
(1998) 03 PAT CK 0083

In the Patna High Court

Case No : Letters Patent Appeal No. 79 of 1991

Shri Bhagwan Singh and Others

APPELLANT

Vs

Gandhiji Singh and others

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Citation : (1998) 2 PLJR 188

Hon'ble Judges : B.P. Singh, J;B.P. Sharma, J

Bench : Division Bench

Advocate : Balbhadra Singh, Nand Kumar Singh and V.K. Rai, Kameshwar Kumar, for the Appellant; Rajeev R. Prasad for the respondents 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh and B.P. Sharma, JJ.—The appellants herein have preferred this Letters Patent Appeal by leave granted by this Court to prefer an appeal, even though the appellants were not parties in the writ petition in which the impugned judgment was rendered. The respondents herein were the writ petitioners in the writ petition being CWJC No. 3210 of 1990. They claimed that they were working as Havildars in the Bihar Military Police Force, but their names have been wrongly left out from the panel, Annexure-5, which had been prepared for the purpose of granting promotion to the eligible Havildars to the post of sub-Inspector of Police (Arms). According to the petitioners, though they were working as Havildars, and though they were eligible for promotion to the post of Sub-Inspector of Police (Arms), the names of persons junior to them were included in the said panel but the names of the writ petitioners had been left out. It was their case that their exclusion from the panel (Annexure-5), was unreasonable, unjustified and arbitrary, since only the cases of those persons were considered for promotion whose names were included in the aforesaid panel. The learned Judge after hearing the parties and after a careful appraisal of the material on record came to the conclusion that even Havildars who were junior to the writ petitioners have

been included in the aforesaid panel leaving out the writ petitioners. He, therefore, allowed the writ petition and directed that the names of the writ petitioners (respondents 1 to 6) be included in the list for consideration and be considered for promotion to the rank of Sub-Inspector of Police (Arms) against the posts reserved for them by an interim order passed by this court in the writ petition on 2.11.1990. A few facts which are not in dispute may first be noticed. Respondents 1 to 6 herein, who were the writ petitioners, were promoted as Havildars as a special case under Rule 660-C of the Bihar Police Manual, which provides that out of turn promotion may be recommended by the Selection Board to officers with outstanding records of service, and the competent authorities may order such promotion in deserving cases as they deem fit and proper with the approval of the next higher authorities. The criteria taken together for determining outstanding record of service has been laid down under the said rule. It is not necessary for us to consider those matters in this writ petition because out of turn promotion granted to respondents 1 to 6 has not been challenged by any one at any time. They were given out of turn promotion to the post of Havildar on different dates in the year 1977. So far as the appellants are concerned, it is not disputed that they were promoted to the post of Havildar later than respondents 1 to 6. The names of the appellants were included in the panel, Annexure-5, but the names of respondents 1 to 6 did not find place in the said panel which had been prepared for the purpose of granting promotion to the higher post of Sub-Inspector of Police (Arms).

2. Counsel for the appellants submitted before us that in accordance with the relevant rules, circulars etc. a Sepoy was to be promoted to the post of Havildar reckoning his seniority by reference to the date on which he passed the Senior Promotion Course, or on the date he was exempted from passing the said Senior Promotion Course. It was submitted that basis for determining seniority in the order of Havildar must also be the same, namely, the date on which the Sepoy concerned had passed the Senior Promotion Course or was exempted from passing that course. He argued that so far as respondents 1 to 6 are concerned, they passed the Senior Promotion Course after their promotion as Havildar, but within the period granted to them for passing that examination. He, therefore, submitted that in the cadre of Havildar, the appellants must rank senior to respondents 1 to 6 on account of the fact that they had passed the Senior Promotion Course after the appellants.

3. The submission urged on behalf of the appellants must be rejected. It is, no doubt, true that for promotion to the post of Havildar, the Selection Board is required to prepare a panel including therein the names of all eligible Sepoys who have passed the Senior Promotion Course. For the purpose of determining their seniority inter se, in the matter of promotion to the post of havildar, that names have to be arranged in the order of seniority in the panel having regard to the date on which the concerned Sepoys passed the Senior Promotion Course, or the date on which they were exempted from passing the said course. After their names are so arranged in order of seniority, they are to be considered for

promotion to the post of Havildar. The appellants as well as the respondents have placed reliance on Annexure-5 which is a circular dated 20th January, 1980. The aforesaid circular makes this position clear, but it also provides that in case some of the candidates considered for promotion in order of seniority are not selected by the Board, and are therefore not promoted as Havildar, they lose the benefit of seniority in the sense that if they are selected by a Selection Board in future, they cannot claim seniority over the Sepoys who have been promoted as Havildar earlier, even though those earlier promoted had passed the Senior Promotion Course later than the Sepoys promoted later. This only clarifies that though the names of the Sepoys have to be arranged in order of seniority for promotion to the post of Havildar, a person not selected for promotion, loses his seniority when the others are promoted as Havildars. If the person who was earlier rejected, is subsequently found suitable for promotion in any subsequent year to the cadre of Havildar, he cannot claim seniority on the basis of the date on which he had passed the Senior Promotion Course. The rule only make explicit, what is otherwise understood as a settled principle in service law. So understood, it is not possible to hold that in the cadre of Havildar, the principle for determination of seniority is the date on which a Sepoy may have passed the Senior Promotion Course. While it is true that the seniority inter se of all" Sepoys who have passed the Senior Promotion Course, and who have been found suitable for promotion by the same selection Board, will be determined by reference to their dates of passing the Senior Promotion Course. The same rule will not apply to the persons who are not selected for promotion, because their promotion to the cadre of Havildar is later, even though as Sepoys they may have been considered to be senior by reckoning seniority from the date of passing the Senior Promotion Course. The learned Judge has, therefore, rightly held that the principle of determining seniority inter se by reference to the date on which they were initially appointed to that cadre, which is the normal rule for determining seniority. In the instant case, undoubtedly, respondents 1 to 6 were promoted earlier than the appellants to the post of Havildar. They have been granted out of turn promotion under Rule 660(C) of the Bihar Police Manual and obviously, by the very nature of the promotion granted, their seniority as sepoy was of no consequence as they were granted promotion in recognition of their outstanding service and performance. It must, therefore, follow that respondents 1 to 6 who were promoted earlier to the cadre of Havildar rank senior to Sepoys regularly promoted as Havildar in subsequent years. Logically, therefore, if the cases of those promoted later were being considered for promotion to the higher post of Sub-Inspector of Police (Arms), the cases of respondents 1 to 6 should also be considered for promotion. This is precisely what the learned Judge has held, and we find no reason to take a different view. We find no error in the judgment and order of the learned Judge and, therefore, this appeal is dismissed.