

(2001) 02 MP CK 0048
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1778 of 2000

State of M.P.

APPELLANT

Vs

Prafulla Chandra Bandopadhyaya and another

RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Madhya Pradesh Police Regulations — Clause 7

Citation : (2001) ILR (MP) 1838 : (2001) 4 MPHT 132 : (2001) 3 MPLJ 429

Hon'ble Judges : Mr. Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : Shri Vivek Awasthy, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

Respondent No. 1 Prafulla Chandra Bandopadhyaya was inducted in service in the year 1965 as Subedar in the 3rd Battalion of the Special Armed Force. He was appointed as Assistant Public Prosecutor with effect from 15-12-1969 as per Gazette notification dated 3-12-1969. He was sent on deputation to the Special Police Establishment, Lokayukt, Madhya Pradesh in the year 1985. On completion of requisite period, time bound promotion was given to him in the pay-scale of Assistant Public Prosecutor, Grade-I. This time bound promotion was given with retrospective effect vide order dated 13-7-1989. At this time the respondent No. 1 was also holding the promoted post of Assistant Public Prosecutor, Grade-I to which he was promoted vide order dated 11-11-1987 on adhoc basis. He was retired on 13-7-89 on attaining the age of superannuation. The order pursuant to which time bound promotion was given, was passed by the parent department of respondent No. 1, i.e., the police department. The respondent No. 1 was found fit to be placed in the pay-scale of Rs. 850-1330, which is of the Assistant Public Prosecutor, Grade-I. The respondent No. 1 filed a petition before the State Administrative Tribunal, Jabalpur (for short the "Tribunal") praying the relief that he should be treated as Assistant Public Prosecutor, Grade-I, w.e.f. 5-4-1983, the

date on which he was found fit for time bound promotion and difference of pay and allowances be directed to be given.

The petitioner, in their return before the Tribunal, submitted that the respondent No-1 was not nominated by the Superintendent of Police for promotion for the post of Assistant Public Prosecutor, Grade-I. However, it was not disputed in the return that the time bound promotion was given to the respondent No. 1 w.e.f. 5-4-1983 along with others. The petitioner further contended that Clause 7 of Schedule-A to M.P. Police Regulations deals with promotion from Assistant Public Prosecutor, Grade-II to Assistant Public Prosecutor, Grade-I. A person having experience of 8 years as Assistant Public Prosecutor, Grade-II could be promoted to the post of Assistant Public Prosecutor, Grade-I and for this purpose, District Superintendent of Police was to prepare a list and nominate the person. The respondent No. 1 was never nominated and his case was never considered by the committee.

The Tribunal vide order dated 11-2-1999 has allowed the application. The Tribunal has come to the conclusion that injustice was meted out to the respondent No. 1 as his case was not at all considered for nomination to the post of Assistant Public Prosecutor, Grade-I. It was not the case set up by the petitioner that the respondent No. 1 was unfit. Since he was on deputation in the Special Police Establishment, Lokayukt, his case was not taken into consideration. But, the fact remains that he was promoted in the Special Police Establishment to the post of Assistant Public Prosecutor, Grade-I in the year 1987 and was also found fit for time bound promotion to the said pay-scale by the parent department w.e.f. 5-4-1983. The Tribunal took notice of that fact that the respondent No. 1 as a matter of fact had retired from the post of Assistant Public Prosecutor, Grade-I to which post he was promoted by the Special Police Establishment, Lokayukt.

Learned counsel appearing for the petitioner has submitted that the order passed by the Tribunal is unjustified. Since the promotion was adhoc, recoveries could be made from the respondent No. 1 of the amount paid to him and respondent No. 1 is not entitled to count the period as Assistant Public Prosecutor, Grade-I. With respect to delay in filing the petition, learned counsel for the petitioner submitted that it was unusual procedure that delay of one year occasioned in filing the present writ petition before this Court.

The Tribunal passed the order on 11-2-1999 and it has been assailed before this Court after one year and 27 days in the writ petition, in para 4, it is simply mentioned that there is no delay in filing the present writ petition. The delay has not been explained at all. We are of the opinion that the petition is belated and deserves to be dismissed on this count alone.

On merits also, we are satisfied that ends of justice would be met if the order of the Tribunal is allowed to stand. The Tribunal has taken the notice of the decision of the Apex Court in the case of State of Punjab and Others Vs. Inder Singh and

Others, . Paras 20 and 21 of the said decision have been relied upon by the Tribunal, which we quote here under :--

"20. It is in fact an admitted position that Constables on deputation to CID have reached higher ranks and retired from CID in those ranks. A hope, though not true, is instilled in officers like the respondents that they would continue in the CID holding higher ranks till the age of superannuation. The conduct of the appellants of now suddenly asking the respondents to go back to their parent departments when they have put in best years of their lives in the CID would appear to be rather unjust. It would have been more appropriate for the appellant to repatriate the respondents after the expiry of the initial period of deputation or at least they should have been told the consequences of their continuing on deputation and sudden repatriation. It would also be more appropriate considering the fact that the deputation in CID could be for any number of years, that the rules are amended and a separate cadre is created in CID to absorb the officers, if they are not on deputation for a number of years. It is submitted before us that Constables who have come on deputation to CID retired while, holding higher ranks in CID and they earned their pension on the basis of their holding higher ranks though the pension was being paid by their parent department. This may be on the basis of relevant pension rules as applicable in the State. Now, if the respondents go back to their parent Department and work there as Constables or Head Constables their emoluments would be reduced considerably and they would be deprived of getting higher pension when they retire. 21. Considering the whole aspect of the matter we affirm the order of the High Court to the extent that option be given to all those respondents who have put in 20 years" qualifying service to seek voluntary retirement from the CID in the ranks they are holding and they will be deemed to have worked in CID up to the date of this judgment. The option shall be given within 30 days."

In the instant case the respondent No. 1 was appointed as Assistant Public Prosecutor, Grade-II in the year 1969 and though he was entitled to be promoted as Assistant Public Prosecutor, Grade-I, w.e.f. 5-4-1983 but, his case was not at all considered. It is not the case set up by the petitioner that he was not entitled to be considered, but, as a matter of fact his case was ignored from consideration, presumably on the ground that he was sent to Special Police Establishment, Lokayukt. The Tribunal has taken the view in para 16 of the order that if a person works on a promoted post in the department to which he was sent on deputation, he would be deemed to have been retired from that post and all pensionary claims, salary etc. should be paid to him according to the salary which was paid to him on promotional post, in view of the Apex Court decision in case of State of Punjab and others Vs. Inder Singh and others (supra), and has quashed the recovery made from the respondent No. 1 of the amount paid to him and has directed the refund of the amount so recovered. It appears that the respondent No. 1, as a matter of fact, was found fit for time bound promotion w.e.f. 5-4-1983 and he was also promoted on 11-11-1987 to the same pay-scale

on the actual post of Assistant Public Prosecutor, Grade-I, which pay-scale already he was enjoying and order of his time bound promotion is not in dispute. Thus, we are not inclined to interfere in the order passed by the Tribunal, which appears to be just and proper in the facts and circumstances of the case.

The petition is dismissed on both counts; being belated as well as on merits.

Writ Petition dismissed.