
(1993) 02 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5126 of 1992

Upendra Narain Singh and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 162, 166, 226
Police Act, 1861 — Section 12, 7

Citation : (1993) 2 PLJR 243

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherjee and Kapildeo Singh, for the Appellant;
R.N.P. Yadav, Government Advocate and S. Azeem, Junior Counsel to
Government Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ application the petitioners have prayed for issuance of a writ in the nature of writ of mandamus commanding the respondents to promote them as Assistant Sub-Inspector/Sub-Inspector of Police in the Criminal Investigation Department (hereinafter referred to as "the C.I.D.") with effect from the date when their juniors in the C. I. D. had been promoted without considering their cases and consequently to pay them arrears of salary. In short, the case of the petitioners in the writ application is that the Inspector General of Police (C.I.D.), Bihar, Patna (Respondent no. 3), is the appointing authority of the Constables of the C.I.D. and is also the authority to post them in different wings in the C. I. D. Petitioners no. 1, 3 and 4, who were appointed as Constables in the C.I.D. of the Police Force in May, 1973 and petitioner no. 2 in October, 1973, were posted in the Dog Squad, which is one of the wings of the C.I.D. and since then they have been working in that capacity. It is claimed by the petitioners that a seniority list of Constables is maintained at the State level of all the wings and branches of the Police Force and promotions are made therefrom. It has been contended that the Constables appointed in the C.I.D.

with them and/or much later have been promoted in the higher rank of Assistant Sub-Inspector/Sub-Inspector of Police in the C.I.D. A comparative chart showing details of such appointments have been given in Annexure 1 to the writ application.

2. The grievance raised on behalf of the petitioners is that though they are senior, their cases have never been considered and the action of the respondents in this regard is illegal arbitrary and in violation of Articles 14 and 16(1) of the Constitution of India as also the Government Circular in this regard. Further, their grievance is that there is stagnation in their service career and as such they are seriously prejudiced so much so that it may adversely affect their post retirement benefits, including their pension. However, having failed in their effort to persuade the State Government, to redress their grievances, the petitioners filed the present writ application.

3. A counter affidavit has been filed on behalf of the respondents in which the main stand has been taken that the Dog Squad to which the petitioners were appointed is a closed cadre and there is no provision to maintain their seniority along with the Constables of general and other wings of the Police Organisation. Thus, according to the respondents, there is no question of maintaining their seniority as compared to the Constables of the C.I.D. The promotion to the higher rank is limited to the cadre in which the Constables are appointed. It is also their case that B.M.P./Dog Squad etc. are separate cadres.

4. The petitioners have filed a reply to the said counter affidavit in which it has been, inter alia, stated that they after passing their Matriculation examination were appointed as Constables in the C.I.D. by respondent no. 4, who is the appointing authority and thereafter they were posted in Dog Squad, which is one of the wings of the C.I.D. like the Constables appointed by respondent no. 4 and posted in different wings on the C.I.D. The petitioners have also denied the statement in the counter affidavit that the Dog Squad is a closed cadre. Further, the statements as regards the maintaining of their seniority and giving them promotion on State level have been reiterated.

5. The questions as to whether there was/is a separate duly constituted cadre of the Constables of the Dog Squad wing in the C.I.D. and also that whether there was/is stagnation in the said service came up for consideration in C.W.J.C. No. 2942 of 1979 disposed of on 7th November, 1983 before a Division Bench of this Court. In the said case their Lordships, in the absence of the fresh materials, declined to decide the question in regard to the constitution of the separate cadre but disposed of the writ application by expressing hope that as the petitioners of the said case were still Constables and had got uninterrupted avenues of promotion till the stage of Inspector of Police, their cases for promotion to the higher posts would be considered as and when occasion may arise, within the framework of the said wing/cadre.

6. In this case also the State has not produced any separate notification or order

showing that a cadre was created under Article 309 of the Constitution or by the State Government in exercise of the executive power conferred under Article 226 of the Constitution. However, Learned Counsel for the State has referred to Rule 410(ii) (f) (4) of the Bihar Police Manual, which is issued by and with the authority of the State Government u/s 7 and 12 of the Police Act, 1861 (5 of 1861) and all the rules contained therein are binding on all Police Officers and an authoritative guide to other concerned Officers of the Government. Chapter 15 of Bihar Police Manual (Volume I) deals with the functioning of the C.I.D. and Intelligence Department. Sub-rule (II) of Rule 410 of the Bihar Police Manual deals with the functions of the C.I.D. Apart from other functions as provided in the aforementioned Rule, in clause (f) it has been stated that the offices mentioned therein, including Dog Squad, whose branches can be set up in other districts also, shall be attached to the C.I.D. In this regard reference has been made to clause 4 of Appendix 83 which deals with the functioning of the Dog Squad. In the said Appendix the strength of the dog is mentioned. Further, it provides that the purpose of the Dog Squad is to keep a set of trained dogs so that they can trace a criminal on the basis of smell. The Deputy Inspector General, C.I.D. has been made overall incharge of this squad assisted by one Superintendent of that office. Besides this, D.S.P. having aptitude in this work has also been posted for keeping day to day watch on their maintenance and training etc. apart from posting of few ministerial officers. Under clause 4 the Superintendent is directly incharge of this squad and its staff. Clause 6 of appendix 83 is very much relevant for this purpose. It provides that the police force appointed in a dog squad from the rank of Constable to Sub-Inspector shall be a closed cadre. Further, it provides that if a suitable officer is not available for promotion an officer may be selected by D.I.G., C.I.D. from any district and posted there under orders of Inspector-General. Clause 7 gives the sanctioned strength for each dog. It provides that there shall be one Havildar for every three dogs. One squad is formed for three dogs. It also provides as to how many Assistant Sub-Inspector or Sub-Inspector shall be incharge of each post where dogs are kept. Clause 8 provides for selection process of dog squad.

7. Thus, from the reading of various provisions of Appendix 83, it appears that the dog squad is established as a separate wing in the C.I.D., having sanctioned strength of dogs as well as the staff keeping control and supervision over training etc. of the dogs. However, under clause 6 it is provided that for giving promotion to Constable and other superior officers of this squad in the general cadre attention shall be paid by the authorities. Thus, I find that though dog squad has been treated to be a separate wing for all practical purposes but still for the purpose of promotion, the cases of the Constables and other superior officers of this squad in the general cadre can be considered. However, the State has not produced any material in support of their stand that it is a separate cadre and they maintained a separate seniority for the purpose of considering their cases for promotion of the Constables and superior officers of this department. Even from reading of clause 6 of appendix 83 though I find that the police force in the

squad from the rank of Constable to Sub-Inspector is stated to be closed cadre but in the same clause it is provided that attention shall also be paid for giving promotion for Constables and other superior officers of this squad in the general cadre and also vice-versa if a suitable officer is not available for promotion in the squad. In this view of the matter, it is difficult to hold that for the purpose of maintaining seniority and giving promotion, the Constable and other superior officers of the dog squad have a separate and closed cadre and that they cannot be considered for promotion in the general cadre.

8. Moreover, despite several opportunities given to the State Counsel to produce documentary evidence creating a separate cadre of the dog squad, he has not been able to produce it. It is well settled that a cadre has to be expressly created under Article 309 of the Constitution or under the executive power of the State Government as it is of vital importance for conferring fundamental rights upon their employees. Further, it is also well settled that it is essential that the cadre should be formally constituted.

9. In the case of M.G. Sharan and Others Vs. State of Bihar and Others, their Lordships in paragraph 32 of the judgment have held as follows :

..... It is true that there are various documents to indicate that from time to time the State Government treated R. V. P. D. as having a separate cadre; but, in my opinion, that is not enough. In order to confer legal right upon the petitioner, it is essential that cadre should also be legally constituted under Article 309 of the Constitution. It cannot be assumed that due to the notification contained under Annexures C, C/1 and C/2 by which the new department was constituted under Article 162 read with Article 166 of the Constitution of India, a separate cadre was created for the R. V. P. D. In my view, a cadre has to be expressly created as it is of vital importance for conferring fundamental rights upon the employees. It is true that although it may be under Article 309 of the Constitution, or it can be created by the State Government under the executive power conferred under Article 162 of the Constitution as observed by their Lordships of the Supreme Court in Sant Ram Sharma Vs. State of Rajasthan and Another, , the relevant passage of which I have already quoted earlier. The Learned Advocate General has also relied on it. But even under Article 162 of the Constitution, it is essential that the cadre should be formally constituted.

Thus, it is difficult to hold that the Dog Squad of the C. I. D. has a separate cadre duly constituted by the competent authority following the formalities prescribed in this behalf.

10. However, as those Constables by whom the petitioners claimed to have been superseded have not been made party in the present case it is difficult to take any decision in regard to the seniority of the petitioners vis-a-vis those Constables in their absence and thereby to issue any positive direction to the authorities for their promotion. As the Learned Counsel for the petitioners has submitted that the matter may be referred to the authorities concerned with a

direction to dispose of the claim of the petitioners for their promotion with retrospective effect, I direct the petitioners to file representation raising the aforementioned grievance before the authorities concerned within two weeks from today and the said authorities will consider and dispose of the same within three months thereafter. It is, however, made clear that before taking any decision in this regard, the respondents will also give opportunity to the persons who may be adversely affected.

11. Further, when the Learned Counsel for the petitioners was confronted with the fact, that the, petitioners have approached this Court after long lapse of time, he, on instruction from his clients, submitted that in case the petitioners are found to be entitled for promotion with effect from a date when their juniors were promoted, they will not claim any arrear salary from that date till the date the order of their promotion is issued. Accordingly, I direct the respondents to consider their cases for promotion in the higher rank with effect from the date when their junior have been promoted. In the result, the writ application is allowed subject to the observations made above. However, in the facts and circumstances of the case, there shall be no order as to costs.