
(2001) 03 PAT CK 0003
In the Patna High Court
Case No : L.P.A. No. 483 of 2000

Shambhu Shankar Thakur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Constitution of India, 1950 — Article 309
Police Act, 1861 — Section 12, 7

Citation : (2001) 2 BLJR 943 : (2001) 2 PLJR 205

Hon'ble Judges : Nagendra Rai, J; Ashok Kumar Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna has been filed against the order dated 9-2-2000 passed in CWJC No. 706 of 1998 by a learned Single Judge of this Court by which the writ application filed by the appellant challenging the out-of-turn promotion given to respondent No. 7 (Raj Kumar Yadav) to the post of Inspector of Police and the Deputy Superintendent of Police (hereinafter referred to as the Dy. S.P.) respectively, has been rejected.

2. The case of the appellant is that on 16-1-1972, he was appointed as a Sub-Inspector of Police as direct recruit and he was confirmed on the said post. He was promoted on the post of Inspector of Police on officiating basis in the year 1982. Thereafter, he was awarded police medal for gallantry by the President of India on 24-11-1984 (vide Annexure-1 to the writ application) for his exemplary courage and bravery in discharging his duty while posted as Sub-Inspector of Police in the District of Ara, (now Bhojpur). There is a provision for out-of-turn promotion under Rule 660-C of the Bihar Police Manual, 1978 (hereinafter referred to as the Police Manual) issued by and with the authority of the State Government u/s 7 and 12 of the Police Act V, 1861. The appellant's case was considered along with other members of force for grant of out-of-turn promotion

in terms of the aforesaid rule and he was granted out-of-turn promotion to the post of Inspector on 9-3-1994 with effect from 22-7-1982 (vide Annexure-2 to the writ application). Thereafter, he was not granted out-of-turn promotion to the next higher post of Dy. S.P. as the aforesaid rule did not apply in a case of promotion to the post of Dy. S.P. In the meantime, persons junior to him including respondent No. 7 were promoted to the post of Dy. S.P. and so he filed a writ application being CWJC No. 6120 of 1995 which was allowed on 10-1-1997 with a direction to the respondents to consider his case for promotion to the next higher post of Dy. S.P. from the date his juniors were promoted, (vide Annexure-3 to the writ application). According to him, respondent No. 7 was appointed as Sub-Inspector of Police much after him on 30-7-1981. The Sub-Inspectors appointed in the year 1980 have not been granted promotion to the post of Inspector. The Respondent No. 7 was given out-of-turn promotion on the post of Inspector on officiating basis with effect from 3-11-1992 by order dated 20-2-1993 (vide Annexure-4 to the writ application). The said promotion was given to him by making relaxation in Police Order No. 121 on the basis of his being recipient of silver medal in 1992 in Scientific Aids to Investigation (Footprint events). Thereafter, a Committee under the Chairmanship of Director-General and Inspector-General of Police, Bihar in its meeting dated 30-12-1996 considered the case of respondent No. 7 for out-of-turn promotion from the post of Inspector to the post of Dy. S.P. and recommended his case for out-of-turn promotion to the post of Dy. S.P. (vide Annexure-5 to the writ application). In the same meeting, a decision was also taken for confirming respondent No. 7 in the rank of Inspector with effect from 3-11-1994 and accordingly by order dated 10-1-1997, he was granted confirmation to the post of Inspector, (vide Annexure-6 to the writ application). By notification dated 3rd February, 1997, he was granted out-of-turn promotion to the post of Dy. S.P. (vide Annexure-7 to the writ application) by the State Government.

3. According to the appellant, respondent No. 7 has been favoured in the matter of out-of-turn promotion because of his close proximity with the man in authority. His promotion is arbitrary, illegal and is an outcome of nepotism and favouritism. The promotion to respondent No. 7 on the post of Inspector and Dy. S.P. is in breach of Rule 660-C of the Police manual and Police Order No. 121. This apart, the said rule is not applicable in a case of promotion to the post of Dy. S.P. and as such by taking recourse to the said rule, no Out-of-turn promotion could be given to respondent No. 7 on the post of Dy. S.P. The respondent-State on the one hand is denying rightful promotion to the appellant whereas on the other, it is conferring impermissible out-of-turn promotion to respondent No. 7 for extraneous reasons.

4. Three sets of counter-affidavits were filed in the writ application, one by the respondent-State and its Officers, other by respondent No. 7 and 3rd by the Bihar Public Service Commission (hereinafter referred to as the Commission).

5. The cases set out in the counter-affidavits filed on behalf of the State and

respondent No. 7 are identical and as such, they are being stated at one place. It is stated that respondent No. 7 was not promoted illegally and arbitrarily. Police Order No. 121 provides for grant of out-of-turn promotion by the Director-General of Police to those police personnel who will win Gold Medal in All India Police Duty Meet. The respondent No. 7 was deputed in most sensitive district of Sitamarhi during communal riots for maintaining law and order where he discharged his duty bravely and successfully. His service record was outstanding. This apart, he participated in All India Police Duty Meet and got a Silver Medal. The Director-General of Police after considering the said facts granted him out-of-turn promotion to the post of Inspector. It is further stated that after his promotion to the post of Inspector, respondent No. 7 had encountered two bank dacoits who were committing dacoity in broad-day light at 11 a.m. on 19-7-1995 in Allahabad Bank. He recovered the looted cash Rs. 1,54,950/-, one Maruti van, etc. The Director-General Board considered the case of respondent No. 7 along with other police personnel under Rule 660-C of the Police Manual and found respondent No. 7 fit for out-of-turn promotion to the post of Dy. S.P. and recommended his case to the State Government and thereafter, the State Government considered the same and found him fit for promotion to the post of Dy. S.P. and the same was approved by the Commission.

6. The stand of the Commission is that the proposal was sent to the Commission by the Department of Home (Police) Government of Bihar for out-of-turn promotion to the post of Dy. S.P. and the Commission recommended the case of respondent No. 7 for out-of-turn promotion to the post of Dy. S.P. as he was found fit for the same.

7. The learned Single Judge after having considered the matter took the view that respondent No. 7 was the recipient of gallantry award and as such, out-of-turn promotion was rightly given to him under Rule 660-C of the Police Manual.

8. The learned Counsel appearing for the appellant submitted that the learned Single Judge has committed a serious error of record in holding that respondent No. 7 was recipient of gallantry award by President of India, as a matter of fact, he was neither given any such award nor it was the case of respondent No. 7 that on that ground, he was given out-of-turn promotion. The case of respondent No. 7 was that promotion to the post of Inspector was given by relaxing Police Order No. 121 and out-of-turn promotion to the post of Dy. S.P. was granted after taking into consideration the performance of respondent No. 7 as a Inspector of Police. He further submitted that out-of-turn promotion of respondent No. 7 to the post of Inspector of Police was wholly impermissible as no rule can be relaxed to give out-of-turn promotion to an individual as that would amount to misuse of power. He further submitted that Rule 660-C of the Police Manual which contains provision for out-of-turn promotion is not attracted in the case of promotion to the post of Dy. S.P. from the post of Inspector as specific provision containing different procedure has been mentioned in the Police Manual for promotion to the post of Dy. S.P. Elaborating his submission, he

submitted that Rules 645, 646 and 724-A and Appendix 71 of the Police Manual contain a provision with regard to appointment and promotion to the post of Dy. S.P. According to the same, 50% post of Dy. S.P. has to be filled up by direct recruitment and 50% post of Dy. S.P. has to be filled up by promotion of Inspectors including Reserve Inspectors of District Armed Police and equivalent ranks of Bihar Armed Police by the Government on the recommendation of a Selection Board consisting of Chairman of the Commission as Chairman and Inspector-General and others as members as given in Appendix-72 of the Police Manual. Rule 660 of the Police Manual comes under the heading of appointment of Assistant Sub-Inspectors and it provides promotion to the post of Reserve Sub-Inspector from the lower rank. Rule 660-C of the Police Manual applies in a case of out-of-turn promotion to the Police personnel up to the rank of Inspector only and it is not applicable in a case of promotion to the post of Dy. S.P. from Inspector.

9. The learned Counsel appearing for the respondents on other hand combated the submissions raised on behalf of the appellant and submitted that the provision contained in Rules 645, 646, 724-A and Appendix-71 of the Police Manual deal with the appointment and regular promotion to the post of Dy. S.P. and is not applicable in a case of out-of-turn promotion to the post of Dy. S.P. Rule 660-C is applicable in cases of all out-of-turn promotion from lower rank up to the higher rank of Dy. S.P. and its application cannot be confined only for out-of-turn promotion up to the post of Inspector. They also submitted that respondent No. 7 was granted out-of-turn promotion to the post of Inspector and to the post of Dy. S.P. on the basis of his performance and other relevant materials in accordance with provision of Rule 660-C of the Police Manual and Police Order No. 121 and the same cannot be nullified at a belated stage at the instance of the appellant.

10. After hearing the learned Counsel for the parties at the bar, two questions arise for consideration in this case. Firstly, as to whether out-of-turn promotion of respondent No. 7 from the post of Sub-Inspector to the Post of Inspector was made in accordance with the statutory provisions contained under Rule 660-C read with Police Order No. 121 and secondly as to whether Rule 660-C of the Police Manual applies in a case of out-of-turn promotion to the post of Dy. S.P. from the post of Inspector and in case if it is found to be applicable, then whether respondent No. 7 was promoted in accordance with the provisions contained under the said rule.

11. At the outset, I may mention that it is admitted by the parties that respondent No. 7 is not a recipient of gallantry award by the President of India. Thus, the ground given by the learned Single Judge for upholding the promotion of respondent No. 7 is against the material on record.

12. The Bihar Police Manual, 1978 has been issued by the State Government in exercise of power under Sections 7 and 12 of the Police Act V, 1861, Chapter 20 deals with appointment and enrolments. The provision with regard to

appointment and promotion to the post of Dy. S.P. is contained in Rules 645, 646, 724-A and Appendices-71 and 72. Rule 645 provides that Dy. S.P. will be appointed in accordance with the rules contained in Appendix 71. Rule 646 contained a provision with regard to promotion of Inspectors including Reserve Inspectors of District Armed Police and equivalent ranks of Bihar Armed Police to the rank of Deputy Superintendent of Police. The said promotion is to be made by the State Government on the recommendation of the Selection Board consisting of Chairman of the Commission as Chairman and Inspector-General and others as members as given in Appendix-72. Rule 724-A of the Police Manual read with Part-2 of Appendix-71 contain provision with regard to procedure which is to be followed for promotion of Inspector, etc. to the post of Dy. S.P. It provides that Inspector-General's Board will send relevant papers before the Board chaired by the Chairman of the Commission which is called Departmental Promotion Committee" and thereafter, the Committee will consider the matter on the basis of the recommendation of the I.G.'s Board and send the same to the Government for its approval. The aforesaid rules do not contain any provision permitting out-of-turn promotion to the post of Dy. S.P.

13. Rule 653 contains a provision with regard to filling up of the post of Sub-Inspectors by direct recruitment and by promotion from the post of Assistant Sub-Inspectors. Rules 654, 655, 656, 657, 658 and 659 of the Police Manual contain provision with regard to filling up the aforesaid post by aforesaid two channels. Rule 660 contains a provision with regard to promotion to the post of Assistant Sub-Inspector from the lower rank. Rule 660-A contains a provision with regard to promotion to the post of Havaldar and Rule 660-B contains provision with regard to promotion of Havaldars including Havaldar Driver to the post of Reserve Sub-Inspectors excluding Reserve Sub-Inspector (Transport). Rule 660-C contains provision with regard to out-of-turn promotion to officers with outstanding record of service. This rule was amended and substituted by the Government Notification G.S.R. 1463 dated 4th February, 1989 which was issued by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with Sub-section (3) of the Police Act, 1961 (Act V of 1961). The said rule runs as follows.

660-C out-of-turn Promotion:-The following criteria and procedure will be adopted for giving out-of-turn promotion.

(a)(i) The officer concerned should not have been awarded any major punishment till the date of consideration and order of out-of-turn promotion.

(ii) Should have very good entries in permanent character roll.

(iii) Should have received citations for high standard of investigation, supervision of cases and for excellence in intelligence work.

(iv) Should have ability for shouldering higher responsibilities consonant with the proposed promotion.

OR

Should have been awarded President's Medal or Medal for gallantry.

OR

Should have received citation for outstanding operational work.

(b) Out-of-turn promotion will be decided by committee which will be constituted as follows:

(i) Director-General and I.G. of Police, Bihar Patna --Chairman

(ii) Senior Officer-in-charge of CID, Bihar --Member.

(iii) Senior Most Officer-in-charge of Special Branch, Bihar --Member.

(iv) Senior Most Officer-in-charge of (Personnel), Bihar --Member.

(v) Senior Most Regional I.G. of Police --Member.

(vi) Special Secretary/Addl. Secretary Home (Police) Department --Member-Secretary

14. Thus, according to the aforesaid rule, the persons fulfilling the criteria mentioned therein will be given out-of-turn promotion which will be decided by a committee which will be constituted as mentioned above.

15. The respondent-State with a view to developing sports/duty meet and similar other activities in the police service issued Police Order No. 121 providing inter alia that the recipient of Gold Medal in All India Sports, Police Duty Meet and Aquatic Competition, etc. will be considered for out-of-turn promotion by the Director-General of Police. It further provided that the participants, who have placed in 2nd position (recipient of Silver Medal) on three consecutive occasions or 3rd position (recipient of Bronze Medal) on four consecutive occasions in the aforesaid sports, etc. will also be considered for out-of-turn promotion by the Director-General of Police.

16. The combined reading of the aforesaid provisions show that so far as the promotion to the post of Dy. S.P. is concerned, that has to be recommended by the Departmental Promotion Committee headed by the chairman of the Commission. It further appears that so far as out-of-turn promotions to the post of Inspector and other sub-ordinate posts are concerned, that has to be made on the basis of recommendation of a Committee headed by the Police Personnel, in some cases by the Director-General of Police and in other cases by police officers. Police Order No. 121 shows that out-of-turn is permissible to a sportsman or participant in All India Duty Meet who have got Gold Medal or Silver Medal on three consecutive occasions or Bronze Medal on four consecutive occasions. The said promotion will be granted by Director-General of Police.

17. It is an admitted position that Rule 660-C and Police Order No. 121 apply in a

case of out-of-turn promotion to the post of Inspector. Thus, it has to be seen as to whether respondent No. 7 was promoted in accordance with the aforesaid provision. The stand of the respondent No. 7 is that he was given out-of-turn promotion to the post of Inspector after taking into consideration that he discharged his duty efficiently in the sensitive Districts during communal riots, his service record was outstanding and he participated in All India Police Duty Meet and got Silver Medal. The respondent No. 7 was not awarded Gold Medal in sports or games as mentioned in the said order. He was awarded Silver Medal in one occasion, as such according to the said Police Order, he was not entitled to out-of-turn promotion. Rule 660-C as extracted above lays down the criteria for out-of-turn promotion. Clause (iv) provides that the candidates should have ability for shouldering higher responsibilities consonant with the proposed promotion or should have been awarded President's Medal or Medal for gallantry or should have received citation for outstanding operational work. None of these criteria has been fulfilled by respondent No. 7, on the other hand, recourse has been taken to Police order No. 121 which as stated above does not provide for out-of-turn promotion to the police personnel who receives Silver Medal for one year. The order granting out-of-turn promotion to respondent No. 7, which has been annexed as Annexure-4 to the writ application, shows that Police Order 121 has been relaxed in special circumstances in favour of respondent No. 7. Thus, the order which could not be supplemented through the affidavit shows that respondent No. 7 did not fulfil the requirement of Police Order No. 121 and that Rule was relaxed in his favour and he was given out-of-turn promotion. In other words, out-of-turn promotion was not granted to him < under Rule 660-C and Police Order No. 121 was relaxed to give benefit to him.

18. Out-of-turn promotion to a post is itself an exception to the general rule that the promotion is to be given to the employees in terms of the rules which may be either seniority or merit-cum-seniority or other requirement. The promotion in derogation of well-settled rules itself causes heart-burning. Even if out-of-turn promotion is held to be permissible to encourage the police personnel to perform better in service, the said promotion cannot be granted in breach of the rules governing out-of-turn promotion. Relaxation of the relevant rule in favour of respondent No. 7 for giving out-of-turn promotion is nothing, but arbitrary, mala fide and misuse of power to benefit respondent No. 7. His performance in All India Police Duty Meet was not outstanding justifying giving an undue benefit to him to the post of Inspector of Police. Thus out-of-turn promotion of respondent No. 7 to the post of Inspector of Police is held to be illegal, arbitrary, unjustified. It shows a high degree of misuse of power by the Director-General of Police.

19. In view of the conclusion that out-of-turn promotion to respondent No. 7 to the post of Inspector of Police was illegal, his subsequent out-of-turn promotion to the post of Dy. S.P. will crumble on this ground alone, but I will decide the second question also as to whether Rule 660-C is attracted in a case of out-of-turn promotion from the post of Inspector to the post of Dy. S.P.

20. The specific provisions have been made for appointment and promotion to the post of Dy. S.P. and the said provisions are contained in Rules 645, 646, 724-A and Appendices-71 and 72 as mentioned above. The said rules do not speak for out-of-turn promotion. The placing of Rule 660-C in the Police Manual shows that it deals with out-of-turn promotion up to the rank of Inspector of Police and the said promotion has no application in a case of promotion to the post of Dy. S.P. The rule itself shows that the committee to give out-of-turn promotion as mentioned therein is chaired by the Director-General and I.G. of Police, Bihar. In a case of promotion to the post of Dy. S.P. a Departmental Promotion Committee is constituted and the same is headed by the Chairman of the Commission. It does not stand to reason that Committee constituted under the Chairmanship of Director-General of Police will recommend out-of-turn promotion to the post of Dy. S.P. though under the rules for regular promotion to the post of Dy. S.P. a Departmental Promotion Committee is constituted consisting of the Chairman of the Commission. Thus, Rule 660-C of the Police Manual which speaks about out-of-turn promotion is applicable only up to the rank of Sub-Inspector of Police. In other words, out-of-turn promotion in terms of the said rule is permissible up to the post of Inspector. The said provision is not applicable in a case of promotion to the post of Dy. S.P. The respondent-State though in this case has stated that Rule 660-C is applicable in case of out-of-turn promotion to the post of Dy. S.P. but in the counter-affidavit which was filed before the apex Court in SLP (Civil) No. 7709 of 2000, (a copy of which has been produced before this Court) shows that respondent No. 7 was wrongly given out-of-turn promotion from the post of Inspector to the post of Dy. S.P. Rule 660-C is confined only to out-of-turn promotion up to the rank of Sub-Inspector of Police and the higher rank to which the promotion is to be granted is that of Inspector of Police.

21. Thus, Rule 660-C is not applicable in a case of out-of-turn promotion from the post of Inspector to the post of Dy. S.P. As stated above, the respondent No. 7 has not been given any gallantry award or Police Medal by the President as wrongly held by the learned Single Judge. The materials on the record brought by the appellant further show that assertion of the respondent No. 7 of killing of four persons in police encounter was fake one and this Court has already ordered CBI inquiry against respondent No. 7. Thus, respondent No. 7 did not fulfil the criteria laid down in Rule 660-C even if it is held to be applicable in case of promotion to the post of Dy. S.P.

22. In the result, the appeal is allowed, order of the learned Single Judge is set aside and the orders granting out-of-turn promotions to respondent No. 7 on the posts of Inspector and Dy. S.P. are quashed.

Ashok Kumar Verma, J.

23. I agree.