

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14297 of 2008

=====

Rajesh Sharan, Son of Murari Sharan Srivastava, resident of Mohalla-
Jaiprakash Nagar, Bettiah, P.S.- Muffasil, District-West Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. The Chief Secretary Government of Bihar, Patna.
3. The Home Secretary Government of Bihar, Patna.
4. The Joint Secretary, Home Department, Government of Bihar, Patna
5. The Director General of Police, Bihar, Patna.
6. The D.I.G. of Police, Magadh Range, Gaya.
7. The Superintendent of Police, Jehanabad.
8. The Superintendent of Police, Aurangabad.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Adv.
For the State : Mr. Anshuman Singh, AC to PAAG-I.

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 10-02-2017

Heard Mr. Kamal Nayan Choubey, learned Senior
Counsel for the petitioner and Mr. Anshuman Singh, learned AC to
PAAG-I.

The present writ application has been preferred by the
petitioner for direction to respondent authorities to consider grant of
out of turn promotion to the petitioner. The relief prayed for reads as
follows:-

“(I) For out of turn promotion and for grant of
consequential benefit.

(II) For issuance of any other relief or relieves which the
Hon’ble Court may deem fit and proper in the facts
and circumstances of the case.”



The factual matrix of the case would unveil that the petitioner was appointed as Sub-Inspector in Bihar Police in the year 1994. Thereafter, the petitioner participated in a police encounter with armed extremists belonging to MCC, wherein the encounter led to liquidation of 9 MCC Activists, who were planning to attack a police picket. In the course of such encounter sophisticated arms, including SLR Carbines, Pistols, DBBL guns, etc., were recovered, which were robbed by the MCC ultras from BMP Jawans at Bhrigurari festival and concerning which Goh P.S. Case No. 115 of 1997 was registered under Sections 396, 397 and 364 of the IPC. Thereafter, the petitioner performed courageous police service which resulted in, the petitioner being awarded with several medals and awards, as is detailed and contained in Annexures-5 to 10 of the writ application. Consequently, the S.P., and the D.I.G. recommended for President Police Medal and out of turn promotion in view of Rules 660(C) of Bihar Police Manual but the petitioner has not been given out of turn promotion till date.

It is submitted by learned Senior Counsel for the petitioner that with the assistance of the petitioner, dreaded extremists were encountered as a result of which the then S.P., Jehanabad vide letter dated 09.10.1998, as contained in Annexure-1, recommended to the D.I.G., Magadh Range, Gaya for giving out of turn promotion to the petitioner under Rule 660 (C) of the Bihar Police Manual.



Consequently, vide letter dated 03.11.1998, as contained in Annexure-2, D.I.G., Magadh Range, Gaya recommended for awarding out of turn promotion to the petitioner and others, giving details how the dreaded nine extremists were eliminated in police encounter with the assistance of the petitioner and how the extremist activities have been put under control due to courageous act of the petitioner. The D.I.G. Magadh Range, Gaya vide Memo No. 463 dated 03.05.2000, as contained in Annexure-3, again recommended the petitioner, for out of turn promotion in pursuance to recommendation made by the S.P., Aurangabad, in connection with Nawinagar P.S. Case No. 21 of 2000. The case of the petitioner is that he has received many medals and awards in lieu of extraordinary performance in service. The entries in the character roll of the petitioner has been recorded as very good and recommendations have also been made for out of turn promotion in view of the integrity maintained by the petitioner within the meaning of relevant rule. The petitioner was recommended for President's Police Medal and out of turn promotion but the officers having inferior track record than that of the petitioner, have been granted out of turn promotion, but the petitioner has been denied the same.

Before arriving at any decision, the concept of promotion and out of turn promotion requires to be appreciated.

Promotion, which is an incidence of service, not only



covers advancement to a higher position or rank, but it also implies advancement to a higher grade. Promotion, however, is not a fundamental right, but right to be considered to promotion is fundamental right under Article 16(1) of the Constitution of India. The conditions of service always mandates promotional opportunities to the employee, so as to increase efficiency in public service and to defeat stagnation, which reduces efficiency. Promotion being an incidence of service, its true effect depends on proper interpretation of relevant rules, or norms of promotion applicable to the service.

The legal position is that right of an 'eligible employee' to be considered for promotion is virtually a part of his fundamental right guaranteed under Article 16 of the Constitution of India. Now, emphasis has to be given to the word 'eligible employees'. In common parlance, the basis for promotion is the length of service, besides factors like, merit, seniority, merit-cum-seniority, seniority-cum-merit, education qualification, etc. An employee does not have a vested right to be promoted, but he become eligible for being considered to be promoted on the fulfillment of the conditions illustrated above and on the basis of the prescribed rules, circulars etc, which are prescribed in the relevant service conditions applicable thereto.

The scheme of out of turn promotion, also finds its place



in service jurisprudence. The basis purpose and concept behind out of turn promotion, in legal parlance termed as accelerated promotion in police service is to give recognition to police personnel, for outstanding work by display of courage and act of bravery during anti-extremist operations.

The Bihar Police Manual, 1978 was promulgated with the authority of the State Government under Sections 7 and 12 of the Police Act, 1861. All the rules contained therein, are binding on all police officers and are an authoritative guide to the duties of the police, their code of conduct, duties, appointments, promotions, transfer, leave, etc.

Rule 660C of the Bihar Police Manual, hereinafter referred to as the Manual, stipulates about the provision of out of turn promotion

Rule 660C:- Out of turn promotion-

Selection Boards may recommend 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 the next higher authority.

Officers so promoted should be placed before the officers of the approved existing list of respective rank prepared by Selection Boards and be confirmed against substantive vacancies as



and when vacancies arise in the order of the list.

Criteria taken together for determining outstanding records of service will be as follows:-

- (i) Award of President's Police Medal and Indian Police Medal, for gallantry and distinguished service.
- (ii) Should not have been awarded any major punishment till the date of consideration and order of out of turn promotion.
- (iii) Very good entries in permanent character poll.
- (iv) Citation regarding high standard of investigation, detection and control of crime and intelligence work.
- (v) Should have ability for shouldering higher responsibilities consonant with proposed promotion.

Hence, on appreciation of Rule, the essence of Rule 660C can be understood to the effect that it does not accord either out of turn promotion or accelerated promotion, it only makes available a separate channel of promotion to a deserving officer on fulfillment of criteria stipulated therein. One can also understand the import of Rule 660C, that out of turn promotion is an exception to the general rule and it should be given strictly according to the Rule. The sum and substance, thus, can be elicited to the effect that it is the selection



Board, which actually recommends for grant of out of turn promotion to such officers, who have outstanding records of service and on the basis of such recommendation, the competent authorities may order for grant of out of turn promotion in deserving cases, as may deem fit and proper, with the approval of next higher authority.

Now the case of the petitioner has to be tested, whether the petitioner falls within the zone of consideration for being recommended for promotion, in terms of what has been stipulated under Rule 660C of the Manual. As it appears through various documents place on record by way of Annexures to the writ application, it appears that the petitioner was recommended by the S.P., Jehanabad and the D.I.G., Magadh Range for grant of President's Police Medal and out of turn promotion, in view of petitioner's display of courage and act of bravery during an anti-extremist operation, in course of performance of his duties. Though, in the absence of any counter affidavit, as also, in the absence of any instructions, the learned counsel appearing for the respondent-State is not in a position to say anything about such annexures or about the recommendations made by the superior officers.

Rule 660C of the Mannual stipulates that it is the Selection Board, which may recommend for out of turn promotion to officers with outstanding records of service. The first and foremost



criteria, out of the five criterias, on the basis of which outstanding records of service has to be determined, stipulates that the police personnel should have been awarded with President's Police Medal and Indian Police Medal, for gallantry and distinguished service. Whereas, it is apparent from the averments of the petitioner, himself that he is not yet awarded President's Medal and he has been recommended President's Medal, but he has only been recommended for President's Medal Award also. Such recommendation for President's Medal Award also has to be approved by a Screening Committee.

Mere recommendation by superior police officials does not entitle a police personnel for grant of out of turn promotion. Such recommendations do entitle him to have his case considered by a Screening Committee (Selection Board as stipulated in Rule 660C) at the State level. Such Screening Committee consists of top police officials of the state, including the Director General of Police, the Additional Director General of Police, - C.I.D., the Additional Director General of Police-Headquarters, besides two other senior level police officials. The Screening Committee obtains the C.I.D. report of the circumstances and events, on the basis of which the name of the police personnel is recommended, and then, such report is analyzed. After analysis, the Screening Committee has to option to



either approve or not to approve the name of such recommended personnel. In some cases, the Screening Committee also has the option to recommend for grant of cash reward. One has to bear in mind, that the opening words of Rule 660C, itself speaks that “Selection Board may recommend.....” The word ‘may’ is used here in discretionary sense and not in a mandatory sense and accordingly the word ‘may’ as used in Rule 660C, cannot be read or construed as ‘shall’.

In the present case, the petitioner has not brought on record any such document, nor is there any averment to that effect, whether his case was even placed before the Selection Board or Screening Committee for consideration to be recommended for out of turn promotion, or for President’s Medal Award.

No counter affidavit has been filed by the respondent-State till date, and no useful purpose would be served by keeping the application pending, at this juncture, for want of counter affidavit.

In view of the discussion made above and in view of stipulations made under Rule 660C of the Manual, this Court can only give a liberty to the petitioner to file a detailed representation to the Director General of Police, Bihar, Patna i.e., Respondent no.5 within a period of four weeks from the date of receipt of this order and it is expected from the Director General of Police, Bihar, to take a decision



for placing the case of the petitioner before the Selection Board, which shall consider the same in terms of Rule 660C of the Manual and determine the same in accordance with the criteria detailed therein. The entire exercise of decision making should be completed within a period of four months from the date of making of representation by the petitioner.

With the above observation, this writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08/05/2017
Transmission Date	N/A

