

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1355 of 2014

In

Civil Writ Jurisdiction Case No.18767 of 2012

=====

Prabhu Nath Singh S/o Late Rameshwar Singh Residing at B/503, Officers' Hostel, Bailey Road, Police Station Shastrinagar, District Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Cabinet Secretariat (Civil Aviation) Old Secretariat, Police Station- Sachivalaya, District- Patna
2. The Finance Commissioner, Finance Department, Old Secretariat, P.S. Sachivalaya, District Patna.
3. The Director cum Chief Pilot, Civil Aviation Cabinet Secretariat, Patna Airport, Government Hanger, Patna
4. The Deputy Secretary, Civil Aviation, Cabinet Secretariat, Bihar, Patna.
5. Directorate of Civil Aviation, through Director General of Civil Aviation, New Delhi.

... .. Respondent/s

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Letters Patent of the Patna High Court---Clause 10--- Constitution of India--- Article 309---Service Law---Promotion---challenge to the decision of writ court whereby appellant was denied promotion on the post of Deputy Chief

Aircraft Engineer on the ground that he has not been acknowledged and approved as a Maintenance Manager by the Director General Civil Aviation (DGCA)--- plea that default on the part of the Government of Bihar in not seeking approval for maintenance from the DGCA cannot be attributed so as to defeat the right of the appellant seeking promotion inasmuch as, he has a right to be considered for promotion keeping in view the status of his licence and his experience relating to the type of Aircrafts.

Held: impugned judgment is based on erroneous assumption, inasmuch as, it is the organization and not the individual who is required to possess a certification from the DGCA-- Government of Bihar directed to apply and seek a certification from the DGCA—appeal allowed with observation that in event the certification is granted by the DGCA to the Government of Bihar, then claim of the appellant shall be revisited keeping in view his qualifications and other necessary requirements. **(Para 7,9,10,12)**

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... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajni Kant Jha, Advocate
For the State of Bihar	:	Mr. Ajay Kumar Rastogi, AAG-10
For Union of India	:	Mr. Kumar Priya Ranjan, C.G.C.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-03-2019

This is a dispute raised by the appellant claiming promotion on the post of Deputy Chief Aircraft Engineer. There is no dispute on the rules of promotion which are contained in Appendix A of the notification dated 7th of June, 1997, whereby rules under Article 309 of the Constitution of India have been framed by the State Government in relation to the subject matter in question.

2. The promotional post finds mention at Item No. 8 of



the said Appendix and which provides for as follows:-

8. उप मुख्य विमान अभियन्ता राजपत्रित 3700.5000 तदैव ए सी एण्ड एक्स. लाइसेंस धारक, सी.ओपेन को तथैव तथैव तथैव प्राथमिकता। किंग एयर सी.90, बैरन-55 डचेज.76 एवं बोनान्जा विमानों के अनुरक्षण का कम-से-कम सात वर्षों का कार्यानुभव।

3. The claim of the appellant came to be rejected by the State Government on the ground that the appellant has not been acknowledged and approved as a Maintenance Manager by the DGCA.

4. The learned Single Judge described the experience of the petitioner as a via media adopted to some how the other claim promotion and then ultimately held that the requisite of genuine experience was wanting and consequently the writ petition was dismissed upholding the order of rejection.

5. Learned counsel for the appellant Shri Rajni kant Jha has urged that the matter was taken up in this appeal and after having heard learned counsel for the parties the Director General Civil Aviation (DGCA) was impleaded as Respondent No. 5 in this appeal on 9th October, 2018 and the said authority was called upon to file an affidavit. Accordingly, an affidavit has been filed by the said authority through Shri Kumar Priya Ranjan, learned counsel who has invited the attention of the Court to the facts narrated therein wherein the basic qualifications as required under the rules quoted above have been admitted but while explaining the grant of approval it has been stated that since the Government of Bihar, Civil Aviation Department



does not have any approval under Civil Aviation Requirement-145 and since no such maintenance work is being carried by the Government of Bihar then in that event the appellant even though has the experience of associating himself with the type of Aircraft referred to therein, namely, King Air C 90 the same would not amount to an automatic experience of the appellant in the absence of such approval from the DGCA.

6. Shri Jha has further invited the attention of the Court that the maintenance is now being carried through outsourcing and one Shri Navin Kumar who represents M/s Innovative Aviation Private Limited is carrying out the maintenance work in spite of the fact that he is a licence holder of the year 2013 and consequently, the appellant is senior to him as he had already been granted licence in the year 2012 itself. Shri Jha contends that the right of the appellant to seek promotion cannot be defeated so long as the statutory requirement is fulfilled by the appellant.

7. It is his contention that the additional requirement which has now been stated in the impugned order as well as in the counter affidavit filed by the DGCA is to be not found in the rules yet in spite of that the default on the part of the Government of Bihar in not seeking approval for maintenance from the DGCA cannot be attributed so as to defeat the right of the appellant seeking promotion,



inasmuch as, he has a right to be considered for promotion keeping in view the status of his licence and his experience relating to the type of Aircrafts as mentioned therein.

8. It is not in dispute that the post of Deputy Chief Engineer is lying vacant and is, therefore, available for consideration.

9. We have considered the submissions raised and what we find is that the order passed by the Government of Bihar denying promotion to the appellant on the ground of he not being possessed of the approval is an erroneous assumption, inasmuch as, this now stands clarified from the affidavits filed on behalf of the DGCA which requires the organization and not the individual to possess a certification. The individual, therefore, even though he is possessed of the experience, yet in the absence of a certification from the DGCA to the Government of Bihar in respect of maintenance, we find that the appellant's right of being considered for promotion is being impeded.

10. Consequently, the dismissal of the writ petition does not appear to be justified and in our opinion, the Government of Bihar deserves to be issued a mandamus to apply and seek a certification from the DGCA, as is evident from the disclosure made in the counter affidavit filed on behalf of the DGCA, which the Government may do expeditiously but not later than three months



from today. It will be open to the DGCA to pass necessary orders in accordance with law.

11. We accordingly, set aside the impugned judgment dated 16th April, 2014 as well as the order impugned dated 24th of March, 2014.

12. The appeal is, accordingly, allowed, subject to the aforesaid direction and in the event the certification is granted by the DGCA to the Government of Bihar, then in that event the claim of the appellant shall be revisited keeping in view his qualifications and other such requirements that may be necessary for being considered to be promoted as Deputy Chief Aircraft Engineer.

13. With the aforesaid observations, the appeal is accordingly allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

AFR/NAFR	AFR
CAV DATE	
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