

(1995) 11 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 5423 of 1984

Surendra Nath Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0041

Judgement

Radha Mohan Prasad, J.—In the present writ application the petitioners are aggrieved by the inclusion of the names of respondent Nos. 6 to 12 and 22 in the Gradation list of Inspectors of Police published under memo No. 8616 dated 8.8.83, as contained in Annexure-5 by the IG. (Adm.), Bihar, Patna and also by the placement of respondent Nos. 13 to 21 in the said Gradation list above by the petitioners and consequently, they have sought for issuance of a writ in the nature of writ of mandamus to prepare and finalise the gradation list afresh in accordance with the law after exclusion of the names of respondent Nos. 6 to 12 and 22 and also for proper placement of respondent Nos. 13 to 21.

2. The short relevant facts of the case are that the posts of Inspector of Police is filled in from amongst Sub-Inspectors of Police. For promotion on the said post a Sub-Inspector of Police has to compete and on consideration of record of efficiency etc. scrutinized at various stages and finally upon recommendation of the Inspector-General (Adm.) promotion is granted. According to the petitioner's respondent Nos. 6 to 12 belong to the cadre of Reporters, which is separate from the cadre of general line of the police personnel including Sub-Inspectors and Inspectors of Police. By the Government resolution, contained in memo No. 1743 dated 16.2.1976 of the Under-Secretary to Government, Home (Police) Department, in Annexure 2, it appears that there were 6 Senior Reporters and 16 Junior Reporters in the C.I.D. which constituted a separate cadre of their own. The State Government with a view to boost their moral and to enlarge the avenue of their promotion, decided to give them the status of Inspector of Police and Sub-Inspectors of Police respectively in their own scale of pay with all conditions and facilities available to the Inspectors or Sub-Inspectors of Police as

the case may be. Thereafter a provisional Gradation list of Inspectors of Police as circulated vide memo dated 19th April, 1983, contained in Annexure-4 inviting objections. The petitioners claim that they submitted objections. Thereafter the final gradation list contained in Annexure-5 was issued, the relevant extract of which has been annexed as Annexure-5 which has been impugned in the present writ, application. In the said Gradation list the names of respondent No. 22 who belongs to the cadre of Home Guard was also included and placed above the petitioners. The petitioners have also assailed the same. Further, the names of respondent Nos.12 to 21 who were given out of turn promotion were placed above the petitioners, the validity of which has also been challenged by the petitioners in the present writ-application.

3. The case of the petitioner is that as the cadre of reporters as well as of the Home Guard remained throughout separate and were never merged with the cadre of the general Police personnel, such as Sub-Inspectors and Inspectors of Police, the inclusion of the names of the respondent Nos. 6 to 12 and 22 and their placement in the Gradation list above the petitioners is wholly, illegal, arbitrary and unconstitutional of India. Further, in regard to the other respondents, namely, respondent Nos. 13 to 21 the case of the petitioners is that the said respondents having been given promotion out of turn as per the provisions of the Rules contained in Rule 660-C of the Bihar Police Manual either in the same order under which the petitioners were promoted or even later, have wrongly been placed above them in the Gradation list. In this regard, it is stated that except Ramdeo Prasad and Loknath Chakravarty (respondent Nos. 20 and 21) all the respondents were given their out of turn promotion in the Inspector-General, Selection Board of the year 1972, whereas the petitioner Nos. 1 to 4, who were promoted as per their turn in 1971, 1973, 1976 and 1979 Inspector-General Selection Board respectively, i.e. either before or in the same Selection Board in which the said respondents were given out of turn promotion yet they have been placed above the petitioner Nos. 1 to 4 in contravention of the provisions of the Rules contained in 660-C itself. As regards respondent No. 21 Aloknath Chatterjee, he was given out of turn promotion by the Selection Board in the year 1981 and as such, he should have been placed below petitioner Nos. 1 to 5 in view of Rule 660-C. As regards Ramedeo Prasad, respondent No. 20, it is contended that he was given President Medal on 26.1.78 of meritorious service when he was officiating as Sub-Inspector on fortuitous basis without Selection Board, but later was given out of turn promotion as Inspector in the I.G. Selection Board of 1978 without Even giving them regular promotion as Sub-Inspector. Thus, according to the petitioner, his out of turn promotion as Inspector in I.G. Selection Board of 1978 itself was illegal and contrary to Rule 600-C. But besides this, it is also contended that at any rate his placement in the Gradation list above those regular promotes upto in the year 1978 was wholly illegal, arbitrary and contrary to Rule 660-C and also ultra vires Articles 14 and 16(1) of the Constitution of India.

4. No counter affidavit has been filed in this case. The writ application was

admitted for hearing on 4.2.85 and any promotion made in the meantime were ordered to be subject to the decision in this application. In the absence of counter affidavit the facts stated in the writ application in regard to non-merger of the cadre of Reporters as well as of Home Guard personnel with the police personnel of general cadre remained undisputed. However, learned S.G. II appearing; for the respondents submitted that by virtue of Government resolution contained in Annexure-2 the cadres of Reporters and Junior Reporters stood merged with the cadre of Inspector and Sub-Inspectors as according to the said resolution, by virtue of giving them Status of Inspectors and Sub-Inspectors, the Government took decision in the said resolution that they would be entitled for all conditions and benefits, which are available to the police personnel in the General cadre. I do not find any substance in the said submission of the learned S.C. II By now, it is well settled that the constitution and creation as well as merger of the cadre has to be made by issuing specific notification in that regard, as held by this Court in the case of M.G. Sharan and Others Vs. State of Bihar and Others, . However, in Paragraphs 29 and 32 of the writ-petition the petitioners have specifically stated that the cadres of Reporters and/or Personnel of Home Guard are separate and have never been merged with the cadre of the general police personnel. There is no denial of the said fact, as no counter-affidavit has been filed. In that view of the matter, I t am constrained to hold that there was no merger of the cadres of Reporters/Junior Reporters and/or of Home Guard Police Personnel with the cadre of General Police Personnel.

5. Accordingly, I find that the inclusion of names of respondent Nos. 6 to 12 and 22, who belong to the cadre of Reporters and/or Home Guard in the Gradation list of Inspectors of Police of the general cadre is wholly illegal and arbitrary. Rule 660-C of Vol. I of the Bihar Police Manual contains the provisions for out of turn promotion. According to the said provision its Selection Boards may recommend out of turn promotion to the officers with outstanding records of the service and competent authority may order such promotion in deserving cases as they deem fit and proper With the approval of the next higher authority. The same rule provides that officers so promoted should be placed below the officers of the approved existing list of respective ranks prepared by Selection Board and be confirmed against substantive vacancies as and when vacancies arise in the order of the list. Thus, it is clear that the officers, who are given out of turn promotion are to be placed below the officers of the approved existing list of respective ranks prepared by the Selection Boards; in other words, in the list of the respective ranks prepared even by the same Selection Board containing the names of the officers promoted as per their turn and the officers promoted out of turn and the officers promoted as per their turn shall rank above the out of turn promotes. Naturally therefore, the officers either promoted in the earlier Selection Board or the officers promoted in the same Selection Board, as per their turn would rank senior to the out of turn promotees, who are either promoted in the later Selection Board or in the same Selection Board. In Paragraph 25 of the writ application clearly deals with the promotions of the

respective officers either as per their turn or out of turn, which facts are not disputed. In such circumstances, it has to be held that placement of respondent Nos. 13 to 21 in the impugned Gradation list is arbitrary and contrary to Rule 660-C of the Bihar Police Manual and also violative of Articles 14 and 16(1) of the 1 Constitution of India.

6. The writ application thus, succeeds and the impugned Gradation list of Inspectors of Police in so far as the petitioners vis-a-vis the private respondents is quashed and the respondents are directed to prepare a fresh Gradation list after excluding the names of respondent Nos. 6 to 12 and 22 in accordance with the principle laid hereinabove.

7. Before parting with this judgment, I would like to observe that if any of the respondents were granted promotion to higher rank in preference to the petitioners pursuant to the impugned Gradation list, then they shall make room and be reverted, if necessary for giving promotion to the petitioners from the due date.

8. Further, I direct that the respondent authorities shall take necessary steps for compliance of the aforementioned directions/observations within three months of the receipt of a copy of this judgment/orders.