

Krishna Murari Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-19-2000

Judge : Shiva Kirti Singh, J.

Appeal No. : C.W.J.C. No. 4255 of 1998

Appellant : Krishna Murari

Respondent : State of Bihar and ors.

Disposition : Appeal Allowed

Judgement :

Shiva Kirti Singh, J.

1. Petitioner, who is a Sergeant Major in the Police Service under Government of Bihar, has prayed for quashing of minutes of the D.G. Selection Board dated 16.10.1996 communicated through a memo dated 14.11.1996 contained in Annexure-11 whereby, pursuant to an earlier order of this Court dated 27.11.1995 passed in a writ petition filed by the petitioner bearing C.W.J.C. No. 3450 of 1995, the petitioner has been confirmed on the post of Sergeant Major with effect from 29.5.1988 and thereafter by the same decision he has been declared unfit for promotion to the post of Dy. S.P. in view of alleged unsatisfactory service record and has been, therefore, superseded.

2. Although in the writ petition petitioner had raised two grievances, one with regard to date of his confirmation which, according to him, should not have been with effect from 29.5.1988, but with effect from the date his juniors have been so confirmed and the second against denial of promotion to the post of Dy. S.P., but in course of arguments, learned Counsel for the petitioner accepted that the decision to confirm the petitioner on the post of Sergeant Major with effect from 29.5.1988 was in accordance with observations and directions of this Court contained in order dated 27.11.1995 (Annexure 8) passed by this Court while disposing of his earlier writ petition. With regard to the only remaining grievance concerning denial of promotion to the petitioner, learned Counsel for the petitioner submitted that the petitioner has been found unfit and superseded only on account of two adverse materials in his service record. One such material was a punishment, of withholding of increment for a period of six months, equivalent to a black mark awarded by order Of punishment No. 421/88 arising out of proceeding Nos. 14/85 and 15/85. With regard to said order of punishment this Court had held vide order contained in Annexure-8 that the adverse affect of the order of punishment No. 421/88 would cease to have any effect since May 1988 because the period of alleged incident was prior to May 1985 and on that basis, it was held that the respondents cannot deny confirmation of the petitioner on the basis of order No. 421/88 after May 1988. The aforesaid order of this Court and finding by this Court in the said order has been accepted by the respondents and accordingly, the petitioner has been confirmed by the impugned order on the post of Sergeant Major with effect from 29th May 1988. According to learned Counsel for the petitioner, once the respondents have accepted that the order No. 421/88'ceased to have any effect after May, 1988, it was not fair, proper and permissible for them to take the same material and on that basis held the petitioner unfit for promotion in their meeting held for the purpose on 10.10.1996.

3. The only other adverse material in the service record of the petitioner is pendency of a departmental proceeding No. 10 of 1992. According to learned Counsel for the petitioner, the matter of pendency of departmental proceeding No. 10 of 1992 was considered by this Court while passing the order dated 27.11.1995 (Annexure-8) and this Court after considering a decision by a Division Bench in the case of Binodanand Jha v. State of Bihar and Ors. disposed of on 24.7.1989

(Annexure-7), observed in the following terms:

So far as the departmental proceeding is concerned, it has been accepted that in the case of Binoda Nand Jha, vide earlier writ petition C.W.J.C. No. 4143/89, the respondents considered his case for promotion to the higher post and the order of promotion was issued with a clear stipulation that the same will be subject to decision in the departmental proceeding. I fail to understand as to how the same procedure cannot be followed in the case of petitioner.

With regard to the aforesaid departmental proceeding, the petitioner has further asserted that the said proceeding has been kept alive although by Annexure-8, this Court had directed the respondents to conclude the said proceeding within a period of four months.

4. Thus, the submission of learned Counsel for the petitioner is that there is no adverse material in the service record of the petitioner which can be legally made a basis to supersede the petitioner in the matter of promotion to the post of Dy. S.P.

5. In the counter-affidavit filed on behalf of the respondents the aforesaid facts have not been disputed but their stand is that since the petitioner has been confirmed on the post of Sergeant Major with effect from 29.5.1988 hence, he cannot compare his case for promotion along with his juniors who were confirmed as Sergeant major on earlier dates. It is also their case that Sergeant Major confirmed in 1988 or later have not been promoted as Dy. S.P. and hence, the petitioner cannot make any grievance in this regard. It has further been submitted that the case of Binodanand Jha cannot help the petitioner because Binodanand Jha and moved this Court and obtained an order in his favour contained in Annexure-6 and so far as petitioner is concerned, his case was not kept pending by the department but was considered and found unfit.

6. The plea of the respondents based on date of confirmation cannot be accepted at least in the case of this petitioner in view of a clear finding given by this Court in Annexure-8 that there is no rule with regard to promotion to the post of Dy. S.P. which debars a person for consideration of his case on the ground that he is not

confirmed in the lower post and that seniority cannot be denied on the basis of confirmation. With aforesaid findings this Court concluded such discussion in these words-

Such being the position, the respondents cannot withhold the promotion of the petitioner to that of the higher post of Dy. S.P. on the ground that he is not confirmed to the lower post of Sergeant Major.

7. The other two contentions of the respondents also have no force because it is irrelevant if no post was kept reserved on the earlier occasion for the petitioner when, in fact, the petitioner had moved this Court against denial of promotion and this Court noticed the order passed by a Division Bench in the case of Binodanand Jha and then directed the respondents to reconsider the case of the petitioner to the higher post of Dy. S.P. with effect from the date petitioner's juniors were so promoted and if the petitioner was found fit for such promotion then in the order of promotion the respondents were at liberty to mention that the promotion, will be subject to the decision of the departmental proceeding No. 10 of 1992. Such reconsideration was required to be done after ignoring the adverse remarks which were never communicated to the petitioner.

8. In the aforesaid facts and circumstances, in my view, for any promotion after 29.5.1988, the petitioner's claim for promotion cannot be denied on the basis of punishment order No. 421/88 which ceased to have effect since May 1988. Further in view of clear direction of this. Court with regard to departmental proceeding No. 10 of 1992. In the earlier order contained in Annexure-8, petitioner's promotion cannot be withheld on the ground of pendency of the departmental proceeding. The petitioner has alleged that these considerations alone were the adverse materials available against him for denying him promotion and this fact has not been disputed.

9. In such circumstances, I am left with no option but to quash that part of impugned decision contained in Annexure-11 by which the petitioner has been found unfit for promotion in the meeting held on 16.10.1996. The matter of promotion to the post of Dy. S.P. is remitted back for reconsideration by the officials concerned in accordance with observations and directions contained in

Annexure-8 as well as in this order and in accordance with law. A final order in this regard should be issued within a period of four months from the date of production/receipt of a copy of this, order.

10. This writ petition is allowed to the extent indicated above along with observations and directions mentioned therein.

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