

(2005) 03 PAT CK 0095

In the Patna High Court

Case No : Letters Patent Appeal Nos. 64 and 70 of 2005

The State of Bihar and Another

APPELLANT

Vs

Janardan Prasad Singh and Others

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Citation : (2005) 03 PAT CK 0095

Final Decision : Allowed

Judgement

Nagendra Rai, A.C.J.

1. Both the appeals have been filed by the State of Bihar and its officers and the points involved in both the appeals are one and the same, as such they have been heard together and are being disposed of by this common judgment.

2. LPA No. 64 of 2005 has been filed against the order dated 11.12.1998 passed in CWJC No. 8954 of 1998 whereby this Court directed the Director General Board to consider the cases of writ petitioners--respondents Janardan Prasad Singh (now dead) and Indu Bhushan Prasad for out of turn promotion in terms of Rule 660C of the Bihar Police Manual to the post of Dy. S.P. in the light of the two judgments rendered by the learned Single Judge of this Court contained in Annexure-6 and 6/1 to the aforesaid writ application.

3. LPA No. 70 of 2005 has been filed against the order dated 11.2.1999 passed in CWJC No. 9522 of 1998 whereby similar direction was issued by the learned Single Judge for consideration of the case of the writ petitioner--respondent Rajendra Singh for out of turn promotion in terms of Rule 6606 of the Bihar Police Manual by the D.G. Board in the light of the order passed in the earlier case being CWJC No. 8954 of 1998.

4. The writ petitioners- respondents in both the cases were in the police service and at the relevant time they were holding the post of Inspector of Police. They were awarded President's Police medal for gallantry and they claimed out of turn promotion to the rank of Dy. S.P. in terms of Rule 660C of the Bihar Police

Manual. The D.G. Board considered the matter and did not grant them out of turn promotion to the post of Dy. S.P. on the ground that the said promotion is granted to the Inspector of Police who is confirmed in the substantive rank and as the writ petitioners - respondents were not confirmed, they were not entitled for the said promotion. However, they were granted out of turn confirmation from the dates mentioned in the order.

5. Janardan Prasad Singh (now dead) and Indu Bhushan Prasad filed CWJC 8954 of 1998 and Rajendra Singh filed CWJC No. 9522 of 1998 and as stated above, in the earlier case direction was issued to consider their cases for out, of turn promotion in terms of Rule 660C by the Director General Board by order dated 11.12.1998 and in the case of Rajendra Singh by order dated 11.2.1999.

6. The State took the stand that there was no provision for out of turn promotion to the next higher rank of Inspector of Police in terms of Rule 660C of the Bihar Police Manual on the basis of award of gallantry and as such they have been given out of turn confirmation in the rank of Inspector of Police by the Director General Board in recognition to their good services. The said stand was not accepted by the learned Single Judge and he directed for consideration of their cases.

7. It appears that the State Government had come out with a policy that in case of Inspectors of Police and the officers to the equivalent of the said rank, who are recipient of gallantry awards, three year weightage will be given in fixation of seniority. Thus conferring benefit on them to accelerate promotion to the next higher grade compared to their contemporaries. The Police Department came to the conclusion after having noticed that there was no provision for out of the turn promotion to the gallantry medal awardees in the rank of Inspector of Police in terms of Rule 660 C made a recommendation to the State Government vide letter No. 3974 dated 3.8.1998 to give such gallantry medal awardees (Inspector of Police) weightage in fixation of seniority and considering this the State Government vide Home (Police) Department issued letter No. 10785 dated 17.10.1998 in the light of the said recommendation of the Police Department giving three years weightage in seniority compared to their contemporaries in the case of recipient of gallantry medals.

8. The Director General Board considered the cases of the writ petitioners--respondents and rejected their claim in March, 1999 on the ground that the cases of Inspector of police for out of turn promotion to the rank of Dy. S.P. does not come within the purview of D.G. Board in terms of Rule 660C of the Bihar Police Manual.

9. Though the direction was issued in the two writ applications one contempt application being MJC No. 1739 of 1999 was filed by the writ petitioners--respondent for initiating contempt proceeding and the same was disposed of on 23.6.2000. Learned Single Judge came to conclusion that if the D.G. Board was not competent to look into the question of out of turn promotion from the rank of

Inspector Police to the rank of Dy.S.p. then instead of rejecting the claim, the matter should have been referred to the competent authority (D.G.-cum-I.G. Police, Bihar/State of Bihar through the Secretary of the department, whoever is the authority) for consideration of their cases and accordingly, issued a direction to the D.G.-cum-I.G. Police, Bihar and the Secretary Home (Police) Department to ensure immediate compliance of the order.

10. The State of Bihar - appellant filed Civil Appeal No. 6356 of 2000 against the aforesaid order passed by the learned Single Judge in the contempt application and the Apex Court stayed the order of the High Court and the same was finally disposed of on 24.8.2004 which is reported in State of Bihar and Others Vs. Rajendra Singh and Another, . The Apex Court set aside the order of this court after coming to the conclusion that the High Court should have focused its attention to the issue as to what further was done consequentially. Instead it went on to give further directions for re-consideration in the line of views expressed by it. That is clearly impermissible. The Apex Court further held that in fact learned Single Judge has held on merits/that the decision of the D.G. Board was not proper and therefore remitted the matter for reconsideration. The Apex Court further held that rightness or wrongness cannot be urged in contempt proceeding and if any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable for feasible, it should always either approach to the Court that passed the order or invoke the jurisdiction of the Appellate Court.

11. Consequently, the contempt petition in this Court was revived.

12. Thereafter, the State - appellant took steps to challenge the orders passed in writ applications. Memorandum of appeals were affidavits on 12th January, 2005 and after complying with the other formalities and the stamp reports, LPA No. 64 of 2005 and LPA No. 70 of 2005 were filed on 19.1.2005 and 24.1.2005 respectively along with the limitation petitions for condoning the delay.

13. The aforesaid appeals have been filed after about delay of six years.

14. Learned counsel for the writ petitioners - respondents challenged the maintainability of the appeals on the ground of delay and submitted that there is no explanation explaining the delay of six years. When this court took steps for punishment in contempt proceeding, the appeals have been filed which is a device, to delay the compliance of the order. This is not a fit case for condonation of delay, whereas the learned counsel appearing for the state submitted that in this case, there is no laches on the part of the State, on the other hand, the State under bonafide legal advice filed SLP before the Apex Court against the order passed in contempt matter where a different direction as was given in the original order was issued and the officers remained under the impression that the entire matter will be considered by the Apex Court in the said matter. The direction given by the learned Single Judge in contempt matter was set aside by the Apex Court on 24.8.2004 and observation was made that the order can be

challenged in appeal and after taking legal advice the appeals have been filed. Thus, there is no laches on the part of the State and the mistake, if any, occurred because of bonafide belief for which the State could not be penalised specially when the point involved is of a greater importance and if the matter is not considered by this Court that will create a havoc with the cadre management of gazetted rank in the police department and will complicate the problem of cadre management.

15. Learned counsel appearing for the writ petitioners - respondents in support of the fact that the appeals should be dismissed on the ground of limitation relied upon the judgments of this Court in the case of Pandit Brahma Nand Choubey @ Brahma Nand Choubey v. Members of Bhoodan Committee and Ors., reported in 1986 PLJR 414 , Ganesh Nagorao Raut Dudhagaonkar Vs. Rajani Shankarrao Satav and Others, , and the Noratanmal Chouraria Vs. M.R. Murli and Another, , whereas the learned counsel appearing for the State - appellant relied upon a judgment of the Supreme Court in the case of State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr., reported in 2000(3) PLJR (SC) 81.

16. In the case of Pandim Brahma Nand Choubey @ Brahma Nand Choubey (supra), a Division Bench of this Court held that the party should be prompt in claiming relief otherwise the right will be forfeited as a penalty for neglect. Equitable considerations have no role to play in construing the provisions regarding limitation.

17. In the case of Bihar State Electricity Board, (supra), this Court held that sufficient cause means the cause which is beyond the control of the parties seeking indulgence for extension of period of limitation. The Court cannot grant exemption from limitation on equitable consideration or on the ground of hardship.

18. In the last case relied upon by the writ petitioners - respondents, i.e, the case of Smt. Sidhidatri Sinha @ Sidhidari Sinha, (supra without laying down a law, a Division Bench of this Court dismissed the Letters Patent Appeal taking into consideration the facts of that case that an attempt was made to reopen a dead case.

19. The question whether limitation in a case is to be condoned or not depends upon the facts of each case and no hard and fast rule can be laid down as to the circumstances which are sufficient for condonation or for rejection of the claim for condoning the delay, but one fact is certain that no party is benefitted by lodging a case after expiry of the period of limitation. The substantial justice should not be frustrated on the ground of technical consideration such as limitation unless there is a gross laches. When the Court has to choose between the substantial Justice and technical consideration such as bar of limitation, the Court generally leans in favour of doing substantial justice. The Court cannot frustrate the substantial justice on the ground of non-deliberate delay. Sufficient cause cannot be construed by adopting a straight jacket formula. Law has to be

applied in a meaningful manner to advance the cause of justice for which the Court exists. The question as to what is the sufficient cause has been considered by the Apex Court in large number of cases and it is not necessary to reproduce them. In the case of Kameshwar Prasad Singh supra) which has been relied upon by the appellant - State, all cases have been referred to and the Apex Court in paragraphs 11, 12 and 13 have laid down the law regarding condonation of delay. The same is reproduced below.

11. Power to condone the delay in approaching the Court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, held that the expression "sufficient cause" employed by the legislature in the Limitation Act, is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that :

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late. G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others, , Binod Bihari Singh Vs. Union of India, ,Shakambari and Co. v. Union of India 1993 Supp 10 SCC 486, Ram Kishan v. U.P. SRTC 1994 Supp (20) SCC 507 and Warlu Vs. Gangotribai and another, ; this Court in State of Haryana Vs. Chandra Mani and others, , held :

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is including the State are accorded the same treatment and the law is administered in an even "handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing on the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of, the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice oriented process approach rather than the technical detention of sufficient case for

explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach in justice oriented process. The court should decide the matter on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

To the same effect is the judgment of this Court in *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, .

13. In *Nand Kishore Vs. State of Punjab*, , this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In *N. Balakrishnan Vs. M. Krishnamurthy*, , this Court held that the purpose of Limitation Act, was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a had cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor. In this context it was observed :

"It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act, does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in the revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse, But it is a different matter when the first Court refuses to condone the delay. In such case, the superior Court would be free to consider the

cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

20. In the light of settled law, now the facts have to be scrutinised to see as to whether this is a case for condonation of delay.

21. The question involved in this case is as to whether Rule 660C of the Bihar Police Manual applies in a case of promotion from the post of Inspector to the post of Dy.S.P. on account of award of gallantry medal. This question has to be considered with regard to large number of officers. A Division Bench of this Court has already held that Rule 660C is not applicable in the case of Inspector of the Police. In such a case the question involved in this case is of greater importance and will affect large number of employees. This apart, there appears to be no intentional laches on the part of the appellant-state. After rendering two judgments the contempt was filed and against the order passed in the Contempt in the year 2000, the appeal was filed before the Apex Court and stay was granted and thereafter that was disposed of on 24.8.2004. The appellants - State and its officers were under bonafide impression that the entire matter will be decided in view of the order passed by the learned Single Judge Modifying the earlier order passed in the writ applications. This belief was a bonafide one and in such a situation the delay in filling the appeals for the period from 2000 to 2004 is explained. Consequently, the contempt application was revived and thereafter the appeals have been filed.

22. Taking into consideration the totality of the circumstances and the points involved, we are of the considered view that dismissing the appeals on the ground of limitation will do great injustice and will not serve the cause of justice but on the ground of technicalities, a confusion will be created in the cadre of police service as to whether under the said Rule, out of turn promotion is permissible to the post of Dy. S.P. from the post of Inspector of Police on account of award of gallantry.

23. Thus, in our view, sufficient ground has been made out to condone the delay and, accordingly, the delay in filing these appeals is condoned.

24. Learned counsel appearing for the appellants - State submitted that Rule 660 C of the Bihar Police Manual does not apply in a case of out of turn promotion from the post of Inspector to the post of Dy. S.P. The same is applicable only up to the stage of promotion to the post of Inspector of Police and, this point is concluded by a Division Bench of this Court in the case of Prahlaad Singh Bhati Vs. N.C.T. Delhi and Another, where this Court has held that Rule 660C of the Bihar Police Manual is not applicable, in a case of promotion from the post of Inspector to the post of Dy. S.P. He further submitted that though this plea was not taken in specific term before the learned Single Judges who rendered the judgment in two cases, the same can be raised in appeal as this is a pure question of law and requires no factual foundation for raising the point. He further submitted that the State Government has already come out with a policy in October, 1998 much

before disposal of these two cases that the Inspectors of Police in the case of award of President's Police Medal for gallantry etc, will be granted three years seniority in their own cadre which will accelerate their promotion and on that basis seniority has been given to the writ petitioners - respondents. Thus Rule 660 C of the Bihar Police Manual is not applicable in their cases.

25. Learned counsel appearing for the writ petitioners - respondents submitted that Rule 660C covers the case of out of turn promotion from the post of Inspector to the post of Dy. S.P. and in this connection relevant provisions of the Bihar Police Manual, which will be referred to at appropriate place, relied upon and submitted that this court in earlier Division Bench did not consider the said aspect of the matter and as such the matter has to be reconsidered. He further submitted that question regarding applicability of Rule 660C of the Bihar Police Manual or the policy of the State Government was not raised before the learned Single Judge and as such the same cannot be raised for the first time in appeal and in support of the same, he relied upon the judgments of this court in the case of Gopaljee Jha Vs. State of Bihar and Others and in the case of Central Provident Fund Commissioner and Another Vs. S.K. Nasiruddin Beedi Merchant Ltd., .

26. Before considering the submissions advanced at the bar, it will be relevant to refer the earlier Division Bench Judgment of this Court in the case of Shambhu Shankar Thakur, (supra) which went up to the Apex Court. In that case, Raj Kumar Yadav was granted out of turn promotion from the post of Inspector to the post of Dy. S.P. under Rule 660 C of the Bihar Police Manual. This court having considered the provisions of the Police Manual came to the specific conclusion in paragraph 21 that Rule 660C is not applicable in a case of out of turn promotion from the post of Inspector to the post of Dy. S.P. and as such the challenge made by Shambhu Shankar Thakur to the promotion given to Raj Kumar Yadav from the post of Inspector to the post of Dy. S.P. was allowed and the order granting the said promotion was quashed. It is to mentioned here that the order granting promotion to Raj Kumar Yadav from the post of Sub-Inspector to the post of Inspector was also quashed on different ground. The said judgment was challenged by Raj Kumar Yadav before the Supreme Court in Civil Appeal No. 7227 of 2001 and that was finally disposed of by the Apex Court on 22nd September, 2004, the question involved in the case as to the applicability of Rule 660 C was not decided and it was observed that the same will be decided in appropriate cases and the matter was disposed of on the ground that in the meantime, Shambhu Shankar Thakur has been promoted as Dy. S.P., therefore, the promotion given to Raj Kumar Yadav need not be disturbed and Shambhu Shankar Thakur shall rank senior to Raj Kumar Yadav. Thus, the Apex Court did not decide the question as to whether Rule 660C of the Bihar Police Manual is attracted in the case of out of turn promotion from the post of Inspector to the post of Dy. S.P.

27. Once the Division bench has held that Rule 660C is not applicable in a case of

out of turn promotion from the post of Inspector to the post of Dy. S.P., the same is binding on this Bench specially when the question has been left undecided by the Apex Court. However, the learned counsel appearing for the writ petitioners respondents submitted that several provisions of the Bihar Police Manual were not considered as a result of which earlier division Bench did not arrive at a right conclusion and as such it is necessary to refer to the relevant provision to find out as to whether different view that was taken in the case of Shambhu Shankar Thakur (*supra*) should be taken. It is to be clarified that in case of different view being taken, the matter has to be referred to a larger Bench, but in ease of agreement with the earlier view, the matter has to be disposed of in terms of the earlier Division Bench judgment.

28. The Bihar Police Manual, 1978 has been framed by the State Government in exercise of power under Sections 7 and 12 of the Police Act V, 1861 (hereinafter referred to as the Act). Chapter 20 deals with appointments and enrollments. Rule 640 to Rule 644 deals with Indian Police Service and Rule 645 to 648A deals with Dy. S.P. Rule 649 to Rule 652 deals with Inspector, Reserve Inspector and Reserve Sub Inspector. Rule 653 to 658 deals with Sub-Inspector and Rule 660 B deals with Reserve Sub-Inspectors and Rule 660C deals with out of turn promotion.

29. So far as appointment and promotion to the post of Dy. S.P. is concerned, Rule 645 provides for direct appointment and Rule 656 provides for promotion of Inspectors and Reserve Inspectors to the post of Dy. S.P. The direct appointment of Dy. S.P. will be made according to Appendix 71. So far promotion to the post of Dy. S.P. is concerned Rule 646 provides that the promotion of Inspectors will be made by the Government on the recommendation of a Selection Board consisting of Chairman, Bihar Public Service Commission as Chairman and Inspector -General and others as members as given in Appendix 72 and Rule 724A. Rule 724A provides a detailed procedure with regard to promotion of Inspectors etc to the post of Dy S.P. and finally all papers have to be sent to the Bihar Public Service Commission for sending their recommendation to the Government for approval for promotion. The said rule runs as follows :

724A. Promotion of Inspectors (including Reserve Inspectors). (i) The promotion of Inspectors (including Reserve Inspectors) to the rank of Deputy Superintendent will be made in accordance with the rules for recruitment to the Bihar Police Service (Part 2, Appendix 71). On receipt of information of vacancies, the Deputy Inspectors General will call for nominations for promotion from Superintendents. At least 14 days before the nominations are sent the names of the nominees shall be published by the district order so that those who are not nominated may represent their cases before the nominations are submitted. Officers wishing to make representation should be given interviews and their cases examined with them. In forwarding the nominations a certificate must be given of the dates on which the lists were published and intimation sent to those not nominated. The Deputy Inspector General will scrutinize the

nominations and send them for consideration by the inspector -General's Board [Appendix 72 (10)] with his recommendations. Those who are superseded by the Deputy Inspector - General will have an opportunity to represent to Inspector General, procedure being the same as in the case of persons not nominated by the Superintendent. The Inspector - General's Board shall nominate Inspectors (including Reserve Inspector in twice the number of vacancies on basis of records and an interview may not be necessary. All papers shall then be sent to Bihar Public Service Commission for sending their recommendations to Government for approval for promotion.

(ii) The lists of approved Inspectors (including Reserve Inspectors) for promotion shall be published in the Police Gazette annually. Additions to the list and removal of names shall be published in the Police Gazette by special notification. Entry in or removal from promotion lists shall be recorded in the district order book and confidential character roll.

(iii) For removal of any name from the promotion list no enquiry need be held or notice pf such proposed action given. However, Government orders will be necessary in each such case."

30. Part I of Appendix 71 contains a rule for direct recruitment and Part II of Appendix 71 contains a provision for promotion from the rank of Inspectors and provides that the Board for promotion shall be presided by the Chairman, Bihar Public Service Commission which is called Departmental Promotion Committee and after scrutiny of papers, the Commission shall send its recommendations to the State Government and thereafter, the State Government shall take decision only on this. Appendix 72 inter alia provides that for promotion of Inspectors and equivalent ranks to Dy. Superintendents, the departmental promotion committee shall consist of Chairman, Bihar Public Service Commission as President and Inspector General and other officers as its members and thereafter shall not require fresh concurrence of Bihar Public Service Commission and to that extent the procedure given in Rule 724 A was amended. In other words, now the question of promotion has to, be considered by a departmental promotion committee headed by Chairman of the Bihar Public Service Commission and other members.

31. Rule 660 C, as earlier stood, provided that the Selection Boards and not the Departmental Promotion Committee, as in the case of promotion from the post of Inspectors to the post of Dy. S.P. may make recommendation for out of turn promotion to officers with outstanding records of service and competent authorities may order such promotion in deserving cases as they deem fit and proper with the approval of next higher authority. This rule was amended and substituted by Government Notification G.S.R. 1463 dated 4th February, 1989 in exercise of the power conferred by the proviso to Article 309 of the Constitution of India read with relevant provision of Police Act, 1961, the substituted provision of Rule 660C is as follow:

"660-C out of turn promotion.--The following criteria and procedure will be adopted for giving out of turn promotion.

(i) The officer concerned should not have been awarded any major punishment till the date of consideration and order of out of turn promotion.

(ii) should have very good entries in permanent character roll.

(iii) Should have received citations for high standard of investigation, supervision of cases and for excellence in intelligence work.

(iv) Should have ability for shouldering higher responsibilities consonant with the proposal promotion.

OR

Should be awarded President's medal or Medal for gallantry.

OR

Should have received citation for outstanding operational work.

(b) Out of turn promotion will be decided, by committee which will be constituted as follows :

(i) Director General and I.G. of Police Bihar, Patna Chairman

(ii) Senior Officer-in-charge of CID, Bihar Member

(iii) Senior Most Officer in-charge of Special Branch, Bihar Member

(iv) Senior Most Officer-in-charge (personnel) of Bihar Member

(v) Senior most regional I.G. of Police Member

(vi) Special Secretary/Addl. Secretary Home (Police) Department Member Secretary.

32. Thus, according to substituted provision of Rule 660 C, out of turn promotion has to be considered by a committee headed by the Director General of Police and I.G. of Police, Bihar as Chairman and other police officials. The chairman of the Bihar Public Service Commission has no play in the matter.

33. The Bihar Government has also issued police Order No. 121 Providing inter alia that the recipient of Gold Medal in All India Sports, Police duty meet and Aquatic Competition etc will be considered for out of turn promotion by the Director General of Police.

34. As it is evident from the provisions of the Police Manual that for promotion to the post of Inspector, the Selection Committee is of the Police Personnel and the Bihar Public Service Commission has no role to play. Only in a case of promotion from the post of Inspector to the post of Dy. S.p., the Commission has role to play as indicated above.

35. Every employee expects promotion and absence of promotion discourages the employee. The promotion is given to the employees according to the rules which will be either seniority-cum-merit, merit-cum-seniority or other reasonable methods. Out of turn promotion is an exception to the general rule and it should be strictly given according to rule otherwise it causes heart burning to other employees. In that view of the matter, while considering the question of out of turn promotion, the rules have to be construed. In such a way that no undue benefit is conferred on the employee.

36. From perusal of Rules 645, 646, 724A and Appendixes 71 and 72 it is clear that no provision is there with regard to out of turn promotion to the post of Dy. S.P from the post of Inspector. The question is as to whether Rule 660C will cover the case. From perusal of Rule 660C and its placement in the Police Manual it is clear that it deals with out of turn promotion up to the rank of Sub-Inspector of Police and not above, it is difficult to believe that so far regular promotion to the post of Dy. S.P the committee for recommendation will be chaired by the Chairman of the Bihar Public Service Commission whereas in the case of out of turn promotion, the police personnel will only be the final authority. The scheme of the Bihar Police Manual shows that the Director General and I.G. of police and the Committee constituted under his chairmanship has to grant promotion to different posts up to the post of Inspector, but for the post of Dy. S.P. as stated above, the rules provide for consultation of Bihar Public Service Commission.

37. Thus, we are of the view that Rule 660C of the Bihar Police Manual is not applicable in the case of out of turn promotion in the case of promotion from the post of Inspector to the post of Dy. S.P. and our view is the same as was in the earlier case of Shambhu Shankar Thakur, (supra).

38. This apart, it appears that the State Government has already come out with a notification conferring seniority of three years to the Inspector in the case of award of gallantry medal and etc. and on that basis, the writ petitioners - respondents, minus Janardan Pd. Singh who is now dead, has been conferred three years seniority, thus accelerate their chances of promotion to the post of Dy. S.P. No doubt, these points were not raised before the learned Single Judge but these points are pure questions of law and they can be raised even before the appellate Court. The decision cited by the teamed counsel appearing for the writ petitioners--respondents that new point cannot be raised in appeal as referred to above has no application in this case as in those cases those points required factual foundation which were lacking in these cases. Law is well settled that pure question of law can be allowed to be raised by the Court at any stage of the proceeding specially when factual foundations are already on record and no further factual foundation are required for determination of the point. Thus, the said objections raised by the learned counsel for the writ petitioners - respondents are rejected.

39. Learned counsel appearing for the writ petitioners--respondents submitted that so far as new notification issued by the State Government dated 17.10.1998

providing for giving only three years seniority to the Inspector in the case of outstanding performance and gallantry award is concerned, that is not applicable in this case as the said provision cannot be given from retrospective effect. This submission is also devoid of substance.

40. The writ petitioners--respondents cannot claim as a matter of right out of turn promotion under Rule 660C only because of having obtained gallantry award. Their cases have to be considered in the light of the relevant rules and provisions and the Rule 660C is not applicable and as such the writ petitioners-respondents could not claim promotion on that basis. The new provision has come into effect in October, 1998 and according to that benefit has been conferred on the writ petitioners-respondents after that date and as such the question of retrospective promotion does not arise for consideration.

41. In the result, both the appeals are allowed and the orders passed by the learned Single Judge in both the writ applications are set aside.