

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11717 of 2017

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1. Girdhary Kumar Mishra, son of Late Chhotelal Mishra, resident of Village - Tagepur, P.O. - Jagdishpur, P.S. - Jagdishpur, District - Bhagalpur.
2. Sanjay Kumar, son of Late Amarnath Singh, resident of Village and P.O. Dranara, P.S. - Bikram, District - Patna.
3. Ram Binod Singh, son of Late Sadhu Sharan Singh, resident of Village and P.O. - Naya Panapur 42 Patti, P.S. - Adhilpur Danapur, District - Patna.
4. Naushad Alam son of Late Md. Abdulla, resident of Village, P.O. - Daulatpur, P.S.- Muffasil, District - Bhojpur Arrah.
5. Sudarshan Singh, son of Late Shivilash Singh, resident of Village P.O. Keshath, P.S. - Nawanagar, District - Buxar.
6. Vijay Prasad Singh, son of Late Kuldip Singh, resident of Village P.O. - Gehuni, P.S. - Bhagwanpur, District - Begusarai.
7. Rahmat Ali, son of Late Md. Subhan, resident of Khalilpura, Ward No. 3, P.O. - Phulwarisharif, P.S.- Phulwarisharif, District - Patna.
8. Anil Kumar Pandey, son of Late Ram Niranjana Pandey, resident of Village P.O. - Kesho Narayanpur, P.S. - Tajpur, District - Samastipur.
9. Nand Kishore Singh, son of Late Ram Govind Singh, resident of Village P.O. - Bharasara, P.S. - Bihiya, District - Bhojpur.
10. Krishna Kumar Singh, son of Late Shivji Singh, resident of Village - Senduar Uttar Tola, P.O. Dayalpur, P.S.- Janta Bazar, District - Saran.
11. Arvind Kumar, son of Late Bigan Singh, resident of Village - Kanauli, P.O. - Kalisarai, P.S. - Makhdumpur, District - Jehanabad.
12. Ratan Kumar Yadav, son of Late Motilal Yadav, resident of Village - Mayaganj, P.O. - Barari, P.S. - Barari (Mayaganj



O.P.), District - Bhagalpur.

13. Binod Kumar Tiwari, son of Shri Dudh Nath Tiwari, resident of Village - Parsa, P.O. - Darwan, P.S. M.H. Nagar, District - Siwan.
14. Amrendra Kumar, son of Late Ram Keshav Shahi, resident of Village P.O. - Shahi Minapur, P.S. - Aurai, District - Muzaffarpur.
15. Asgar Imam, son of Late Rashid Alam, resident of Village P.O. - Malmal, P.S. - Kaluahi, District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Additional Director General of Police Headquarters, Bihar.
5. The Inspector General of Police, Government of Bihar (Headquarters), Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tuhin Shankar, Adv
For the Respondent/s : Mr. Md.Nadeem Seraj -GP-5

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date :-15-03-2019

Heard the learned counsel for the petitioners
and the State.



2. The petitioners, who are members of Bihar Police Service, have approached this Court for setting aside the order contained in Memo No. 5682/P-2 dated 16.05.2017 passed by the Principal Secretary, Department of Home, Government of Bihar, Patna whereby the date of promotion of the petitioners, which was granted to them earlier has been shifted forward as well as for a direction to the respondents to attach to the services of the petitioners seniority with effect from the date of their reversion to the general cadre from the cadre of Stenographer / Assistant Sub-Inspector of Police.

3. The petitioners were appointed as Stenographers/Assistant Sub-Inspectors in the years 1988-89. They were retained in the aforesaid closed cadre of the Stenographers / ASI for more than five years when they should have been ordinarily reverted to the general cadre in view of Appendix 42(5) of The Bihar Police Manual, 1978. The provision of Appendix



42(5) of The Bihar Police Manual is being extracted below for ready reference:

"The standard of educational qualifications, measurements, age and physical tests shall be the same in case of steno sub-inspector as is for sub-inspector(unarmed), vide rule 658 and for steno or typist assistant sub-inspectors, those of constables, vide rule 663. In suitable cases relaxation in height and chest may be done by Dy. I.G., Admin. up to 1" and by the Inspector-General up to 2". In case of scheduled caste/tribe, further relaxation may be done by 1". All candidates shall be allowed to appear in test of shorthand dictation/typing and after that they may be required to appear in physical tests meant for respective ranks. However, suitable candidates may be exempted from these tests. The candidates shall be appointed by the Central Selection Board [Appendix 72(2)]. They will serve as stenographers for a period of five years, after which they will ordinarily revert to district work but before that they shall undergo the usual course of training at the Police Training College for ordinary Police duties. The Inspector General shall be at liberty to retain them as stenographers for a longer period where necessary."

4. A bare reading of Clause 5 of Appendix 42 of The Bihar Police Manual, 1978 makes it evident that the requirements at the time of the induction of



Stenographers / ASIs / Sub-Inspectors are the same as in case of the police officers of the general cadre but in their cases, there could be relaxation in height and chest measurement up to a particular limit. The Clause further indicates that such appointees shall work as Stenographers for a period of five years, after which they will ordinarily revert to district work, but before that, they shall undergo the usual course of training at the police training college for ordinary police duties. The Inspector General of Police shall be at liberty to retain them as Stenographers for a longer period where necessary.

5. In terms of the above, the petitioners were required to be repatriated / reverted as Assistant Sub-Inspectors in the general cadre sometimes in the year 1993 and 1994, after their having completed five years but they were repatriated / reverted only after lapse of about 20 years by order dated 21.07.2008 contained in Memo No. 3301 / P-2. The petitioners were not



permitted or allowed training but the respondents allowed training to the subsequent appointees after repatriating them in general district cadre.

6. Learned counsel for the petitioners has drawn the attention of this Court to the fact that on several representations made to all the concerned officials/respondents by the petitioners to fix their seniority in accordance with law, a policy was formulated vide Police Order No. 291 of 2008, notified vide Memo No. 1406 and 1887 dated 31.03.2008 and 30.04.2008 respectively for repatriation of the petitioners and other candidates to the district cadre. The aforesaid orders of the Police Department, after taking note of the judgements of this Court passed in C.W.J.C. No. 11211 of 2003 and 11667 of 2003 which indicated that after five years of rendering service on the post of Stenographers / Assistant Sub-Inspector, an officer of the aforesaid cadre would be entitled to be reverted to the general cadre and their seniority would be counted



from the date of their reversion to the general cadre, brought about certain modifications. The modifications were to the extent that Stenographers ASI would normally be reverted to the general cadre after five years but the work from them in the general cadre would be taken only after they would pass the PTC examination; all such reverted officers who would continue to work as Stenographers after the reversion would be treated as members of the general cadre; the aforesaid modification would be applicable with immediate effect to such Stenographers, who have, up till now, not been reverted and who desire to be reverted to the general cadre; such Stenographers / ASIs who have the qualification for going for training would be reverted to the general cadre and till the time they go for training, they shall continue to work as Stenographers; such officers of the Stenographer cadre who would continue in the aforesaid cadre by their election for the same would be promoted in the same



cadre of Stenographers on the higher post of Sub-Inspectors in accordance with the vacancy; such officers of the Stenographer cadre who would themselves elect to remain in the same cadre would not object to persons junior to them getting reverted to the general cadre after completing five years; such Stenographers who have chosen to remain in the same cadre shall not be given any further opportunity of reversion to the general cadre and such Stenographers who get promoted in that cadre will not be given the benefit of reversion later.

7. The modifications, referred to above, further made it clear that the Director General of Police would be authorized to take work from such Stenographers / ASI even after their reversion as long as their services as Stenographers are required.

8. The petitioners approached the respondents for giving them promotion to the post of Sub-Inspectors which was given to their juniors. On such representation, by order dated 10.11.2008 contained in



Memo No. 5054/P-2, the seniority of the petitioners along with others was fixed. On that gradation list, the petitioners were promoted to the post of Sub-Inspectors of Police vide order dated 06.11.2009 contained in Memo No. 41/P-2. The petitioners thereafter made representations for fixing the date of promotion from an earlier date in view of the delayed repatriation / reversion which had made them juniors to those who had been trained prior to the petitioners after their repatriation in district cadre.

9. The petitioners were also allowed training which they successfully passed.

10. It has been submitted that thereafter vide letter dated 09.09.2016, the seniority of the petitioners was revised and they were placed below the persons who were junior to them in the gradation list. After the petitioners had passed their PTC examination, they further represented for refixing their seniority but without paying heed to the representation of the



petitioners, by order dated 16.05.2017, the date of promotion of the petitioners was shifted back to 09.06.2010, i.e., from the date of completion of PTC training by the petitioners.

11. It has been urged on behalf of the petitioners that the aforesaid shifting back of the date is highly unjustified and is in breach of the rules in that regard. The Board completely over-looked that the petitioners were not allowed training earlier for no fault of theirs and were also retained in the Stenographer's cadre long after the requisite period of five years and that their date of seniority was made reckonable from the date of their passing the PTC examination which was not the requirement of law. The requirement, on the other hand, was of taking the work of general cadre from such reverted officers only after they completed training but the date of completion of training was not / never the basis for fixing the seniority of such police officers, which was to be fixed from the date of reversion.



12. For the aforesaid reasons, it has been prayed that the seniority be refixed and the gradation list be quashed. Because of such shifting back of the date of seniority, the petitioners may lose out on promotion and the Departmental Promotion Board is stated to be under contemplation for considering / recommending officers for promotion to the post of Inspectors.

13. As opposed to the aforesaid submissions made on behalf of the petitioners, learned counsel for the respondents submitted that in police organization, the Assistant Sub-Inspectors of Police are promoted to the rank of Sub-Inspector under Rule 659 of The Bihar Police Manual, 1978. Fifty per cent of the vacancies in the rank of Sub-Inspectors is to be filled up by selection from the rank of ASI who have served for at least minimum of five years. Only select officers who have shown exceptional merit while serving as ASIs are required to be promoted.

14. It has further been submitted that



promotion in police department is on the basis of seniority-cum-merit. The eligibility criteria for promotion of Assistant Sub-Inspector to Sub-Inspector are (a) completion of probation period of two years (b) passing of Hindi Noting and Drafting Examination (c) passing of police training course (d) confirmation (e) clean service record (availability of requisite ACR, no effect of major punishment, free from pendency of departmental / judicial / criminal proceedings and not under suspension). The passing of PTC examination is stated to be an essential condition for promotion to the rank of Assistant Sub-Inspector in view of Rule 660 and 684 of the Bihar Police Manual, 1978.

15. Learned counsel for the respondents also drew the attention of this Court to the judgement of the Supreme Court in ***R. Prabha Devi & Ors. Versus Union of India [AIR 1988 SC 902]*** holding that seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills



the eligibility condition prescribed by the relevant rules.

16. On factual score, it was submitted that the petitioners were promoted from ASI to SI on 06.01.2009. At that time, all the petitioners had not passed the PTC examination and were not eligible for promotion. Thus, any promotion granted to them against the norms laid down was wrong and could not have been allowed to be perpetuated. Thus, after reviewing their cases, the petitioners were granted promotion with effect from the earliest possible date i.e. the date of their passing the PTC examination.

17. The further submission on behalf of the respondents is that the seniority of the Sub-Inspectors and ASIs is determined as per the provisions contained in Police Order No. 260 of 1997 which inter alia indicates that no seniority list would be prepared on the basis of provisional / ad hoc promotion. Thus, the promotion granted to the petitioners earlier was not a regular promotion and therefore the date of grant of



such promotion was refixed without any order of recovery of the financial benefits that the petitioners had obtained because of such irregular promotion.

18. The learned counsel appearing for the respondents has also submitted that seniority and eligibility are distinct concepts and the rule making authority is competent to frame rules laying down the eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that any person who was inducted in service earlier would not be required to comply with the eligibility condition for being considered for promotion to the higher post merely on the basis of his seniority. It was thus argued that re-fixing of the seniority list cannot be questioned by the petitioners as their promotion was, in the first instance, without their having the eligibility of having passed the PTC examination which was mandatory.

19. After having heard the learned counsel for



the parties, what strikes this Court is that the petitioners would normally have been reverted to the general cadre but they were not given that benefit and were made to serve as Stenographers A.S.Is. The relevant requirement under the Police manual for reversion of such officers was completion of five years and the only condition was that they would be given the work of the general department only after their successful completion of the training of PTC. It further appears from the records that the petitioners were reverted after a long time and despite their insistence for being sent for PTC training, such training was not given to them. However, on representation having been made by them, their seniority was fixed which was later re-fixed and persons juniors to the petitioners were placed above them on the ground of the petitioners having been irregularly promoted to the higher posts without their having completed the mandatory training in PTC.

20. No doubt there is a distinction between



seniority and eligibility and no matter what is the length of service of an employee, one has to be eligible for promotion which is dependent on various other factors/variables.

21. However, here is not a question of promotion to the higher post but only of the eligibility. The earlier promotion was given without the petitioners having cleared the PTC training. This was only under circumstances for which the petitioners cannot be faulted with. Sending a person for requisite training is under the authority of the employer and the only effort which an employee can make is to make representation and insist for being sent for training.

22. There is no gainsaying the fact that equality under article 14 is a positive concept and it conceives within it an enforceable equality which may not amount to directing continuance and perpetuation of an illegality/illegal procedure or an illegal order for extending similar benefits to the petitionists. Before a



claim based on equality is upheld, it must be established that the claim is just and legal and which has been denied to the petitionists while it has been extended to others. It is only then can it be called an invidious discrimination, which cannot be countenanced under law. However, it has been brought to the notice of this Court that many persons who were appointed later than the petitioners were promoted from a date when they had not cleared the PTC training and though Article 14 of the Constitution of India does not conceive of a negative covenant, the seniority of the petitioners has been toyed with to their disadvantage. The promotion which was granted to the petitioners earlier, in some instances before the dates on which they cleared the PTC test, was only on recognition of the fact that the petitioners were reverted after long lapse of time on their insistence and it is not their fault that they underwent training much later. It is not a case where anyone of the petitioners failed to clear the PTC examination in one go and the



delay in clearing such examination was only because of the fault of the employer in not sending them for requisite training. It was only on account of that fact that the promotion to the petitioners was given, on the post of Sub-Inspectors.

23. The seniority of the petitioners which has been shifted forward serves no purpose and any further promotion to the post of Inspector would not only be on the basis of the length of service as Sub-Inspectors but also on other considerations of eligibility.

24. In ***The Union of India & Ors versus Harendra Prasad Gupta 2017(3) PLJR 261***, a Division Bench of this High Court while dealing with promotion of the respondent in case of vacancies being available for the year 2012-13 but the DPC not having been convened for the said year, held that delay in consideration for grant of promotion against the vacancies for the quota for the year of vacancy has implication for future promotion and for the failure of



the employer in convening DPC, the burden cannot be shifted upon to the employees who have legitimate expectation for consideration of promotion at an appropriate time and in conformity with the guidelines of the competent authority.

25. While expositing the aforesaid principle, the Division Bench of this Court, referred to above relied upon a judgment delivered by the Apex Court in ***The Union of India & Ors versus N.R. Banarjee & Ors, (1997) 9 SCC 287.***

26. Similarly, in ***Ajit Kumar Mishra versus The Union of India & Another, 2016(2) PLJR 111,*** a Division Bench of this High Court again, while dealing with promotion and shifting of dates has held that the respondent employee cannot be denied promotion on account of the laches of the employer.

27. Similar views have been expressed by an Hon'ble Single Judge in ***Prantosh Kumar Das versus The State of Bihar & Ors, 2014(1) PLJR 25.***



28. Under such circumstances, this Court is of the view that the claim of the petitioners is required to be reconsidered by the concerned respondents.

29. It further appears from the writ petition that a representation has been made by the petitioners before the Additional Director General of Police, (Headquarters) and the Director General of Police, (Headquarters) but no decision has been taken over the aforesaid representation.

30. Under the aforesaid circumstances, the petitioners are directed to make a fresh representation before the Director General of Police, Headquarters within a period of three weeks from today, which representation would be disposed off, taking into account the factors stated hereinbefore and a reasoned order shall be passed within a period of four weeks thereafter but preferably before any decision with respect to the concerned Board taking up the issue of promotion of the petitioners and others to the higher post of Inspectors.



31. With the aforesaid observation/direction,
the writ petition is disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16/03/2019
Transmission Date	

