
(2006) 08 PAT CK 0104
In the Patna High Court
Case No : CWJC No. 3533 of 2004

Awadhesh Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Citation : (2006) 3 PLJR 617

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh, Sharad Kumar Sinha and Manish Kumar, for the Appellant; Dhruv Mukherjee, Shyam Kishore Sharma and Sanjay Prakash Verma, for the Respondent

Judgement

V.N. Sinha, J.—Heard Sri Ganesh Prasad Singh learned senior counsel for the petitioner, Sri Shyam Kishore Sharma, Government Advocate No. V for the State of Bihar and Sri Dhruv Mukherjee of the State of Jharkhand. In response to the query made by this Court under orders dated 10.8.2006, learned counsel for the State of Bihar has informed this court that junior to the petitioner was considered and granted promotion on the post of Executive Engineer vide notification dated 13.6.2002 with effect from 1.4.1998, as such, the due date of promotion in the case of the petitioner should also be 1.4.1998.

2. Petitioner is aggrieved by the proceedings of the Departmental Promotion Committee dated 30.11.2002/27.1.2003, Annexure-6, whereunder he has been declared fit for promotion on the post of Executive Engineer with effect from 1.4.2003. According to learned counsel for the petitioner, juniors to the petitioner in the grade of Assistant Engineer were granted promotion on the post of Executive Engineer with effect from 1.4.1998 under notification dated 13.6.2002 and the Departmental Promotion Committee during their proceedings dated 30.11.2002/27.1.2003, Annexure-6 should also have considered and declared the petitioner fit for promotion on the post of Executive Engineer with effect from 1.4.1998, as proceedings under Rule 55(A) of the Civil Services (Classification,

Control and Appeal) Rules, 1930 was initiated against the petitioner only when show-cause notice bearing letter No. 234 dated 19.5.2000, Annexure-D to the counter affidavit was issued and the punishment of censure was imposed only on 20.9.2000, as is evident from resolution of the State Government dated 20.9.2000, Annexure-4. Thus, it is submitted that there was no allegation, show-cause or any charge-sheet pending against the petitioner on 1.4.1998, the date his other juniors were considered and promoted on the post of Executive Engineer. In the circumstances, according to learned counsel for the petitioner, the resolution dated 20.9.2000, Annexure-4 imposing punishment of censure could not have deprived the petitioner of his promotion on 1.4.1998, the due date.

3. In support of the aforesaid submission, learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Bank of India and Another Vs. Degala Suryanarayana, , wherein His Lordship placing reliance on the celebrated judgment in the case of Union of India Vs. K.V. Jankiraman, etc. etc., held that the prospective punishment order cannot deprive the employee of the benefit of the promotion on the due date of promotion on which no charge or any proceeding was pending against him.

4. Learned counsel for the State, on the other hand, has defended the proceedings of the Departmental Promotion Committee dated 30.11.2002/27.1.2003, Annexure-6 on the ground that the resolution dated 20.9.200, Annexure-4 imposing the punishment of censure in the year 1999-2000 has not yet been set aside, as such, petitioner has to be considered and promoted on the next higher post only after the effect of censure is over and in consideration thereof only the Departmental Promotion Committee has held that petitioner is fit to be promoted on the next higher post with effect from 1.4.2003.

5. Having heard counsel for the parties, I am of the view that the submissions put forward by the learned counsel for the State is in teeth of the judgment of the Hon'ble Supreme Court in the case of Bank of India and Anr. vs. Degata Suryanarayana and Union of India vs. K.V. Jankiraman (supra) as on the due date of promotion of the petitioner i.e. 1.4.1998 neither charge-sheet nor show-cause notice under Rule 55 and 55(A) of the Civil Services (Classification, Control and Appeal) Rules, 1930 respectively was pending against him, as such, the authorities could not have deprived the petitioner of promotion with effect from the due date i.e. 1.4.1998. The effect of resolution of the State Government dated 20.9.2000 imposing punishment of censure, in my opinion, is only to defer the consideration until the effect of censure has not lapsed. But once the effect of censure has lapsed, petitioner is to be considered for promotion with effect from the due date. In the light of my observations above, I modify the resolution of the Departmental Promotion Committee dated 30.11.2002/27.1.2003, Annexure-6 to the extent that thereunder petitioner is declared fit for promotion with effect from 1.4.1998. The respondent State of Bihar is directed to issue

appropriate notification in the light of this order within a period of three months from the date of receipt/ production of a copy of this order, as on the date of the resolution of the Departmental Promotion Committee dated 30.11.2002/27.1.2003, Annexure-6 petitioner was not relieved to join the State of Jharkhand as is evident from the statement made in paragraph 22 of the counter affidavit of Respondent Nos. 2 and 3. This writ application is, accordingly, disposed of. No cost.