

Teerth Narain Mallick and Others

Vs

State of Bihar and Others

Civil Appeal No. 371 of 1987

Ram Kumar Singh

Vs

State of Bihar and Others

Writ Petition No. 2084 of 1980

(Ranganath Misra, M. M. Dutt JJ)

10.02.1987

JUDGMENT

RANGANATH MISRA, J. -

The petitioner in the writ application as also the appellants in the appeal were erstwhile Sergeants in the police service of the State of Bihar and are now designated as Reserve Sub-Inspectors. Admittedly, the Police Manual of 1930 framed under the Police Act of 1861 contained the relevant rules applicable to the police force. Under that Manual, there used to be a cadre called Sergeants who were recruited directly and were eligible for promotion to the rank of Sergeant-Major. There used to be another category known as Havildars who were eligible for promotion as Jamadars. In 1978, a new Police Manual was introduced replacing the old Manual. Under Rule 639 of this Manual, the State Police Force is grouped into the following categories :

Superior Officers

1. The Inspector General
2. Additional Inspector General
3. Deputy Inspector General
4. Superintendents
5. Assistant Superintendents
6. Deputy Superintendents
7. Reserve Inspectors and other Inspectors

Other Officers

8. Reserve Sub-Inspectors
9. Sub-Inspectors
10. Assistant Sub-Inspectors
11. Havildars
12. Naiks
13. Constables

Note : Reserve Inspectors and Reserve Sub-Inspectors were previously called as Sergeant-Majors and Sergeants respectively.

According to the scheme of the 1978 Manual, 50 per cent of the posts of Reserve Sub-Inspectors (excluding Reserve Sub-Inspectors - Transport) has to be filled up by promotion from the rank of Havildars and the remaining 50 per cent is reserved for direct recruitment. Though the Police Manual is intended to cover the entire field of the State Police Force (except the Bihar Armed Police Which is an establishment constituted under a separate statute) and Jamadars are not known to the police ranks, the High Court has found, and there is no dispute before us, that more than a thousand Jamadars are still in service in the regular police establishment. We have been told at the bar that the nomenclature of Jamadar is still correct as a category of police officers under the Bihar Armed Police Act but in these cases, we are not concerned with Jamadars of the Bihar Armed Police Act.

2. The State Government of Bihar created 118 posts of Subedars in August 1979 and directed that Sergeants who by then had come to be known as Reserve Sub-Inspectors under the 1978 Manual would not be eligible for consideration for promotion to these posts of Subedars. There is no serious dispute that conditions of service of the Subedars are same as that of the Inspectors. Petitioners who are now Reserve Sub-Inspectors contend that they are eligible for promotion and the order excluding them from consideration is bad and violative of the equality contemplated under Article 16 of the Constitution.

3. These cases have a chequered career but it is unnecessary to refer to it.

4. We are satisfied, after hearing learned counsel, that though under the Police Manual Jamadars are not shown as a category of police officers, they have continued to be in service and at present their number exceeds a thousand. Since under the Police Manual, Havildars belong to the class of "Other Officers" and there is a promotional avenue available to Havildars, there is no longer any necessity of promoting Havildars as Jamadars. That, however, would not meet the requirements of the present situation. Since there are about a thousand Jamadars still in service and there was no promotional avenue for officers in that rank, the government has created these 118 posts of Subedars in the rank of Inspectors to provide a promotional avenue for that category. Mr. Jai Narain, learned counsel for the State, has contended and it is not seriously opposed, that Jamadars being promotees from out of Havildars ordinarily do not have higher qualification as possessed by Sergeants (now Reserve Sub-Inspectors). It is true, as contended by Mr. Gopal Subramaniam for the appellants, that once there is a merger and Jamadars and Sergeants have become fixed into the common category of Reserve Sub-Inspectors, the promotional avenue cannot be closed to Reserve Sub-Inspectors who form one section of a category out of which promotion is to be granted. The State of Bihar has created these 118 posts of Sergeants (sic Subedars) not known to the ranks indicated in Section 639 of the Police

Manual, to meet a special situation. We do not think in the facts of the case the cause of justice would at all be advanced if we interfere with the arrangements made by the State in the matter of creation of the 118 posts of Subedars and confining the promotional opportunity thereto Jamadars alone. At one stage, the State of Bihar had taken the stand before the High Court that from Subedars further promotion to the rank of Deputy Superintendent of Police would not be admissible, but Mr. Jai Narain pointed out in the course of the hearing before us that to provide such a restriction may not be appropriate. As we have already pointed out, there would be no necessity of further promotion of Havildars to Jamadars; therefore, the present problem is a passing phase and would not re-occur. Keeping that aspect in view, we think it reasonable and in the interest of the service that the promotional prospect to the post of Deputy Superintendent of Police may not be totally banned for Subedars. On the other hand, the same educational qualification which is prescribed for Reserve Sub-Inspectors (sic Inspectors) should be provided as the requisite qualification for considering the claim of promotion to the rank of Deputy Superintendents out of Subedars.

5. There is considerable force in the submission of Mr. Gopal Subramaniam that the elimination of the Reserve Sub-Inspectors from consideration to the promotional post of Subedars is bad, but as we have decided not to interfere with the arrangement of the State in the special circumstances, we think it appropriate to direct the State Government to increase the strength of Reserve Inspectors by 20 per cent of the existing strength so that the promotional prospects of the Reserve Sub-Inspectors would become better and the grievance would somewhat be eliminated. The State of Bihar is directed to comply with this part of the order within six months from now and effect promotion to such newly created posts from out of the Reserve Sub-Inspectors.

6. Mr. Gopal Subramaniam pointed out that some of the persons who are promoted as Subedars were actually junior to the appellants and in case following their promotion as Subedars, they are posted at such places where they would be the directly senior officers of the Reserve Sub-Inspectors who were senior to such Subedars in the rank of Reserve Sub-Inspectors, there would be lot of embarrassment. We expect that due care and attention would be taken to see that such a situation is avoided. Since this is a passing phase, with a little attention bestowed the problem can be eliminated. The appeal and the writ petition are disposed of with these directions and without may order for costs.

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