
(1998) 01 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 324 of 1995

Shaktinath Mandal and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Citation : (1998) 1 PLJR 726

Hon'ble Judges : B.P. Singh, J; Ashish N. Trivedi, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and Shree Kant Pandey, for the Appellant; B.N. Singh and Nilu Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh & Ashish N. Trivedi, JJ.—The three petitioners In this writ petition have prayed for the Issuance of writ In the nature of mandamus commanding the respondents to determine the seniority of the petitioners as Wireless Operators in the Bihar Police Radio, taking into consideration the services rendered by them earlier in the Indian Army in the same capacity, and to grant them time-bound promotion to the Selection Grade in the said rank by reason of the same having been granted to person junior to the petitioners in the Bihar Police Radio, and further for direction to the respondents to confirm the petitioners in the service of Bihar Police Radio as Wireless Operators in consideration of past service rendered in the Indian Army. It has also been prayed in the writ petition that direction be issued to the respondents not to compel the petitioners to undergo basic training, since the petitioners have successfully undergone grade/class-1 training in the Wireless course while working in the Indian Army. This relief was not pressed at the time of hearing of the writ petition because the petitioners have since gone for training. By amendment petition filed on 6.7.1995 the petitioners have prayed for additional relief, namely, that since B.M.P.-16 is a closed cadre, the posts of Inspector, Sub-Inspectors, A.S.I. and Operator Constable available in the Wireless Branch of B.M.P.-16 be filled up by the

petitioners who belonged to the closed cadre of B.M.P.-16. This prayer was made on the assumption that the petitioners still belonged to the cadre of B.M.P.-16 and, therefore, promotional posts must be filled up by the petitioners and others like them, who were initially appointed in B.M.P.-16, but who were, along with the posts, subsequently transferred to the Bihar Police Radio.

2. The case of the petitioners is that they had earlier served Indian Army and after rendering over 15 years of service they superannuated from the service in the Indian Army. The petitioners were appointed on 1.12.1983 as Literate Constable (Wireless Operator). In B.M.P.-16 there were ten sanctioned posts of Inspector, twelve post of Sub-Inspector and fourteen posts of Assistant sub-Inspector and twenty-six posts of Literate Constable, but due to non-functioning of Wireless Branch in B.M.P.-16 all the posts were surrendered to the Bihar Police Radio and services of the petitioners were also transferred to Bihar Police Radio on 15.12.1988. The case of the petitioners is that while serving the Indian Army they had undergone Class- I training in trade proficiency I.e. Operator, Switch Board and Line as also of technical proficiency. They had successfully passed such training examination. The grievance of the petitioners is that in reckoning their seniority, the services rendered by them in the Indian Army have not been counted and, therefore, their names were shown lower down in the gradation list of Literate Constables (Wireless Operators), Bihar Police Radio, as would be evident from Annexure-4. The case of the petitioners is that their representation to the authorities brought no satisfactory result. Moreover, they were directed to undergo basic training in the wireless trade by the Assistant Inspector General (Wireless). This was arbitrary since the petitioners had already acquired necessary qualification for being appointed as Wireless Operators, and they having been granted certificates in technical proficiency and trade proficiency in Wireless branch by the Indian Army. As earlier noticed, the petitioners have since obeyed the order and have not pressed for any relief on this count.

3. The moot question which arises for consideration is whether the services rendered by the petitioners in the Indian Army can be counted for determining their seniority in the establishment of Bihar Police Radio.

4. In the counter-affidavit filed on behalf of the State it has been averred that the petitioners were appointed in the Bihar Military Police XVI Battalion on the ground of retirement from the Army Service. B.M.P XVI Battalion was raised on the pattern of Border Security Force, and the Government took a decision to engage Ex-Servicemen in the Battalion. The petitioners were appointed as Sepoy Operator in the year 1983 in B.M.P. XVI Battalion to work on wireless sets. Due to non-availability of wireless- sets in the Battalion the petitioners were absorbed in the Bihar Police Radio Organisation-vide Police Hqr. Memo No. 3682/86 dated 25.12.1988 and accordingly they Joined the Bihar Police Radio Organisation on 15.12.1988. The petitioners were given their seniority from the date of their appointment in the B.M.P.-XVI Battalion itself. This benefit was extended to the petitioners since they were ex-army men and had been originally appointed in

B.M.P.-XVI Battalion, as otherwise under the relevant rules of Bihar Police Radio Service, seniority is required to be fixed from the date on which the concerned person passes the wireless training course. The claim of the petitioners to count their services in the Indian Army for the purpose of determining their seniority in the Bihar Police Radio service has been refuted on the ground that there is no rule which provides for counting Army service in civil services for the purpose of fixation of seniority of ex-army personnel which has been clarified by the State Government under Home Police letter No. 6218 dated 8th July, 1992(Annexure-E). So far as the promotion and other benefits are concerned, it is stated that the cases of the petitioners are under consideration before the departmental promotion committee. It is pointed out that the petitioners were appointed to the post of Sepoy Operator in B.M.P.-XVI and not as Literate Constable. It has been clarified that for the purpose of fixation of pension and gratuity, the Government of India has decided that the period of military service can be counted for the said purpose if the concerned employee gives his consent within a year of his appointment to the civil service and deposits gratuity etc. with interest so as to avail of the benefit of the aforesaid provision. The aforesaid Memo has been annexed as Annexure-F to the counter-affidavit, which does not say anything about taking into account the service rendered in the Indian Army in the matter of fixation of seniority.

5. The normal rule is that seniority of a Government servant is counted from the date from which he joins his service. This may be subject to exceptions, if the law or rules of any beneficial scheme consistent with law provides otherwise. We requested counsel for the petitioners to show us any such law, rule, regulation or even any scheme which extends such benefit to ex-Army men such as the petitioners. We are not oblivious of the fact that in appropriate cases the Government of India has issued Circulars granting certain benefits in the matter of counting service rendered in the Indian Army upon discharge of Army personnel employed under emergency provisions or on Short Service Commission. The case of the petitioners is not covered by any such scheme. Counsel for the petitioners, however, relied upon Circular No. 15784 issued on 26th August 1972 by the Department of Personnel, Government of Bihar. Under the said Circular certain principles have been laid down for the determination of seniority inter-se as between different categories of employees. In paragraph 3(vi) of the Circular it is provided that in the case of ex-servicemen it will be deemed that they had joined the State service in the year next to their joining the army service or in the year next to the date on which they attained the age making them eligible for appointment to the State service, whichever be later. However, they shall be placed lower than the other candidates appointed in that year. Relying upon this Circular counsel submits that the ex-army men have been given the benefit of counting their past service in the Army for reckoning their seniority in the State Civil service on reappointment. The Circular of the Government of Bihar referred to above is merely a guideline fixed by the State Government for determining the cases of seniority inter-se between different

categories of persons employed in the State service. Unless the petitioners satisfy this Court that they are entitled to count their service in the Army for the purpose of determining seniority in the State services, they cannot take advantage of the Circular which only lays down the method by which inter-se seniority may be determined. The circular is merely explanatory in character, and does not confer upon the petitioners a right to count their services in the Army for the purpose of seniority in the State service upon reemployment. Such substantive right can be conferred only by law or rules or regulations framed, or by exercise of executive power by issuing Circular etc. which should not be inconsistent with any law. Since no such law, rule or regulation or even Circular has been brought to our notice conferring this right upon the petitioners, the plea of the petitioners that their service in army can be counted for the purpose of seniority in the State service must be rejected.

6. The next submission urged on behalf of the petitioners is that they have rendered service for more than ten years after their appointment in B.M.P.- XVI Battalion, and until today they have not been given the benefit of time bound promotion. It is now stated before us that during the pendency of the writ petition such benefit has been given and therefore it is not necessary for us to say anything more on this aspect of the matter. It was lastly contended that since the petitioners belong to the cadre of B.M.P.-XVI Battalion, the promotional posts available in the B.M.P.-XVI Battalion should be given to the petitioners from the due date. The plea has been raised in the application for amendment of the writ petition. Since no such demand was made before the authority, and the competent authority has not expressed any view on this aspect of the matter, nor there is anything in the counter-affidavit of the State to assist us to decide this question, we do not wish to express any opinion on this matter. It will, however, be open to the petitioners to move the competent authority which shall consider their claim in accordance with law. We neither express any opinion on the claim of the petitioners that they are entitled to those promotional posts, nor do we express any opinion on the plea of the State counsel that the petitioners along with their posts stand transferred to the Bihar Police Radio. This is a matter which has to be considered having regard to the relevant rules, regulations, orders etc. If the petitioners make such application before the authority, the competent authority is expected to dispose of the matter within three months from the date on which such claim is made. This writ petition is, accordingly, disposed of.