

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1670 of 2018

In

Civil Writ Jurisdiction Case No.9400 of 2018

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1. Upendra Singh, Son of Sri Kanhaiya Singh, resident of Village- Purwan, P.O. and P.S.- Brahmpur, District- Buxar.
 2. Sanjay Yadav, Son of Sri Bali Narayan Yadav, resident of Village and P.O.- Chakki, P.S.- Brahmpur, District- Buxar.
 3. Binod Kumar, Son of Sri Baban Singh Yadav, resident of Village- Kulharia, P.S.- Buxar Muffasil, District- Buxar.
 4. Animesh Kumar Kewat, Son of Sri Sahdeo Kewat, resident of Village- Pathla, P.O. and P.S.- Lakhisarai, District- Lakhisarai.
 5. Ramesh Ram, Son of Sri Asharfi Ram, resident of Village- Baruara, P.O.- Kusauthar, P.S.- Bahadurpur, District- Darbhanga.
 6. Bipin Bihari Yadav, Son of Sri Ram Pravesh Yadav, resident of Village- Jagdishpur, P.O.- Nadaw, P.S.- Buxar, District- Buxar.
 7. Santosh Kumar Thakuri, Son of Late Yashbir Singh Thakuri, resident of Singara Asthan, Police Station, P.O. and P.S. Rampur, District- Gaya.
 8. Ratnesh Kumar Yadav, Son of Sri Dinanath Yadav, resident of Village and P.O.- Amarpur Tole, P.S.- Darauli, District- Siwan.
 9. Vishnu Bahadur Chhetri, Son of Sri Hari Bahadur Chhetri, resident of Jail Camp, P.O. Bihar Veterinary College, P.S.- Hawaii Adda, District- Patna.
 10. Satish Bahadur, Son of Late Bhim Bahadur, resident of Raniganj Raj Para, Near Mangla Mandir, P.O. and P.S.- Raniganj, District- Bardhaman (West Bengal).
 11. Shankar Thapa, Son of Sri Bahadur Jang Thapa, resident of Bihar Military Police-1, P.O.- Bihar Veterinary College, P.S.- Hawaii Adda, District- Patna.
 12. Bal Bahadur Pune, Son of Sri Min Bahadur Pune, resident of Orissa Armed Police, 2nd Battalion, Jharsugra, P.O. and P.S.- Orissa Armed Police, P.S.- Jharsugra, District- Jharsugra (Orissa).
 13. Suresh Thapa Magar, Son of Sri Bharat Thapa Magar, resident of Bihar Military Police-1, P.O.- Bihar Veterinary College, P.S.- Hawaii Adda, District- Patna.
 14. Shyam Chhetri, Son of Sri Gopal Chhetri, resident of Mohalla- Sheikhpura, P.O. Bihar Veterinary College, P.S.- Hawaii Adda, District- Patna.
 15. Marsi Muktan, Son of Sri Dhan Bahadur, resident of Jharkhand Armed Force-1, P.O. and P.S.- Doranda, District- Ranchi.
 16. Raja Chhetri, Son of Sri Shyam Kumar Chhetri, resident of Bandhu Apartment, near Vigyan Kendra, P.O. and P.S.- Bariatu, District- Ranchi (Jharkhand).
 17. Umesh Kumar Yadav, Son of Sri Badri Yadav, resident of Village and P.O.- Barka Rajpur, P.S.- Simri, District- Buxar.
 18. Santosh Kumar Yadav, Son of Sri Bhimsen Prasad Yadav, resident of Village- Sengar Tola, P.O. and P.S.- Rivilganj, District- Saran at Chapra.



19. Gopal Sharma, Son of Sri Ram Kishun Singh, resident of Village- Dawthu, P.O. Gangapur, P.S.- Ulla Hasganj, District- Jehanabad.
20. Ajay Kumar, Son of Sri Budh Bahadur, resident of Quarter No. 11/7-13, Aadi Poli, P.O.- Chandrapura, P.S.- Chandrapura, District- Bokaro (Jharkhand).
21. Pradeep Singh, Son of Sri Chirendra Singh, resident of Village- Dharohi, P.O. Chausa, P.S.- Buxar Muffasil, District- Buxar.
22. Sushil Kumar, Son of Sri Jag Narayan Chaudhary, resident of Village- Bhadsari, P.O.- Bhada, P.S.- Bagen, District- Buxar.
23. Rajesh Kumar Prasad, Son of Sri Madan Prasad, resident of Village and P.O.- Mandrauli, P.S.- M.N. Nagar Hasanpur, District- Saran at Chapra.
24. Ramesh Kumar Yadav, Son of Sri Jagdish Yadav, resident of Village and P.O.- Bhawalpur, P.S.- Marhaura, District- Saran at Chapra.
25. Tek Bahadur Rana, Son of Sri Dil Bahadur Rana, resident of Village- Koribari (Milan Road), P.O.- Champasari, P.S.- Pradhan Nagar, Siliguri, District-Darjeeling (West Bengal).

... .. Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police (Welfare), Bihar, Patna.
4. The Inspector General of Police (Operations), Bihar, Patna.
5. The Inspector General of Police (Inspection), Bihar, Patna.
6. The Additional Director General, Bihar Military Police, Patna.
7. The Superintendent of Police (Operations), Special Task Force, Bihar, Patna.
8. Upendra Kumar Chaubey, Son of Sri Ram Kishun Chaubey, resident of Village- Jarigawan, P.O.- Karhansi, P.S.- Buxar Muffasil, District- Buxar.
9. Ajit Kumar Singh, Son of Sri Pushpendra Singh, resident of Village- Mathwaliya, P.O. Daulatpur, P.S. Ara Muffasil, District- Bhojpur at Ara.
10. Sanam Tamang, Son of Late Ganga Ram Tamang, resident of Village- Mosling (Salua), P.S.- Kharagpur (Local), District- West Mednipur (West Bengal).
11. Markandey Singh, Son of Sri Lal Bihar Singh, resident of Village and P.O.- Sonpa, P.S.- Rajpur, District- Buxar.
12. Chandan Bahadur Thapa, Son of Sri Man Bahadur Thapa, resident of Orissa Military Police, 2nd Battalion, Jharsugra, P.O. and P.S.- Orissa Military Police, District- Jharsugra (Orissa).
13. Bahadur Thapa, Son of Sri Ram Bahadur Thapa, resident of Jharkhand Armed Police-1, Line, P.O. and P.S.- Doranda, District- Ranchi (Jharkhand).
14. Bablu Gurung, Son of Late Tek Prasad Gurung, resident of Jharkhand Armed Force Police-1, Line, P.O. and P.S.- Doranda, District- Ranchi (Jharkhand).



15. June Bahadur Rana, Son of Late Tek Bahadur Rana, resident of Orissa Armed Police, 2nd Battalion, Jharsugra, P.O. and P.S.- Orissa Armed Police, P.S.- Jharsugra, District- Jharsugra (Orissa).
16. Mantu Lal, Son of Sri Dhan Bahadur Magar, resident of Village- Dawthu, P.O.- Gangapur, P.S.- Ulla Hasganj, District- Jehanabad.
17. Gyanendra Jang Shah, Son of Sri Home Jang Shah, Resident of Bihar Military Police-1, P.O.- Bihar Veterinary College, P.S. Hawai Adda, District- Patna.
18. Tapan Kumar Gurung, Son of Sri Tula Ram Gurung, resident of Bihar Military Police-1, P.O.- Bihar Veterinary College, P.S.- Hawai Adda, District- Patna.
19. Rajiv Kumar Singh, Son of Sri Narendra Singh, resident of Village- Bawana Ganda, Jalalpur, P.S.- Daraunda, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Abhinav Srivastava, Advocate
For the State	:	Mr. Prabhat Kumar Verma, AAG-3
		Mr. Suman Kumar Jha, A.C. to AAG-3
		Mr. Sanjay Kumar Ghosarvey, A.C. to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-08-2019

Heard Shri Abhinav Srivastava, learned counsel for the appellants and Shri P.K. Verma, learned Additional Advocate General No.3 for the State.

2. The appeal assails the impugned judgment dated 18th July, 2018 delivered by a learned single Judge in C.W.J.C. No.9400 of 2018, wherein the appellants had prayed that they should be allowed to retain the status of the Driver Constables which they have acquired by lawful means in spite of having been



placed on deputation in the Special Task Force keeping in view the exercise which was undertaken by the respondents in terms of Paragraph 1186 of the Bihar Police Manual.

3. The submission is that the appellants cannot be deprived of their position in the gradation list of Drivers of the Bihar Military Police, which is their original parent cadre once they have faced the committee constituted for selecting the Drivers under Paragraph 1186 aforesaid. Apart from this, it has also been urged that such benefits have been extended to others vide orders dated 10th of May, 2013, 20th of May, 2013, 04th of June, 2013, 25th of November, 2013 and 07th of December, 2013. It is urged that all these Drivers, who have been posted in the Special Task Force on deputation, have been repatriated to their original cadre but simultaneously allowing them to retain their position as Drivers. Thus, denial of the said benefit to the appellants is discriminatory and violative of Article 14 of the Constitution of India.

4. The claim of the appellants for being treated as such had been forwarded on 02nd of May, 2016 by the Bihar Military Police to the Director General of Police, Bihar, but the same was turned down on 15th July, 2016 with a recital that the change of cadre would not be permissible and they shall continue to be in the Bihar Military Police.



5. The background in which this dispute has arisen is that all the appellants were Constables in different battalions of the Bihar Military Police. The State Government for the purpose of prevention of organized criminal activities decided to set up a Special Task Force in the State of Bihar and several police personnel from different Organizations were deputed in the said Special Task Force, wherein the appellants were also transferred from different battalions of the Bihar Military Police against the 66 posts of Driver that had been sanctioned for the Special Task Force. 50 posts of Drivers were again sanctioned and the writ petitioners-appellants, as noted above, were transferred to the Special Task Force respectively.

6. In order to utilize the duties of the appellants as Drivers, they were provided with Learner's Driving Licence arranged by the officials of the Central Task Force, whereafter a committee was constituted in the year 2012 itself that undertook the exercise of converting their status to the Driver Constables. This, according to the appellants, has been done in accordance with the procedure prescribed under Paragraph 1186, which was applicable then. Paragraph 1186 is extracted herein under :

*“1186. Appointment of
drivers/Havildar driver/Reserve Sub-
Inspector (Transport)--(a) Driver.--*



Keeping in view, the qualifications required for drivers, the Superintendents shall make selections from among the rank of constables and send the list to the Range Deputy Inspector-General for approval. Preference may be given to those who already know driving. The drivers shall ordinarily remain in their own districts. The number of constables (i.e. "Learner") trained or to be trained in driving for filling vacancies shall not exceed 25 per cent of the sanctioned strength of driving staff (see rule 1188).

The drivers shall be given training as provided in clause (3) Appendix 88 and tested.

A list of drivers, who become successful in tests, shall be kept in districts according to seniority and copy sent to Range Deputy Inspector General where these shall be consolidated.

(b) Havildar drivers.--They shall be appointed from among the drivers of the range list as given below :--

In July, the Range Deputy Inspector-General shall call for nominations in P.M. Form no. 102 for promotion to the rank of Havildar Drivers from Superintendents on the basis of seniority and efficiency. At least 14 days



before nominations are sent to Deputy Inspector-General, the Superintendent shall publish by district order the names of those driver constables whom they propose to promote in order that those who are not to be promoted may represent their cases before the promotions are made. The driver constables making such representations should be given interviews and their cases examined with them. In forwarding the nominations, a certificate must be given of the dates on which the lists were published and intimation sent to those not nominated. The Range Deputy Inspector-General's board may interview the nominees in which a Motor Vehicle expert may also be kept. Thereafter a list of selected driver constables shall be prepared and a copy of the minutes of the committee sent to Inspector-General office. If any driver constable is placed higher than his seniority warrants, reasons must be given for the same.

(c) Reserve Sub-Inspector (Transport).-- See rule 660B(a)(ii). ”

7. The appellants continued to discharge their duties as Driver Constables in the Special Task Force and they set up a claim that their names should be included in the said gradation list



of Driver Constables. It is this request of the appellants that gave rise to the present controversy, whereafter the letter dated 15th July, 2016 was issued by the Director General of Police declining to accept their change of cadre.

8. Learned counsel for the appellants contends that by virtue of this denial, the appellants have lost their opportunity of getting placed in the gradation list of Drivers, as a result whereof they continued to be treated as Constables of the Bihar Military Police. The submission of Shri Srivastava is that even assuming for the sake of argument that they were on deputation and would be retained in the cadre of the Bihar Military Police, yet they would now be entitled to the benefit of being treated as Driver Constables and not merely as General Constables.

9. It is for this reason that the two other arguments have been advanced, firstly that they had been placed as Driver Constables after following the due procedure as was applicable then in the year 2012 itself. It is also submitted that there was no other Rules and the framing of the new Rules, namely, the Bihar Police Driver Cadre Rules, 2017, which repeal all the earlier provisions, would not affect the rights of the appellants as they had been selected through a committee under Paragraph 1186 which was in force at the time of their consideration and placement as



Driver Constables. The second argument is that this benefit has been extended to several such Constables who worked as Driver Constables in the STF and upon repatriation are being retained as such.

10. A counter affidavit was filed to the said allegation in the writ petition and we find that the stand taken before the writ Court was that the appellants had been deputed as Constables and not as Drivers and therefore could not claim any such right of being treated as Driver Constables. It has also been pleaded in the counter affidavit that the Bihar Military Police had got nothing to do with the decisions taken by the Special Task Force authorities which could in no way extend any benefit to the appellants.

11. In reply to the arguments of similar such Drivers having been retained, statement made in Paragraph 15 of the counter affidavit is that the memos in respect of other similar situate persons have become infructuous after the decision of the headquarters dated 15th July, 2016.

12. Shri P.K. Verma, learned Additional Advocate General No.3 contends that the learned single Judge has rightly come to the conclusion that there could not be any change of cadre and adjustment, if any, cannot now be made, but if the appellants are still aggrieved, they have been given the liberty to approach the



appropriate authority for redressal of their grievance. He therefore submits that the appellants had no legal rights so as to claim their continuance as Driver Constables or even placed in the gradation list as they do not appear to have been appointed either by the competent authority or in accordance with the rules as Drivers. The mere placement by STF authorities therefore does not in any way extend such benefits to the appellants to claim their status as that of a Driver Constables.

13. We have considered the submissions raised. At the very outset, we may point out that the learned single Judge has not assessed the impact of the process that was undertaken under Paragraph 1186, whereby the appellants have been admittedly screened and they were allowed to function as Driver Constables in the Special Task Force, which is part of the very police organization. It is correct that the appellants had been sent on deputation from the Bihar Military Police, but, at the same time, in the given circumstances, they were allowed to perform the duties of Drivers after having assessed them on the strength of the procedure prescribed under Paragraph 1186 of the Bihar Police Manual.

14. The appellants claimed that they should be continued to be treated as such and for this, they have pleaded that



the State-respondents have discriminated them. We do not find any such consideration by the learned single Judge on this issue having been clearly raised and contested. The Police personnel who had been sent on deputation and worked as Drivers in the Special Task Force are stated to have been retained as such in their capacity as Driver Constables. The State therefore will have to take a decision with regard to the future of such Driver Constables who have undergone the aforesaid exercise and who claim entitlement to be retained in the status of Driver Constables.

15. We may also further point out from the statement of facts in the documents of the respondents as also in the appeal that a particular writ petition, bearing C.W.J.C.No.1708 of 2010 (Umesh Singh Vs. The State of Bihar and Others), had been filed, where the petitioner therein was also extended the said benefits. We, however, find from the record that while passing the judgment, this Court had indicated that the same would not be treated as a precedent.

16. We find that the appellants have come up with their case with facts and materials on record that did require a consideration. The writ petition therefore could not have been dismissed and the relief prayed for could not have been declined with the liberty to approach the STF authorities. To the contrary,



all these aspects, as referred to above, had to be considered before relegating the appellants to the State Government.

17. We therefore now direct the respondents to consider the claim of the appellants along with all such similarly situate Drivers who may have been screened in terms of Paragraph 1186 inasmuch as this was the only provision available prior to the 2017 Rules for such adjustment. The Rules of 2017 have come later on for the purpose of direct recruitment. In our opinion, the learned single Judge could not have declined the relief on the ground that 2017 Rules are now in force.

18. In the instant case, the issue is as to whether the appellants had been rightly screened and assessed by the competent authority in accordance with the procedure prescribed under Paragraph 1186 or not. It is only thereafter that the status of the appellant could have been either denied as Driver Constables or accepted as such more so keeping in view the fact that the appellants had come up with a case that such similarly situate persons have been extended such benefits by the respondents.

19. We therefore direct the Additional Director General, Bihar Military Police, Patna (respondent No.6) to take a decision in the matter in the light of the observations made herein above within a period of six weeks from the date of presentation of the



certified copy of this order. The impugned judgment of the learned single Judge dated 18th July, 2018 shall stand modified accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

