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Court : Patna

Decided On : Apr-01-1997

Judge : N. Pandey, J.

Appeal No. : C.W.J.C. No. 10778 of 1994

Appellant : Ram Chandra Singh and ors.

Respondent : State of Bihar and ors.

Disposition : Application Dismissed.

Judgement :

N. Pandey, J.

1. This petition under Articles 226 and 227 of the Constitution of India was filed for an appropriate writ/order quashing the promotion of respondent Nos. 7 to 55 to the post of Inspector (Armed), Bihar Military Police as also Police Order No. 4/93 (Annexure-1) issued by the Additional Director General of Police (Armed). A prayer has also been made for a writ of mandamus commanding the respondents to promote the petitioners to the post of Inspector (Armed) in terms of the provisions of Rule 649 of the Bihar Police Manual ignoring the procedures prescribed by Police Order No. 4/93.

2. Before going to the crucial contentions of the parties, it would be appropriate to notice that petitioners after obtaining permission of the Court had deleted the names of respondent Nos. 17 to 55 on 15.3.1995. Therefore, it will not be open to them to press this application for quashing of the promotion of those respondents.

3. The petitioners were initially appointed as sepoy in the cadre of Bihar Military Police. In course of time, they were promoted as Havildars and later to the post of Sub-Inspectors. In order to grant promotion to the post of Inspector (Armed) nominations were called for by respondent No. 2 from respective commandants and zonal Deputy Inspector General to prepare a fit list by the I.G. Board. Thereafter, the Range Board under the Chairmanship of respective zonal I.G.s took field test including parade, arms drill and other kinds of physical test in addition to the scrutiny of service records and annual confidential reports.

4. The grievance is although service records of the petitioner were brilliant, the Range Board did not recommend their names to the I.G. Board because they had failed at the field test conducted as per the provisions of Standing Order No. 4/93. In that view of the matter, although junior persons to the petitioner were promoted, but they were denied.

5. Mr. Ganesh Prasad Singh, learned senior Counsel, contended that procedures prescribed under Standing Order No. 4/93, laying down new criteria for promotion are wholly inconsistent with the provisions of Rule 649 of the Bihar Police Manual. That apart, in view of different decisions of this Court including in the case of Ram Anugrah Singh v. State of Bihar and Ors. 1992 BBCJ 440 and Rajendra Prasad and Ors. v. State of Bihar and Ors. in CWJC No. 6684 of 1994 disposed of on 28.7.1995, only the Director General-cum- Inspector General of Police was empowered to issue Police order.

6. He next contended that conditions imposed by Police order regarding passing of physical /field test was quite arbitrary because no such conditions are enumerated either under Rule 649 of the Bihar Police Manual or under the Bihar and Orissa Military Police Manual. According to him, since on the basis of petitioners' service record and annual confidential reports, nominations were made by the competent authorities it was not open to the authorities to reject promotions virtually at the fag

end of their service career.

7. On behalf of the respondents, it has been contended that Inspectors of the armed organisation are always required to perform arduous duties. Therefore, there was nothing wrong if such persons were required to appear at the physical/field test. Conditions set forth in the said Standing Orders were quite in consonance with R. 6 (A) and 6/7 of the Bihar and Orissa Military Police Manual, 1933. But a supplementary counter affidavit was filed on 5.3.1997, enclosing therewith a copy of the Police Standing Order No. 257 of 1995 whereby the Director General and Inspector General of Police has cancelled the Standing Order No. 4/93 which was previously issued by the Additional Director General of Police laying down certain criteria to be observed for field test etc. with respect to eligible candidates for promotion to the post of Sub-Inspectors (Armed) and Inspectors (Armed).

8. There is no dispute that this Court also in the case of Rajendra Prasad and others, CWJC No. 6684 of 1994 had already held that the Additional Director General of Police had no jurisdiction to issue Police Order No. 4/93. It was held that Director General of Police, who was previously known as Inspector General of Police, had the sole authority to issue such orders. Undisputedly, appreciating such a finding of this Court, Bihar Police Order 257/95 was issued.

9. There is no dispute that even as per the provisions of Rule 649 of the Police Manual, promotions to the post of Inspectors are to be granted by a Selection Board on the basis of merit cum seniority. Therefore, no Sub-Inspector can claim promotion simply on the basis of seniority unless he is selected by the Selection Board on merit. It is well-known that in absence of any prescriptions under a particular statute regarding procedures etc. to conduct the merit test, it will always be open for the competent authority to lay down a suitable criteria for selection.

10. In the instant case, the petitioners were asked to appear at the physical/field test etc. as per the procedures prescribed by Police Order No. 4/93. But the said order has already been declared illegal since the Additional Director General of Police had no jurisdiction to issue such order. There is no dispute that the petitioners had appeared at the test as per the procedures prescribed by the said

order. Therefore, they can have a legitimate claim to appear at the physical/field test etc. afresh as per the procedures prescribed by the Director General of Police vide Standing Order No. 257 of 1995.

11. For the reasons stated above, I, therefore, while rejecting the objections of the petitioners that no physical test etc. can be held, direct the authorities to extend an opportunity to the petitioners to appear at a fresh physical/field test etc. in terms of Police Order No. 257/95.

12. Subject to the aforesaid direction /observation, this writ application is hereby dismissed. But in the circumstances of the case, there shall be no order as to costs.

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