
(1996) 05 AHC CK 0059

Allahabad High Court

Case No: None

Sata Nand Tripathi

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision: May 26, 1996

Citation: (1996) 05 AHC CK 0059

Final Decision: Allowed

Judgement

Palok Basu, J.

The constitutional mandate being that in our country all citizens would get not only social, economical and political justice

but would also get equity of status and all opportunities, the questions involved in these nine writ petitions are whether the petitioners grievance that

they stand discriminated is correct or not and whether the demotion orders dated 321995 against the petitioner working as Deputy

Superintendents of Police is in the teeth of the directions of the Hon"ble Supreme Court in Rana Randhit Singh v. State of U. P., AIR 1989 SC

218, ""that the respondents are directed to publish the final gradation list on the basis of the directions given above within six months hence, after

granting confirmations in the cadre to the Stale of U. P. that the scheme in the rules shall be strictly followed and when a temporary or officiating

appointment is made and the officer is not approved by the Public Service Commission, within one months of such nonapproval, the candidate

shall be revolted and would not be entitled to be continued m the promoted post of Deputy Superintendent of Police.

2. By virtue of their promotions as Deputy Superintendent of Police nearly eight or nine years ago the petitioners claim permanency or

regularisation as such and challenge the impugned orders riveting them to the posts of Inspectors of Police and further say that those reversion

orders are contrary to the constitutional provisions and do not go to enhance the rule or law visavis, the petitioners.

3. The short facts are that Sara Nand Tripathi (C. M. writ petition No 6036 of 1995) Kant Dast Singh (C. M. No. 5106 of 1995) Harbans Singh

(C.M. No. 5218 of 1995) V. K. Gupta (C. M. No. 5163 of 1993) Raj Nir Singh (C. M. No. 5207 of 1995) Nagendra Singh (C. M. No. 5174

of 1995) Shyam Pal Singh (C. M. No. 4535 of 1995) V. C. Rai (C. M. No, 4865 of 1995) and Prem Chand (C. M. No. 4865 of 1995) have

filed these writ petitions under Article 226 of the Constitution, challenging the orders in each of the petitioner"s case being dated 321995. The

respective dates on which all these nine petitioners were promoted as Deputy Superintendents of Police may be mentioned here :

(1) Sata Nand Tripathi 2071986, (2) Ram Dass Singh 971986, (3) Harbans Singh 1471986, (4) V. K. Gupta 571986 (S) Rajbir Singh

11101994, (6) Nagendra Singh 2051992, (7) Shyam Pal Singh 1471986, (8) Vishnu Chart Rai 1101992, (9) Prem Chand 2051992.

4. It is not in controversy that all the petitioners had been selected into the Police Force as SubInspectors or Inspectors and in due course they

were promoted to the post of Duty Superintendents of Police in pursuance of the existing service rules known as the U. P. Police Service Rules,

1942 (foe short, the old rules). At this stage few rules may be quoted here for ready reference to facilitate the discussion here after. Under Rule

3(g) ""members of service"" has been defined to mean a person appointed in a substantive capacity under the provisions of those rules or of rules in

force previous to the introduction of those rules, to a post in the cadre of the service and includes every such officer who was appointed as

temporary Deputy Superintendent of Police under notifications dated 28th May, 1948, 6th September, 1948, 22nd September, 1948 and 9th

March, 1949 and subsequently appointed in a substantive capacity from the date of his substantive appointment.

5. Rules 5 provides the source of recruitment:

5. Source of Recruitment. Recruitment to the service in the ordinary grade shall be made

(1) on the result of competitive examination conducted by the Commission ; and

(ii) by promotion of permanent Inspectors of Police : Provided that the Governor may also in the interest of public service sanction the appointment

in temporary or officiating vacancies, of SubInspectors of Police, who have been approved for substantive, appointment as Inspectors of Police

and have officiated as Inspectors for not less than two years.

6. Rule 17 is contained in Part VI of the rules which lays down the procedure for recruitment by promotion :

PART VI PROCEDURE FOR RECRUITMENT BY PROMOTION

17. Recruitment by promotion. (1) For the purposes of recruitment under Rule 5(ii) a selection based on the criterion of merit shall be made in the

manner hereinafter provided from among permanent Inspectors of Police.

(2) The Chief Secretary to Government shall draw up a list containing names of candidates in order of merit, whom he considers most Suitable

from among those who are eligible for promotion. The number in this list shall be double the number of vacancies which are intended to be filled

substantively, during the course of the year.

(3) The Chief Secretary shall also draw up a supplementary list containing names of candidates, in order of merit, whom he considers suitable for

officiating for temporary vacancies occurring during the course of the year. The number of this list shall be, so far as possible, equal to the number

of temporary officiating vacancies expected to occur during the course of the year.

(4) The two lists, together with a gradation list, indicating therein the reason for passing over the seniors, if any, and the character rolls of all eligible

candidates, shall be sent by Government to the Commission. The Commission will examine the rolls and add any new names to either of the two

lists and return both the lists as finalised together with other papers to Government.

(5) The Chief Secretary shall, in consultation with the Commission, decide whether an interview of all or any of the candidate is necessary and, if

so, fix a date and call them for interview. These candidates will be interviewed by the Selection Committee, consisting of the following :

(i) A representative of the Commission, who will preside over the Committee ;

(ii) The Chief Secretary, or the Secretary to Government Home Department;

(iii) The Inspector General.

Where the Chief Secretary, in consultation with the Commission, comes to the conclusion that an interview of all or some of the candidates is not

necessary, the Committee shall consider their cases on the basis of their character roll, and personal files.

(6) The lists of names of candidates selected by the Committee for appointment against permanent and temporary or officiating vacancies

respectively will be considered by the Commission who thereafter send the lists as finally approved by them to Government.

(7) The names of the candidates selected in the first list, upto the number of permanent vacancies intended to be filled substantively during the

course of the year, shall be drawn up and rearranged in order of seniority and they will be appointed against substantive vacancies in the cadre of

the service in the same order.

(8) The remaining names of the first list will be transferred to the top of the second list which will then form the Select List. The candidates will be

appointed against officiating and temporary vacancies in the order in which their names stand in this list, as and when vacancies occur during the

course of the year. This Select List will hold good only for one year or until such time as a review is made at the following selection.

(9) In case permanent vacancies ; do not occur for two consecutive years and it becomes necessary to make a selection for officiating and

temporary vacancies, only, the Selection Committee will meet to examine the cases of all eligible candidates including those who were superseded

at the last selection. The procedure prescribed above shall so far as applicable be followed.

7. Rule 22 prescribes the period of probation and Rule 24 deals with confirmation which are reproduced below :

22. Period of probation.(1) Every candidate on appointment to the service in or against a substantive vacancy shall be placed on probation for

two years.

(2) Continuous service rendered in an officiating or temporary capacity in a post included in the cadre of the service or on an equivalent post may

be taken into account in computing the period of probation.

(3) (a) Every officer recruited under the provisions of Rule S(i) shall, during his probationary period, be required to attend a course of instruction at

the State Police Training College, extending to eighteen months, and to pass the departmental examinations in the subject prescribed for him. On

completion of his course he shall be posted to a district and required to obtain a certificate of efficiency in practical training as prescribed for

Assistant Superintendents of Police

(b) Every officer recruited under the provision of Rule 5 (ii) shall during his probationary period, be posted to a district or to the Criminal

Investigation Department or to the Government Railway Police.

(4) Every officer recruited under the provisions of Rule 5 (ii) shall be posted on probation for a period of one year to district or to the Criminal

Investigation Department or to the Government Railway Police.

"24. Confirmation.(1) A probationer directly recruited shall be confirmed in his appointment at the end of the period of probation if (a) he has

passed the departmental examinations completely, and (b) the Governor is satisfied that he is fit for confirmation.

(2) An officer recruited by promotion shall be confirmed in his appointment at the end of the period of probation, if the Governor is satisfied that he

is fit for confirmation.

(3) All confirmation under this rule shall be notified in the official Gazette.

8. Before proceeding further it may be pointed out that undisputedly Governor has issued a rule named. The Uttar Pradesh Government Servants

Criterion for Recruitment by Promotion Rules, 1994 which have been promulgated with immediate effect having been published on October 10,

1994. Initially when the writ petitions were heard Gazette publication of the said rules had not been made and consequently enough argument was

advanced challenging the applicability of those rules. By the time arguments concluded it has been brought to the notice of the Court that the said

rules have been published in the official Gazette, dated 18th May, 1995 and has been made effective from the date of its issuance i.e., 10/10/1994.

The U.P. Government Servants Criterion for Recruitment by Promotion Rules, 1994 (for short, new Rules) have brought about some changes

which must be noticed hereinnow. Subrule (8) of Rule 1 says""They shall apply to recruitment by promotion to a post or service for which no

consultation with the Public Service Commission is required on the principles to be followed in making promotions under the Uttar Pradesh Public

Service Commission (Limitation of Functions) Regulations, 1954, as amended from time to time. Rule 2 provides that the New Rules shall have

effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the

Constitution, or orders, for the time being in force. After laying down in clause (c) of Rule 3 that "post" or "service" means a post or service under

the rule making power of the Governor under the proviso to Article 309 of the Constitution, Rule 4 of the New Rules reads as under :

4. Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department and to a post in any

service carrying the paysale the maximum of which is Rs. 6700 or above, shall be made on the basis of merit, and to rest of the posts in all services

to be filled by promotion, including a post where promotion is made from a nongazetted post to a gazetted post or from one service to another

service, shall be made on the basis of seniority subject to the rejection of the unfit".

9. It will be desirable to emphasise here that while under the old rules recruitment by promotion was to be made on the basis of selection based on

the criterion of merit", the New Rules changed the same into criterion "on the basis of seniority subject to the rejection of the unfit.

10. Sri K N. Tripathi, Sri Rakesh Dwivedi, Sri Rashtrapati Khara, Sri Shambhu Nath Sriyastava, Sri Shashinandan and Sri S. A. Oilani, learned

counsel for the petitioners have argued the matter at length and with great ability. The learned Additional Advocate General, Sri A. K. Misra has

espoused the cause of the respondents and the Court records its appreciation for the sincerity and labour with which they have placed the matter

before the Court. The assistance rendered by Sri R. K. Saxena, learned standing counsel who was also available to the Court during a number of

days of hearing it also commendable.

11. The matter being of extreme urgency has been heard at the time of admission as prayed by the learned counsel for the petitioner. Counter

affidavits were called which have been filed and rejoinder affidavits have also been filed by all the petitioners" counsel. Learned Additional

Advocate General has produced before the Court all the relevant records concerning the meeting held on 1111994 which decided the fate of the

petitioners and has also filed the circulars and relevant G.Os. which were issued from time to time under the old rules under which the petitioner

and the like were promoted as agreed to by the learned counsel for the parties all these writ petitions are being disposed of finally at the admission stage.

12. Much turns on what type of rights the petitioners can be said to have been conferred with by their appointment as Deputy Superintendents of

Police in each individual case. While it is strongly contended by the learned counsel for the petitioners that even though the words "ad hoc" and

also "temporary basis" may be found in the appointment letters concerning promotion of each one of the petitioners, the effect of their continuance

on the posts for all these years is that they should be deemed to have been promoted to the substantive rank and their appointments should be held

to be against substantive vacancies. The argument is seriously rebutted by the learned Additional Advocate General and he says that none of the

petitioners could become "a member of the service" since at no point of time they were appointed against permanent posts or for that matter

permanently promoted nor any one of them has been confirmed by any subsequent order later.

13. Before taking up the discussion it may be mentioned that under the New Rules the meeting which was held on 11/11/1994 has been described to

be a meeting of the "Vibhagya Chain Samiti" (translated by the Court (Departmental Selection Committee)). The undisputed position is that in the

said meeting the Chief Secretary was present as the Chairman, the Principal Secretary and the Director General of Police were present as the

members while the Secretary Appointment and Personnel as also Special Secretary Appointment were present as nominated members. It may be

stated here that neither the Old Rules nor the New Rules talk of any such Departmental Selection Committee. Subrule (S) of Old Rule 11 as noted

above provides for a selection committee for the purpose of making promotion and it further provides that the selection committee will consist of

Chief Secretary or the Secretary to the Home Department, and the Inspector General of Police apart from a representative of the Public Service

Commission. Reference about this type of a committee is not to be found in the New Rules. The type of committee which was constituted is not

envisaged under the New Rules or found under the Old Rules.

It is stated by the learned Additional Advocate General that some Government orders or executive instructions have been issued under which two

new named members have been authorised to participate in such selection committees. It may be stated here that provisions regarding constitution

of committee dealing with vital aspects of promotion of persons like the petitioners must be strictly in accordance with law. Unless such rules were

amended and provisions were incorporated whereby such type of departmental selection committee could be created, it is not lawful for the

respondents to have screened the cases of the petitioners through the said committee.

14. It was argued that the aforesaid New Rules were not sufficiently published and therefore the petitioners could never come to know the

constitution of the alleged departmental selection Committee. The argument proceeded that under the circumstances the petitioners could not lay

sufficient facts in the petitions nor could they come out with adequate pleadings regarding the constitution of the said committee and therefore, it is

only the respondents who may let this Court know as to how and why the said new departmental selection committee was constituted. It was

emphasised on behalf of the petitioners that there was no occasion for them to challenge the mode or method adopted by the respondents in

getting the cases of the petitioners screened by the said departmental selection committee and that the respondents be asked to say whether there

has been any amendment in the Old Rules.

15. In this connection learned Additional Advocate General has, with commendable fairness has placed the relevant G.Os. under the Old Rules

and informed the Court as to who were the members of the departmental selection committee under the New Rules. However, no material was

placed before the Court to show as to how the two new invited members were made to sit in the screening committee.

16. While it is true that there were, not sufficient pleading in the writ petition concerning the constitution of the New Committee it must be held

without any hesitation that the petitioners could not have made a grievance about it because in all likelihood they would have proceeded to think

that the committee constituted must have been the one under the Old Rules and there was no occasion for them to think that there has been a

change in the committee without there being any corresponding change in the Old Rules. It is only during the course of arguments that it so

transpired that not only that the New Rules have been brought in but simultaneously a new committee has been constituted. The relevant provisions

contained in the New Rule have already been quoted above. It does not indicate anything about constitution of the committee.

17. The argument that the petitioners may not have come to know that the promulgation of the New Rules shall be dealt with immediately hereafter

but the fact to be emphasised here is that even if the New Rules were publicised the petitioners did not come to know anything about the creation

of the new departmental Selection Committee. The argument advanced by the learned counsel for the petitioners that the aforesaid committee is

contrary to the provisions of the rules applicable to the petitioners" cases has to be upheld. In none of the counter affidavits has anything been

pointed out as to on what basis the consultation of the Public Service Commission shall be done away with. It was argued that enacting such

provisions may be contrary to the mandate contained in Article 320 of the Constitution of India. However, this argument has not be gone into here

for the simple reason that since the petitioners were governed by the Old Rules when their cases were initially considered for promotion, they will

have to be continued to be governed by those rules unless they are amended. It has been noticed already above that while under the Old Rules

promotion was on the basis of criterion on merit, under the New Rules the promotion will be on the basis of seniority subject to rejection of unfit,

Consequently substantial changes are brought about by the present rules and therefore the constitution of the committee as declined under the Old

Rules must be followed.

18. It was argued that the aforesaid New Rules were not published in the gazette and consequently they could not put any use. U was seriously

contended that unless publication in the official Gazette was made sufficient publicity of the rules cannot be presumed and therefore their

applicability is law stands impaired. This argument is not tenable. In the writ petitions 13 foundation could have been laid as to how the petitioners

themselves got to know of the New Rules unless they had themselves knowledge of it. The respondents "counsel has stated that the New Rules

were circulated to every department and the delay in publication was occasioned because of certain unforeseen circumstances, the primary one

being prolonging strike by the employees of the State Government as a result the Government Press remained closed for months and months.

19. It may be stated here that rules promulgated by the Governor under Article 309 of the Constitution are Legislative in character. There can not

be any particular mode for publicizing such rule. However, circulars are in the form of letters or memorandums incorporating the rules there in or

separately sending the rules along with forwarding letters. On the facts involved in the present case sufficient publication must be presumed, (t is

difficult to uphold the argument that publication in the official Gazette along should be the mode of publicity of such law or rules. The view is

supported by the decision in Chandrakant Sakharan Karkhanis v. State of Maharashtra, AIR 1977 Bom 193. It is thus established beyond doubt

that New Rules have come into play.

20. It was contended by the learned counsel for the petitioners that the petitioners have acquired rights under the Old Rules and therefore, those

rights could not be curtailed by New Rules much less could any action be taken to change the type of selection committee which was provided for

in the Old Rules and therefore the reversion orders having been recommended by such Selection Committee requires to be quashed. This

argument has been opposed by the respondents. Counsel on two scores firstly that by the very nature of the appointment the petitioners did not

become members of the service, secondly that promotion being a matter of incidence of service no specific claim can be made on Old Rules because

the petitioners have to follow such rules as are changed from time to time for making administration easy and practicable.

21. Both the aspects are intricately involved and can be simultaneously dealt with. In order to appreciate the respective arguments the impugned

orders may be noted here. Translated into English the said order would read as under :

ORDER

The selection committee constituted in accordance with the provisions of the U.P, Government Servants Criterion for Recruitment by Promotion

Rules, 1994 considered the case of Sri Sata Nand Tripathi for regularising him on the post of Deputy Superintendent of Police and after due

deliberation did not find him fit for regularization of his appointment. The Government has accepted the recommendations of the selection

committee.

Therefore in pursuance of the aforesaid rules the Governor directs that Sri Sata Nand Tripathi be reverted to his original post from which he was

promoted on ad hoc basis with immediate effect. Sri Sata Nand Tripathi will take over charge on the directions of the Director General of Police at

the place and post to be indicated.

22. Identical is the reversion order concerning rest of the petitioners except that the names of each individual petitioners has to be inserted at the

relevant place.

23. A copy scrutiny of the aforesaid Old Rules makes it incumbent upon the respondents to examine the petitioner's cases through a committee

under the Old Rules. In the instant case committees were constituted and the cases of the petitioners were considered by those committees from

time to time. In spite of judgment of the Hon"ble Supreme Court in Rana Randhir Singh's case (supra) no steps were taken to fix the seniority inter

se and make promotion. Both the learned counsel for the petitioners as well as the respondents placed strong reliance on some of the paragraphs

in the aforesaid ruling. It may be stated here that the directions were mandatory in nature which were to the following effect :

The State of Uttar Pradesh is directed to publish the final gradation list on the basis of the directions given above within six months hence after

granting confirmations in the cadre of Deputy Superintendent of Police keeping the rules in view. There shall be a direction to the State of Uttar

Pradesh that the scheme in the Rules shall be strictly followed and when a temporary or officiating appointment is made and the office is not

approved by the Public Service Commission, within one month of such nonapproval the candidate shall be reverted and would not be entitled to

be continued in the promotional post of Deputy Superintendent.

24. How and why the aforesaid direction of the Hon"ble Supreme Court was not followed in time is a matter of serious concern but for the time

being has to be kept apart because the petitioners were, at least six of them, promoted on ad hoc basis in the year 19.86.

23. It may incidently be mentioned here that by an order dated 13th August, 1990, 125 persons who were promoted on ad hoc basis, between

1986 and 1989 have been already regularised and confirmed as Deputy Superintendents of Police. A copy of the order dated 13th August, 1990

has been annexed as Annexure 6 to Writ Petition No. 5163 of 1995. It was strongly contended on behalf of the petitioners that neither there is any

legal nor any moral basis for the respondents to exclude the petitioners on some technical ground while granting promotion 01 regularising

practically all other officers who were similarly placed as the petitioners.

26. Learned Additional Advocate General, however, laid stress to the fact that those 125 persons who were regularised by the order, dated

1381990 were promoted prior to 1985 and since the petitioners were promoted after 1985, i.e. 1986 onwards, the regularisation rules were not

applicable to the petitioners and, therefore, they could not be regularised.

27. While it may be true that strictly speaking the regularisation rules may not be applicable but to deny the petitioners the benefit of having worked

for several years on the prompted post and asking each one of them to be reverted after several years, on the peculiar facts of this case, does not

appear to have sanction of law. This is not a case where the petitioners were to be reverted for some suitable selected candidate has come to be

appointed. The petitioners cases were duly considered by the Promotion Committee under the Old Rule and each one of them was promoted. If

the respondents would have followed the mandate of the Hon"ble Supreme Court, they would have been confirmed within six months of their

promotion. Therefore, coming to the argument of the respondents that the petitioners did not become members of the service, it may not be an

acceptable argument that they had become members of the service. But even if it is held their entering into the services on ad hoc basis would not

make them members of the service at that stage, the argument will not add any strength to the steps taken by the respondents in doing away with

the promoted posts to the petitioners and reverting them back particularly because those very vacancies are permanent vacancies and merely

writing ""ad hoc"" at the time of promotion is to deny to the petitioners a legal right to get confirmed within six months.

28. Reliance was placed on three decisions of the Hon"ble Supreme Court and they are Union of India v. K, V. Jankiraman, 1991 (4) SCC 109,

Director, Lift Irrigation Corporation v. P. K. Mohanty, 1991 (2) SCC 295 and Union of India v. S. L. Dutta 1991 (I) SCC 505. There cannot be

any controversy that there is no fundamental right to promotion, an employee can have the right to be considered for promotion, and, if reduction in

chances of promotion takes place because of changed rules, it will not enable an employee to challenge those rules as violating Articles 14 and 16

of the Constitution.

29. The controversy in the present case however, is not exactly in terms in which they were raised and decided in the aforesaid three decisions.

The petitioners have been promoted under the Old Rules by a validly constituted selection committee. Whether it was ad hoc or it was permanent

would not go to create any defect in the selection procedure. Once the petitioners had been selected their cases for subsequent consideration must

be by the same selection committee which had been constituted under the rules then in force to throttle the rights of the petitioners by changing the

selection committee and also the criterion for promotion is taking away the vested right of each of the petitioners.

30. To elaborate this aspect of the matter let it be emphasised again that each one of the petitioner was well within the eligible list for promotion

when the case of each one of them was considered. As per the proceedings of the selection committee dated 14/3/1986, a true copy of which has

been filed by the learned Additional Advocate General it was specified that because of pendency of the writ petitions and some other litigation it

was not possible to make permanent promotions to the posts of Deputy Superintends of Police. It is no body's case that permanent vacancies

were not in existence or that the petitioners were not entitled to be permanently promoted when the said selection committee had met.

31. The result therefore would be that the type of selection committee envisaged under the Old Rules would have gone again into the question

whether any of the petitioners could be extended the promotional benefits on permanent basis or not. It therefore follows that the rights of the

petitioners would be adversely affected by the New Rules and particularly the selection committee which was constituted does not have sanction of

law. It may be at once clarified that the Old Rules can be deemed to have been amended only to the extent to which the New Rules make it

possible and nothing more. Therefore the consideration of the cases by the petitioners by the committee in question was wholly illegal.

32. Before parting with this case it may be mentioned that the learned Additional Advocate General vehemently argued "that all these writ petitions

must fail for the reason that two of the similarly situated reverted Deputy Superintendents of Police have filed writ petitions before the Lucknow

Bench Which declined to entertain the same* The additional argument in this connection was that the petitioners will have alternative remedy to go

to the U.P. Public Services Tribunal. The argument was that one of the petitioners Shyara Pal Singh had gone before the U. P. Public Services

Tribunal against the adverse entries which were given to him and had obtained a stay order and that the stay order became inoperative because of

the provisions contained in Section 5A of the U. P. Public Services Tribunal Act. However, it may be emphasised that it was brought to the notice

of the Court that some amendments have been brought about in the U. P. Public Services Tribunal Act where even if an interim order is passed,

that would be deemed to have been inoperative by operation of the amending law. It has been pointed out that a challenge has been extended to

those amended provisions in some other writ petitions in which notices have been issued to the Advocate General on behalf of State of U. P. to

justify the vires of those provisions. Learned Advocate General placed reliance on two decisions of the Hon"ble Supreme Court in State of V. P. v.

Labh Chand, AIR 1994 SC 754 and U. P. Jal Nigam v. G. S. Mathur, 1995 (1) SCC 21. These decisions do not come to help the argument

advanced on behalf of the respondents because on the peculiar facts of this case their writ petitions could not be throw out on the ground of

availability of alternative remedy. In fact to say the least, it may have been a real injustice to the petitioners if they were shut out from approaching

this Court.

33. At this stage a word may be said about why the aforesaid reversion orders may have been passed against the petitioners. Thus court is not to

assume the job of selection committee but the petitioners have asserted certain facts why they presumed that they may have been directed to be

reverted. Sata Nand Tripathi petitioner has filed annexures indicating throughout good conduct. However, there is only one entry which may be

presumed as adverse which said that he worked satisfactorily at the Intelligence Headquarters and always has interest to get field posting but

behaved in an indisciplined manner unlike a Gazette Officer when he was served with orders of transfer from INT HQRs. to Moradabad where he

did not join and proceeded on medical leave. Petitioner filed a claim petition before the U. P. Public Services Tribunal and he obtained an interim

order on 1781994. This was necessitated because the petitioner made a representation against the adverse entry dated 3041991 note above

which representation was rejected on 871993. It has been admitted in the counter affidavit that but for the aforesaid entry there is nothing adverse

against the petitioner. These are not denied in the counter affidavit.

34. Ram Dass Singh petitioner apprehends that his demotion is the result of two entries though his representation against the first was allowed by

the State Government and his representation against the second entry has been partially allowed. Annexure 5 in the writ petition is the letter of the

State Government allowing the representation against the adverse entry recorded Sri Arun Kumar Singh, Superintendent of Police, Ghazipur. It

may be mentioned here that the said S. P. had himself recorded several outstanding conduct of the petitioner. After allowing the said representation

it is only the outstanding entries which remain against the petitioner.

35. Regarding the entry concerning the year 199293 a detailed representation was moved by the petitioner, a true copy which is annexure 11. In

the written argument it has been detailed as to how only adverse entry concerning nonregistration of some of the cases in the diary survived for the

period between 7101992 and 3151993. Against this part also the petitioner has made further representation on 321995 which is pending disposal

and all other entries had already been expunged and that DIG Range and also I.G. Zone had disagreed with the gradation bad, the State

Government has not interfered with the said gradation.

36. The petitioner has also filed several annexures indicating his good conduct and efficient discharge of duty on several challenging occasions.

37. Harbans Singh petitioner did not state of any adverse entry existing against him. In paragraph 8 of the counter affidavit a reference has been

made to a censure entry dated 2561992. Details of the censure entries are conspicuously lacking. In rejoinder affidavit, however, the petitioner has

said that the said censure entry was concerning an insignificant matter and that too was under challenge by him before the U. P, Public Services

Tribunal in claim petition No. 2174 of 1994. It has further been averred therein that the petitioner had made a representation against the said entry

but it was pending and no decision of the Government was communicated to the petitioner. Likewise it has been averred that respondents have not

supplied the documents demanded by the petitioner.

38. V. K. Gupta petitioner has said that no adverse entry has been communicated to him over since he was appointed as Deputy Superintendent

of Police (Vigilance). He has referred to litigation (C. M. Writ Petition No. 34671 of 1993 which was filed by one T. N. Singh and got dismissed

on the petitioner"s impleadment and opposing the same. Some dispute arose about vacating the accommodation in occupation of the petitioner. A

transfer order was communicated to him which was challenged by petitioner in writ petition No. 16599 and the said transfer order dated 1651994

was stayed. The petitioner was thereafter posted at the LIU Department. The petitioner made a representation saying that he may be transferred

from LIU posting etc. It has been said in paragraph 6 of the counter affidavit that there has been some adverse entries in the character roll. It is

further stated that the petitioner submitted correct report concerning one A. L. Ansari. It has been emphasised in the rejoinder affidavit that in view

of the averments of the respondents made in paragraph 21 of the counter affidavit filed in writ petition No. 16599 of 1994 there was in fact no

other entry in existence in the character roll upto 31.8.1994. The averment of the said counter affidavit has been quoted in paragraph 6 of the

rejoinder affidavit.

39. Petitioner Rajbir Singh has not referred to any adverse entry existing against him. However, in paragraph 6 of the counter affidavit it has been

averred on behalf of the respondents that the petitioner has been awarded misconduct entry in the year 1989 and there has been an adverse entry

in the year 1992 categorising him as an officer. In paragraph 13 of the rejoinder affidavit it has been stated that the entry of 1989 must be deemed

to have been wiped out because the petitioner got the promotion in the year 1991. As regards the entry of 1993 the petitioner has said that his

representation/appeal is pending and has not yet been decided.

40. Nagendra Singh petitioner has also not referred to any adverse entry against him, However in paragraph 4 of the counter affidavit it has been

averred on behalf of the respondents that there were two misconduct entries against the petitioner in the years 1986 and 1990 and one censure

entry awarded on 16.5.1994 concerning the year 1993. In paragraph 4 of the rejoinder affidavit it has been stated that the petitioner was promoted

OB 20.5.1992 and therefore any entry existing before that should be taken to have been wiped out inasmuch as there exists no adverse entry after

the petitioner worked as Dy. S P. The adverse entry referred to as for the year 1993 in fact relates to an alleged FIR dated 3.3.1991 when the

petitioner was posted as Station Incharge. It is further averred that the counter affidavit has wrongly mentioned the year 1994 as the date of this

censure entry purposely because there is nothing against the petitioner which may require his demotion.

41. Shyam Pal Singh, petitioner has said that on 5.7.1990 he was placed under suspension pending disciplinary proceedings which he challenged in

writ petition No. 22413 in which the following interim order was passed :

Until further orders of this Court, the operation of the order dated 571990 shall remain stayed. However, it is made clear that the enquiry officer

shall be free to proceed with the enquiry and is directed to complete the same within two months from the date of presentation of a certified copy

of this order before him. The petitioner shall give full cooperation in the enquiry. In case the petitioner shall not cooperate, the enquiry officer is free

to proceed with the matter.

The petitioner has averred that he was consequently reinstated on 2791990 and no chargesheet has ever been submitted and no proceedings have

been drawn against the petitioner. In paragraph 9 of the petition it has been averred that by an order dated 2741990 the State Government has

withdrawn the disciplinary proceedings against the petitioner. It has further been said in paragraphs 12 and 13 of the petition that in the order of the

State Government dated 2741994 an adverse entry has been recorded regarding an incident dated 471990. It is said that so long as the aforesaid

writ petition was pending they could have completed the enquiry in view of the aforesaid interim order but they could not pass the adverse entry

when the matter was already subjudice. The aforesaid averments have not been denied and instead para 5 of the counter affidavit says that

because the disciplinary proceedings have been dropped, the writ petition No. 22413/90 has become infructuous. In the rejoinder affidavit this

averment has been seriously challenged,

42. Petitioner Vishnu Chari Rai has said that on enquiry it was found that Head Armourer namely, one Sadanand Tewari was responsible for

issuing a 9 mm Pistol and 30 cartridges" with two magazines H. C. Janardan Mishra without permission of the petitioner who was then the Reserve

Inspector. It is averred that even after this enquiry there was no basis for any censure entry. Petitioner says that there was no basis for making the

adverse entry and therefore he filed a representation appeal before the State Government on 261993 which was rejected on 1711995 and the

censure entry was however modified substantially. In para 4 of the counter affidavit it has been averred that the petitioner has been awarded

censure entry on 741993 of a very serious nature which has been partly expunged by the State Government concerning his representation. Even

after toning down the remark it remains to be adverse. In para 4 of the rejoinder affidavit it has been reiterated that the petitioner was promoted as

Dy. S. P. on 1101991 and the alleged incident giving rise to the so-called censure entry has happened in the year 1990 while the entry was

expunged substantially on 741993.

43. Petitioner, Prem Chandra had detailed some instances when he had asked for certain enquiries to be made concerning some allegations against

him. The relevant averment emerging from the various paragraphs is that an alleged adverse entry dated 1311992 would be deemed to have been

erased because of the promotion of the petitioner on 2051992. It is not denied in the counter affidavit that the entries sought to be relied upon

against the petitioner relate to the years prior to his promotion. It has been said in paragraph 7 of the counter affidavit that the representation of the

petitions; against the adverse entries of 1991 was rejected on 2431993. The averment*! made in the writ petition has been reaffirmed in the

rejoinder affidavit with the addition that the petitioner having been promoted by a duly appointed D. P. C. on 2051992, an entry prior to the said

date cannot be used for reverting

44. Having thus examined the reason why the petitioners may have been reverted by the impugned orders, all that can be said is that there is more

than scope for rethinking in the matters. It is not open for this court to evaluate the effect of entries but in view of the decision that is being taken no

further discussion on these aspects is called for.

45. It may be said here that strong reliance was placed on the decision of a Division Bench of this court delivered by Hon^{ble}. D. K. Trivedi and

M. Katju, JJ. (Lucknow Bench) in the case of Vimal Kishore Gupta v. State of U. P. (Writ Petition No. 1164SB1994) decided on 221995. It has

been held therein as under :

We have followed the decision of the Supreme Court in P. Ganeshwar Rao v. State of A. P., 1988 (Supp) SCC page 740 and the decision in Y.

V. Rangaiah v. Srenivasa Rao, 1983 (3) SCC 284. Thus, the law as laid down by the Supreme Court is very clear. Vacancies which occurred

prior to the change in the law have to be filled in accordance with the old law, whereas the vacancies which arose after the change in the law have

to be filled in, in accordance with new law.

It was emphasised that on the aforesaid findings the writ petition was disposed of with relief having been granted to the petitioners therein.

46. The learned Additional Advocate General however has challenged the correctness of the aforesaid observation. He also argued that on facts

the two decisions of the Supreme Court relied upon by the Bench do not lay down the propositions inferred. For the time being this controversy

can be disposed of with the observation that there is a scope of argument on the propositions laid down in the aforesaid decision.

47. However, notwithstanding what has been held in the decision, for the reasons stated in the foregoing paragraphs the impugned reversion orders

cannot be sustained. To emphasise, there is no amendment in the old rules by which the constitution of the committee could be changed and

therefore for the reasons stated above, the cases of the petitioners are required to be reconsidered because as pointedly noted there is enough

scope to come to the conclusion that cases of the petitioners on merits concerning the adverse entries has scope of being decided afresh.

48. It was however rightly pointed out by the learned Additional Advocate General that since advantage had accrued to various persons by

granting promotion to them in cases which were screened by the present Departmental Selection Committee, if this judgment is made to operate

retrospectively, it may create difficulties which may be obviated if the judgment is confined to the cases of the petitioners. After considering this

matter it is directed that the observations made in this judgment on the promotion committee or the departmental selection committee shall be

confined to the cases of the petitioners and will have only prospective operation leaving unaffected all those who stand benefited by the said

departmental promotion committee's recommendation.

49. In view of the aforesaid discussion the writ petitions succeed and are allowed. The impugned orders dated 321995 in each of the petitions are

quashed. It will be open to the respondents to reconsider the matter of the petitioners" regularisation/confirmation by a validly constituted

committee in accordance with applicable rules.

50. Parties will bear their own costs.