
(2007) 03 PAT CK 0177
In the Patna High Court
Case No : LPA No. 111 of 1998

Suryadeo Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Citation : (2007) 2 PLJR 547

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Y.V. Giri and Raj Giri, for the Appellant; Ray Shivaji Nath, for the Respondent

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—In 1987 the concerned Range Board found the petitioner, appellant, and others competent to discharge the duties of Sub-Inspector of Police and, accordingly, granted officiating promotion to them from the post of Assistant Sub-Inspector of Police. While such promotion was accorded It was made clear that such promotion will not count for seniority. It was also made clear that such promotions are ad hoc promotions and the petitioner and others may be directed to their substantive post of Assistant sub-Inspector of Police if any person senior to the petitioner and others has been left out to be promoted to the officiating post of Sub-Inspector of Police. Petitioner has brought on record affidavits filed by the State in respect of certain other writ petitions wherefrom one fact appears that is upto 1989 the Central Board was not constituted. In accordance with the Rules governing the promotion, an Assistant Sub-Inspector of Police can be promoted to the post of Sub-Inspector of Police provided he has been found fit to be so promoted by the Central Board. No such promotion can be accorded by Range Board. In the counter affidavit filed to the writ petition filed by the appellant it had therefore, been clarified that the Range Board was competent to give promotion only on ad hoc basis for discharging officiating duties and that too for a limited period.

2. It, therefore, appears that the Range Board though could choose a right

person to discharge the responsibilities on a higher post, but it was not competent to give a regular promotion to such post. The regular promotion could only be accorded by the Central Board. There appears to be no dispute that at the time when the petitioner was accorded officiating promotion to the post of Sub-Inspector of Police, he was not accorded a regular promotion, for the Range Board, which granted such promotion, was not competent to give such promotion and, accordingly, he was granted ad hoc officiating promotion.

3. It was, therefore, well within the competence of the Central Board, which was constituted in 1989, to reconsider the case of the petitioner and to opine that the petitioner is not competent to be promoted to the officiating post of Sub-Inspector of Police. This, however, was not done. The Central Board in 1989 found that the respondents No. 6 to 11 are competent to be promoted to the post of Sub-Inspector of Police. At the same time it did not opine that, although by virtue of the decision of the Range Board, the petitioner is officiating as Sub-Inspector of Police, but he is not competent to discharge the duties attached to the said post or he is not competent to hold the said post. It however, felt that the respondents no. 6 to 11 being senior to the petitioner, while they should be accommodated in the post of Sub-Inspector of Police, the petitioner must give up his officiating post of Sub-Inspector of Police and, accordingly, reverted back the petitioner. There is no dispute that according to the Rules contained in Police Order no. 204 of 1988, inter se seniority of Assistant Sub-Inspector of Police and Sub-Inspector of Police will be determined on the basis of the date of appointment in the cadre of constable. But those officers, who have not been given promotion on account of unsatisfactory service records, their seniority will be determined after the expiry of the period for promotion on account of unsatisfactory service record. In such view of the matter, in the writ petition it was alleged that while the Range Board considered the case of officiating promotion of the petitioner and others, the cases of the respondents no. 6 to 11 were also considered and they were found unfit. Accordingly, it was sought to be contended that the direction contained in the promotion order that if any senior is left out to be promoted, the petitioner will be reverted, is not applicable to a subsequent decision of the appropriate authority to promote those rejected persons. However, it was sought to be contended that the promotion order itself would show that the cases of the respondents no. 6 to 11 had been considered and rejected at the time of granting the officiating promotion to the petitioner. A look at the promotion order would demonstrate that the same does not utter a single word as regards consideration of the case of the respondents no. 6 and 11. In those circumstances, there is nothing on record which would suggest that the Range Board while considered the case of the petitioner also considered the case of his seniors, namely, the respondents no. 6 to 11.

4. However, it was categorically contended by the petitioner in the writ petition that the respondents no. 10 and 11 are juniors to the petitioner. It was stated that the respondents no. 10 and 11 are juniors to the petitioner. It was stated that the respondents no. 10 and 11 were appointed as constable with effect from

1st August, 1973 and 1st January, 1972 respectively; whereas the petitioner was appointed as constable with effect from 1st September, 1971. The respondents no. 10 and 11 were noticed by the writ court, but it does not appear that they appeared before the writ court. In the appeal the respondents no. 10 and 11 have been noticed, but they have also chosen not to appear before this court. In the counter-affidavit filed before the writ court by the State, this assertion has not been denied. Therefore, whereas the respondents no. 6 to 9 are seniors to the petitioner; admittedly the respondents no. 10 and 11 are juniors to the petitioner. Even if the respondents no. 10 and 11 have been found fit to be promoted by a competent authority, no explanation has been given why the case of their senior, namely, the petitioner herein for regular promotion was not considered while the cases of respondents no. 10 and 11 were considered by the competent authority. That would suggest that the competent authority proceeded on the basis that the case for promotion of the petitioner from the post of Assistant Sub-Inspector of Police to the post of officiating Sub-Inspector of Police has been concluded and, accordingly, the same does not require any further consideration. This is so in view of a Division Bench judgment rendered in CWJC no. 2686 of 1991 and connected writ petitions where also officiating Sub-Inspectors of Police were reverted back to their substantive post of Assistant Sub-Inspector of Police to pave the way of promotion to seniors to them to the post of Sub-Inspector of Police. The Division Bench noted in that case that while promotions to officiate were granted by the Range Boards, the Central Selection Board considered the case for regularisation of the officiating promotions and while considering the same, it did not compute the seniority of the officiating officers from the date of their officiation in the post of Sub-Inspector of Police and broke that into pieces by taking into account one day break in the officiation.

5. It appears that while cases for regularisation of officiating Sub-Inspector of Police were considered in 1989 by the Central Selection Board. The case of the petitioner for such regularisation was not considered. He was simply reverted to pave the way for accommodating his seniors, who had been left out by the Range Board, but who were found fit to be promoted by the Central Board. The fact remains that admittedly the respondents no. 10 and 11 are juniors to the petitioner. If the respondents no. 10 and 11 are juniors to the petitioner, the petitioner could not be reverted from the officiating post of Sub-Inspector of Police to the post of Assistant Sub-Inspector of Police for the purpose of making available to either of respondents no. 10 and 11 the post of Sub-Inspector of Police in which the petitioner was then officiating. The matter should, thus be concluded.

6. There is, therefore, no just reason for passing the impugned order. As was challenged by the petitioner in the writ court, which simply cancelled the officiating promotion of the petitioner to the post of Sub-Inspector of Police and reverted him back to his substantive post of Assistant Sub-Inspector of Police only for the purpose of accommodating, amongst others, the respondents no. 10 and 11 on the ground that the said respondents are senior to the petitioner;

whereas, in fact. they are not. The writ court noted almost all the contentions and, as a matter of fact, found that the respondents no. 6 to 9 are seniors to the petitioner, but did not apply its mind in relation to the seniority of respondents no. 10 and 11, accordingly, rejected the writ petition.

7. Having regard to the fact that the respondents no. 10 and 11 are juniors to the petitioner and in as much as the order impugned in the writ petition reverting back the petitioner from the officiating post of Sub-Inspector of Police to the substantive post of Assistant Sub-Inspector of Police was passed only for the purpose of accommodating either of the respondents no. 10 and 11 a berth in the cadre of sub-Inspector of Police by removing the petitioner therefore, the impugned order cannot be sustained in so far as petitioner is concerned. We have, therefore, no other option but to interfere with the said order. The order dated 29th January, 1990 impugned in the writ petition whereby the petitioner has been reverted from the officiating post of sub-Inspector of Police to his substantive post of Assistant Sub-Inspector of Police is, accordingly, struck down.

8. The learned counsel for the State has drawn our attention to an order passed by the State on 15th May, 1998 whereby the promotion of the petitioner to the post of Sub-Inspector of Police was regularised with effect from 20th August, 1994. The said order makes it clear that the same was passed in view of a decision rendered in CWJC no. 7989 of 1997 filed, amongst others, by the petitioner. It was submitted that having regard to the said order, the present appeal has become infructuous.

9. In the present appeal the one and the only question was whether, for the reasons indicated in the order impugned in the writ petition, the petitioner could be deprived of the officiating promotion to the post of Sub-Inspector of Police as was accorded to him in 1987. The officiating promotion of the petitioner has no connection with the regular promotion of the petitioner to the post of Sub-Inspector of Police. By the judgment rendered by us the hurdle has been removed, which prevented the petitioner from discharging the duties of Sub-Inspector of Police on having been promoted to that post to discharge the duties attached to that post in his capacity as officiating officer.

10. It is made clear that to the benefits flowing from the original order of promotion, by which the petitioner was promoted to the post of officiating Sub-Inspector of Police, the petitioner shall be entitled to the same until the date he was regularly promoted. The appeal stands disposed of.