

**(2007) 03 PAT CK 0174**  
**In the Patna High Court**  
**Case No : CWJC No. 7105 of 2001**

Barun Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 14-03-2007

**Acts Referred:**

**Citation :** (2007) 2 PLJR 535

**Hon'ble Judges :** Barin Ghosh, J

**Bench :** Single Bench

**Advocate :** Prashant Kashyap, for the Appellant; Ritesh Kumar, for the Respondent

**Final Decision :** Allowed

## Judgement

Barin Ghosh, J.—Heard both the parties. Petitioner was working in the post of Horticulture Inspector. He was accorded promotion to the post of Horticulture Officer/ SHO by an order dated 14th October, 1999 on the recommendation of Promotion Committee. By the impugned Order dated 10th May, 2001, this promotion of the petitioner was cancelled. In the present writ petition, petitioner is challenging the validity of the said order dated 10th May, 2001.

2. The order dated 10th May, 2001 does not disclose any reason for cancellation of the promotion of the petitioner, which was accorded by the order dated 14th October, 1999. In the counter affidavit, it has been stated that there were four reasons for the cancellation. First of them is non-clearance of model roster for promotion. It now stands admitted that the petitioner was placed in the roster point No. 155 and promotions were accorded to roster points 111 to 157. Petitioner belongs to General category and roster point 155 is meant for General Category. Therefore, mere non-clearance of model roster for promotion is not such an illegality or irregularity for which the due promotion, as accorded to the petitioner, could be cancelled.

3. The next reason for cancellation of the promotion is that the petitioner did not

have the minimum qualifying working period. It is true that on 4th/5th January, 2001, it was decided that Horticulture Inspector must serve as such for five years to become eligible to be promoted but the fact remains that the said decision dated 5th January, 2001 could not be applied when the petitioner was accorded the promotion on 14th October, 1999. Admittedly, prior to 14th October, 1999 in the decision contained in an order dated 14th May, 1976, it was provided that five years experience is required for a Horticulture Inspector to be promoted to the post of Horticulture Officer, in case, he is either a matriculate or an I.Sc. passed candidate. The said Circular made it absolutely clear that in the event, a candidate is a graduate in agriculture or is a graduate in any other subject but at the matriculation level had science subjects, he must have three years experience to be promoted from the post of Horticulture Inspector to the post of Horticulture Officer. That decision of the State was applicable to the petitioner and admittedly, the petitioner had three years experience as Horticulture Inspector. The petitioner is though a graduate in Arts, but he had all the four science subjects in his matriculation examination as would be evident from his mark sheet issued by the Bihar School Examination Board. He appeared in Mathematics, Physics, Chemistry as well as in Biology.

4. The third contention in support of the cancellation of the promotion of the petitioner is that the Departmental Promotion Committee, which decided the promotion was not duly constituted. Although, the petitioner has brought on record the Circular of the Government dated 7th November, 1989, which suggests what would be the composition of the Promotion Committee but apart from asserting in the counter affidavit that the Departmental Promotion Committee was not duly constituted, it has not been brought on record as to who constituted the Promotion Committee, which recommended the promotion of the petitioner and on the basis of such recommendation the petitioner was ultimately promoted. A Judicial Review Court cannot proceed on the basis of bare assertions unsupported by materials on record. It has been stated in the body of the counter affidavit that the original file pertaining to the promotion of the petitioner is traceless. That the petitioner had a hand in making the file trace-less has not been alleged. At the same time, it has been stated that a new file with the help of relevant papers was constructed and the whole matter was examined thoroughly but still then the composition of the Promotion Committee has not been furnished in the counter affidavit.

5. The fourth and the last contention is that the Director, Horticulture was not competent to effect the promotion, he should have obtained approval before issuing the order of promotion as was the established procedure. In paragraph-13 of the counter affidavit, it has been stated that normally proceedings of the Committee has to be approved by the A.P.C. before issuing orders. The State has not brought on record any document, which makes it obligatory to have approval of the A.P.C. of the decision of the Promotion Committee. Furthermore, the Government decision dated 7th November, 1989 gives the full particulars of the procedure to be followed for effecting the subject

promotion. In this procedure, there is not even a whisper that A.P.C. is competent to sit in appeal over the decision of the Departmental Promotion Committee.

6. The logical conclusion, therefore, would be that there was no just reason for cancellation of the promotion order of the petitioner. In the circumstances, the writ petition is allowed and the impugned Order dated 10th May, 2001 is quashed. This disposes of the writ petition.