
(1983) 05 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 40 of 1982 (R)

Shri Keshan Kumar Singh and another APPELLANT

Vs

The State of Bihar and others RESPONDENT

Date of Decision : 11-05-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Police Act, 1861 — Section 2

Citation : (1983) PLJR 530

Hon'ble Judges : S. Roy, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Shree Nath Singh, P.S. Dayal, J.P. Shrivastava, B.P. Verma and A.S. Dayal, for the Appellant; N.K. Prasad, Government Pleader No. 1 and B.P. Jaiswal, Junior Counsel to Govt. Pleader No. 1, S., for the Respondent

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—By this petition under Article 226 of the Constitution of India the petitioners have prayed for quashing the seniority list of 1973 batch of Police Sergeants dated 9.11.1979 as contained in Annexure-5 and also the seniority list dated 19.9.1981 with regard to the Police Sergeants of that batch as contained in Annexure-1. By these two annexures the petitioners have been shown juniors to some of the recruits of 1973 batch. So far petitioner no. 1 is concerned, he has been shown junior to respondent nos. 6 to 9 whereas petitioner no. 2 has been shown junior to respondents nos. 6 to 16. They have also prayed that respondent nos. 1 to 5 be commanded to place their names in Annexure 7 above the respondents for the purpose of considering the cases for promotion. The two petitioners along with 10 others including respondent nos. 6 to 16 were recruited through the Central Selection Board (the Selection Board) to the post of Police Sergeants. The date of appointment was the 25th of February, 1973. The petitioners and the concerned respondents were confirmed on the same date in 1975.

2. The case of the petitioners is that the seniority of the Sergeants recruited through the Selection Board was required to be determined according to the merit list prepared by the Selection Board. The position of the petitioners in the merit list was at serial nos. 5 and 6 respectively and they, therefore, were put in the seniority list at serial nos. 5 and 6 respectively. Respondent no. 4 issued Annexure 1 by which the seniority list of the Sergeants of 1973 batch was revised. By it the inter-se seniority of the recruits of 1978 batch was fixed taking into consideration their performance in the Police Training College, Hazaribagh (the P.T.C.). The petitioner no. 1 was placed at serial no. 8 and petitioner no. 2 was placed at serial no. 17. Annexure 5 was issued from the office of respondent no. 2 in which the list of the Police Sergeants of 1973 batch was circulated. The dates of confirmation and also the inter-se seniority were mentioned therein. Annexure 1 and 5 are illegal and bad in law as they were issued in contravention of the circular dated 12.12.1934 which is Annexure 2 to the writ petition. On 1.12.1981 respondent no. 4 from the office of respondent no. 2 issued the list of the names of 12 Police Sergeants for considering their cases for promotion to the posts of Sergeant Major, Annexure-7 The names in Annexure-7 were arranged according to the seniority. The persons who Were included in Annexure-7 are those who have been shown senior to the petitioners in the illegally prepared seniority list.

3. Respondent nos. 1 to 4, i.e., the State of Bihar and its Officers, have filed counter affidavit. No counter affidavit has been filed on behalf of the other respondents. At the time of hearing, respondent nos. 1 to 5 and 6 to 8 contested the case.

4. In the counter affidavit filed on behalf of the aforesaid respondents the case, in short, is that the seniority list was prepared by the appointing authority that is the Inspector General of Police (Respondent no. 2) By taking into consideration the merit list prepared by the Selection Board and the performance of individual recruits at the P.T.C. Reliance was placed in Annexure 2. The first seniority list of 1973 batch was prepared on 4.6.1974 on the basis of their performance in the final examination at the P.T.C. which is Annexure A to the counter affidavit. The second seniority list was published on 2.6.1975 again on the basis of the performance in the final examination at the P.T.C. which is Annexure-B to the counter affidavit. For the purpose of fixing the seniority with regard to the Police Sergeants recruited in a particular year not only the merit list prepared by the Selection Board was taken into consideration, but also the performance of individual recruits at the final examination at the P.T.C. This was done in pursuance of the decision taken by respondent no. 2 in 1967 as contained in Annexure-F to the counter affidavit. Respondent No. 2 had that power in terms of Annexure-2.

5. This writ petition was filed on 7.1.1982. The writ petition was admitted for hearing on 27.2.1982. The petitioners prayed for interim relief that consideration of Sergeants as contained in Annexure-7 and their promotion be stayed. The

prayer for interim stay was refused at that stage. However, it was ordered that any order of promotion made thereafter would be subject to the result of this writ petition. When this writ petition was pending some of the respondents were promoted to the posts of Sergeants Majors. Petitioner no. 1 was thereafter promoted and petitioner no. 2 was found fit for promotion. On 11.3.1983 a supplementary counter affidavit was filed on behalf of respondent nos. 1 to 4 in which they annexed a letter dated 8.2.1983 of respondent no. 1. This is Annexure-G. By this Annexure the State Government directed that the inter-se seniority of direct recruits be determined after adding the marks obtained by the candidates at the final examination in the P.T.C. to the marks obtained by them at the time of their selection. The main controversy is whether respondent no. 2 in terms of Annexure 2 could have determined the seniority in the manner done. I will refer to other facts and annexures brought on record by the parties later.

6. Before proceeding further, it is necessary to dispose of some of the objections raised on behalf of the respondents regarding the maintainability of the writ petition. It was contended that since the inter-se seniority of the Police Sergeants of 1973 batch was fixed as far back as in 1974 and 1975 (Annexures-A and B respectively), this Court should reject the writ petition on the ground of delay and laches. In paragraph 11 of the counter affidavit filed on 21.1.1982 it has been stated that two seniority lists were prepared on the basis of the marks obtained in the recruitment examination as well as in the P.T.C. examination. In reply filed on 12.7.1982 the petitioners stated that Annexure-A and B were not the seniority lists and they were not even published in the Gazette and the same were not prepared after following the procedure laid down by the State Government, namely, that no draft seniority list was published and no objections were called for before finally preparing the seniority list. With regard to the assertion made on behalf of the petitioners that no draft seniority list was published and no objections were called for and that annexures-A and B were never issued were not denied by the respondents by filing any reply. When a Court refuses to inquire into belated or stale claims it does so not on the basis of rule of law but rule of practice based on sound and proper exercise of discretion. There is no invariable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case. One of the principles on which the Court proceeds in refusing relief on the ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. Reference may be made to *Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others* (A.I.R. 1974 S.C. 259). From the facts of this case stated above two things emerge. Firstly, respondent nos. 1 to 4 in their counter affidavit have merely stated that Annexures A and B were prepared. The petitioners have asserted that they were not issued and the procedure in preparing the final seniority list was in (sic) followed. The respondents have not denied this. Secondly, on the basis of the seniority list as contained in Annexures

A and B no promotion was effected. In the circumstances, therefore, the writ petition cannot be dismissed on the ground of delay or laches.

Second ground urged for dismissing the writ petition was that after the filing of the same, reliefs were granted to the petitioners by promoting petitioner no. 1 to the post of Sergeant Major and by considering the case post of Sergeant Major. Factually these are admitted by the petitioners. According to writ petition so far petitioner no. 1 is concerned juniors were considered first and, promoted and so far petitioner no. 2 is concerned, juniors to him have already been promoted whereas he was found only fit for promotion. The cases of the persons of 1973 batch were considered according to the seniority list prepared by respondent no. 2 which is impugned. Since that has been done, the writ petition cannot be thrown out on the ground that the reliefs have already been granted to the petitioners.

7. Both the parties at the out set relied on Annexure 2. According to the petitioners, respondent no. 2, the appointing authority, had no jurisdiction to add the marks obtained by the candidates in final P.T.C. examination but was bound to draw the seniority list as per the merit list prepared by the Selection Board, whereas according to the respondents, respondent no. 2 had the jurisdiction to fix the seniority in the manner done. To appreciate the submissions it is necessary to refer in some detail Annexure 2, which according to the Full Bench decision in *Bishundeo Mahto v. A.P.N. Singh* (1982 B.B.C.J. 45) is a rule framed under Article 309 of the Constitution.

8. Annexure 2 was issued on 12.12.1934 by the Government of Bihar and Orissa in the Appointing Department. The relevant portions read as follows:

The local Government have recently had under consideration of the principles to be followed in determining the seniority of officers of the provincial and Subordinate Services, when more than one officer is appointed to a service at the same time. It has been decided that the following instruction should be observed in future :

1. (a).....

(d).....

(c) The decision regarding the Seniority of direct recruits shall be made by the authority entitled to appoint at the time of their first appointment. In all cases such decisions shall be final.

2. Government do not consider it practicable to lay down definite criteria to determine the seniority of direct recruits. The following suggestions, however, are made for the guidance of departments concerned :--

(a).....

(b) When direct recruits have been placed in order of merit by a Selection Board, full consideration should be given to the opinion of arch Board.....

It will be noticed that the first part is a decision of the State Government and the second part contains suggestion, for guidance. Paragraph 1 (c) empowers the appointing authority to decide the seniority of direct recruits. It is admitted that respondent no. 2 was the appointing authority of the Sergeants of 1973 batch and he determined the seniority. There is also no dispute that the petitioners and the respondent nos. 6 to 16 were direct recruits, recruited through the Selection Board. Respondents contended that respondent no. 2 was entitled to take into consideration the different factors including the merit list prepared by the Selection Board for the purpose of determining the seniority. According to the petitioners since they and the respondent nos. 6 to 16 were appointed on the basis of the merit list, respondent no. 2 could not have deferred the preparation of the seniority list for taking into consideration also their performance in the P.T.C. examination. Let us, therefore, scrutinise Annexure-2 from that it appears that the appointing authority has been given power to take final decision. Paragraph 2 says that no criteria is being laid down, but guidelines were suggested, one of which is the merit list prepared by the Selection Board. I will show that the respondents also accepted that the only material for fixing seniority was the merit list, for the respondent no. 2 repeatedly wrote the Government that performance at P.T.C. examination be also considered in this regard.

The respondents have (sic) in Annexure F, note dated 19.1.1967 prepared by the then Additional Inspector General of Police addressed to the Inspector General of Police. The Additional Inspector General of Police suggested that the marks obtained in the P.T.G. examination should be added to the marks obtained in the written and viva-voce test at the time of recruitment for the purpose, if determining the seniority. It was suggested that if the Inspector General of Police approved, the proposal could be examined and followed uniformly. Where, however, the Government approval would be necessary, it would be obtained. The Inspector General of Police agreed with this on 20.1.1967. The petitioners contended that apart from the fact that respondent no. 2 had no power to determine the seniority other than on the merit list of the Selection Board, Annexure F was merely a proposal and it never received the approval of the State Government. The petitioners have relied on Annexure 3 dated 21.11.1954. From Annexure 3, it appears that the Government laid down the procedures for recruitment to the rank of Sergeants. Relevant portion of Annexure 3 is at paragraph 14 which lays down that the names of the candidates will be arranged by the Selection Board strictly in order of merit. The appointments will be made strictly according to the final order of merit subject to the provisions of paragraph 15 and 16. Paragraph 15 is with regard to the reserved seats for the members of the Scheduled Tribes and Scheduled Castes. Paragraph 16 lays down that success shall confer no rights for appointment unless the Inspector General of Police is satisfied after such enquiry as he may consider necessary that the candidate is suitable in all respects for appointment to the public service. According to the petitioners Annexure 3 is determination of the State

Government with regard to recruitment as laid down in Section 2 of the Police Act 1861. With regard to this the respondents contended that the subject of Annexure 3 is recruitment which is distinct from conditions of service. The manner of fixing the seniority is a condition of service and, therefore, Annexure 3 has no application. Further, paragraph 14 of Annexure 3 speaks about the appointment and is silent about the seniority. Moreover, from Annexure 3 it appears that the proposal for amendment of rule 651 of the Police Manual, 1930 was directed to be submitted.

From the perusal of Annexure 3. I am of the opinion that it has nothing to do with the fixation of seniority and is, therefore, of no help to the petitioners. Before noticing the contents of Annexure 4, a letter issued by the Government to the Deputy Inspector General (Administration) Bihar dated 3.5.1979, it may be relevant to note that on and from 1974 the recruitment to the posts of Sergeants is being done on the commendation of Bihar Public Service Commission (the B.P.S.C.) Annexure 4, which is a decision of the Government, communicated to the Deputy Inspector General of Police (Administration) in which it has been stated that the State Government has decided that the inter-se seniority of the candidates should be determined on the basis of the merit list prepared by the B.P.S.C. and if the Inspector General of Police wanted that their performance after the training should also be considered the proposal might be sent for implementing in future. Therefore, the proposal of respondent no. 2, which first originated in Annexure F, till then did not become the rule and/or law. From this it appears that up to the 3rd of May, 1979, the Government were of the view that the inter-se seniority should be fixed according to the merit list prepared by the B.P.S.C.

Annexures 9/1 and 9, issued from the office of respondent no. 2, are dated 4.7.1965 and 1.8.1968 respectively. In the case of C.D. Singh, a Sergeant, his seniority was determined on the basis of the decision of the Selection Board. Both the Annexures refer to paragraph 1 (c) of Annexure quoted above. It was stated in those Annexures that the decision of the Selection Board was final. The seniority list was corrected accordingly. It was contended by the respondents that the interpretation of paragraph 1 (c) of Annexure 2 cannot be said to be final and binding on any of the respondents. I have referred Annexures 9/1 and 9 with a view to showing that the performance at P.T.G. examination was not considered relevant for the purpose of fixing the seniority. On 15.9.1975 a letter was issued from the Office of the Inspector General of Police to the State Government which is Annexure 10. In it, it was requested to the State Government to approve the proposal of the Inspector General of Police that the performance of the persons after training be also considered for the purpose of fixing the seniority. Ultimately, by letter dated 8.2.1983, Annexure G, the State Government, accepted the proposal of the Inspector General of Police and directed that the seniority be determined by adding the marks obtained at the examination after training with the marks obtained by them at the time of recruitment. Therefore, upto 8.2.1983 the procedure was not to add the marks

of P.T.G. final examination.

9. It is of importance to notice that merely asserting in the counter affidavit that since 1956 the seniority was being determined by adding the marks obtained in P.T.C. examination, which fact was denied by the petitioners, the respondents have not brought on record the merit list prepared by the Selection Board and the seniority list prepared by respondent no. 2, with regard to Sergeants of any batch prior to 1973 to show that respondent no. 2 in fact followed that procedure in earlier cases from 1956 to 1972.

In this connection reference may be made to Annexures 8/1, 8/2 and 10. Annexure 8/1 is a letter from the State Government dated 12/13.7.1971 to all the Secretaries and Head of the Department. The subject is decision of the State Government for the purpose of appointment and fixation of seniority with regard to all employees of the State Government. It appears from Annexure 8/1 that for purpose of fixing the seniority the period for which the Government servant was working on ad hoc basis was being counted. In this context this Annexure was issued, in which it was laid down that counting the period of working on ad hoc basis was contrary to Annexure 2 and it was held that the seniority shall be fixed according to the merit list prepared by the B.P.S.C. or the Selection Board by excluding the period for which a person might have worked on ad hoc basis. Annexure 8 is a letter from the State Government to the Inspector General of Police dated 14.5.1980. The subject is correction of the seniority list of the Assistant District Prosecutors of Police, It appears from this Annexure that it was issued after the decision of the case of Bajrang Lal. C.W.J.C. No. 1914 of 1975 (disposed of on 11.10.1977) was filed by Bajrang Lal who was appointed as Assistant District Prosecutor of Police in January, 1987 on the basis of the merit list prepared by the Selection Board. Bajrang Lal challenged the seniority list prepared by the Inspector General of Police by which the marks obtained by him in the P.T.C. examination was also added to the marks obtained by him as the recruitment test. His case was that it was in violation of Annexure 2. It was held in that case that in view of Annexure 13 of that case (which is Annexure 8/1 of this case) the Inspector General of Police was not entitled to add the marks obtained in the P.T.G. examination for determining the seniority and the seniority was required to be determined only on the basis of the merit list prepared by the Selection Board. The State Government accepted this position and implemented it not only in the case of Bajrang Lal but also in the case of other persons of that orders as appears from Annexure-8/2.

10. So far Annexures 8 and 8/2 are concerned, it was contended on behalf of the respondents that the cadre of the District Prosecutors was different from that of Sergeants and, therefore, any decision taken with regard to them will not be of any avail to the Sergeants. It has not been disputed by the petitioners that the cadre of District Prosecutors is different than that of the Sergeants. But it was submitted that both the cadres have been lumped together by the State Government in its communications by laying down the procedure to be followed

for fixing the seniority. In other words, their conditions of service are same. The petitioners relied on Annexure 10, letter from the office of the Inspector General of Police to the State Government. The subject of Annexure 10 is the determination of the seniority of the Sergeants, Sub-Inspectors and Assistant District prosecutors. It is admitted case that the persons who were appointed in the cadre of District Prosecutors were also required to undergo training in the P.T.C. after recruitment. In paragraph 3 of Annexure 10 it has been stated that the Sergeants, Sub-Inspectors and Assistant District Prosecutors are equal in rank. By Annexure 10 the office of the Inspector General of Police requested the State Government to issue appropriate order for adding the marks obtained by the persons of the aforesaid three cadres in the P.T.C. final examination along with the marks obtained by them at the time of recruitment. Annexure 4 was also relied upon. This is a letter from the State Government dated 3.5.1979 to the Inspector General of Police. Here also the subject is the determination of seniority of the Sergeants, Sub-Inspectors and the Assistant District Prosecutors. The contention of the respondents that Annexures 6 and 8/2 cannot be relied upon by the petitioners is without any substance.

11. It was submitted on behalf of the respondents that the decision in Bajrang Lal's case (Supra) was not correct inasmuch as since Annexure 2 was the rule framed under Article 309 of the Constitution, it must prevail over any executive instructions, such as Annexure-8/1.

There is no dispute with regard to the legal position that by executive instructions the rules framed under Article 309 of the Constitution cannot be amended or modified. There is also no dispute with regard to the legal position that if the rule is silent in any particular point, the Government can fill up the gap and supplement the rules and issue instructions not inconsistent with the rules. Paragraph 1 (c) of Annexure 2 no doubt empowers the Inspector General of police to determine the seniority of direct recruits, but as already held it does not lay down the binding criteria on the basis of which the seniority shall be determined. The State Government, therefore, could have filled up that gap of Annexure 2. There is yet another aspect of the matter. Section 2 of the Police Act, 1861, empowers the State Government to determine the conditions of service of members of the subordinate ranks of any police force. Procedure to be followed for fixing the seniority is a condition of service. The State Government was, therefore, competent to determine the mode u/s 2 of the Police Act for fixing the seniority. However, in paragraph 2(b) of Annexure-2 the appointing authority was directed to give full consideration to the merit list prepared by the Selection Board. In the circumstances the State Government was competent to fill up the gap by issuing annexure 8/1. With respect, Bajrang Lal's case (Supra) was correctly decided.

12. For the reasons, aforesaid, it must, therefore be held that for the purpose of fixing seniority respondent no. 2 had no jurisdiction to add the marks obtained at the P.T.C. final examination.

13. It was contended on behalf of the respondents that even assuming that there was no rule for adding the marks obtained in the P.T.C. examination for determination of the seniority, by Annexure G the State Government decided that those marks shall be added. That being the position, according to the respondents, this Court cannot interfere with the seniority fixed by the Inspector General of Police. In reply it was submitted on behalf of the petitioners that Annexure G came into existence on 8.2.1983 and it cannot be made applicable to the persons recruited in 1973.

14. I have already noticed that by Annexure G the State Government determined that for the purpose of fixing the seniority the marks obtained at the P.T.C. examination shall also be added with the marks obtained at the time of recruitment. It is not the case of the respondents that Annexure G is a rule framed under Article 309 of the Constitution. In my opinion, Annexure G is the determination of the State Government u/s 2 of the Police Act, 161 with regard to conditions of service. Neither there is any thing in Annexure G to indicate that the State Government purported to give any retrospective effect nor, in my opinion, can it be given retrospective effect. Annexure G, therefore, cannot be held to be applicable to the candidates selected and recruited as Sergeants in 1973. Their seniority shall have to be fixed according to the rules then prevalent i.e., on the basis of the merit list prepared by the Selection Board.

15. It was contended on behalf of the respondent that whether the petitioners were at serial nos. 5 and 6 respectively in the merit list prepared by the Selection Board is a disputed question of fact and, therefore, no relief can be granted in this writ petition.

16. In paragraph 6 of the writ petition the petitioners have asserted that their names appear in the merit list at serial nos. 5 and 6 respectively. In that list they have been shown above respondent nos. 6 to 16. The same thing has been reiterated in paragraph 7 of the writ petition. Paragraphs 6 and 7 of the writ petition have been traversed in paragraphs 8 and 9 of the counter affidavit filed on 21.1.1982. In paragraph 8 of the counter affidavit it has been stated that the merit list of the Sergeants of 1973 batch was not available in the concerned file and efforts were being made to grace it out. It has been further stated that the merit list was made on the basis of the marks obtained at the recruitment test and also the marks obtained in the P.T.C. examination. It has been asserted that according to the marks obtained in the written test petitioner no. 1 was placed at serial no. 9 and petitioner no. 2 was placed at serial no. 10. In paragraph 9 of the counter affidavit it has been stated that as the merit list was not available in the file, it was not possible to say whether the seniority list as mentioned in paragraph-6 of the writ petition was correct or not. On 28.1.1982 a Bench of this Court directed the Government Pleader No. to produce the executive instructions or rules on the basis of which the seniority of the candidates selected through the selection Board was fixed. On 27.2.1982 a Bench of this Court directed the learned Government Pleader no. 1 to call for the relevant file which contained the

merit list of the Selection Board and to keep it with him so that if the Bench finally hearing this application, directed for inspection or production of the file it might be possible to do so without adjourning the case. In the affidavit filed by the petitioners on 12.12.1982 in paragraph 7 it was stated that no merit list was prepared on the basis of the performance of the Sergeants at the P.T.C. examination. They in that paragraph stated that they had learnt from the office of respondent no. 4, i.e., the Deputy Inspector General of Police (Communication) Bihar, that the merit list prepared by the Selection Board was in the relevant file and they quoted the same. It appears from that list that 350 candidates were found fit out of which 10 qualified in all the subjects in the written test. Petitioners, out of those 10 candidates, are respectively at serial nos. 5 and 6 of the that list. Three candidates had failed in Hindi but the Selection Board decided to select them, Respondent Nos. 6 and 7 who are at serial nos. 12 and 11 of that list are such candidates who had failed in Hindi. Seven candidates had failed in English but the Selection Board selected them also. Respondent No 8 is at serial No. 14 and is such a candidate who had failed in English. In the affidavit filed on behalf of the petitioners on 24.2.1983 they filed Annexure 13, the minutes of the proceedings of the Bihar Legislative Assembly. Annexure 13 was filed in support of the submissions made by the petitioners in paragraph 7 of their affidavit filed on 12.2.1982.

17. I have extensively referred relevant portions of the writ petition, supplementary affidavit, counter affidavits and the Annexures. When the hearing of this petition was taken up, the learned Government Pleader No. 1 informed us that the merit list prepared by the Selection Board could not be found out. From the statements of facts made on behalf of the parties, as noticed above, I do not find it difficult to accept the assertions made by the petitioners. It must be held that the petitioner name appeared in the merit list prepared by the Selection Board at serial nos. 5 and 6 respectively. I may also notice that nothing has been brought to our notice on behalf of the respondents 1 to 5 to show that any effort was made by them to re construct the merit list from the relevant records particularly when that was one of the questions to be decided in this writ petition.

18. On behalf of the respondents, it was submitted that in view of the subsequent events by which respondent nos. 6,7 and 8 were promoted to the posts of Sergeant Major, and in view of the fact that Annexures A and B exist, the petitioners ought to have amended the writ petition. Since no amendment has been prayed for, no relief can be granted to them. Petitioners in their affidavit filed on the 30th of March, 1982, had stated that respondent nos. 6,7 and 8 who were juniors to them were promoted illegally to the posts of Sergeant Major. On 12.2.1982, the petitioners replied with regard to Annexures A and B. On 27.4.1983 when the hearing was taken up the respondents therefore had full notice of the grounds taken by the petitioners. Since the respondents had notice of the same, I do not find any reason why they should not be heard on that. On 27.2.1982 a Bench of this Court ordered that any order of promotion made thereafter would be subject to the result of this application. Therefore, any

promotion made after 27.2.1982 will be subject to the result of this petition. The petitioners are entitled to appropriate reliefs.

19. In view of my above findings, I do not think it necessary to decide the alternative submissions made on behalf of the petitioners. In the result, the writ petition is allowed. The petitioners are declared senior to respondent nos. 6 to 15 in the rank of Sergeants and seniority list must be prepared accordingly. Petitioner no. 1 has already been promoted to the rank of Sergeant Major and petitioner no. 2 has been found fit for such promotion. Respondent Nos. 6,7 and 8 have been promoted to that rank before the petitioners. If no post is available in the rank of Sergeant Major to which petitioner no. 2 can be promoted, respondent no. 8 who was at serial no. 14 in the merit list prepared by the Selection Board shall be reverted to the post of Sergeant and the post so available should be filled up by the petitioner no. 2. It is ordered that the petitioners shall be deemed to have been promoted to the rank of Sergeants Major earlier than the respondent nos. 6,7 and 8. It has not been brought to our notice that any other respondents have been promoted.

On the facts and in the circumstances of this case, there will be no order as to costs.