

(2025) 01 PAT CK 1694

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.14130 of 2019

State of Bihar

APPELLANT

Vs

Himanshu Shekhar

RESPONDENT

Date of Decision : 09-01-2025

Acts Referred:

Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 — Rule 14, 14(2), 17

Citation : (2025) 01 PAT CK 1694

Hon'ble Judges : Partha Sarthy, J

Bench : Single Bench

Advocate : Anjani Kumar, Sanjay Kumar, Siya Ram Shahi, Indu Bhushan

Final Decision : Allowed

Judgement

Partha Sarthy, J

1. The State is aggrieved by the judgment of the learned Single Judge, which found that withholding of promotion is not a punishment, in accordance with Explanation (ii) of Rule 14 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity 'CCA Rules').

2. Mr. Anjani Kumar, learned Additional Advocate General-4, submitted that the Explanation has been erroneously interpreted. It is pointed out that withholding of promotion is a punishment under Rule 14(ii). The Explanation is only to ensure that when such withholding of promotion is made after consideration of a person; then it is not necessarily a punishment.

3. Shri Siya Ram Shahi, learned Counsel for the sole respondent-writ petitioner, seeks to uphold the impugned judgment. It is submitted that the punishment was imposed in the year 2018 and withholding is directed from the time when the employee is due for promotion, which would unnecessarily prejudice the respondent.

4. Brief facts have to be noticed and it is seen that three allegations were made against the employee. Charge sheet was issued and despite granting sufficient time, there was no response. The disciplinary authority imposed two punishments as against the three charges levelled, which were of withholding of three increments with non-cumulative effect and withholding of promotion for three years from the due date. Withholding of three increments with non-cumulative effect has worked itself out. The grievance is only with respect to the withholding of promotion from the due date.

5. We have also looked at Annexure-16 impugned order, which indicates that there were three allegations raised against the respondent. The first allegation was that on a specified date, when the water level of the Bagmati river was above the danger mark, the writ petitioner, who was the Sub Divisional Officer, Flood Control Sub-Division, Badlaghat, Khagaria, was not in station and not reachable on telephone; which was switched off. The delinquent was absent from the headquarters and work place and was not reachable, was the first charge. The second charge related to an erroneous report being submitted on the work carried out at a particular site. Despite information of the errors crept in, the respondent failed to correct it and the Executive Engineer-cum-Flood Control Division-2, Khagaria had to conduct an investigation and send a work report to ensure that the continuance of the work is not hampered. The delinquent was alleged to have been negligent in discharging his responsibilities. The third allegation was that the respondent was not present when the Chairman, Special Investigation Team, inspected the work site; again a charge of remaining absent from the headquarters without information. As against the three charges, two punishments were imposed, which we do not find inappropriate.

6. Rule 17 of the CCA Rules mandates a disciplinary enquiry, only when major penalties are imposed. The minor and major penalties are prescribed under Rule 14 and to the extent applicable in the present case, the rule is extracted hereunder along with the Explanation:-

"14. Minor and Major Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties:-

(i) xx xx

(ii) withholding of promotion;

(iii) xx xx

(iv) xx xx

(v) withholding of increments of pay with cumulative effect.

Explanation.- The following shall not amount to a penalty within the meaning of this Rule, namely:-

(i) xx xx

(ii) withholding of promotion of a Government servant after consideration of his case to a service, grade or post for which he is eligible, whether he is in a substantive or in officiating capacity.”

7. From a plain reading of the rule, it is clear that withholding of promotion is a minor penalty, as stipulated in the CCA Rules. The explanation is by way of an abundant caution, when a withholding is made after consideration of an employee for promotion. There can be many situations where such a withholding occurs. A serious misconduct committed immediately after consideration, but before the promotion is granted, could lead to withholding of the same. Similarly, when a penalty is imposed pursuant to a disciplinary enquiry, during the rigor of punishment, the delinquent would be disentitled for promotion. The Hon’ble Supreme Court has time and again held that this would not lead to a double jeopardy; in which circumstance, withholding of promotion cannot be considered to be a punishment. Likewise, when a disciplinary proceeding is pending, if an employee’s case comes up for promotion, a sealed cover procedure is adopted; which results in withholding of promotion. Considering such instances of withholding of promotion, the Explanation has been provided. An explanation cannot render otiose the main provision. When the rule itself provides ‘withholding of promotion’ as a minor penalty, there is no question of reliance being placed on the Explanation to find that withholding of promotion is not a penalty. We, hence, find the interpretation of the explanation to be erroneous and set aside the judgment.

8. The contention of the respondent was also that when the order was passed in the year 2018, if promotion had to be withheld for three years, it can only run up to 2021.

9. We find absolutely no reason to accept the said contention since if there is a Kalawadhi prescribed for promotion and the employee has not achieved the Kalawadhi, then a penalty imposed to withhold the promotion within a period coming within the Kalawadhi prescribed, would be of no consequence since it will be no punishment at all.

10. On the above interpretation and reasoning, the appeal stands allowed, setting aside the impugned judgment of the learned Single Judge.

11. Interlocutory application, if any, shall stand closed.