

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4901 of 2009

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Maruf Raja Quadri, S/o Late Md. Zunnun, resident of Village +PO –
Bitho Sharif, P.S. Chandaoti, District – Gaya.

.....Petitioner

Versus

1. The State of Bihar through Director General of Police Bihar,
Patna.
2. D.I.G. of Police Personnel Department Bihar, Patna.
3. I.G. of Police Personnel Department Bihar, New Secretariat,
Patna.
4. I.G. of Police Region Muzaffarpur Bihar.
5. D.I.G. of Police Bettiah, Bihar.
6. Superintendent of Police, Motihari.

.....Respondents

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Appearance :

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Advocate
For the Respondent/s : Mr. Anil Kumar Singh (GP-26)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
C.A.V. ORDER

9. 19-04-2017 The present petition was heard at length on
06-04-2017. After hearing, Mr. Md. Shahnawaz Ali, learned counsel
for the petitioner and Sri Anil Kumar Singh, learned Govt. Pleader –
26, order was reserved.

2. The petitioner has invoked writ jurisdiction of this
Court under Article 226 of the Constitution of India, with a prayer
to issue writ of mandamus directing the respondents to promote
him to the post of Police Inspector from the post of Sub-Inspector of
Police.

3. Short fact of the case, as pleaded in the writ
petition, is that the petitioner was appointed as Assistant Sub
Inspector of Police (junior) on 13-08-1972. Subsequently, he was



sent for training in Police Training College, Hazaribagh and after completion of training, he was granted regular promotion, as Sub-Inspector of Police, with effect from 01-02-1984. It has been pleaded that though the petitioner was promoted as Sub-Inspector of Police in the year 1984, he was not given the said benefit, whereas, others, who were promoted or directly appointed as Sub Inspector of Police, were granted promotion as Inspector of Police. A specific plea has been taken that one person namely Bipin Kumar, who was junior to the petitioner, was already promoted in the year 2007. The said person was also belonging to District Police Force, Motihari, similar to the petitioner. The petitioner, thereafter, filed a detailed application before the Deputy Inspector General of Police (hereinafter referred to as D.I.G.) Bettiah in the month of September, 2008, in which, a clarification was sought for and during enquiry by the Superintendent of Police, Motihari, it was found that petitioner's name was not sent for regular promotion knowingly and deliberately by the office of the Superintendent of Police, Motihari. In the writ petition, it has also been stated that subsequently, in the month of September, 2008, the D.I.G., Bettiah recommended the name of petitioner for promotion. The Regional Selection Board was constituted by the D.I.G., Bettiah region and the same constituted Board found the case of the petitioner as fit for promotion and on the basis of the said recommendation of the



Selection Board, the Deputy Inspector General, Champaran Range, Bettiah sent the recommendation to the Director General of Police, Bihar (for short "D.G.P.") with the recommendation of the Selection Board for promoting the petitioner, as Inspector of Police, vide Memo No. 156 dated 17-02-2009 (**Annexure - 1** to the writ petition). It has further been pleaded that the Board, under the Chairmanship of Director General of Police, had considered the case for grant of promotion to the Sub Inspectors of Police of 1984 Batch and thereafter, ten Sub-Inspectors of Police were promoted, as Inspector of Police. According to petitioner, even juniors were promoted vide Memo No. 216/P-1 dated 21-01-2009 (**Annexure - 2** to the writ petition). Since the petitioner was not promoted, he filed representation before the Director General of Police for examining his case. It was indicated in the representation that he was going to superannuate in the month of May, 2009. Thereafter, again, he filed representation raising the same grievance.

4. At the time of argument, it was submitted by learned counsel for the petitioner that without getting promotion as Inspector of Police, the petitioner superannuated with effect from 31st May, 2009. According to learned counsel for the petitioner, the petitioner, after being recommended by the D.I.G. on the basis of recommendation of duly constituted Selection Board, having clean service record, was entitled to be given promotion, as



Inspector of Police at least from the date on which, juniors to the petitioner were promoted as Inspector of Police.

5. In this case, firstly a counter affidavit was filed on 21st August, 2010 on behalf of the respondent no. 6/Superintendent of Police, Motihari. In the counter affidavit of respondent no. 6, in paragraph no. 6 & 7, the claim of the petitioner was virtually accepted. The statement made in paragraph 6 & 7 of the counter affidavit of respondent no. 6 are as follows:-

“6. That thereafter a Selection Board was constituted by the D.I.G. Champaran Range Bettiah in which the case of the petitioner for promotion was considered and found fit and thereby his name was recommended for regular promotion to rank of Inspector of Police vide Memo No. 156/GS dated 17.2.09 (vide Annexure – 1 to the writ application).

7. That from perusal of the para 7 of the writ application as well as (annexure-2 of the writ application), it appears that before the petitioner’s recommendation vide Annexure-1 could reach the office of the D.G.P. Bihar, Patna, a meeting of the Board under the Chairmanship of D.G.P. Bihar, Patna had already taken place for consideration case of regular promotion of other Sub-Inspectors of the 1984 Batch and a decision of promotion already stood issued vide Memo No. 216 dated 21.1.09 (vide Annexure – 2 to this writ application).”



6. After filing of the counter affidavit on behalf of the respondent no. 6/Superintendent of Police, one another counter affidavit was filed on 29-07-2011 on behalf of the respondent no. 2, duly sworn by the Deputy Inspector General of Police (Personnel), Bihar. The petitioner thereafter has filed rejoinder on 26th August, 2011 and in rejoinder, the petitioner has specifically pleaded that seniority list of Sub Inspectors of Police was prepared by the office of the D.G.P., Bihar, vide its letter no. 2360/P-2 dated 25-04-2002. In the said seniority list, petitioner's name had appeared at serial no. 1424 and he was shown as promoted from the post of Assistant Sub Inspector of Police to Sub Inspector of Police w.e.f. 01-02-1984. The petitioner in its rejoinder had made specific statement that persons, whose names were incorporated from serial no. 1545 to 1733 of the said seniority list, were granted promotion as Inspector of Police w.e.f. 29-12-2006, vide Notification issued on 01-11-2007.

7. Mr. Md. Shahnawaz Ali, learned counsel for the petitioner, while pressing the present petition, submits that the petitioner was promoted from A.S.I. to S.I. with effect from 01-02-1984. According to him, once the persons, who were promoted/appointed after the petitioner as Sub-Inspector of Police, ignoring the case of the petitioner, it is a case of *malafide* and arbitrary action on the part of the respondents. He submits that the petitioner since was promoted as Sub-Inspector of Police on



01-02-1984 after completion of training from the Police Training College, Hazaribagh, certainly he was entitled to be considered for being promoted from the date on which juniors to the petitioner were promoted as Inspector of Police. He reiterates by way of referring to running page 9 of the petition i.e. enclosure of **Annexure - 1** and recommendation of the Regional Selection Board in column no. 5 to show that the Board had also noticed the date of promotion of the petitioner, as Sub-Inspector of Police, to be 01-02-1984. According to him, there cannot be any dispute regarding his promotion as Sub-Inspector of Police on 01-02-1984. He submits that even according to counter affidavit, it has not been disputed that persons, who were promoted/appointed after the promotion of the petitioner, were granted promotion as Inspector of Police. It has been emphasized that petitioner was having clean and exemplary service record and as such, ignoring the case of the petitioner for granting promotion was illegal act of the respondents and therefore, it is a fit case for issuance of direction to the respondents to consider the case of the petitioner for granting promotion as Inspector of Police from the date on which juniors or at least similarly situated persons as petitioner were promoted.

8. Sri Anil Kumar Singh, learned Govt. Pleader - 26 has vehemently opposed the prayer of the petitioner. By way of referring to fact disclosed in the counter affidavit filed on behalf of



the respondent no. 2, he tried to persuade the Court that date of promotion of the petitioner, as Sub Inspector of Police, may not be taken as 01-02-1984, but instead it can be inferred that he was promoted as Sub-Inspector of Police with effect from 06-05-1987, as stated in paragraph – 5 of the counter affidavit of respondent no. 2. He has argued that petitioner was appointed as Steno Sub-Inspector of Police on 13-08-1972 and he was reverted to the rank of General Assistant Sub Inspector of Police on 23-09-1983. He completed his P.T.C. training in 1984 and thereafter, he was granted *adhoc* promotion to the rank of Sub-Inspector of Police on 01-02-1984. By way of placing reliance on a Division Bench order of this Court dated 30-03-2006 passed in C.W.J.C. No. 11211 of 2003 and C.W.J.C. No. 11667 of 2003 (**Annexure – A** to the counter affidavit of respondent no. 2), learned State counsel has argued that post of Steno Sub-Inspector/Assistant Sub-Inspector belong to entirely different cadres. He submits that in the said order, this Court has further observed that ‘ordinarily’ after serving as Stenographer for five years, Steno Sub Inspectors/Steno Assistant Sub Inspectors would be reverted to the district work and on reversion, their seniority in the main police list would be reckoned from the date of their reversion. According to learned State counsel, in view of Division Bench order of this Court, as referred hereinabove, the date of promotion would be of year 1987 instead



of 1984. As per learned State counsel, the petition deserves to be rejected outrightly on the aforesaid ground.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the materials available on record, at least, this fact is evident and supported with the relevant documents that the petitioner was promoted as Sub Inspector of Police on 01-02-1984, which can be seen in the recommendation of the Regional Selection Board at running page 9 of the brief. On the basis of the said recommendation of the Selection Board, the Deputy Inspector General, Champaran region, Bettiah, vide its Memo No. 156 dated 17-02-2009, recommended the case of the petitioner for his promotion as Inspector of Police. This fact has also been admitted in the counter affidavit of respondent no. 6, in paragraph no. 6 & 7, which has been incorporation hereinabove. Only plea for non-consideration of the case of the petitioner has been taken in the said counter affidavit that before recommendation made by the D.I.G., vide **Annexure – 1** to the writ petition, which was made on 17-02-2009, the D.G.P., Bihar had already granted regular promotion to Sub Inspectors of 1984 Batch and promotion order was already issued, vide Memo No. 216 dated 21-01-2009. On perusal of order contained in Memo No. 27/P dated 01-11-2007 issued under the order of Director General of Police (Headquarter



& Administration), Bihar, which has been brought on record by filing rejoinder by the petitioner at running page 63 and 64, it is evident that in the month of June, 1984, Sub Inspectors of Police were directly appointed and they were granted promotion from Sub-Inspector of Police to Inspector of Police. Meaning thereby that persons, who joined subsequent to the petitioner, were promoted as Inspector of Police in the year 2007 itself. This Court, at this juncture, may not record any observation as to whether the petitioner was entitled to be promoted with effect from the date of promotion of direct recruits, though appointed subsequent to the petitioner, but at least, it is as per recommendation i.e. **Annexure - 1** to the writ petition, contained in Memo no. 156 dated 17-02-2009, which was made on the basis of recommendation of the Regional Selection Board treating the date of promotion as Sub Inspector of Police w.e.f. 01-02-1984, the case of petitioner was required to be considered by the Director General of Police. Ofcourse, prior to the issuance of **Annexure - 1**, the Selection Board presided over by the Director General of Police, vide it Memo No. 216/P-1 dated 21-01-2009, had already considered and granted promotion to ten Sub-Inspectors of Police to the post of Inspector of Police. Perusal of running page 9 i.e. recommendation of the Regional Selection Board shows that this recommendation was made on 23-12-2008 i.e. much prior to passing of **Annexure -**



2 i.e. Memo No. 216 dated 21-01-2009. Once the case of the petitioner was received in the office of the D.G.P., certainly it was necessary for him to constitute a Board and consider the case of the petitioner regarding his promotion to the post of Inspector of Police.

10. So far as the order, on which heavy reliance has been placed by the learned State counsel i.e. order dated 30-03-2006 in Annexure – A to the counter affidavit, the Court is of the opinion that said decision has got no relevance for considering the case of the petitioner for his promotion as Inspector of Police. Once the petitioner was already promoted as Sub Inspector of Police, there was no question for applying the principle, as per Appendix - 42 of the Bihar Police Manual, which has been referred in order dated 30-03-2006 by the Division Bench of this Court. Even for the time being, if it is assumed that the said provision was applicable, it is an admitted case that petitioner was appointed as Steno Sub Inspector of Police on 13-08-1972. It is specific case of respondent no. 2, which has been disclosed in paragraph 3 (i) of the counter affidavit of respondent no. 2, that petitioner was appointed as Steno Assistant Sub Inspector of Police on 13-08-1972. Even if the order dated 30-03-2006 (**Annexure – A** to the counter affidavit) is taken into account, after completion of five years as Steno Sub-Inspector of Police, he was deemed to be reverted as



General A.S.I. after completion of only five years. Moreover, in the present case, the petitioner was already promoted as Sub-Inspector of Police on 01-02-1984 after completion of his training from Police Training College, Hazaribagh. Accordingly, the Court is of the opinion that reliance of learned State counsel on **Annexure – A** to the counter affidavit i.e. order dated 30-03-2006 passed by Division Bench of this Court has got no application in the present case.

11. In view of facts & circumstances and the fact that petitioner was promoted as Sub-Inspector of Police on 01-02-1984 as well as his case was recommended by the Deputy Inspector General, Bettiah, vide Memo No. 156 dated 17-02-2009 (**Annexure – 1** to the writ petition) with the recommendation of the Regional Selection Board, it is necessary to issue a direction to the Director General of Police, Bihar to consider the case of petitioner for his promotion from Sub-Inspector of Police to Inspector of Police in accordance with law. All the formalities must be completed within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed with all consequential benefit.

(Rakesh Kumar, J.)

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