

“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5874-5875 OF 2009

Kumod Kumar & another

... Appellants

versus

State of Jharkhand & others

... Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. Consequent upon their selection, the appellants were inducted into the Police Department of the State of Bihar, by way of direct recruitment, as Steno Sub-Inspectors of Police. Appellant no. 1 – Kumod Kumar was appointed as such on 10.4.1982. He joined his duties on 13.4.1982. Appellant no. 2 – Ramesh Kumar was appointed on 11.9.1985, and he joined as such on 16.9.1985.

2. On 26.8.1989 and 11.6.1991, the appellants were taken (on reversion) to the general line of the Police Department as Sub-Inspectors of Police. In this behalf it would be pertinent to mention, that induction into the general line of the Police Department from Steno Sub-Inspectors is permissible, subject to the satisfaction of the eligibility criteria, as also, consequent upon the selection and recommendation by the Central Selection Board.

3. The seniority of the appellants in the general line of Sub-Inspectors of Police, was determined by the Police Department, with effect from the date of their appointment to the general line of Sub-Inspectors of Police (on reversion). This determination is not acceptable to the appellants. They claim seniority in the general line of Sub-Inspectors of Police (on reversion) with effect from the date of their initial appointment into the Police Department, as Steno Sub-Inspectors of Police. Therefore, whilst the appellants claim seniority in the general line of Sub-Inspectors of Police with effect from the dates of their appointment into the police service, i.e., with effect from 10.4.1982/11.9.1985, the authorities have chosen to determine their seniority with effect from the dates of their appointment to the general line of Sub-Inspectors of Police, i.e., with effect from 26.8.1989/11.6.1991.

4. A challenge raised at the behest of the petitioners (including the present appellants) in Writ Petition (S) no. 4272 of 2006 before the High Court of Jharkhand at Ranchi (hereinafter referred to as, the High Court), seeking seniority in the general line, with effect from the date of their appointment into the police service, was dismissed by a Division Bench of the High Court, on 13.9.2007. The petitioners (including the present appellants) sought a review of the order dated 13.9.2007, by filing Civil Review no. 80 of 2007. The review petition was dismissed on 23.1.2008. The orders dated 13.9.2007 and 23.1.2008 were assailed by the appellants by filing special leave petitions. Leave was granted on 28.8.2009, giving rise to the present civil appeals.

5. The first issue that arises for consideration in the determination of the controversy is, whether the posts of Sub-Inspector of Police in the general line of the Police Department, as also, the posts of Steno Sub-Inspector of Police belong to a common cadre. An answer to the aforesaid query, would make a substantial headway, to the determination of the issue in hand. It is, therefore, that we shall venture to determine the instant aspect of the matter first, before delving into the niceties arising out of the present controversy.

6. The Bihar Police Manual, 1978, (hereinafter referred to as, the Police Manual) was issued by the State Government under Sections 7 and 12 of the Police Act V, 1861. There is no dispute among the rival parties, that the provisions contained in the same regulate *inter alia*, the conditions of service of personnel of the Police Department, and are binding on all police personnel. We shall, therefore, first advert to the provisions contained in the Police Manual, and venture to answer the query, relating to the issue of cadre.

7. Chapter 1A of the Police Manual, Volume I, delineates the duties and responsibilities of different units, category-wise, in respect of the entire police work-force. In Chapter 1A aforementioned, a reference has been made to the "Bihar Fire Brigade Service" under Bihar Fire Service Act, 1948, which is to function under the directions of the Inspector-General of Police, through the Chief Fire Officer. The chapter also makes a reference to separate "Finger Print and Handwriting Centres", for examination of finger prints and handwritings. These centres carry out their activities under Directors, but in consonance with and under the control of a Deputy Inspector-General of

Police, from the Criminal Investigation Department. The chapter also makes a reference to the constitution of a "Dog Squad", which is placed under the charge of a police officer of the rank of Deputy Superintendent of Police, who is to work under the directions of an Inspector-General and a Deputy Inspector-General, of the Criminal Investigation Department. The chapter also provides for a separate "Central Workshop of Police Transport". Personnel of the above workshop, have the responsibility of looking after the vehicles of the Police Department. The workshop is under the control of an Assistant Inspector-General, who is to function under the directions of an Inspector-General. A separate section of officers/officials is assigned the responsibility of "Police Communications". These officers/officials work in wireless centres, spread over the entire State. Each wireless centre is under the control of a police officer of the rank of Superintendent of Police. There is also a "Statistical Section" in the Police Department. This section collects and records facts and figures concerning police functioning, in the entire State. The Statistical Section assists the office of Inspector-General in preparing various statistics. There is also a "Police Photo Section", which functions under the Criminal Investigation Department. Besides the above, there is a "Forensic Science Laboratory" functioning under the charge of Inspector-General of Police. There is also a separate "Clothing Store" at the central level of the Police Department, which works under the charge of a Deputy Superintendent or an Inspector (reserve). The Clothing Store functions under the overall control of an Inspector-General. Chapter 1A, describes the police personnel aforesaid, performing distinct duties and responsibilities, as

separate units, separate centres, and separate cadres. In sum and substance, none of the units, centres and cadres referred to above, are considered to be components of the general line of the police force.

8. Insofar as the present controversy is concerned, clause (9) of Rule 7A, under Chapter 1A, is of material significance, and is accordingly being extracted hereunder:-

“(9) Miscellaneous Force.--(a) For accounts, correspondence and crime record, there are Accountants, Head Clerks, Upper Division Clerks and Lower Division Clerks, etc. who are attached with the office of Inspector-General, Deputy Inspector-General and Superintendent but they are not the members of the Police force.

(b) There are Stenographers of the ranks of Sub-Inspector and Assistant Sub-Inspector who are posted in the Confidential Section of the Offices of Inspector-General, Deputy Inspector General, Superintendent, Assistant and Deputy Superintendent, etc.”

A collective perusal of sub-clauses (a) and (b), of clause 9, of Rule 7A, leaves no room for any doubt, that just like the other units, centres and cadres referred to in the foregoing paragraph, the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors is a cadre separate and distinct from the general line of police personnel of the Police Department. Steno Sub-Inspectors and Steno Assistant Sub-Inspectors are a part of the “Miscellaneous Force”. The above determination is further affirmed from clause 3(e)(i) of Rule 7A, which is also being extracted hereunder:-

“7A. For the performance of duties and discharge of liabilities at different levels and in different units the categorywise set up of Police force is as follows:-

3. District Level-

(e)(i) A circle is divided into Police-Stations. A sub-Inspector holds the charge of each Police-Station. For assistance to Sub-

Inspector, Junior Sub-Inspectors, Assistant Sub-Inspectors, Havildars and Constables are appointed.”

A perusal of clause 3(e)(i) reveals that the nature of duties of Sub-Inspectors of Police belonging to the general line of the police force, are substantially distinct and at variance insofar as, duties and responsibilities of the personnel belonging to the “Miscellaneous Force” are concerned.

9. On the cadre issue, reference may also be made to Chapter 2 of the Police Manual, Volume I. The same delineates the duties of the police officers of all ranks. The duties and responsibilities described therein, have a reference to only police personnel belonging to the general line of the police force. There is no reference to duties discharged by numerous other personnel of the Police Department comprising of the units, centres and cadres referred to above. There is, therefore, a clear indication even from Chapter 2, that the cadre of Sub-Inspectors of Police in the general line, is separate and distinct from the other cadres, centres and units referred to above (including Steno Sub-Inspectors/Steno Assistant Sub-Inspectors).

10. Chapter 20 of the Police Manual, Volume I, deals with appointments and enrolments of police officers. Rules 653 to 656 contained therein, deal with the issue of appointment of Sub-Inspectors in the general line of the Police Department. Under Rule 653, the above process of appointment has to be initiated by determining the vacancies in each district of the Criminal Investigation/Intelligence Departments, which would further lead to an assessment of the number of vacancies to be filled up by way of direct

recruitment and by promotion. Rules 653 to 656 aforementioned, are being extracted hereunder:

“653. Sub-Inspectors.-(a) In July, the Inspector-General will intimate to each Deputy Inspector-General the number of vacancies allotted to each district and the Criminal Investigation/Intelligence Departments and the number to be filled by direct recruitment and by promotion of Assistant Sub-Inspector [Rule 659(a)]. He will also indicate what limitations, if any, are to be observed as to the appointment of any particular sections of the community.

(b) In accordance with rule 659(a) vacancies up to 50 per cent may be filled by selection from the rank of Assistant Sub-Inspector. The remainder shall be filled in the manner laid down in the following rules.

(c) A requisition shall be sent to Bihar Public Service Commission in the prescribed form in which the informations about the number of vacant posts, etc. shall be given. The job of holding examination for recruitment to Class III technical and non-technical executive and supervisory posts (including Sub-Inspector) has been given to Bihar Public Service Commission as per article 320(1) of the Indian Constitution.

654. Manner of selection – (a) Notices in the form given in the Appendix 38 or any other form prescribed by Bihar Public Service Commission will be printed and supplied by them for wide circulation and will also be published in the Bihar Gazette and selected newspapers. Candidates will be required to comply with the directions given in the notice. The help and interest of heads of schools and colleges shall be freely sought.

(b) All applications shall be received by Bihar Public Service Commission which shall be entered in the candidates' register in their prescribed form.

(c) All candidates who are *prima facie* eligible for appointment shall be required to appear for measurements and physical tests given in Appendix 38 at district/range headquarters before Superintendent/Range Deputy Inspector-General or before any special committee specially set up for this purpose. The list of candidates who satisfy these tests shall be furnished to the Public Service Commission who shall then arrange to hold a written competitive examination as in sub rule (e).

(d) Against the names of those who are *prima facie* ineligible, who are below standard measurement or who fail in the physical tests the word “rejected” with reasons will be written clearly in the candidates' register and the candidate shall be informed accordingly.

(e) The written portion of the test referred to in (c) shall be of 100 marks each in following subjects:-

General knowledge (including General Science and Current Affairs) and General Hindi as compulsory subjects and two optional subjects to be selected from the list given in Appendix 38.

655. Interview – The Public Service Commission may decide to select persons for interview above a certain percentage of marks depending on the number of vacancies available and usually three times the number of vacancies may be called. A Deputy Inspector-General nominated by the Inspector-General shall be included as an expert.

656. Selections – (a) The Public Service Commission shall select the best men for appointment for the post of (i) Reserve Sub-Inspector of armed police, and (ii) Sub-Inspector of unarmed police separately depending on the number of vacancies available. While doing this, it is to be noted that for serial (i), the standard of physical tests is higher as given in Appendix 38. Moreover candidates possessing certificates of National Cadet Corps and efficient in sports may be preferred for this post.

For serial (ii), preference may be given to those possessing Diploma or degree in criminology. The Commission will bear in mind the desirability of maintaining also approximately the correct percentage of scheduled castes and tribes as given in Appendix 40.

(b) The Deputy Inspector-General (Administration) will ensure that verification Rolls in P.M. Form no. 101 are issued in respect of those for whom appointment letters are going to be issued. For this purpose, Superintendents may be directed to get in touch with the authorities concerned for getting it expedited. Thereafter, the candidates shall be referred for medical test before the Civil Surgeon or Deputy Superintendent of Sadar Sub-divisional Hospital of the place where the candidate resides (see Rule 672). On being declared fit in P.M. Form no. 103 the Deputy Inspector-General will issue appointment letters to the selected candidates on advice of the Commission and will direct them to report to the Principal, Police Training College, on the date fixed generally in January. A detailed list of the candidates appointed will at the same time be sent to the Principal, Police Training College, together with their application forms verification rolls, medical and other certificates. These papers will form a part of the candidates' appointment papers and will be sent to the Superintendents of the districts to which they are subsequently posted [for period of probation (see Rule 668)].”

The process of selection of Sub-Inspectors of Police in the general line of the police force, is to be conducted by the Bihar Public Service Commission (hereinafter referred to as, 'the Public Service Commission'). It is the Public

Service Commission, which advertises the vacancies to be filled up, it is the Public Service Commission which receives applications, and it is the Public Service Commission which determines the eligibility of candidates on the basis of standard measurements and physical tests. Therefore, it is the Public Service Commission which conducts the written test, and finally, holds interviews. The aforesaid process has been expressed in Rule 654 of the Police Manual, Volume I. Rule 656 of the Police Manual, Volume I, denotes the process of selection for direct recruitment. Rule 659 pertains to the process of promotion of Assistant Sub-Inspectors to the rank of Sub-Inspector of Police, in the general line of the police force. It is necessary to emphasize, that the instant process does not apply to appointments to the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors.

11. The Bihar Police Manual, 1978, Volume III (hereinafter referred to as, the Police Manual, Volume III) contains 102 appendices. Appendix 42 thereof has the following heading, "Rules for the recruitment, training, examination and posting of Steno Sub-Inspector, Steno Assistant Sub-Inspector and Typist Assistant Sub-Inspector of Police". A perusal of appendix 42 reveals, that the process of appointment of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors is to be initiated by the Inspector-General. As a first step, the Inspector General is to work out the number of vacancies in the ranks of Steno Sub-Inspectors and Steno Assistant Sub-Inspectors. On determining the number of vacancies to be filled up, he would decide the number of vacancies to be filled up by way of direct recruitment, and by promotion from the rank of

Steno Assistant Sub-Inspector. Paragraphs 1 to 5, 11, 14 and 15 of appendix 42 are relevant for the present controversy and are accordingly extracted hereunder:

“1. In order to provide stenographers for all but the lightest districts and for the railways and the offices of the Deputy Inspector-General of Police, the corps of trained steno, sub-inspectors and assistant sub-inspectors should be not less than 188 and 69 respectively.

2. Every year in the month of July, the Inspector-General shall work out the number of vacancies in the ranks of steno sub-inspectors and steno assistant sub-inspectors. On the basis of these vacancies, he shall decide to make direct recruitment by the procedure given hereinafter keeping in view the reservations for scheduled caste/tribe. He will also decide as to what quota should be fixed for promotion from the rank of steno assistant sub-inspector to steno sub-inspector.

3. Advertisement shall be made through Employment Exchange calling for application in P.M. Form no. 131 in Hindi (Devanagri script) (a) from persons trained in stenography, and (b) from persons not trained in it but having aptitude for it. Persons in category (b) should have good knowledge of Hindi and if possible of English who can be enlisted in the cadre of writer constables and then sent for further training in stenography either free of cost in Police Training College or on payment in C.M.S. Commercial Institute, Bhagalpur or any other institute preferably of Government undertaking. A sum of Rs. 8 shall be deposited by candidates under head “055-Police-Other receipts” in Treasury Chalan, a copy of which should be attached with their application. Candidates belonging to S.C./S.T. as also candidates from Police Department are exempted from payment of this fee.

(c) Those who are already in Police Department may also be eligible to apply if they are in category (a) without any age-limit. For category (b), they should be preferably within the age-limits vide clause 5 but officers and men of S.C./S.T. may apply up to the age of 34 years. Such candidates can apply in plain paper.

4. The test of minimum speed for five minutes only for various ranks are given below:-

Sl. No.	Post	Words per minute.			
		Hindi		English	
		Dictation	Typing	Dictation	Typing
1	Steno sub-inspector, Class I	100	35	120	40
2	Steno sub-inspectors (Class II)	80	30	100	40

General under Police Act. They shall wear Police uniform but shall not use any of the powers of police so long as they work as stenographers and typist.”

For direct recruitment, an advertisement has to be issued, through the employment exchange, calling for applications from persons trained in stenography. The process of selection contemplates, a test for ascertaining whether the candidates qualify the minimum speed in stenography (prescribed for different ranks of stenographers). All candidates are to be allowed to appear in the test of shorthand dictation and typing, whereafter, they are required to appear in a variety of physical tests meant for the respective ranks for which the selection is being conducted. Paragraph 5 of appendix 42, however, exempts suitable candidates from these tests. The appointment to the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors is to be made by the Central Selection Board. Paragraph 5 aforementioned, also envisages the relaxation of physical standards postulated for Sub-Inspectors and Assistant Sub-Inspectors of Police (of the general line). Height and chest requirements are relaxable by 1 inch (2 inches, for scheduled caste/tribe candidates) and 2 inches (3 inches for scheduled caste/tribe candidates) respectively. No such relaxation is contemplated for appointment to the general line of the police force Department. Paragraph 5 of appendix 42 contained in Police Manual, Volume III provides, that after serving for a period of 5 years, Steno Sub-Inspectors and Steno Assistant Sub-Inspectors can be appointed (on reversion) to the general line of the Police Department. It is however mandated, that before such reversion, they would have to undergo the usual course of training at the Police Training College, for ordinary police

duties. Paragraph 14 of appendix 42 narrates the primary object for recruiting trained stenographers. Paragraph 15 extracted above, leaves no room for any doubt, that even though Steno Sub-Inspectors/Steno Assistant Sub-Inspectors are permitted to wear police uniform, they are not permitted to discharge "police duties".

12. A perusal of the different provisions from the Police Manual reveals, that the Police Department is comprised of personnel belonging to distinct and separate units, centres and cadres. These separate entities in the Police Department are described differently as "Fire Brigade Services", "Finger Print and Handwriting Centres", "Dog Squad", "Central Workshop of Police Transport", "Police Communication", "Statistical Section", "Police Photo Section", "Forensic Science Laboratory", "Clothing Store", "Miscellaneous Force", "Missing Persons Bureau", "Juvenile Aid Bureau" etc. The above referred units, centres and cadres do not perform "police duties". Only police personnel belonging to the general line of the police force, perform police duties. Insofar as the process of recruitment is concerned, the responsibility of selection and appointment to the ranks of Sub-Inspector of Police and Assistant Sub-Inspector of Police belonging to the general line, is vested with the Public Service Commission. For recruitment to the general line, the prescribed physical standards are not relaxable. Insofar as the Steno Sub-Inspectors/Steno Assistant Sub-Inspectors are concerned, their recruitment is postulated separately under appendix 42 contained in the Police Manual, Volume III. The selection to the Stenographers' cadre, is made through a

Central Selection Board (and not by the Public Service Commission, as in the case of the general line). The physical standards prescribed are relaxable for those inducted as Steno Sub-Inspectors/Steno Assistant Sub-Inspectors. The above is an in-house process of selection. After Steno Sub-Inspectors/Steno Assistant Sub-Inspectors have rendered 5 years' service, they become eligible for appointment (on reversion) to the general line of the Police Department. It is imperative for those appointed (on reversion) to undergo the police training postulated for Sub-Inspectors/Assistant Sub-Inspectors of the general line on their induction into the Police Department. The service of 5 years rendered by them, therefore, does not by itself constitute sufficient satisfactory training for induction into the general line of the police force. The comparative analysis of selection and appointment of Sub-Inspectors/Assistant Sub-Inspectors of Police in the general line, and that of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors, leaves no room for any doubt, that those inducted into the general line of the police force, constitute a separate and distinct cadre, as against those recruited as Steno Sub-Inspectors/Steno Assistant Sub-Inspectors in the "Miscellaneous Force" of the Police Department. The above conclusion gets further credence from the fact, that the duties which Steno Sub-Inspectors/Steno Assistant Sub-Inspectors discharge, are totally dissimilar from the responsibilities assigned to Sub-Inspectors/Assistant Sub-Inspectors in the general line of the police force. While the former are assigned only stenography work, the latter perform traditional police duties.

13. In view of the above, we are satisfied in recording the conclusion, that Steno Sub-Inspectors/Steno Assistant Sub-Inspectors are a part of a different cadre vis-à-vis Sub-Inspectors/Assistant Sub-Inspectors of the general line. We hereby, therefore endorse the view expressed by the High Court, in the impugned orders. We shall now examine the different submissions advanced on behalf of the appellants.

14. The first contention advanced at the hands of the learned counsel for the appellants was based on a communication addressed by the Government of Bihar, Political Department (Police Branch), to the Inspector General of Police, Bihar, dated 4.9.1953. Since substantial emphasis was laid on the aforesaid communication, the same is being extracted hereunder:

“Sub.:- Establishment of a new cadre of Steno-S.Is. and Steno-A.S.Is. in the Police Department
Sir,

I am directed to refer to the correspondence resting with your letter no. 1134A/K.W.-I-I-13-47 dated 30/31.5.52 and to say that, in supersession of the orders contained in Mr. Naqavi letter no. 2562PP, dated the 27th May, 1947, Government have been pleased to approve your scheme for the replacement of the existing cadre of stenographer-clerks in the Police Department by a new cadre of Steno Sub-Inspectors and Steno Assistant Sub-Inspectors, as prescribed below:-

2. The new cadre will consist of the same number of posts (both permanent and temporary) as are sanctioned for the existing cadre of Stenographer-clerks including leave reserve posts. The Steno Sub-Inspectors will draw pay in the scale of Rs.100-5-130-EB-6-190 and the Steno A.S.Is. will draw pay in the scale of Rs.50-2-90 sanctioned for Sub-Inspectors and Asstt. Sub-Inspectors of Police respectively.

3. The existing Stenographer-clerks, class II attached to the Deputy Inspectors General of Police should be designated as Steno Sub-Inspectors and will draw pay in the scale of Rs.100-5-130EB-6-190 if they have passed the Secretariat Stenographer class II examination. Those who have not passed the above examination will draw pay in the scale of Rs.75-2-85, and will not be absorbed as Steno Sub-Inspectors until they become eligible for the scale of Rs.100-5-130EB-6-190. But

they may start on Rs.85 if the D.Is.G. consider that they have got satisfactory speed in shorthand & typewriting.

4. The existing Stenographer-clerks attached to the Superintendents, Asstt. Superintendents and Deputy Superintendents of Police should be designated as Steno-A.S.Is. and will continue to draw pay in the scale Rs.50-2-70-EB-2-90 plus the special pay admissible to a passed or an unpassed Steno-clerk.

5. The Steno Sub-Inspectors and Steno Assistant Sub-Inspectors will be enrolled under the Police Act. While employed on the work of stenographer they will not exercise any police powers. They will not be entitled to any conveyance, house rent or uniform allowance as are admissible to ordinary S.Is. and Assistant Sub-Inspectors of Police in the general line.

6. The Steno Sub-Inspector will be recruited on the result of a competitive examination in the same manner as other Sub-Inspectors are recruited. The minimum qualifications for a candidate appointed to this rank will be an intermediate standard. They will undergo a special test of shorthand and typewriting and must display in both speed and accuracy, minimum standards to be fixed by the Inspector-General of Police, Bihar from time to time.

7. They will serve as Steno Sub-Inspector for about 5 to 7 years and if found suitable they will be eligible for absorption in the general line as S.I. of Police. Their reversion to general line will take effect after their selection by the Central Selection Board co-existing of Deputy Inspectors General of Police.

8. The Steno Assistant Sub-Inspector will also be appointed by direct recruitment after a competitive examination and interview by Central Selection Board. The minimum qualification for a candidate recruited, in this rank will be a matriculation certificate or equivalent thereto. All the candidates thus selected will be required to pass a special test in shorthand and typewriting as laid down for Steno S.Is. The physical standard will be the same as for other A.S.Is. appointed by direct recruitment.

9. On appointment as Steno Assistant Sub-Inspectors, they will continue as such for 5 to 7 years. Thereafter, if they are found suitable, they will be eligible for absorption in the general line as A.S.Is. of Police. Their reversion to general line will take effect their selection by the Central Selection Board consisting of Deputy Inspectors General of Police. The Steno Assistant Sub-Inspectors after promotion to the rank of Steno Sub-Inspectors may be absorbed in the permanent cadre of Sub-Inspectors of Police.

10. The Steno Sub-Inspectors and Steno Assistant Sub-Inspectors, on their absorption in the corresponding rank in the general line will be required to undergo a course of training at the Police Training College, Hazaribagh, before they are employed on regular duties of the general line.

11. The existing Steno-clerks on their absorption as Steno Sub-Inspectors or Steno Assistant Sub-Inspectors, as the case may be, will count their seniority vis-à-vis the officers of the general line from the date of appointment as Steno Sub-Inspectors or Steno Assistant Sub-Inspectors.

12. The existing incumbents will be appointed as Steno Assistant Sub-Inspectors and Steno Sub-Inspectors after they have satisfied the conditions now imposed for their recruitment and after they have been interviewed and found suitable by a Selection Board consisting of not less than 3 Deputy Inspectors General of Police. Those existing incumbents who are unwilling or found unsuitable for appointment as Steno Assistant Sub-Inspectors and Steno Sub-Inspectors will continue to remain as Steno-clerks on their existing scale of pay.

13. Proposals for amendment of the Police Manual Rules may be sent to Government in due courses.

14. The Accountant-General Bihar has been informed.”

(emphasis is ours)

Based on the position expressed in paragraph 11 of the afore-extracted communication dated 4.9.1953, it was the vehement contention of the learned counsel for the appellants, that on their absorption (on reversion), Steno Sub-Inspectors/Steno Assistant Sub-Inspectors, would count their seniority vis-à-vis the officers of the general line, from the date of their appointment as Steno Sub-Inspectors/Steno Assistant Sub-Inspectors. It was further the contention of the learned counsel for the appellants, that a perusal of paragraph 13 of the communication reveals, that the proposal expressed in paragraph 11 (of the above communication), was acceptable to the State Government, and that the above acceptability extended to an assumption of the Government's approval for an appropriate amendment to the provisions contained in the Police Manual as well.

15. We have given our thoughtful consideration to the first contention advanced at the hands of the learned counsel for the appellants. First and

foremost, a perusal of the subject of the aforesaid communication reveals, that the Steno Sub-Inspectors/Steno Assistant Sub-Inspectors were recognized as a separate and distinct cadre for the Police Department. Not only the subject of the communication, but also its paragraph 1, visualizes the creation of separate cadre of Stenographers. Secondly, the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors was to be created out of the existing cadre of Stenographer-clerks. Paragraph 5 of the communication denotes, that the cadre of Stenographers contemplated in the communication, would not discharge any police functions vested in the general line. Paragraph 6 recognises the fact, that the Steno Sub-Inspectors/Steno Assistant Sub-Inspectors would be recruited in the same manner as other Sub-Inspectors/Assistant Sub-Inspectors of Police. Despite thereof, paragraphs 7 and 9 clearly postulate, that they would be entitled to absorption in the general line as Sub-Inspectors/Assistant Sub-Inspectors only if they are found suitable. Paragraphs 7 and 9 envisage, that their reversion to the general cadre would take effect after their selection by the Central Selection Board. Paragraphs 7 and 9 therefore clearly expound, that for the purpose of their appointment in the general line, the date of appointment would not be their original date of appointment to the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors, but would be "after their selection by the Central Selection Board". Paragraph 10 of the communication dated 4.9.1953 postulates, that Steno Sub-Inspectors/Steno Assistant Sub-Inspectors, if found suitable for absorption in the general line, would be required to undergo training at the Police Training College, before they are deployed for duties of the general line.

None of the foregoing aspects contemplated in the communication dated 4.9.1953, lends credence to the submission advanced at the hands of the learned counsel for the appellants, namely, that on the absorption of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors in the general line of the Police Department, they would be entitled to seniority with reference to the date of their induction into the police service in the stenographers cadre.

16. The position recorded by us in the foregoing paragraph, does not take into consideration the pointed submission advanced at the hands of the learned counsel for the appellants. In his submission, learned counsel had placed reliance only on paragraph 11 of the communication dated 4.9.1953. It is not possible for us to accept, that the appellants can seek any benefit from the contents of paragraph 11 of the communication dated 4.9.1953. Paragraph 11 aforementioned was made applicable only to "The existing steno-clerks on their absorption as Steno Sub-Inspectors or Steno Assistant Sub-Inspectors... will count their seniority vis-à-vis the officers of the general line from the date of appointment as Steno Sub-Inspectors or Steno Assistant Sub-Inspectors". The appointment of the appellants into the Police Department came about decades after the issuance of the communication dated 4.9.1953. The appellants were inducted into the Police Department by way of direct recruitment as Steno Sub-Inspectors/Steno Assistant Sub-Inspectors, they were not shown to have ever held the post of Steno-clerks. It would be pertinent to mention, that the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors was created out of the existing cadre of

Stenographer-Clerks. Therefore, terms and conditions postulated (in the letter dated 4.9.1953) with reference to the Steno-Clerks, cannot be extended to Steno Sub-Inspectors/Steno Assistant Sub-Inspectors. Therefore, *per se* paragraph 11 of the letter dated 4.9.1953 is inapplicable to the controversy in hand. Because the appellants cannot, describe themselves as “existing” Steno-Clerks, when the aforesaid communication was issued, the communication dated 4.9.1953, in our considered view, is wholly irrelevant/inapplicable to the claim raised on behalf of the appellants. Paragraph 11, at best, afforded a protection to Steno-Clerks who had been inducted into the service of the Police Department prior to the creation of a separate cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors. Interpreted in the above manner, it is apparent, that the aforesaid benefit would not flow to those appointed to the Stenographers’ cadre after the issuance of the communication dated 4.9.1953, or alternatively, after the incorporation of the proposals accepted by the State Government (in the communication dated 4.9.1953), through the suggested amendment in the existing provisions of the Police Manual. In the above view of the matter, we find no merit in the first contention advanced at the hands of the learned counsel for the appellants.

17. The second contention advanced by the learned counsel for the appellants was premised on the fact, that there were no existing statutory rules on the basis whereof the seniority of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors can/could be determined, on their absorption (on reversion), as

Sub-Inspectors/Assistant Sub-Inspectors in the general line. In the above situation, it was the contention of the learned counsel for the appellants, that reference needs to be made to the existing administrative instructions on the subject of seniority. In this behalf, learned counsel for the appellants has invited our attention to general principles laid down by the Department of Personnel, Government of Bihar, for fixing the *inter se* seniority in service, through instructions dated 26.8.1997. Learned counsel has placed emphatic reliance on paragraph (iii) thereof, which is being reproduced hereunder:-

“iii. Where an incumbent is transferred from one service to another on his own request, services rendered by him in the previous post shall not count for seniority. But in case such transfer follows a policy decision taken by Government, his services in the previous post shall count for seniority.”

It was the submission of the learned counsel for the appellants, that the appellants were not transferred from the cadre of Steno Sub-Inspectors to the general line, against the post of Sub-Inspectors in the police force, on their own request. Relying on the manner of determining seniority in the departmental instructions dated 26.8.1997, it was submitted, that the previous service rendered by the appellants (in the cadre of Stenographers) was liable to be “counted”, while determining their seniority, for the simple reason, that they had not made any request for their appointment (on reversion) to the general line. It was submitted, that only when a transfer is made on request, the service rendered by an employee on the previous post is not to be taken into consideration, for determining seniority. Since that is not the case here, it is the contention of the learned counsel for the appellants, that the appellants

were entitled to count the service rendered by them in the Stenographers' cadre, consequent upon their appointment (on reversion) to the general line.

18. The contention advanced at the hands of the learned counsel for the appellants, as has been noticed in the foregoing paragraph, was refuted by the learned counsel representing the respondents. It was the submission of the learned counsel for the respondents, that the reason which prompted the authorities to provide for appointment (on reversion) from the cadre of Stenographers, to the general line of the Police Department, was that there were no promotional avenues in the Stenographers' cadre, and as such, career progression was provided for those in the Stenographers' cadre by way of absorption (on reversion) to the general line. In the aforesaid background, it was contended, that the appellants cannot be held entitled to the benefit of past service (in the cadre of Stenographers), for determining seniority in the general line of the police force. It was also the contention of the learned counsel for the respondents, that the appointment under reference cannot be deemed to be an appointment made by way of transfer, and as such the instructions dated 26.8.1997 would be inapplicable to the case in hand.

19. We have given our thoughtful consideration to the second contention advanced at the hands of the learned counsel for the appellants. It is necessary for us to extract hereunder paragraph 17 of the impugned order.

The same is accordingly reproduced hereunder:-

"17. One more aspect of the matter also indicates that these posts of Steno Sub-Inspectors and general cadre Sub-Inspectors are separate/distinct cadres. It is an admitted fact that in view of lack of

promotional avenues in the cadre of Steno Sub-Inspector of Police a special scheme was framed by the State Government to allow the Steno Sub-Inspector Police to come to the general line of Sub-Inspector after completing minimum service of 5-7 years, subject to suitability and physical fitness. On being selected in the general line of Sub-Inspector of Police, Steno Sub-Inspector of Police was required to undergo the requisite Police training and only after successful completion of the training, he (Steno Sub-Inspector of Police) is inducted into the cadre of general line sub-Inspector of Police to enable him to avail the promotional avenues thereafter. Thus, it is clear that the post of Steno Sub-Inspector of Police belongs to an entirely different cadre.”

In our considered view, as a general proposition, in the absence of any express provision, there can be no dispute whatsoever, that consequent upon appointment by way of transfer, a transferred employee who acquires the right to hold an equivalent post in the exigency of service or in public interest, is entitled for the determination of his seniority, to count the period of service rendered by him against the erstwhile post, along with the period of service rendered by him in the post to which he has been transferred. The situation herein is however different. The appointment of the appellants (on reversion) is neither in public interest nor in exigency of service. The appellants' appointment (on reversion) to the general line, is for the benefit of the appellants (who belonged to the Stenographers' cadre), on account of lack of promotional avenues. An employee who accepts to participate in the process of selection to determine his suitability, as contemplated in the provisions extracted hereinabove, cannot be allowed to contend that his appointment (on reversion) to the general line, was on account of the employer's will. Having participated in the process of selection, the appellants will be deemed to have sought and opted for their appointment (on reversion) to the general line of the police force. It is only on the determination of the incumbent's suitability,

through a selection process, that an individual from the Stenographers' cadre, will gain entry into the general line of Sub-Inspectors/Assistant Sub-Inspectors of Police. Such appointment is neither in public interest nor in the exigency of service. Furthermore, it is not possible for us to accept, that appointment (on reversion) contemplated in the present case, can be equated with an appointment by way of transfer, as generally understood. *Stricto sensu*, therefore, it is not possible for us to accept, that the appointment of the appellants from the Stenographers' cadre would fall within the regime contemplated, under the extracted clause, relied upon by the learned counsel for the appellants (from the departmental instructions, dated 26.8.1997).

20. General principles of service law jurisprudence are applicable, only in situations wherein there are no express rules governing the determination of seniority. We would venture to express the legal position on the basis of a sample illustration. Take for instance, the post of Constable. In the police department, the cadre of Constables is at the District level. Persons holding the same post would, therefore, be placed in separate and distinct District cadres (depending upon their recruitment, to a particular District). Each District cadre of Constables, will have a separate seniority list. In terms of seniority, Constables in one District cadre, would not be comparable with other Constables in the remaining District cadres. Even though the post is the same, if a Constable is transferred "at his own request/option" from one cadre to another, i.e., from District "A" to District "B", he would be placed at the bottom of the seniority of the cadre to which he is transferred, i.e., at the

bottom of the seniority of Constables in District "B". He would not legally be entitled to count his seniority with reference to the date of his induction into the service of the police department as a Constable. This is the true purport of the departmental instructions (dated 26.8.1997). The position would be quite different in case a Constable is transferred from one district cadre to another district cadre in public interest and/or on account of a policy decision. In such a situation, even though the Constable is transferred to another cadre, i.e., from District "A" to District "B", he would legally be entitled to count his seniority with reference to the original date of his appointment against the post of Constable in District "A" while determining his seniority in District "B". The above illustration would be clearly inapplicable in case a person holds post - say "X", is appointed (say, on reversion) to another post - say "Y", after participating in a selection process. When an individual moves from post "X" in a particular cadre to post "Y" in another cadre, the principle relied upon by the learned counsel for the appellants, would be inapplicable. As in the present case, the appellants were originally inducted into the Police Department to the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors and thereafter, were appointed on reversion to the cadre of Sub-Inspectors/Assistant Sub-Inspectors of Police in the general line of the Police Department. Herein, the appointment contemplated is from a different post with different duties and responsibilities, to another separate and distinct post with wholly different duties and responsibilities. This appointment contemplates shifting from one cadre to a different cadre. This appointment is preceded by a process of selection, to be conducted by the Central Selection

Board. Herein, in the absence of statutory rules and/or express executive instructions, the transferee would not be entitled to count the period of service rendered by him in the former post, on the basis of the principle invoked by the learned counsel for the appellants. In the submissions advanced by the learned counsel for the appellants, he seeks to refer to the factual position in the latter illustration, but desires to apply the principle contemplated in the former situation. It is only because the submissions advanced at the hands of the learned counsel for the appellants, deserved to be clarified, that we have demonstrated the position through the illustration referred to hereinabove. In view of the above, we are satisfied that the claim of the appellants, based on the second contention advanced at the hands of the learned counsel for the appellants, is clearly untenable. It is so, not only because of the legal position depicted hereinabove, but also because, the general principles of seniority applicable to transfers, are inapplicable to the facts and circumstances of the case in hand.

JUDGMENT

21. The statutory rules referred to in the Police Manual expressly postulate, that appointment of those absorbed (on reversion) to the general line, will be determined on their selection by the Central Selection Board. The transfer contemplated in the departmental instructions, dated 26.8.1997, is therefore not relateable to the appointments (on reversion) contemplated in the present case. It is therefore not possible for us to refer to the general principles laid down by the Department of Personnel, dated 26.8.1997, to draw any conclusion in respect of the controversy in hand. We are also in agreement

with the submission advanced by the learned counsel for the respondents, that it is not justified to treat the appointment of the appellants to the general line of the Police Department, as an appointment by way of transfer. For the reasons recorded hereinabove, we find no merit in the second contention.

22. The third contention of the learned counsel for the appellants was based on earlier judgments rendered on the issue. First and foremost, reliance was placed by the learned counsel for the appellants on a judgment rendered by a Division Bench of the High Court of Patna in Bhagwat Prasad Singh v. Bhudeo Tiwari (C.W.J.C. No.6371 of 1990, decided on 2.7.1993). In the judgment relied on, the petitioners were inducted as Steno Sub-Inspectors of Police. They joined as such on 1.3.1967. Subsequently, on their "option", they were absorbed and confirmed in the cadre of Sub-Inspectors of Police, in the general line with effect from 2.1.1969. The petitioners in the above case desired to be placed above the direct recruits to the cadre of Sub-Inspectors of Police in the general line, who were appointed on 2.1.1969. While adjudicating upon the controversy, the High Court categorically arrived at the conclusion, that the cadre of Steno Sub-Inspectors of Police, was entirely different from the cadre of Sub-Inspectors of Police in the general line. Thereupon, for the purpose of determining the petitioners' seniority with effect from the date of entry into the police service (as prayed for by them), the High Court first placed reliance on a Government circular of 1972 laying down rules governing general principles and procedures for fixation of seniority, wherefrom it inferred, that when an incumbent is transferred from one service

to another “on his own request”, service rendered by him in the previous post would not count for seniority. But it was also noticed, that in case such transfer is based on a policy decision taken by the Government, the concerned employee’s service in the previous post, would count towards seniority. The High Court, while recording the above conclusion, also relied upon the decision rendered by this Court in Direct Recruit, Class II Engineering Association v. State of Maharashtra, AIR 1990 SC 1607 to infer, that once an incumbent was appointed to a post in accordance with the rules, his seniority had to be counted from the date of his appointment, and not from the date of his confirmation. It is thereupon that the High Court recorded the following conclusion:

“11. Keeping in view the facts of the present case and the principles governing determination of seniority it has to be held that for the purpose of determining inter se seniority of the petitioners and respondent nos. 1 to 19, the respective dates of entry/appointment of these persons in the cadre of Sub-Inspector of Police can be the only relevant basis and neither the date of first appointment of the petitioners in another cadre nor the date of confirmation of the respondents on their respective post is of any consequence for the said purpose. Accordingly, in our opinion, there is no merit in this writ application which is accordingly dismissed...”

23. Learned counsel for the appellants then placed reliance on another judgment rendered by the High Court of Patna in Surya Nath Singh v. State of Bihar (C.W.J.C. No.11211 of 2003, decided on 30.3.2006). Herein again, the petitioners in a set of writ petitions disposed of collectively had joined the State Police Department as Steno Sub-Inspectors/Steno Assistant Sub-Inspectors. Consequent upon their appointment (on reversion) as Sub-Inspectors/Assistant Sub-Inspectors in the general line of the police

department, they claimed their seniority in the general line, with effect from the date of their induction into the police department as Steno Sub-Inspectors/Steno Assistant Sub-Inspectors. It was their contention, that the earlier decision rendered by the High Court in Bhagwat Prasad Singh's case (supra) was wrongly decided. Even in the instant case, the High Court arrived at the conclusion, that the posts of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors and those of Sub-Inspectors/Assistant Sub-Inspectors in the general line belonged to two distinctly separate cadres, and hence, the service rendered by the petitioners in the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors being in a separate cadre could not be taken into account for determining their seniority, in the cadre of Sub-Inspectors/Assistant Sub-Inspectors (on reversion) to the general line. On an analysis of the decisions relied upon at the behest of the petitioners, the High Court arrived at the following conclusions:

“13. On a consideration of the two decisions in Girish Pandey and B.P. Singh and the relevant provisions of Appendix of the Bihar Police Manual, I came to the following conclusions:-

Posts of Steno Sub Inspector/Steno Assistant Sub Inspector and those of Sub Inspector/Assistant Sub Inspector belong to entirely different cadres. Ordinarily, after serving as stenographer for five years, Steno Sub Inspector/Steno Assistant Inspector would revert to the district work and on reversion, their seniority in the main police line would be reckoned from the date of their reversion.

In case, Steno Sub Inspector/Steno Assistant Sub Inspector are retained by the Inspector-General of Police as Stenographers for a period exceeding five years, on 'reversion' their loss of seniority shall not be more than five years inasmuch as the Inspector-General of Police cannot retain them beyond five years and cause further prejudice to them with regard to their seniority on 'reversion', as observed in the decision in Girish Pandey.”

Having recorded the aforesaid conclusions, the High Court expressed the view that the decision rendered by the Division Bench in Bhagwat Prasad Singh's case (supra) was correctly determined. The High Court accordingly declined the petitioners the benefit of seniority in the general line of the police department, with effect from the date of their entry into service against the posts of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors.

24. It was the pointed contention of the learned counsel, that the determination rendered by the High Court in Bhagwat Prasad Singh's case (supra) was premised on a very significant fact, namely, that the petitioners in the controversy settled by the High Court, had "opted" for their transfer from the Stenographers' cadre, to the general line of the police department. It was submitted, that the High Court was fully justified in the aforesaid factual background, to deny the petitioners (before the High Court) the right to take into consideration the service rendered in the Stenographers' cadre, towards seniority in the general line of the Police Department. It was submitted that the position in the present controversy is quite different, inasmuch as, herein the petitioners had not opted for their appointment to the general line of the Police Department. It was submitted that the position in the present case being converse to the position in Bhagwat Prasad Singh's case (supra), the appellants would certainly be entitled to seniority from the date of their appointment in the Stenographers' cadre.

25. It is not possible for us to accept the submission of the learned counsel for the appellants, that the appellants had not "opted" for their transfer from the

cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors to the cadre of Sub-Inspectors/Assistant Sub-Inspectors in the general line of the police force. We have already recorded our conclusion hereinabove to the effect that the appellants having participated in the process of selection before the Central Selection Board, they must be deemed to have exercised an express option for moving from the Stenographers' cadre to the general line of the Police Department. Thus viewed, we are satisfied that the judgments relied upon by the learned counsel for the appellants rendered in respect of police personnel of the same department cannot be relied upon for the purpose canvassed by the learned counsel. We, therefore, hereby decline the third contention advanced at the hands of the learned counsel for the appellants.

26. While concluding his submissions, learned counsel for the appellants placed reliance on three judgments rendered by this Court, to support the cause canvassed on behalf of the appellants. It would be pertinent to mention that reference was made to K.C. Arora v. State of Haryana, (1984) 3 SCC 281, T.K. Kapur v. State of Haryana, 1986 (Supp) SCC 584, and K.P. Sudhakaran v. State of Kerala, (2006) 5 SCC 386. We have gone through the judgments pointed out by the learned counsel for the appellants. In our considered view, the same are premised on peculiar facts and circumstances of the cases considered, or alternatively on the statutory rules applicable to a particular service. None of the aforesaid judgments can gainfully be relied upon to draw an inference one way or the other, insofar as the present controversy is concerned.

27. For the reasons recorded herein above, we find no merit in these appeals. The same are accordingly dismissed.

New Delhi;
December 18, 2014.

.....J.
(Jagdish Singh Khehar)

.....J.
(Arun Mishra)



JUDGMENT