
(1997) 02 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 19328 of 1990

Shanti Swaroop and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 12

Citation : (1997) 02 AHC CK 0001

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant;

Final Decision : Disposed Of

Judgement

R.H. Zaidi, J.—By means of the present petition under Article 226 of the Constitution of India, Petitioners pray for a writ, order or direction in the nature of mandamus commanding the Respondent Nos. 2 to 4 to make promotion from the rank of Constable Armourer to the Head Constable Armourer. U.P. Police on the basis of seniority and after examining the service record of the candidates. Prayer for quashing the selection of the candidates from amongst the constable armourer for promotion to the rank of head constable armourer on the basis of written test, practical examination and interview has also been made.

2. The facts of the case in brief are that the Petitioners were recruited as constable in U.P. Police before 1984. Thereafter, they were sent for Armourer Training Centre, Sitapur. The Petitioners also took training of Electrical and Mechanical Engineering at Bhopal. After completion of the aforesaid trainings, the Petitioners were awarded certificate of proficiency. It is stated that the Petitioners were legally entitled to be promoted to the post of head constable armourer; but the Respondents without following the procedures prescribed under Paragraph 393 of the Police Office Manual started holding written test, practical examination and interview, and are not making the promotion after

following the procedure prescribed under the aforesaid Paragraph No. 393. A reference in this regard has also been made of the selection of the candidates on 4.3.1987. The Petitioners have already made representations for ventilation of their grievances to the Police Head Quarter, U.P. at Allahabad and requested for their promotion to the post of head constable armourer, but of no avail.

3. A writ petition No. 4394 of 1990 is also alleged to have been filed, which was finally disposed of by this Court on 12.2.1990 with the direction to the Respondents to decide the representations filed by the Petitioners. Thereafter, it is alleged that the representations filed by the Petitioners were not decided, consequently, the present writ petition was filed praying for the reliefs mentioned above.

4. In reply to the facts stated in the present writ petition, a counter-affidavit has been filed on behalf of the Respondents. It has been stated that the examinations (written and practical) are being conducted by the department Just to Judge the efficiency of the candidates. It has also been alleged that the representations filed by the Petitioners were rejected vide order dated 4.12.1989, a copy of which has been annexed along with the counter-affidavit as Annexure CA-1. The aforesaid order has been passed on the representations filed by the persons other than the Petitioners. In the said order it has been stated that examination is taken for the purpose of making promotion from the post of constable armourer to the post of head constable armourer on the basis of merit and in accordance with seniority.

5. Thus, it is apparent from the facts stated in the counter-affidavit as well as in the order, referred to above that the promotions to the post of head constable armourer from the post of constable armourer are being made on the basis of departmental examination held by the Respondents. Paragraph 393 of the U.P. Police Office Manual on which reliance has been placed by the learned counsel for the Petitioner, in support of his submissions reads as under:

393. Armourers, who also perform the duties of Magazines Moharrirs and Cycle repairs, are especially selected from Armed police constables and trained in Arsenals. They are included in the strength of the Armed police but for the purpose of promotion their cadre is treated as quite separate. Promotions from the rank of constable armourer to the rank of head constable armourer will be made by seniority but those having an unsatisfactory record of service may be passed over. Promotion from head constable armourer to sub-Inspector armourer will be made by selection. An Instructions File should be maintained on this subject.

(emphasis supplied)

A reading of the aforesaid paragraph reveals that promotion from the post of constable armourer to the post of head constable armourer is to be made on the basis of seniority subject to the rejection of the candidates whose service record is not found to be satisfactory. While promotion to the post of sub-Inspector

armourer from the post of head constable armourer is to be made on the basis of selection.

6. Admittedly, in the present case promotions to the post of head constable armourer were not made on the basis of seniority and after perusing the service record of the candidates, but on the basis of examination and interview conducted by the Respondents for the said purposes.

7. Learned standing counsel invited attention of the Court to the facts stated in paragraph 4 of the counter-affidavit. It was contended that in the year 1973-74 with a view to reform the procedure of recruitment to different cadres in the police department, a committee was constituted which besides other matters also made recommendation regarding recruitment and promotion of the constable armourer and head constable armourer. On the basis of recommendation made by the said committee, the Inspector General of Police has taken a decision and passed the following order:

The present procedure of promotion from Constable to Head Constable Armourer is to promote who are Basic Course passed. This is done according to seniority and Character Roll by the Selection Committee. The Committee also used to get their Technical knowledge tested at the Army Centres.

8. The aforesaid order is apparently vague and does not provide anywhere that the procedure prescribed under Paragraph 393 of the Police Office Manual, referred to above, shall not be followed in the promotion of constable armourer to the post of head constable armourer. Further, the aforesaid order is alleged to have been passed by the Inspector General of Police on the basis of the report submitted by the Committee in exercise of power u/s 12 of Police Act, 1861, which is reproduced below:

12. Power to Inspector-General to make rules.--The Inspector-General of police may, from to time, subject to the approval of the State Government, frame such orders and rules as he shall deem expedient relating to the organisation, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, account requirements and other necessities to be furnished to them, the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police force, as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

A plain reading of the aforesaid regulation shows that the orders passed by the Inspector-General of Police in exercise of the aforesaid regulation are required to be rectified/approved by the State Government. It has not been stated specifically, or otherwise the sanction of the State Government was obtained before or after passing the aforesaid order by the Inspector-General of Police. As such, even if any order was passed by the Inspector-General of Police, as

referred to above, the same cannot affect the application and operation of Paragraph 393 of the U.P. Police Office Manual. It is not disputed that the orders contained in U.P. Police Office Manual are binding upon the Respondents. The Respondents are, therefore, under an obligation to make promotions of constable armourer to the post of head constable armourer on the basis of seniority and service record as provided under Paragraph 393 of the U.P. Police Office Manual, and not on the basis of written test, practical examination and interview conducted by the Respondents.

9. The examinations (written, practical and interview) for promotion of constable armourer to the post of head constable armourer is alleged to have taken place in the year 1990. It was on 5.10.1990 that an application for interim relief directing the Respondents 1 to 3 not to promote the candidates selected from amongst the constables armourer on the basis of written and practical examinations and interview held on August 6, 7 and 8, 1990 to the post of head constables armourer was made but no interim order was granted by this Court in favour of the Petitioners. This petition is being taken up for hearing after about seven years the same was filed in this Court. The candidates selected for promotion must have been promoted to the post of head constable armourer and might have been further promoted to the post of Sub-Inspector armourer. Further the candidates alleged to have been selected for the promotion to the post of head constable armourer have not been impleaded in the present petition as Respondents.

10. Under the aforesaid facts and circumstances, I do not find any Justification for quashing the said promotions and in disturbing the status quo in the said service as it obtains today. However, in view of the aforesaid discussion and in view of the facts that the provisions of Paragraph 393 of the U.P. Police Office Manual are still intact and operative, the Respondents are liable to be directed to make promotions from the post of constable armourer to the post of head constable armourer strictly in view of the provisions of Paragraph 393 of the U.P. Police Manual.

11. Writ petition succeeds and is allowed in part. Respondents are directed to make promotions to the post of head constable armourer strictly in accordance with the provisions contained in Paragraph 393 of the U.P. Police Office Manual. They are also directed to take into consideration the cases of the Petitioners and award them promotion if they are found fit to be promoted. There shall be no order as to costs.