

(2013) 07 JH CK 0074

Jharkhand High Court

Case No: WP (S) No. 6992 of 2012

Ram Kumar Upadhyay

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 8, 2013

Citation: (2013) 4 AJR 292 : (2013) 3 LJLR 580

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: S.N. Pathak and Fayyaz Ahmad, for the Appellant; Pravin Rana, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Chandrashekhar, J.

The petitioner has approached this Court seeking quashing of order dated 21.7.2012 passed by the Respondent No. 2 whereby the claim of the petitioner for out of turn promotion on the post of Assistant Sub-Inspector of Police with all consequential benefits, has been rejected. The brief facts of the case as disclosed in the writ petition are that, the petitioner is working as A.S.I. and as per the amended Rule, he is entitled for grant of out of turn promotion. The petitioner has made a specific plea that other persons who are similarly situated to the petitioner, were granted out of turn promotion whereas, the petitioner has been denied the benefit of out of turn promotion. The petitioner approached this Court in W.P.(S) No. 6356 of 2008 which was disposed of on 19.3.2012 with a direction to the respondents to decide the representation of the petitioner. Pursuant to the order passed by this Court, the impugned order dated 21.7.2012 has been passed. Challenging the order dated 21.7.2012, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed stating that the only right which could have accrued to the petitioner, is a right of consideration for grant of out of turn promotion. The case of the petitioner was considered and it was not found fit by the competent authority for grant of out of turn promotion to the petitioner and therefore, his claim has been rejected.

3. Heard learned counsel for the parties and perused the documents on record.

4. Dr. S.N. Pathak, the learned Senior Counsel appearing for the petitioner raised a plea that in view of Rule 660C of the Jharkhand Police Manual and the amended-provision thereof as well as Police Order No. 219A/90, the petitioner is entitled for grant of benefit of out of turn promotion. He has further raised a plea that other similarly situated persons have been granted benefit of out of turn promotion whereas, the claim of the petitioner has been rejected only on the ground that his performance was not of the highest standard and he has not won any medal In the National Games, which is clearly erroneous in view of the amended provision wherein there is no requirement of having obtained any gold medal in the National Games.

5. The learned counsel appearing for the respondents has reiterated the stand taken in the counter-affidavit and submits that the case of the petitioner has been considered and it has been rejected by the authority on merits and therefore, this Court may not interfere in the matter.

6. The relevant portion of Rule 660C of the Jharkhand Police Manual are quoted below:--

Rule 660C. Out of turn promotion--Selection Boards may recommend out of turn promotion to officers with outstanding records of service and competent authorities may order such promotion in deserving cases as they deem fit and proper with the approval of next higher authority.

Officers so promoted should be placed below the officers of the approved existing list of respective rank prepared- by Selection Boards and he confirmed against substantive vacancies as and when vacancies arise in the order of the list.

Criteria taken together for determining outstanding records of service will be as follows:--

(i) Award of President's Police Medal and Indian Police Medal, for gallantry and distinguished service.

(ii) Should not have been awarded any major punishment till the date of consideration and order of out of turn promotion.

(iii) Very good entries in permanent Character Roll.

(iv) Citation regarding high standard of investigation, detection and control of crime and intelligence work.

(v) Should have ability for shouldering higher responsibilities consonant with the proposed promotion.

7. By order dated 9.9.2011, issued under Police Order No. 219A/90, the relevant provision has been amended which is extracted below:--

Amendment Order

(A) Those players of all games such as Football/Volleyball/Hockey, who have represented the country or continuously at least two times represented the State of Bihar in the National Games and played on behalf of Bihar, consideration can be made by the Board on his out of turn promotion.

(B) Consideration can be made by the Board on such N.I.S. trained coach, whose team will get Championship Trophy in the Regional Police Sports Competition, provided after perusal of their Character Roll/Confidential Remarks, the Board found them fit for the promotion. But there should be difference of two years between after first special promotion and second promotion. The constitution of the Board for all aforementioned promotion will be done by the headquarter from time to time.

8. In the proceeding of W.P.(S) No. 6356 of 2008 which was disposed of on 19.3.2012, this Court passed the following order--

In view of these submissions, I hereby direct respondent No. 2 (The Director General of Police, Jharkhand, Ranchi) to treat this writ petition as a representation and decide the claim of the petitioner, by passing a detailed speaking order, in accordance with law, rules, regulations, policies and Government enforceable orders, applicable to the petitioner, as expeditiously as possible and practicable, preferably within a period of eight weeks from the date of receipt of a copy of the order of this Court, after giving an adequate opportunity of being heard to the petitioner or to his representative. Respondent No. 2 will also consider Annexure-10 annexed with I.A. No. 656 of 2012, preferred in this writ petition.

9. In the counter-affidavit, the respondents, have taken the following stand:--

8. That with regard to the statement made by the petitioner in paragraph-4, in the instant writ petition under reply, it is humbly stated and submitted that the petitioner is a player of Basketball represented the State at various level, but his individual performance does not make him entitled for out of turn promotion.

9. That with regard to the statement made by the petitioner in paragraph-7, in the instant writ petition under reply, it is humbly stated and submitted that out of turn promotion has not been granted in any case similar to the case of the petitioner in the State of Jharkhand. From perusal of the examples cited by the petitioner for out

of turn promotion, it appears that the same has been given by the State of Bihar and petitioner's comparison with the State of Bihar does not hold good.

10. That it is humbly stated and submitted that according to Police Order No. 219A/90XP such police sportsmen, who have represented national games at least for two times continuously, will be considered for out of turn promotion by the promotion committee. Accordingly, the petitioner's case was considered by the Out of Turn Promotion Committee on 19.1.2007 and on proper consideration of the case he was not found fit for out of turn promotion. The Out of Turn Promotion Committee is high level committee who considered the case of the petitioner in all facts and circumstances of the case including performance of the team in the National Games in which the petitioner participated in the years 2001 and 2002 in 31st and 32nd National Games respectively. The team had secured 4th and 5th position respectively. Taking all facts into consideration the committee did not find the petitioner fit for out of turn promotion.

11. That with regard to the statement made by the petitioner in paragraphs-15 and 16, in the instant writ petition under reply, it is humbly stated and submitted that Out of Turn Promotion Committee meeting held on 19.1.2007 considered the case of the petitioner alongwith two others namely Rajan Kumar and Sanjay Kumar Singh. The committee observed that the two persons namely Rajan Kumar and Sanjay Kumar Singh had secured Gold Medals and their performance were found outstanding and exemplary as they had secured 1st position and for that reason their case of out of turn promotion was considered and allowed. The petitioner's case was rejected as because the performance of the Basketball Team in which the petitioner participated was not so good.

10. The amended provision of the Rule 660C has been considered by the Board constituted for considering the case of the persons for grant of out of turn promotion. The impugned order dated 21.7.2012 indicates that the amended provision has been noticed by the Board and it has been found that the other persons against whom the petitioner has made a specific allegation that they are similarly situated, have been awarded gold medal in the 5th National Games whereas, it has been found that the petitioner failed to win any medal in the National Games and the skill of the petitioner was not found of the highest standard. Though, I am in agreement with the contention raised by the learned Senior Counsel appearing for the petitioner that there is no requirement of obtaining any medal in the National Games, however, I am of the opinion that in the case of each and every person who took part in the National Games, is to be considered only on the ground that they have participated in 2 National Games and they must be granted the benefit of out of turn promotion, the scheme of granting out of turn promotion would become unworkable and in fact it would frustrate the very foundation of the scheme. Every person who has participated in 2 National Games cannot claim grant of out of turn promotion on the basis of the amended

Rule as a matter of right. The only right which has been conferred by the aforesaid provision upon sport-persons, is a right to be considered. The case of the petitioner was considered and by a reasoned order his claim was rejected by the competent authority. I do not find any illegality in the impugned order dated 21.7.2012 and accordingly, the writ petition is dismissed.