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**(2003) 01 PAT CK 0111**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 13450 of 2002**

Ram Nandan Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 27-01-2003

**Acts Referred:**

Bihar Financial Rules — Rule 74  
Bihar Service Code, 1952 — Rule 58

**Citation :** (2011) 131 FLR 549 : (2003) 2 PLJR 66

**Hon'ble Judges :** Shashank Kr. Singh, J

**Bench :** Single Bench

**Advocate :** Atul Chandra, for the Appellant; S.J. Rahman, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shashank Kr. Singh, J.—This Court not being satisfied with the counter affidavit filed on behalf of the State on 10.1.2003 directed the Respondent-State to file a further counter affidavit explaining as to why if promotion has to be granted to the Petitioner from the date the same has been granted to his immediate juniors, financial benefits also will not accrue to him as delay in granting the said promotion was not due to laches of the Petitioner.

2. The Petitioner has been agitating this matter since long. He had first moved this Court by filing C.W.J.C. No. 5631 of 1996 whereby Petitioner has been granted liberty to move the department first for redressal of his grievances and the Respondents were directed to dispose of his representation by a reasoned order. When no reasoned order was being passed, Petitioner was compelled to move this Court by filing M.J.C. No. 3582 of 1998. During the pendency of the contempt application, by Annexure-2 promotion has been granted to the Petitioner from the date his immediate juniors have been granted promotion. However, as the Petitioner has already superannuated, no financial benefit was given rather it was stated that the said promotion would be notional promotion.

3. This Court not being satisfied as to under what provisions the State could with held the financial benefit accruing to its employee, if otherwise he has been found suitable for promotion and aforesaid financial benefit had accrued to his juniors also. This Court by its order dated 15.1.2003 directed a counter affidavit to be filed by an officer not below the rank of D.I.G. Today learned G.P. 7 has informed the Court that he has already received the statement of facts either the matter be adjourned for filing a counter affidavit or the same be disposed of in view of instruction he has received from the Respondents. As the instruction received from the department, has been placed before this Court, this Court does not feel necessity of unnecessarily keeping the matter pending.

4. In the instruction received by the State counsel, the main contention has been that the Petitioner stood superannuated on the date when his promotion was considered in view of direction of this Court and the Rule 74 of the Bihar Financial Rules and the Rule 58 of the Bihar Service Code clearly envisage that if promotion has to be granted to a superannuated person, the same can be notional. In the same statement of facts, a fact which has been candidly accepted is that the juniors to the Petitioner have been promoted from the earlier date and have received financial benefits, this fact has not been denied. This being the accepted fact and another fact which is also relevant is that on the date when the juniors were considered for promotion, Petitioner's case was not rejected by the Departmental Promotion Committee. As such, laches if any, is of making of the department itself even pendency of a departmental proceeding is not a bar in consideration for promotion. Said proceeding has resulted in exoneration from the charges. Now this Court is of the considered view that the Petitioner cannot be made to suffer for the laches which is not of his making. He has to get the same benefit what his immediate juniors have been given.

5. As such, part of Annexure-2 which says (sic?) without financial benefits, is quashed and Respondent No. 2 is directed to calculate the financial benefit which will accrue to the Petitioner in view of promotion granted by Annexure-2 and the same shall be paid to the Petitioner within a period of three months from the date of receipt/production of a copy of this order.

6. It is further made clear that the pensionary benefit of the Petitioners should be calculated afresh in view of last pay drawn as the result of the promotion granted to the Petitioner, if already not revised.

7. This writ application is allowed to the extent indicated above.