

(2024) 01 JH CK 0012

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6836 Of 2018

Sriniwas Rao And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 05-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Citation : (2024) 01 JH CK 0012

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Swati Shalini, Jai Prakash

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Petitioner nos. 1 and 2 are Coaches whereas petitioner nos. 3 to 17 are the sport persons who won National Sport Event. Their grievance is that they have not been given out of turn promotion as per the Police Order 219A/90 X.P. issued by the Director General of Police, Bihar. This policy has been adopted by the State of Jharkhand vide Letter No. 879/G dated 09.09.2011 of the office of Director General of Police and Inspector General of Police, Jharkhand.

2. The instant writ petition has been filed under Article 226 of the Constitution of India for direction to the respondents-Police Authorities to consider their cases for out of turn promotion in the light of the policy as stated above.

3. It is submitted by learned counsel for the petitioners that under the stated policy to encourage the sport persons serving the department of police from time to time, the officers and men of the police department have been given out of turn promotion from the date when they won medal for the State. Reference is made to one Santosh Kumar Singh, Constable, who was the winner of Gold Medal in 5th All India Basket Ball Championship held from 14.02.1999 to 25.02.1999. He was granted promotion to the post of Assistant Sub Inspector on

18.05.2006 with effect from 25.02.1999. It was not the solitary case, but also Dev Kumar Rao, Constable, Rajeshwar Prasad Verma, Assistant Sub Inspector and Krishna Kumar Sharma, Constable, were granted promotion w.e.f. 17.02.1997, 08.11.1997 and 11.01.1998 respectively vide office order dated 06.04.1998. Other cases have also been cited where performing sport persons have been given out of turn promotion.

4. The main contention of the petitioners is that petitioner nos. 3 to 17 have been belatedly granted promotion, but not from the date they won medals.

5. With respect to petitioner no. 1 it is submitted that although he has been found fit for promotion as Coach and fulfills the requisite criteria but his case is pending for consideration by the Departmental Promotion Committee for last six years and two months. The team represented by the petitioner no. 1, had won gold medal in 66th All India Police Volleyball Cluster Championship-2017 held on 10.10.2017 to 14.10.2017, in which he was coach of the team.

6. Mr. Jai Prakash, learned AAG-1A, appearing for the respondents, has not disputed the police notification by which out of turn promotion was granted in past to outstanding sport persons in the police department. What is contested, however, is the claim for promotion from the date of their winning medal. It is argued that the policy does not lay down any legal right and is discretionary in nature. In almost all the cases promotions have been granted from the date of the order and not from the date of promotion. Only in one case of Santosh Kumar Singh out of turn promotion was granted effective from the date when he won medal for the State. With regard to the case of Dev Kumar Rao, Constable, Rajeshwar Prasad Verma, Assistant Sub Inspector, and Krishna Kumar Sharma, Constable, it is submitted that the notification does not mention that they have been granted promotion from the date they won medal for the State. As far as petitioner no. 2 is concerned, he is not a trained coach of National Institute of Sports (NIS) and, therefore, he is not eligible for promotion under the Scheme.

7. After having considered the submissions advanced on behalf of both sides, it is apparent that in the light of the policy of the Government to encourage the sport persons from time to time, out of turn promotion has been granted to the police personnel. The main question before this Court is whether the petitioners are entitled to promotion with effect from the date of winning the medal or not.

8. It has been contended on behalf of the State that since the incentive in the form of promotion is a part of policy. Therefore, no right inheres in the petitioners to claim promotion, and far less promotion from the date they won medal. There are, however, instances where the promotions have been granted to police personnel with effect from the date they won medal. Not only in case of Santosh Kumar Singh but also from Annexure-10 of the rejoinder to counter affidavit dated 08.12.2020 it appears that three persons were granted promotion with effect from different dates by minutes of the Promotion Committee for considering the promotion in the light of Police Order 219A/90 X.P. The

promotion was granted to one Sanjay Kumar Singh, Constable No. 368 w.e.f. 25.02.1999 whereas the minutes was signed in the year 2007.

9. As far as petitioner nos. 3 to 17 are concerned, they have already been granted promotion and their grievance is that they have not been given promotion with effect from the date when they won medal for the State.

10. So far as writ jurisdiction of this Court is concerned, it is for enforcement of not only legal and fundamental right but also it strikes at arbitrary exercise of executive power by instrumentalities of State. State cannot apply unequal yardsticks for those who are similarly situated. Argument that in policy matters authorities have a choice in its implementation, and can decide whom to be extended, when to be extended the benefit under the scheme is difficult to countenance, in view of the settled law that administrative actions cannot be exercised in an arbitrary manner. It is open for the State to review and revisit its policy, but so long as it is in place, the same has to be applied evenhandedly without any discrimination. That is the requirement of non-arbitrariness in administrative action flowing from Article 21 of the Constitution. It has been held in *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489 at page 504 The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised".

11. What appears in the present case is that scheme to incentivize the sportspersons from the police department is not being applied uniformly. To some, out of turn promotion has been granted from the date of promotion, whereas to others it has been granted from the date when they won the prize, whereas in some cases the matter is kept pending years together before the Departmental Promotion Committee (DPC) without taking any decision in the matter. This can be hardly said to be in conformity with the mandate of non-arbitrariness as enshrined in Article 21 of the Constitution.

12. The order dated 18.02.2019 passed by Respondent No.3 with respect to petitioner no.3 to 17 wherein promotion has been granted from the date of notification, whereas financial benefits have been given from the date of joining to the promotional post. Deputy Inspector of Police, Jharkhand Armed Police (JAP) vide his Memorandum No.2404/Sa.Sha dated 16.10.2017 to concerned SSP were asked to forward the service books and proposal for out of turn promotion of the petitioners. The service books were sent and was placed before the screening committee which recommended by letter dated 24.11.2017 further out of turn promotion.

13. During the pendency of the instant writ petition, as per the direction of Director General of Police (R-2), Police Inspector General (Human Rights) (R-3)

passed an order vide Memo No.316/G dated 18.02.2019 and the decision has been taken that the promotion will be granted from the date of notification whereas financial benefits will be given from the date of joining to the promotional posts. This decision will not affect the prospect of promotion of the petitioners, since they had won the prizes much before coming of this direction, and also because it has come much after the process for promotion had already been initiated. Furthermore, the very condition that the promotion will be granted from the date of notification, gives unbridled latitude to the decision-maker, to arbitrarily delay the notification and by cherry picking the cases when the promotion is to be granted.

14. The admitted position is that Petitioner No.1 has been found National Institute of Sports (NIS) trained coach and even then, the grant of promotion to him had been kept pending awaiting verification of his certificate.

15. What is apparent is that all the petitioners except Petitioner no.2 who is not a NIS trained coach, have been denied promotion and consequential benefits from the date when they qualified for being given incentives under the scheme, without any justifiable reason, by keeping the matter pending, and then rejecting it altogether. Such an arbitrary exercise in giving incentives is against the principles of non-arbitrariness that pervades our constitutional scheme guaranteeing the right to equality.

Under the circumstance, the Respondents are directed to extend the benefit of out of turn promotion with consequential benefits, from the date of winning the Gold medal to the petitioners, save and except Petitioner No.2 who does not fulfill the eligibility criteria.

Writ Petition is accordingly allowed. I.A., if any, stands disposed of.