

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16573 of 2011

=====

Shyam Kumar, son of Late Uday Narain Singh, resident of village- Bajidpur, P.S.- Ghoshi, District – Jehanabad.

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Home, Government of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The Inspector General of Police, Bhagalpur Range, Bhagalpur
5. The Deputy Inspector General of Police (Personnel), Bihar, Patna
6. The Deputy Inspector General of Police, Eastern Region, Bhagalpur
7. The Superintendent of Police, Banka

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Subodh Kumar Jha, Advocate
For the State : Mr. Manoj Kumar Ambastha, S.C.26
Mr. Subodh Kumar, A.C. to S.C.26

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-08-2016

Heard Mr. Subodh Kumar Jha, learned counsel for the petitioner and Mr. Manoj Kumar Ambastha, learned Standing Counsel No.26 for the State.

With the consent of the parties, this matter has been heard with a view to its final disposal at the stage of admission itself.

The aggrieved petitioner prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No.1101 dated 6.8.2011 issued under the signature of the Deputy Inspector General of Police, the respondent no.6 together with the order bearing Memo No.1254 dated 6.8.2011 issued under the signature of the

Superintendent of Police, Banka, the respondent no.7 herein whereby the petitioner has been made to compulsory retire from the post of Sub Inspector of Police in exercise of powers vested under Rule 854(A) of the Bihar Police Manual read along with Rule 74 (a) of the Bihar Service Code.

In the nature of the order that I propose to pass, it would not be required to deal with the merit of this case but for recording my opinion it would be necessary to briefly discuss the facts leading to the impugned order.

The petitioner is a direct recruit on the post of Sub Inspector and joined his post on 14.10.1985. The name of the petitioner was considered for promotion to the post of Inspector of Police and was recommended as such by the Superintendent of Police, Banka vide Memo No.2948 dated 14.11.2009. The case of the petitioner was not found favourable for promotion by the Eastern Zonal Board considering his service records and which was duly communicated to the Deputy Inspector General of Police (Personnel), Bihar, Patna by the Deputy Inspector General of Police, Eastern Region, Bhagalpur vide his letter bearing Memo No.1239 dated 1.12.2009 enclosed at Annexures R6/A to the counter affidavit filed in the proceedings. The Director General Board held meeting on 19.5.2010 and 16.7.2010 to consider the case of the recommendees



for promotion to the post of Inspector. The name of the petitioner finds mentioned therein. 36 of the Police Sub-Inspector were recommended for promotion to the post of Inspector but 22 of them were not found fit for promotion which is apparent from paragraph-9 of the recommendations. In so far as the petitioner is concerned, his name appears at sl.no.10 amongst the candidates not found fit for promotion and it is in consideration of his service record that the D.G. Board observed that his case should be considered for compulsory retirement. A copy of the minutes of the meeting of the D.G. Board is present at Annexure-R6/C series at page-125 of the writ proceedings. The next meeting took place on 18.8.2010, a copy of which has been annexed at Annexure-R6/B to the counter affidavit at page-61 and the Deputy Inspector General of Police (Personnel) in reference to the proceedings of the D.G. Board dated 19.5.2010 and 16.7.2010 issued directions to the Deputy Inspector General of Police of the different range including the Bhagalpur range to take necessary steps in the light of the recommendations. A letter was addressed to the Superintendent of Police, Banka bearing Memo No.959 dated 31.8.2010 requiring compliance of the recommendations of the D.G. Board, a copy of which is present at Annexure-D to the counter affidavit of the respondent no.7 at page-89. The position was reiterated vide order dated 4.2.2011 requiring the Deputy Inspector



General of Police of different range including the Bhagalpur Range to inform the headquarters about the steps taken towards the compulsory retirement of the Sub Inspector named in the letter including the petitioner. A copy of this letter is present at Annexure-R6/C to the supplementary counter affidavit of respondent no.6 at page-122. The response of the respondent Superintendent of Police, Banka is very important and which has been annexed at Annexure-7 to the writ petition. The Superintendent of Police, Banka in reference to the minutes of the D.G. Board dated 19.5.2010 and 16.7.2010 in so far as it opined for compulsory retirement of some of the Police Sub Inspectors has with reference to the petitioner informed that although the petitioner may not have exemplary service record but he is an average police officer and his conduct is not found wanting. The Superintendent of Police has simply left the decision on the compulsory retirement of the petitioner, at the discretion of the D.G. Board.

Now even when there is no such recommendation of the Superintendent of Police on the compulsory retirement of the petitioner that a decision was taken at the headquarters to compulsory retire the petitioner under Rule 854(A) of the Bihar Police Manual read along with Rule 74(a) of the Bihar Service Code. The Deputy Inspector General, Eastern Range, Bhagalpur vide his order bearing

Memo No.1101 dated 6.8.2011 ordered for compulsory retirement of the petitioner which has been followed in the order of the Superintendent of Police of even date bearing Memo No.1254 impugned at Annexure-10.

Although, the order of compulsory retirement impugned at Annexures-9 and 10 to the writ petition has been addressed upon by learned counsel for the parties on merits but in my opinion, in view of the clear stipulation present in Rule 854(A) of the Bihar Police Manual and Rule 74(a) of the Bihar Service Code, the order of compulsory retirement not being an order of the State Government, it cannot be upheld and is fit to be set aside. Rule 854(A) of the Bihar Police Manual in its Sub Rule (1) with reference to Rule 74(a) of the Bihar Service Code provides for compulsory retirement on account of inefficiency or misconduct of a government servant who has rendered 21 years of his service (excluding leave etc.) or 25 years of total service. Since the order of compulsory retirement makes a reference to Rule 854A of the Bihar Police Manual and 74(a) of the Bihar Service Code, it would be very relevant to consider the provision of Rule 74(a) of the Bihar Service Code which reads thus :-

“ The State Government may require any Government servant who has completed twenty one years of duty and twenty-five years of total service calculated from the

date of his first appointment to retire from Government service, if it considers that his efficiency or conduct is not such as to justify his retention in service. Where any Government servant is so required to retire, no claim to any special compensation shall be entertained.”

It is self eloquent from a reading of the provisions underlying Rule 854(A) of the Bihar Police Manual read along side Rule 74(a) of the Bihar Service Code that the exercise of such power is exclusively reserved with the State Government and not the D.G. Board. The orders of compulsory retirement impugned at Annexures 9 and 10 though taken by a superior authority but these orders are not orders passed by the State Government. The proposition of law is well settled in this regard and when a statute provides an action to be taken in a particular manner, it has to be done in that particular manner alone and all other modes are strictly forbidden. In so far as the present case is concerned, where the power to compulsory retire a government servant on inefficiency or misconduct on completion of 21 years and 25 years of service is reserved with the State Government then in my opinion, the D.G. Board was acting wholly without jurisdiction to exercise such power and in making any such recommendation. The Deputy Inspector General of Police, East Range, Bhagalpur and the Superintendent of Police, Banka, have

mechanically complied with the directions of the D.G. Board to compulsory retire the petitioner in exercise of powers vested in Rule 854(A) of the Bihar Police Manual read with Rule 74(a) of the Bihar Service Code, the orders are patently illegal and without jurisdiction.

In result the order of compulsory retirement of the petitioner impugned at Annexures 9 and 10 of the writ petition cannot be upheld are accordingly set aside.

It has been stated at the Bar that the petitioner in his normal course of service would have superannuated on 29.2.2016. The age of superannuation of the petitioner has passed in the meanwhile, the consequences in the form of the in service benefits as well as the post retirement benefits as would accrue to the petitioner, shall be available to him and should be paid within three months of receipt/production of a copy of this order.

This writ petition is allowed but without any order as to costs.

(Jyoti Saran, J)

N.H./-

U			
---	--	--	--