

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 332 of 2020

Ramesh Kumar Sinha Son of Late Jugal Kishore Prasad Resident of 3,
Anugrah Narayan Road, Murarpur, Police Station Kotwali, District Gaya.

... .. Petitioner/s

Versus

1. Bihar State Power (Holding) Company Limited Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Chief Manager-cum-Chief Engineer, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Joint Secretary, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Managing Director, Bihar State Power Transmission Company Limited, Vidyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Santosh Kr Sinha 2, Rakesh Ambastha, Uttam
Kr Mishra, Advocates
For the Respondent/s : Mr Vikash Chandra Srivastava, Advocate

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 29-08-2022

Heard learned counsel for the petitioner and the respondents.

2 The issue in the instant writ petition is petitioner's claim for promotion from the post of Assistant Controller (Transmission) to that of the Controller (Transmission).

3 The admitted fact is that petitioner was eligible for grant of promotion to the post of Controller (Transmission) for



which his matter was placed before the Departmental Promotion Committee (for brevity, *DPC*) dated 06.06.2011. By notification dated 17.06.2011, promotions were granted to others. The petitioner's promotion was kept pending for want of Annual Confidential Report (for brevity, *ACR*).

4 Just two months thereafter, *DPC* was again convened on 02.08.2011. Again, the petitioner's consideration was kept pending. It is also an admitted position that a proceeding was pending against the petitioner since 2007. The result of consideration by the *DPC* on 06.06.2011 and 02.08.2011 was, thus, required to be kept in a sealed cover subject to result of the pending proceedings. That, however, has not been done.

5 It is also admitted that the petitioner was exonerated in the proceedings on 15.03.2013 and acquitted in a pending criminal case on 06.04.2019. Another admitted position is that at least one junior of the petitioner at seniority position No 38, just below the petitioner at 37 in the *DPC* dated 06.06.2011, has been granted promotion as Controller (Transmission) vide notification dated 17.06.2011 bearing No 558 issued by the General Administration Department of the then Bihar State Electricity Board.

6 Since junior of the petitioner on the post of Assistant Controller of Transmission has been promoted as Controller



(Transmission); and since no proceedings, civil or criminal, were pending against the petitioner after 06.04.2019, the petitioner was entitled to consideration for promotion and denial thereof amounts to an act of discrimination. The discrimination, meted out to the petitioner, is violative of Articles 14 and 16 of the Constitution of India. The respondents, however, still want to deny the petitioner promotion, but now by placing reliance on the fact that DPC has not been convened after 06.04.2014 and also the fact that the Government in the General Administration Department, has issued a direction dated 11.04.2019 that all promotions and DPC have been postponed until further orders. They have taken a plea that the promotion of the petitioner will be placed before the DPC whenever its meeting is held as per the direction of the Government of Bihar.

7 On a first look, stand of the State appears to be reasonable, but when this stand is viewed with the facts of the instant case in the background, this Court is inclined to consider the stand of the respondents otherwise. It is not the case of the respondents that the petitioner was not found eligible/worthy of the promotion in question. Both DPCs dated 06.06.2011 and 02.08.2011 have kept his promotion pending/in abeyance for want of ACR, obviously due to pendency of the departmental and



criminal proceedings. Eligibility for promotion, therefore, is not in doubt. It is also admitted that junior of the petitioner has been promoted and that after 06.04.2019, there is no proceeding whatsoever pending against the petitioner. The petitioner has also retired with effect from 31.01.2014.

8 The learned counsel for the Respondent-Company has handed over attested copy of proceedings of DPC dated 02.08.2011. From these proceedings, it is apparent that 24 educationally qualified Assistant Controllers including the petitioner were considered for grant of promotion as Controller. For want of ACR, the case of 5 persons including the petitioner was not recommended and it was decided to place their matters in the next DPC. Thereafter, on 02.08.2011, the case of these 5 persons including the petitioner was considered and after scrutiny of educational qualifications, length of service, ACR and pending proceedings, 4 persons were recommended for grant of promotion to the post of Controller. Petitioner's promotion, however, was kept pending merely because of pendency of the charge/s, and not for any other reason/ineligibility.

9 The embargo of promotion and convening of DPC has been imposed by the State Government under its order dated 11.04.2019 issued by the General Administration Department, i e,



after the petitioner had already become entitled to grant of promotion.

10 Since the petitioner has retired, his eligibility is not denied or disputed and his junior has already been promoted, this Court would observe that there is no requirement of the petitioner's claim being examined by any DPC since the earlier DPCs have already considered the petitioner's case for grant of promotion and kept his promotion in abeyance only due to pending departmental/criminal proceedings, while granting promotion to his junior/s. Now that there is no proceeding pending, the reason for keeping the petitioner's promotion in abeyance has ceased to exist. Thus, even applying the Next Below Rule as per decision of the Apex Court in the case of R K Sethi -Versus- Oil & Natural Gas Commission, reported in (1997) 10 Supreme Court Cases 616, the petitioner is entitled to grant of promotion to the post of Controller (Transmission).

11 This Court would further observe that under similar circumstances, a coordinate Bench of this Court has allowed the claim for promotion in *CWJC No 16913 of 2019* in the case of *Lal Mohan Sharma -Versus- The State of Bihar & Others*, copy of which has been annexed as Annexure 1 to the petitioner's rejoinder



to counter affidavit. Though the authorities have filed a supplementary counter affidavit, they have not denied this fact.

12 This Court would, thus, direct the respondents to grant the petitioner promotion and consequential benefits, whatsoever, with effect from the date of his acquittal in the criminal trial (06.04.2019), without raising the requirement of his claim being placed before any DPC, since, admittedly, his junior has been granted promotion, and since the petitioner has now retired.

13 Let the entire exercise be completed within eight weeks from the date of receipt/production of a copy of this order.

14 Writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.09.2022
Transmission Date	NA

