

(2009) 10 PAT CK 0042
In the Patna High Court

Banke Bihari Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Citation : (2009) 10 PAT CK 0042

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and learned Counsel for the State.

2. Learned Counsel for the petitioner submits that the petitioner, holding the post of Executive Engineer in the Road Construction Department, was cleared by the Department of Vigilance in 2003 whereafter his case was considered by the Departmental Promotion Committee on 24.10.2004 for promotion to the post of Superintending Engineer in the Scheduled Tribe category and in which category 15 vacancies were available. After the recommendation of the Departmental Promotion Committee finding him fit for promotion to the post of Superintending Engineer, a Departmental Establishment Committee recommended him for additional discharge of duties of the post of Superintending Engineer while holding the substantive post of Executive Engineer. Similar recommendations for promotions were made of certain others too by the same Departmental Promotion Committee. In pursuance thereof the Establishment Committee in like manner passed orders with regard to them also. Subsequently, on 23.9.2006 others (including junior to the petitioner) came to be confirmed on the post of Superintending Engineer.

3. The petitioner is being denied the benefit of the recommendation made by the Departmental Promotion Committee and is being discriminated vis-a-vis his juniors on the alleged ground that there is a departmental proceeding pending against him in pursuance of a charge-sheet dated 6.5.2006 which remains inconclusive till date.

4. The short submission on behalf of the petitioner in the aforesaid facts is that on the date that he was considered for promotion by the Departmental Promotion Committee, there were no proceedings pending against him. He had been cleared by the Vigilance. The vacant promotional post was available. These are the only criteria on basis of which his case had to be considered. Additionally, if the vacancy for the promotional post was available, it was not open to the respondents to whittle down the deliberations of the Departmental Promotion Committee by not granting him substantive promotion to the post of Superintending Engineer, deprive him of the benefit of the same by allowing intervening subsequent developments and on basis of these subsequent developments then to contend that he was not eligible for promotion to the post of Superintending Engineer in view of the subsequent developments.

5. Strong reliance is placed on the judgement of this Court reported in Umesh Chandra Jha Vs. The State of Bihar, , more particularly paragraph-6 of the same. To contend that even procedures of "sealed cover" has no relevance in the context of the present controversy.

6. Learned Counsel for the State submits that the recommendation of the Departmental Promotion Committee, per se, shall not create a vested right, but other formalities have to be observed also. He additionally submits that the Establishment Committee did not grant him promotion to the post of Superintending Engineer, but only permitted him to discharge the duties of a Superintending Engineer also in addition to his own substantive rank and duty of an Executive Engineer even while paying him the salary of an Executive Engineer only. Before the petitioner could be considered for confirmation like others, the petitioner was suspended on 10.4.2006.

7. On record is an order of this Court passed in C.W.J.C. No. 16374/07 dated 27.2.2008 setting aside the order of suspension when the departmental proceeding continued.

8. There is no right to promotion but the right is to be considered for promotion. If a person is considered for promotion, he is found fit, vacancies are available and he is recommended as such, there have to be very cogent, convincing and thoroughly substantial grounds to deny him the benefit for the same. It is not the ipse dixit of the authorities to withhold promotions of a person in whose favour a recommendation has been made unless there are substantial justification for the same in law. To draw an analogy mere empanelment cannot create a right of appointment, but when the vacancies are available and appointment is sought to be denied from the panel there have to be very cogent and convincing reasons if a challenge is laid out.

9. The law stands equally well settled that the cause of action has to be considered for promotion on the basis of service records as they stand on the date of consideration. Subsequent developments have no bearing upon the same.

10. If vacancies were available, a government servant was considered against

the vacancy on the date of consideration his records were clear, he came to be recommended for promotion it shall require very strong reasons to justify why despite all of the aforesaid the Establishment Committee chose to grant him only officiating charge. In this context the judgement relied upon by the petitioner in the case of Umesh Chandra Jha (supra) may become relevant for consideration.

11. Procedural formalities required thereafter for promotion are the domain of the authorities and they cannot sleep over the procedural formalities, allow intervening developments to then contend that now the situation has changed and there were proceedings to deny such promotion. It is not necessary to dwell on the matter any further in view of the nature of the order proposed.

12. To ask for a counter affidavit at this stage and then to take up this matter for admission years later when today this Court is hearing writ applications of the year-2003 shall not be delivering justice to the petitioner.

13. Copies of the writ petition in two sets have already been served on the office of the learned Advocate General under the High Court Rules. The second copy of the writ petition is meant for the State authorities to facilitate early disposal of the case by filing counter affidavit. No counter affidavit has been filed.

14. Now that the State has the second copy of the writ petition available with it, this Court does not accede to the suggestion of the learned Counsel for the State that the petitioner should be directed to file a detailed representation before the authorities. That shall be sheer bureaucratic rigmarole.

15. This Court requires the respondent No. 2 to examine the claims of the petitioner, grant him a personal hearing if he so requests and then pass a reasoned and speaking order on the claim of the petitioner that he is entitled to be promoted to the post of Superintending Engineer from the date that his juniors have been granted the promotion.

16. Let a reasoned and speaking order dealing with all aspects of facts and law be then passed by respondent No. 2 so that judicial review of the same may be facilitated, should the occasion arise.

17. Let this order be complied within a maximum period of three months from the date of receipt/production of a copy of this order before respondent No. 2.