
(1992) 04 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1629 of 1991 (R)

Suresh Nath Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0019

Judgement

S.B. Sinha, J.—This application raises a short question as to whether the petitioner is entitled to the monetary benefits owing to issue of an order of promotion granted in his favour with retrospective effect.

2. The fact of the matter lies in a very narrow compass.

3. The petitioner was appointed as a Constable in the year 1964. His name after confirmation stood in the seniority list at serial No. 472. His name was recommended to the Central Selection Board for promotion in 1988. The Central Selection Board held its meeting from 28th December, 1988 to 8th January, 1989 and found 1800 candidates fit for promotion to the rank of Sub-Inspector of Police. However, the name of the petitioner was not considered at that point of time his service book was available. The supplementary Central Selection Board held its meeting on 26-2-1989 whence the service book of the petitioner was placed before it and his case for promotion was recommended by the said Board. The Central Selection Board in relation to its meeting held between the period 28-12-1988 to 9-1-1989 recommended the case of the persons bearing serial No. 184 to 1800 in the gradation list who were junior to the petitioners. It was observed by the Central Selection Board that the A.S. Is. whose cases could not be considered for fragmentation for want of Service book would not less their seniority if they were found fit in course of the supplementary Board. The said minutes of meeting dated 15-6-1989 is contained in Annexure-1 to the writ application. As notice hereinbefore, the petitioner was found fit for promotion to the post of Sub-Inspector of Police by the supplementary Selection Board.

4. The petitioner's name was recommended by the Supplementary Central

Selection Board in its meeting held on 26-2-1989, for promotion on 28th April, 1990 by publishing the list of persons who were found fit for promotion but no order of promotions. Many persons, junior to the petitioner however, were promoted in the mean while.

5. The petitioner, having not been promoted submitted his representation in January, 1991. The said representation was however not disposed of for a long time and at that juncture the petitioner filed this writ application.

6. In this case a counter-affidavit has been filed where with an order dated 27th November, 1991 as contained in Annexure-R-2/A has been annexed for the purpose of showing that the petitioner has been given his due promotion to the post of Sub-Inspector of Police.

7. It has further been directed in the aforementioned order dated 27th November, 1991, the petitioner's inter se seniority shall be maintained. In view of the aforementioned order of promotion as contained in Annexure R-2/A to the writ application, there cannot be any doubt that the petitioner must be held to have been promoted with effect from the date when his juniors next below him in the seniority list was so promoted.

8. In this situation, the petitioner must be held to have become eligible also for obtaining all the monetary benefits therefor.

9. Mr. K. P. Mitra, learned Counsel appearing on behalf of the respondent, however relied upon a circular letter bearing No. 3/M, dated 4th April, 1985 which is to the following effect:

Sambarg Ke Kanneey Sarkari Sewak ki Ucchar pad par pronati hone ke paschat Bareiya ko pronati ka labh.

Kuch matnle me sambarg ke Kaneey padadhikari- ko Ucchar pad par ptonati de di jati hai. Pronatee bareiye padadhikari ke kirud kuchh arop lambit rambit rahne ke chalte ya unki charitr pustika me partikul abhibaykatee ke chalte ya kisi prasnika bhul ke chalta unhai samaye par pronati nahi mi pati hai ; Kintu unkae liye pad par surakshit rakha jata hai. Yadei prasasi bibigh swame athwa lok sewa ayog ki anusansa par sam-bandh padadhikari ke mamla par purne bichre parant uncha kaneey ke di gai pronati ki tithi se pronati ke jogyae samjhte ho, to sambandhit bareiye sarkari sewak ke kaneey ke di gayi ki tithi se pronati deta huae unka betan ucchar betwan me ess parkar nischit kiya jyga mano wa ianeey ke di gayi pronati ki tithi se pronat he, prantoo bareiye sarfcar se wafe ke dwara bihit prakriya ka anusaran karte hua nirgal sacham adesh/adsuchna ke adhar par pad bhar grahan karne ke tithi ke pur ka ko bakaya anumanya hoga.

10. According to Mr. Mitra, therefore, in view of the aforementioned circular "letter, the petitioner would not be entitled to any monetary benefits at all, by reasons of his obtaining promotion with retrospective effect.

11. The submission of Mr. Mitra cannot be accepted for more than one reasons.

12. Firstly as has been seen hereinbefore, the order of promotion (sic) not issued in favour of the petitioner for no fault of his.

13. The petitioner was not responsible for loss of his service book. The Central Selection Board, itself, as noticed hereinbefore, directed that the case of all persons whose service book could not be placed before it; would become entitled to promotion with retrospective effect so that they may not lose their seniority. In this situation, therefore, the State of Bihar in my opinion was bound to give effect to its own policy decision. The State as such did not have any jurisdiction to differ with the decision of the Central Selection Board by taking shelter to an office order issued by the Finance Department, as it itself accepted the said recommendation without any reservations whereunder.

14. Further Rule 659 of Bihar Police Manual provides as follows:

Promotion of Assistant Sub-Inspectors (a) 50 per cent of the vacancies in the rank of Sub-Inspector shall be filled by Selection from the rank of Assistant Sub-Inspector who have at least done a minimum of five years service " Rule 653(b)]. Only selected officers who have shown exceptional merit while serving as Assistant Sub-Inspector will be promoted.

(b) On receipt of information vide Rule 653(a), the Deputy Inspector General will intimate the number of vacancies allotted to each district and call for nominations, to reach him on a date to be fixed.

(c) At least 14 days before nominations are sent to the Deputy Inspector General the names of the nominees shall be published by district order so that those who are not nominated may have an opportunity of representing their cases before the nominations are actually submitted. Officers having such representations to make should be given interviews and their cases examined with them. In forwarding the nominations a certificate must be given of the date on which the lists were published and intimations sent to those not nominated. Those not nominated, may submit representation within 14 days to the Deputy Inspector General which shall be considered by him as early as possible so that in case of necessity, additional nominations may be sent. In selecting Assistant Sub-Inspector for promotion, preference should be given to those who have received special commendation for integrity of character and good detective work.

(d) The Range Deputy-Inspector General's Board [Appendix 72(3)] shall make selection from those nominated from districts and shall send names for consideration to Central Selection Board [Appendix 72(2)]. This list shall be drawn according to seniority but if any Assistant Sub-Inspector is placed serially above his seniority on the basis of his ability, reasons for such special nomination shall be given. Necessary papers and all papers concerning selection shall be presented before the Central Selection Board [Appendix 72(2)] by the date fixed.

(e) The Central Selection Board "Appendix 72(2)] shall, if necessary, interview the candidates nominated by the Range Deputy Inspector-General's Board and

prepare a list of selected candidates for promotion. Names on this list should ordinarily be in order of seniority, if an officer is placed higher in the list than his seniority warrants the reasons for such special nomination shall be recorded. Promotions shall be confined to the selected list framed by the Central Board [Appendix 72(2)] but vacancies shall be filled up rangewise according to seniority in the list by the Range Deputy-Inspector-General.

A copy of the proceedings shall be forwarded to Inspector-General for information who shall endeavour to see that wide disparities do not occur in matter of promotion and confirmation in different ranges and adjustments may be made by suitable transfers of Assistant Sub-Inspectors.

(f) The General Selection Board shall make 25 per cent more selections of Assistant Sub-Inspectors than the number of vacancies so that there is not difficulty in filling casual vacancies. Names beyond 25 per cent may also be kept in this list after getting order of Inspector-General. If any one in the list does not get promoted in one year, his case shall be reviewed again for inclusion in the next year's list and he shall be placed above them.

(g) Assistant Sub-Inspector shall be on probation for a period of twelve months from the date of the order promoting them to the rank of Sub-Inspector.

15. It is now well known that the provisions of Bihar Police Manual have statutory force.

16. In that view of the matter, the petitioner as a matter of right was entitled to be considered for promotion in accordance with his seniority. It is not the case of the State that the petitioner's case come within purview any exception contained therein. If the aforementioned rule is applicable, there cannot be any justification as to why the petitioner would not have been promoted with retrospective effect.

17. Reference in this connection may be made to 1977 (2) SLR 626 as also a decision of the Punjab and Haryana High Court in Charon Dass Chandha v. The State of Punjab and Haryana reported in 1980 (3) SLR 702 . The aforementioned view has also been reiterated by a Division Bench of this Court in Dr. Paras Nath Prasad Vs. State of Bihar and Others, .

18. In that case the Division Bench after taking into consideration various decision held:

Courts in India have regulated their discretion by rules of prudence always reminding themselves that their power has to be exercised in the ends of justice. This Court, in Akshay Kumar Sinha and Others Vs. The District Superintendent of Education, Purnea and Another, , rejected the contention that no direction can be given to the respondent-State to appoint the petitioner who had become average as, according to the court, that alone could meet the ends of justice. Again a Division Bench of this Court in Lalji Sharan Vs. The State of Bihar and Others, , has held that the petitioner who has been denied due seniority in accordance

with law even after his superannuation was entitled to a notional seniority and consequential .benefits. In the State of Mysore Vs. C.R. Sheshadri and Others, , the Supreme Court has given its verdict to the effect that when a person is found to have denied his due promotion the court may hold that he had been entitled to such promotion with retrospective effect and, accordingly issue direction to the Government to make the payment of arrears of pay etc. In the words of the Supreme Court. "There is no dearth of authority to hold that once an order of the Government is found to be void or unsustainable in law and is quashed, the relief which may be a monetary relief and which how from such setting aside of the order, has to be allowed to the successful petitioner," In Surya Narain Yadav and Others Vs. Bihar State Electricity Board and Others, , once again the Supreme Court has reiterated the law stated in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , that "under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expedience fail to carry out the premiss solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen" and extended the rule of promissory estoppel in favour of the employees stating that the Board by permanently absorbing ex cadre doctors cannot deny them the consequence thereof which is complete violation of Articles 14 and 16 of the Constitution of India and accordingly granted relief of absorption with effect from the due date but declined to make any direction which would prejudice such persons who had been recruited and absorbed in service of the Board behind their back without affording the Board an opportunity of hearing them.

19. Further recently the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., , while considering the matter relating to adoption of sealed cover procedure while withholding of any person on the ground that a disciplinary and/or criminal proceeding had been pending against him, held:

When an employee is completely exonerated in criminal/disciplinary proceedings and it is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his.

20. The aforementioned decisions as referred to hereinbefore, apply in all fours in the present case.

21. The petitioner has no right of promotion, but in terms of the Articles 14 and 16 of the Constitution of India, he had a right to be considered for promotion along with others eligible candidates. Denial of consideration of promotion at a point of time when he was so entitled would also be violative of Articles 14 and 16 of the Constitution of India.

22. In that view of the matter, he was entitled to be considered for promotion by the Central Selection Board in its meeting held between the period 28-12-1988 to 9-1-1989.

23. The petitioner cannot be held responsible for non-availability of his service book before the said Central Selection Board. In fact, as noticed hereinbefore, the Central Selection Board itself, in view of the non-availability of the service Book of a large number of employees directed constitution of supplementary Selection Board and categorically stated that the persons who would be found fit for promotion to the post of Sub-Inspector of Police by the Supplementary Central Selection Board, would be entitled to promotion with retrospective effect. Such a decision on the part of the Central Selection Board is in turn with the provisions contained in Articles 14 and 16 of the Constitution of India.

24. It is, therefore, clear that by reason of the Departmental Circular an employee cannot be deprived of his just benefit to which he is otherwise entitled to in law.

25. For the reasons aforementioned, this writ application is allowed and the respondents are hereby directed to give effect to the order of promotion in respect of the petitioner, from the date when the employee just below the petitioner has been promoted and they are further directed to give all monetary benefits to the petitioner, with utmost expedition and preferably within a period of three months from the date of receipt of a copy of this order.

26. In the facts and circumstances of the case, there will be no order as to costs.