision is upon a wrong interpretation of rules that rule 660-C of the Police Manual providing for out of turn promotion to members of the police force has no application to the personnel of Bihar Fire Service. In the aforesaid facts and circumstances, this writ application is allowed to the extent of setting aside the decision of the committee contained in Annexure-10 with regard to personnel of the Bihar Fire Service and the matter is remitted back to the competent committee for reconsidering the claim of the petitioner and other eligible persons of Bihar Fire Service for out of turn promotion in the light of findings given in this judgment and in accordance with law.

Such reconsideration should be completed within a period of four months from the date of communication/production of a copy of this order before respondent no. 2, the Director General and Inspector General of Police, Bihar, Patna. In the facts of the case, there shall be no order as to costs.