
(1988) 05 GAU CK 0020

In the Gauhati High Court

Case No : Civil Rule Nos. 168, 189/82, 8/83 & 108 of 85

Sukumar Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-05-1988

Acts Referred:

Citation : (1988) 2 GLR 262

Hon'ble Judges : J.Sangma, J and S.N.Phukan, J

Bench : Division Bench

Advocate : S.Barman Roy, K.N.Bhattacharjee, D.K.Biswas, B.B.Deb, Advocates appearing for Parties

Judgement

Phukan, J.—By this common judgment and order we propose to dispose of 4 (four) writ petitions which were registered as Civil Rule Nos. 168, 189/82, 8/83 and 1080/85.

2. In Civil Rule 168/82 the petitioner was promoted to the post of SubInspector of police in the year 1965; petitioner in writ petition 189/82 was promoted on 31.8.70; petitioner in Civil Rule 1/83 was promoted on 31.8.70; and 13 petitioners in Civil Rule No. 1080/85 were promoted during the period from 1973 to 1976. on 6.12.62 the then Chief Commissioner of the Union Territory of Tripura framed a set of rules under Article 309 of the Constitution for recruitment for the post of Police (Armed and unArmed) (vide Annexure1 to the writ petition in Civil Rule No. 168/82). According to said rule the method of recruitment to the said post of Inspector of Police was by promotion failing which by transfer/deputation and qualifications laid down for promotion was 3 years of service in the grade of SabInspector of Police. By the NorthEastern Areas (Reorgacisation) Act, 1971 on and from 21.1.1972 the new State of Tripera was established comprising the territories which were comprised in the Union Territory of Tripura. On 12.2.81 the Government of Tripura framed revised rules under Article 309 of the Constitution regarding the method of recruitment and the qualifications necessary for appointment to the post of Inspector of Police and according to the

said Rules the method of recruitment was by promotion failing which by transfer/ deputation and the qualification for promotion was 8 years in the grade of SubInspector of Police and "having passed prepromotion examination as prescribed by the State Government and to be conducted by the Tripura Police Organisation/West Bengal Police Directorate". The present petitioners have not been promoted to the post of Inspector of Police mainly on the ground that they have not appeared/passed the prepromotion examination as laid down in the revised rules of 1981 though other SubInspectors of Police who were similarly situated or who were junior have been promoted. Being aggrieved the petitioners have approached to this Court for appropriate writ/ directions.

3. The main contention of the learned counsel appearing for the petitioners is that the revised rules of 1981 could not be made applicable to the present petitioners as they acquired a vested right to be considered for promotion after putting in 3 years of service as SubInspector of police under the Rules of 1962. It has also been urged that conditions of passing prepromotion examination cannot be made applicable to the present petitioners as it was not a condition for promotion under 1961 Rules. Mr. Barman Roy, learned Advocate General has submitted that under Article 309 of the Constitution the State Government is competent to frame rules giving retrospective effect and as such Rules of 1981 are applicable to the present petitioners. According to Mr. Barman Roy passing of prepromotion examination is not a condition of service and as such no vested right of the petitioners have been taken away by the aforesaid Rules of 1981.

4. From the language of the notification dated 12.2.81 by which rules for appointment to the posts of Inspector of Police were framed, it is clear that the said rules were not given retrospective effect. Only question which needs our consideration is whether the said revised rules would apply to the persons who were appointed to the posts of SubInspector of Police prior to 12.2.1981.

5. In *T. R. Kapur and others vs. State of Haryana and others* A. I. R. 1987 S.C. 415, it was held that power to frame rules to regulate the conditions of service under the proviso to Art. 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect, and that it is well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. Their Lordships further held that the rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits accrued under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights.

6. The Apex Court in *ExCapt. K C. Arora and another vs. State of Haryana and others* (1985) 3 S. C. C. 281 also held that amendment of rules framed under Article 309 of the Constitution taking away vested rights with retrospective effect is invalid.

7. By the rules of 1981 two conditions were imposed for promotion to the post of Inspector of Police, namely, 8 years service in the Grade of SubInspector of Police and passing of pre promotion examination. Unless the above qualifications are fulfilled a SubInspector of Police who was appointed prior to February, 1981 would not be considered for promotion. We are, therefore, of the opinion that by this amendment conditions of service were changed. Prior to February, 1981 the petitioners acquired vested right under the rules of 1962 to be considered for promotion after putting in 3 years of service as Sub Inspector of Police. Thus we are of the opinion that by 1981 rules the rights acquired by the petitioners to be considered for promotion to the posts of Inspector of Police after putting in 3 years of service in the capacity as SubInspector were taken away. In view of the law laid down by the Apex Court as stated above, we are of the opinion that rules framed in 1981 cannot be made applicable to the present petitioners as they acquired right to be considered for promotion under 1962 rules.

8 As stated earlier rules of 1981 has not been given retrospective effect. So in our opinion the intention of the rule makers is clear and it was intended that the SubInspectors of Police who were appointed prior to 12.2.1981 shall be governed by 1962 rules for their promotion to the post of inspectors of Police as they had acquired right to be considered for promotion and the aforesaid rules of 1981 shall be applicable only to those categories of subInspectors who were appointed after the above rules were notified. The above fact also supports our view that for the purpose of promotion the petitioners will be governed by 1962 rules.

9. A preliminary point was raised before us on behalf of the State that the present petitions are liable to be thrown out on the ground of delay, laches and acquiescence. The rules of 1981 were notified on 12.2.81 and two petitions, namely, Civil Rule Nos. 168 and 189/82 were presented before this Court on 4.9.82 and 1.12.82. The above delay of more than one year cannot be a ground to throw out the petitions. In coming to the above conclusion we have taken into consideration the fact that the petitioners are members of the disciplined forces and belong to lower echelons of service and it is extremely difficult for them to rush to Court. Hence this contention is rejected.

10. Learned counsel appearing on behalf of the petitioners initially urged the point that the revised rules of 1981 are bad in law as the State Government did not obtain previous approval of the Central Government as required under Section 66 of the North Eastern Areas (Reorganisation) Act, 1971. Though this point may have some substance, it was not pressed and as such we need not consider it.

11. From what has been stated above, we hold that the revised rules regarding the method and qualifications necessary for appointment to the post of Inspector of Police as notified by the Government vide notification No. F. 20(12) GA/79 (1) dated 12.2.81 (vide Annexure 2 to the Civil Rule No. 168/82) shall not apply to the petitioners who were holding the posts of SubInspector of Police before the aforesaid date and that for the purpose of promotion to the said posts the

petitioners shall be governed by the old rules which were notified by Tripura Administration vide notification No. F. 20(6)GA/61 dated 16.12 62 (vide Annexure 1 to the above writ petition). We direct that the cases of the petitioners for promotion to the posts of Inspector of Police shall be considered by respondents 1 and 2 on the basis of the above old rules of 1962 and on the basis of service records of the petitioners at the relevant time. Cases of the petitioners shall be considered individually prior to the date on which their immediate junior was promoted to the post of Inspector. In the event any petitioner is found suitable for promotion he shall be so promoted notionally from a date prior to date of promotion of his immediate junior and from the date of order of promotion he shall be promoted on regular basis. The entire process shall be completed within two months from today.

In the result, the petitions are allowed to the extent indicated above. Considering the facts and circumstances we direct the parties to bear their own costs.