
(2002) 01 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12116 of 2001

Ramesh Chandra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0021

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The dispute in this writ petition relates to seniority between the petitioner and respondent No. 7 Suresh Prasad (hereinafter referred to as "the respondent"). The petitioner seeks quashing of the decision of the Departmental Board dated 23-8-2001 holding the respondent senior to him and the consequential order dated 3-9-2001, copies whereof are Annexures 16 and 17 to the writ petition. The petitioner also seeks direction upon the respondents concerned to promote him to the post of Divisional Fire Officer holding him senior to the respondent on the basis of his out of turn promotion on the post of Assistant Divisional Fire Officer with effect from 8-9-1995. The facts of the case, so far as relevant, briefly stated, are as follows.

2. The petitioner was appointed as Fire Station Officer in the Bihar Fire Service, a post equivalent in rank to the post of Sub-Inspector of Police on 28-6-1976. He joined the post on 12-7-1976. He was granted 1st time-bound promotion on completing ten years of service on 12-7-1986 which was later adjusted against the junior selection grade of the post. On 10-7-1991, the petitioner was recommended by the Government of Bihar for the President's Fire Service Medal with reference to an incident which took place in the Secretariat and other offices at Patna on 13-1 -1991. On 8-7-1992, he was again recommended for the President's Fire Service Medal with respect to another incident of 21-9-1991. The petitioner was awarded Fire Service Medal for meritorious service by the President of India on the eve of 1992 Independence Day which was notified on 29-8-1992. He was granted another President's Fire Service Medal for

distinguished service on the eve of 1994 Independence Day. On 27-9-1994, the petitioner filed representation for out of turn promotion on the post of Assistant State Fire Officer, a post equivalent in rank to Inspector of Police, under Rule 660-C of the Bihar Police Manual. The claim was rejected by the Promotion Committee/DG Board on 27-7-1995 and the same was communicated to the petitioner on 8-9-1995. On 6-9-1997, the petitioner was again awarded President's Fire Service Medal for gallantry. At this stage, he came to this Court in CWJC No. 4521/98 challenging the said decision of the DG Board dated 27-7-1995/8-9-1995. It is relevant to mention here that in the said decisions the DG Board had taken the view that the provisions of Rule 660-C of the Police Manual are not applicable to the members of Bihar Fire Service. By judgment dated 27-6-2000, this Court set aside the said decision of the DG Board holding that by virtue of Rule 11 of the Bihar Fire Service Rule, 1955, framed u/s 23 of the Bihar Fire Service Act 1948 read with the proviso to Article 309 of the Constitution of India, the provisions of Bihar Police Manual are applicable mutatis mutandis to the members of the Bihar Fire Service in respect of matters not covered by the Rules, i.e., Bihar Fire Service Rules, 1955 or the Rules made by the IG of Police u/s 22 of the Bihar Fire Service Act. The petitioner filed representation, annexing copy of the judgment, to re-consider his case for out of turn promotion. On 20-12-2000, the DG Board considered his case in the light of the said judgment of this Court and decided to grant out of turn promotion to the post of Assistant Divisional Fire Officer, equivalent in rank to Inspector of Police, with effect from 8-9-1995, i.e., the date of the act of gallantry. It is relevant to mention here that the petitioner had been promoted to the said post of Assistant Divisional Fire Officer, on merit, and according to seniority, on 5-7-1996. On 5-1-2001, consequential order was issued on behalf of the DG Board modifying/shifting the date of promotion, on the post of Assistant Divisional Fire Officer, From 5-7-1996 to 8-9-1995. The order stated that his seniority in service will be determined accordingly. On 15-1-2001, the petitioner filed representation for his promotion to the post of Divisional Fire Officer, a post equivalent in rank to Deputy Superintendent of Police, on the basis of said out of turn promotion on the post of Assistant Divisional Fire Officer, with effect from 8-9-1995, pointing out that he had completed the period of "Kalawadhi" of five years on the post on 8-9-2000. Some time after, on 9-7-2001 the provisional seniority list of the Assistant Divisional Fire Officers, was circulated by the State Fire Service Headquarters wherein the petitioner was placed at Serial No. 2 below the respondent who was placed at Serial No. 1. The petitioner objected to his being placed below the respondent. On 27-7-2001 the Deputy Inspector-General-cum-Deputy Commandant General, Homeguards and Fire Service sought guidance from the Police Headquarters. By communication dated 7-8-2001, the office of the Director-General and IG of Police, Bihar (in short, the DGP) informed the DIG-cum-Deputy Commandant General, Homeguards and Fire Service that by virtue of his out of turn promotion on the post of Assistant Divisional Fire Officer with effect from 8-9-1995 the petitioner had become senior to the respondent and their inter se seniority may accordingly be fixed. Disagreeing with the said

opinion, the Departmental Board vide impugned decision dated 23-8-2001 held the respondent to be senior to the petitioner. Objection of the petitioner to the provisional seniority list thus was rejected. Consequential order was passed circulating the final gradation list on 3-9-2001 which is the other order impugned in this case, as noticed at the outset.

3. It may be mentioned here that the date of initial appointment and promotion to the post of Assistant Divisional Fire Officer, of both the petitioner and the respondent are the same, that is, they were initially appointed on 12-7-1976 and promoted to the post of Assistant Divisional Fire Officer, on 5-7-1996. The respondent, however, was treated as senior to the petitioner on account of being older in age. While this date of birth of the respondent is 1 -1 -1953, the date of birth of the petitioner is 1 -8-1953. It is relevant to mention here that the respondent was always treated as senior to the petitioner and the petitioner never challenged his seniority until he was granted out of turn promotion with effect from an earlier date, on 5-1-2001. The case of the petitioner is that by virtue of his out of the promotion on the post he is entitled to reckon his seniority on the said post with effect from 8-9-1995 and therefore, he should be treated senior to the respondent.

4. Counter-affidavits have been filed on behalf of the State Fire Officer, Bihar and the respondent Suresh Prasad. No counter-affidavit has been filed on behalf of the State Government or the DGP. The stand of the DGP, however, is evident from the communication dated 7-8-2001 referred to above, and another communication made during pendency of this case dated 9-11-2001 enclosed as Annexure-19 to the reply affidavit of the petitioner. By the latter request was made, on behalf of the DGP, to the Secretary, Home (Police) Department to take decision at the Government level and accordingly direct the State Fire Officer, to file counter-affidavit in the present case.

5. The only point for consideration is whether shifting the date of promotion on the post of Assistant Divisional Fire Officer, from 6-7-1996 to 8-9-1995 by virtue of out of turn promotion to the said post granted on 5-1 -2001 brought about accelerated seniority in service and thereby the petitioner became senior to the respondent. The dispute hinges on the interpretation of Rule 660-C of the Police Manual which may be quoted (as amended) as under:

Selection Boards may recommend out of turn promotion of officers with outstanding records of service and competent authorities may order such promotion in deserving cases as they deem fit and proper with approval to next higher authority. Officer so promoted should be placed below the officers of the approved existing list of respective rank prepared by Selection Boards and be confirmed against substantive vacancies as and when vacancies arise in the order of the list.

Criteria taken together for determining outstanding records of service will be as follows:

- (i) Award of President's Police Medal and Indian Police Medal, for gallantry and distinguished service.
- (ii) Should not have been awarded any major punishment till the date of consideration and order of out of turn promotion.
- (iii) Very good entries in permanent Character Roll.
- (iv) Citation regarding high standard of investigation, detection and control of crime and intelligence work.
- (v) Should have ability for shouldering higher responsibilities consonant with the proposed promotion (See Home (Police) Department Notification No. GSR 34, dated 12th May, 1976).

(emphasis added)

6. Shri Ganesh Prasad Singh, learned Counsel for the petitioner, submitted that the impugned decision of the Departmental Board dated 23-8-2001, professedly in the light of the decision of the Supreme Court in Civil Appeal No. 3005 of 2000, State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, is result of wrong interpretation of the said decision. As a matter of fact, the Supreme Court held in no uncertain terms that out of turn promotion under Rule 660-C of the Bihar Police Manual is a substantive promotion, on merit, like promotion under Rule 649. Such promotion having been granted to the petitioner, in accordance with the Rules, he cannot be denied the consequential and corresponding benefit of seniority with effect from the date of such promotion. He urged that the Departmental Board of the Bihar Homeguards and State Fire Service being administratively subordinate to the DGP, it could not disobey the direction of the DGP to determine the petitioner's seniority on the basis of his out of turn promotion with effect from 5-7-1996 vide order dated 5-1-2001 by which the out of turn promotion was granted from a backdate.

7. Shri K.K. Mandal, learned Counsel for the respondent No. 7, submitted that the out of turn promotion is fortuitous and compassionate in nature and cannot be treated at par with merit promotion and, in any view, does not give accelerated seniority in service. He relied on Chandradeo Singh v. Bhojpur, Rohtas Gramin Bank and Ors. 2001 (2) PLJR 575. Shri A.B. Sinha, SC X, appearing for the State submitted that out of turn promotion also confers corresponding seniority on the person concerned. The petitioner is thus entitled to be treated as senior to the respondent.

8. Seniority of a person has to be normally reckoned from the date of appointment promotion and therefore, on first blush it would appear axiomatic that out of turn promotion should confer on the person corresponding seniority from the date of promotion. In the instant case however, there being statutory rule holding the field, the question has to be considered on the basis of the rules and not general principles. Rule 660-C as noticed above clearly stipulates that upon out of turn promotion the officer so promoted "should be placed below

the officers of the approved existing list of the respective rank". Besides he has to wait for confirmation till a substantive vacancy in the rank is available. The stipulation of placing the officer prompted out of turn "below the officers of the approved existing list" is based on the premise that the rights of the persons already promoted and included in the approved list of the particular rank should not be affected by any out of turn promotion granted later. More often than not, such out of turn promotion comes later but with effect from an earlier date to coincide with the date of the act of gallantry. Meanwhile, persons may have been promoted to the said post. Should such out of turn promotion affect their rights? The answer, in my opinion, must be in the negative.

9. Out of turn promotion is promotion which is not due as per one's seniority on the particular day. This is given in token of recognition of some service rendered by him. But, it does not mean that it should be at the cost of others. Thus, while a person by virtue of out of turn promotion may come to hold the higher post v/ here it is given from an earlier date, it gives him pecuniary benefits of the higher post from the date of such promotion, it cannot simultaneously confer upon him accelerated seniority in service. That, in my opinion, will be giving him double benefit which is not contemplated in the Rule.

10. In the case of Ajit Singh Januja and others Vs. State of Punjab and others, , though in a somewhat different contest dealing with the question of seniority of a person promoted to the higher post in the reserved category by virtue of reservation, the Supreme Court held that accelerated promotion to the members of SC/ST/OBC on reserved post on account of reservation and operation of roster does not confer upon them accelerated seniority and therefore, they cannot claim any right for promotion to still higher grade of service against the post meant for general category on the assumption that they have become senior on the basis of their accelerated promotion. If meanwhile a person in the general category, senior to him in service, has been able to earn promotion on the said post and thus catch him up, the original inter se, seniority between them is restored and he has to be treated as senior to the person promoted earlier.

11. It should be kept in mind that the decision in Ajit Kumar Januja's case was rendered on general principles no statutory rule was involved. The present case stands on lower footing from the petitioner's point of view in view of express provisions of Rule 660-C. It may mentioned that though this Court in CWJC No. 4521/98 upheld the claim of the petitioner to be considered for out of turn promotion under Rule 660-C, it clarified, on objection by respondent No. 7 who had intervened in that case, that "the relief claimed by the petitioner has no relation to the inter se seniority between him and the intervenor".

12. There are, however, two salient features of this case. Firstly, both the petitioner and respondent No. 7 were promoted on the post of Assistant Divisional Fire Officer on the same day, i.e., 5-7-1996, and secondly, the cadre seems to consist of only five officers. Two of them, i.e., petitioner and respondent No. 7 were appointed initially on 12-7-1976, the rest were appointed on

29-4-1977, 5-8-1980 and 27-9-1988. Where the number of persons working in different ranks is, large, like the Police Service for which Rule 660-C of the Police Manual is primarily meant, promotion from one rank to another is an ongoing exercise. And therefore, where a person has been promoted to a higher rank the subsequent promotion of another person to that rank, out of turn, may not affect his rights. In the instant case, however, both petitioner and respondent No. 7 were promoted to the post of Assistant Divisional Fire Officer, on the same day. Where a person is promoted earlier he would stand on a clear footing vis-a-vis the subsequent out of turn promotee promoted from an earlier date. But, in the instant case, both of them were promoted on the post of Assistant Divisional Fire Officer on the same day. Whether respondent No. 7 can claim impairment of right if the petitioner is treated senior to him by virtue of his out of turn promotion? According to me, as the respondent was all along treated senior to the petitioner for about 25 years-a privilege which the petitioner never questioned until he got out of turn promotion on 5-1-2001, and that being the only basis of claim, the rights of the respondent cannot be affected by such out of turn promotion. The spirit of Rule 660-C of the Police Manual is that it provides out of turn promotion but it does not confer accelerated seniority inasmuch as the person so promoted has to be placed at the bottom of the approved list of officers of the particular rank. The petitioner thus though promoted on out of turn basis with effect from 8-9-1995 had to be placed at the bottom of the list of Assistant Divisional Fire Officers and respondent No. 7 being already above him in the list, he cannot claim seniority over the respondent. In the above view of the matter, I am not inclined to uphold the case of the petitioner.

13. I have already spoken about the double benefit. It may be clarified that promotion, in whatever form, confers advantage of the post in the shape of pay, etc. Out of turn promotion enables the person to hold the post to which he is not entitled in the normal course as per his seniority. Therefore, denial of seniority over others already promoted does not mean denial of the benefits of promotion. In the instant case, had the petitioner and respondent No. 7 not been promoted to the post of Assistant Divisional Fire Officer so far, by virtue of his out of turn promotion, the petitioner would have been promoted to the post from, say, 8-9-1995, and in that case, he would have stolen a march over respondent No. 7 but as it was, respondent No. 7 had been promoted. The out of turn promotion granted to the petitioner gave him other benefits of the post such as pay, etc. from an earlier date but as by virtue of Rule 660-C of the Police Manual, he had to be placed at the bottom of the list, he cannot be treated as senior to respondent No. 7.

14. In the above premises, I find no merit in the case of the petitioner. The writ petition is accordingly dismissed. There will be no order as to costs.