
(2004) 10 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 6734 of 1999

Pradip Kumar Ganguli

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Citation : (2004) 10 PAT CK 0025

Judgement

V.N. Sinha, J.—Heard Sri Shivaji Pandey for the petitioner and Sri Navendra Kumar, J.C. to S.C. VI for the State of Bihar and official respondents.

2. The petitioner who is holding the post of Assistant Inspector General, Prison-II and is a Member of Senior branch of Bihar Jail Service has filed this writ application praying, inter alia, that authorities be directed to consider his case for promotion to the Senior Selection Grade. As according to him persons junior to him in the said service have already been given the Senior Selection Grade vide notification bearing Memo No. 4487 dated 29.10.1993, Annexure-8 to the writ application.

3. The State respondents with reference to their counter-affidavit have submitted that the case of the petitioner for promotion to the Senior Selection Grade was considered twice, once on 16.10.1990 and again on 16.5.1997 but on both occasions he was not found fit for promotion by the Departmental Promotion Committee and as such he could not be promoted in that grade Counsel appearing for the State in support of the aforesaid statement made in the counter-affidavit produced before me the photo copy of the proceedings of the Departmental Promotion Committee held on 16.5.1997 which is taken on record of this case and with pointed reference thereto submitted that the case of the petitioner was considered vide Item No. 1 and he was not found fit for promotion.

4. I have perused the proceedings of the Departmental Promotion Committee dated 16.5.1997, where from it appears that thereunder the Committee has not recorded any reasons as to why the petitioner was not found fit for promotion. The recommendation of the Departmental Promotion Committee not to promote

the petitioner is bereft of reasons. As such, in my opinion, the recommendation of the Committee is no recommendation at all in the eye of law, Hon"ble Supreme Court in the case of the State of Rajasthan Vs. Sriram Verma and Another, has categorically held that the Body considering the promotion of the employees should record reasons for overlooking a senior.

5. Counsel for the State-respondents however submitted that the proceedings of the Departmental Promotion Committee may not have contained reasons for not promoting the petitioner but the petitioner is aware of the fact that there are adverse remarks recorded against him and those remarks may be the reasons for not promoting the petitioner. In this connection, he referred to the representation of the petitioner dated 31.1.1994 addressed to the Secretary, Home (Jail) Department, Government of Bihar, as contained in Annexure-9/1, whereunder petitioner requested to obliterate those remarks recorded against him.

6. Counsel for the petitioner with reference to the said representation dated 31.1.1994 itself submitted that the adverse remarks, referred to in the representation, have never been communicated to the petitioner and it is only from sources, other than official, petitioner learnt about the so-called adverse remarks and made the representation dated 31.1.1994, Annexure-9/1 which the Home Secretary has not disposed of and as such according to the counsel, petitioner assumed that those adverse remarks referred to in the representation dated 31.1.1994 does not exist and ought not to have been taken into consideration by the authorities while considering the promotion on 16.5.1997 or on the earlier occasions i.e. on 16.10,1990.

7. Having heard the two counsels, I am of the view, that as the aforesaid adverse remarks have neither been communicated nor the representation filed to obliterate those remarks dated 31.1.1994 has yet been considered and disposed of, the authorities were not required to consider those remarks while considering the promotion of the petitioner on 16.5.1997.

8. As the proceeding dated 16.5.1997 does not contain any reason not to promote the petitioner, in my opinion, such consideration for promotion on 16.5.1997 is no consideration in the eye of law and I direct the authorities to reconsider the promotion matter of the petitioner in the light of the law laid down by the Hon"ble Supreme Court in the aforesaid case of the State of Rajasthan v. Sri Ram Verma, (supra) as also keeping in view the observations made above within a period of three months from the date of receipt/production of a copy of this order.