

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.80 of 2017

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Upendra Singh S/o Late Khush Nandan Singh Resident of Mohalla-Kolhua
Paigamberpur, Mithan Sarai, Near-Vivah Bhavan-Cum-Satsang Bhavan, P.S.-
Ahiapur, Dist.-Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Depatt. of Home, Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police (Special Branch) Bihar, Patna
4. The Inspector General of Police, (Personnel), Bihar, Patna
5. The Inspector General of Police, (Headquarter), Bihar, Patna
6. The Deputy Inspector General of Police, (Special Branch), Bihar, Patna
7. The Inspector General of Police, Muzaffarpur Zone, Muzaffarpur
8. The Deputy Inspector General of Police, Muzaffarpur Zone, Muzaffarpur
9. The Superintendent of Police, Special Branch, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.
Mr. Kripa Shankar Jha, Adv.
For the Respondent/s : Mr. Ravi Verma, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-11-2017

Heard Mr. Sunil Kumar, learned counsel appearing for the
petitioner and Mr. Ravi Verma, learned AC to GP-4, for the State.

The petitioner is aggrieved by the order bearing Memo No.
3542 dated 16.10.2015 of the Inspector General of Police,
(Headquarter), Bihar, Patna whereby his claim for promotion to the
cadre of Inspector has been rejected, inter alia, on grounds that since,
until the date of passing of the order, only such of the Sub Inspector(s)
who had been promoted or recruited until 5.9.1994, had been
promoted to the cadre of Inspector and the petitioner was promoted as
Sub Inspector only on 10.12.2004, he did not come within the zone of



consideration and having superannuated on 31.7.2013, he was not eligible for such promotion. A copy of the order is impugned at Annexure 10 to the writ petition.

Mr. Sunil Kumar, learned counsel for the petitioner, in reference to the pleadings on record has submitted that the petitioner was appointed as Steno Assistant Sub Inspector on 4.10.1972. In reference to the office order bearing Memo No. 128/1987 dated 7.5.1987 of the Deputy Inspector General of Police, Dumka at Annexure 1, he submits that the petitioner was brought in regular cadre of Assistant Sub Inspector with effect from 31.12.1978 vide order bearing Memo No. 3982 dated 21.7.1986 and was confirmed in the cadre of the Inspector with effect from 28.2.1982. In support of such submission he has also relied upon a file noting appearing at Annexure 12 at running Page-244 to demonstrate that the Superintendent of Police, Dumka in his noting dated 31.1.1989 has considered the claim of the petitioner to confirm him in the cadre of Sub Inspector with effect from 12.2.1982. He thus submits that the conclusion drawn by the Inspector General of Police at paragraph 5 of the impugned order to the effect that the petitioner was though recommended for confirmation against the post of Sub Inspector vide order bearing Memo No. 3982 dated 21.7.1986 with effect from 29.2.1982 but which has been kept in abeyance by virtue of the departmental proceeding No. 24/1986 is not correct.



It is further his argument that in view of promotion/ confirmation order of the petitioner to the post of Inspector with effect from 28.2.1982, as contained in Annexure 1, the conclusion drawn by the Inspector General of Police at paragraph 10 that the petitioner would be treated as Assistant Sub Inspector with effect from 9.9.1983 and would be confirmed in the cadre of Sub Inspector with effect from 10.12.2004 is contrary to the records and in effect the rejection of the claim of the petitioner for promotion to the post of Inspector on grounds that only such Sub Inspector, who were promoted or appointed until 5.9.1994 have been promoted as Inspector is incorrect and unsustainable in law and would require a reconsideration in view of the documents on record.

Mr. Verma, learned State Counsel, while not disputing the materials on record which do confirm the promotion/ confirmation of the petitioner in the cadre of Assistant Sub Inspector with effect from 31.12.1978 vide order bearing Memo No. 3982 dated 21.7.1986, as contained in Annexure 1, and also does demonstrate confirmation of the petitioner in the cadre of Sub Inspector with effect from 28.2.1982 but has chosen to refer to Rule 660 of the Bihar Police Manual to submit that even though the orders on record would confirm the contention of the petitioner but legally he is not entitled for confirmation on the cadre of Sub Inspector with effect from 28.2.1982 because Rule 660(c) of the Bihar Police Manual provides



that no Constable shall be promoted to the rank of Assistant Sub Inspector unless he has passed the examination for Assistant Sub Inspector course at the Police Training College in terms of Rule 684. It is submitted that it is a matter of record that the petitioner passed this examination only in the year 1984 and thus, even if the order at Annexure 1 would confirm him against the post of Assistant Sub Inspector with effect from 31.12.1978 but legally the petitioner cannot be confirmed on the said post until he has passed the examination for the Assistant Sub Inspector course at the Police Training College which he cleared only in the year 1984.

He has next referred to Rule 659 of the Bihar Police Manual to submit that the claim of the petitioner for promotion as Sub Inspector would arise only on completion of five years on the post of Assistant Sub Inspector and which he completes only in the year 1989. It is thus submitted that even though the notings of the Superintendent of Police, Dumka at Annexure 12 at Page-244 read alongside office order bearing No. 568 dated 7.5.1987 of the Deputy Inspector General of Police, Dumka does confirm the petitioner against the post of Assistant Sub Inspector with effect from 31.12.1978 in the light of the order bearing Memo No. 3982 dated 21.7.1986 as also against the post of Sub Inspector with effect from 28.2.1982 but such order would have to be considered in the light of the statutory stipulations present at Rule 660(c) and 659(i)(a).



I have heard learned counsel for the parties and have perused the records.

Apparently the order of the Inspector General of Police is contrary to the materials on record as discussed hereinabove. The conclusion drawn at paragraph 5 and paragraph 10 of the order is again contrary to the recommendation of the Superintendent of Police, Dumka at Annexure 12 at running Page-244 as well as the order issued by the Deputy Inspector General of Police, Dumka dated 7.5.1987 at Annexure 1. These two documents do confirm that a conscious decision was taken by the Police Department to promote and confirm the petitioner in the cadre of Assistant Sub Inspector and Sub Inspector while taking note of the departmental proceeding No. 24/1986. The issue yet would be that even if the authorities have chosen to promote the petitioner against the post of Assistant Sub Inspector and in the rank of Sub Inspector, whether the orders are in tune with the statutory provisions underlying Rule 660(c) in so far as his confirmation on the post of Assistant Sub Inspector is concerned and Rule 659(i)(a) in so far as his promotion to the post of Sub Inspector is concerned.

The argument advanced by Mr. Verma is sound and is supported by the statutory provisions even though it runs against the orders on record. This Court would not shut its eyes to the statutory position existing as regarding the eligibility of the petitioner to the



post of Assistant Sub Inspector as well as to the post of Sub Inspector. Merely because the authorities have issued orders of promotion in conflict with the statutory provisions, it has to be read as a recommendation to be tested against the statutory provisions.

The records confirm that the authorities have taken note of the departmental proceeding initiated against the petitioner and the punishment suffered by him and it is after taking note of this aspect, they have chosen to confirm him against the post of Assistant Sub Inspector with effect from 31.12.1978 to the post of Sub Inspector w.e.f. 28.2.1982. As I have observed the order dated 7.5.1987 at Annexure 1 and the opinion of the Superintendent of Police, Dumka at Annexure 12 have to be seen alongside the statutory requirements present under Rule 660(c) and since it is not in dispute that the petitioner has passed the examination of Assistant Sub Inspector course at the Police Training College only in the year 1984, his confirmation against the post of Assistant Sub Inspector would have treated as the date on which he has passed the examination at the Police Training College in 1984.

This exercise is to be followed by consideration of the case of the petitioner for promotion in the rank of Sub Inspector and which in terms of Rule 659(i)(a) makes the petitioner entitled to the post of Sub Inspector on completion of five years of service as confirmed Assistant Sub Inspector which in the present case would be in the year



1989. That the petitioner's suitability to the post(s) is not in question, this opinion merely shifts the date of confirmation of the petitioner to the post of Assistant Sub Inspector from 1978 to 1984 and to the post of Sub Inspector to 1989 on completion of five years of satisfactory service as Assistant Sub Inspector. Again since there is no dispute as to the eligibility and his suitability of the petitioner for promotion to the post of Sub Inspector, the opinion aforementioned becomes conclusive.

Having accepted the objection raised by Mr. Verma, learned State Counsel, it yet does not take away the right of the petitioner for promotion to the rank of Sub Inspector with effect from 1989 and since the Inspector General of Police by the impugned order has accepted that such of the Sub Inspectors, who were directly recruited or promoted until 5.9.1994 have been promoted to the rank of Inspector of Police, the claim of the petitioner for such promotion becomes ripe for consideration.

Although Mr. Verma at this stage refers to paragraph 30 of the counter affidavit filed on behalf of respondents no. 1, 2 and 5 to submit that it is only those A.S.I. appointed in the year 1977 who have been promoted as S.I. in 2004 and since the petitioner would be confirmed A.S.I. only in 1984, his claim would have to be considered accordingly but the argument advanced would fail in view of the order at Annexure 1 and the recommendation of the petitioner for such



promotion made by the Superintendent of Police, Dumka at Annexure 12 which order(s) continues to be in force and have never be interfered with by any authority at any stage nor can be permitted to be interfered with at this belated stage.

For the reasons aforementioned, the order bearing Memo No. 3542 dated 16.10.2015 of the Inspector General of Police, (Headquarter), Bihar, Patna, impugned at Annexure 10 to the writ petition, is quashed and set aside and the matter is remitted back to him for consideration of the claim of the petitioner for promotion as Inspector afresh in the light of the facts noted hereinabove and for passing appropriate order in accordance with law preferably within eight weeks from the date of receipt/ production of a copy of this order.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2017
Transmission Date	NA

