

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1674 of 1998

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Sukhdeo Jee, Son of late Dilip Kumar Singh, resident of Mohalla A.G. Colny, Main Road, Patna, P.S. Shastri Nagar, District Patna, at present posted and working as Accounts Assistant, Barauni Thermal Power Station, Barauni, P.S. Barauni, District Begusarai

.... Petitioner/s

Versus

1. The Bihar State Electiricty Board, through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. The Chairman, Bihar State Electricity Board, having its office at Vidyut Bhawan, Bailey Road, Patna
3. The Member, Finance, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Secretary, Bihar State Electricity Board, Having his office at Vidyut Bhawan, Bailey Road, Patna
5. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh

& Jeetendra Naraya, Advocates

For the Respondent/s : Mr. Vinay Kirti Singh, Addl. Standing Counsel,BSEB

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 06-02-2015

1. Heard Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioner and Mr. Vinay Kirti Singh, learned Additional Standing Counsel appearing on behalf of Bihar State Electricity Board.

2. The petitioner was initially appointed as an Apprentice Junior Accounts Clerk in December, 1976 in Bihar State Electricity Board. In course of time he was promoted to the post of Accounts Assistant with effect from 16.7.1982 and was granted selection grade

with effect from 16.7.1992. As has been pleaded in the writ application, with the permission of the Respondent Board, while serving under the Board, he acquired qualification of Post Graduate Diploma in Personnel Management from National Institute of Personnel Management, Calcutta. He is said to have acquired Post Graduate Diploma in Management, equivalent to Master of Business Administration from Indian Institute of Business Management, Patna.

3. With his experience of working under the Board and the qualification which he acquired, petitioner claims that he deserved to be considered for being promoted to the post of Accounts Officer in the Board, in accordance with Rule 6(iii) read with Rule 7(i) of the Bihar State Electricity Board Accounts Service Cadre Rules, 1991 (hereinafter referred to as 1991 Rules),

4. Before I refer to other pleadings, I must take note of the fact that the Accounts service Cadre came to be created under the said 1991 Rules. The post of Accounts Officer is the basic grade post for the said cadre. Rule 6(i) provides that new appointment in the said cadre can be made in the grade of "Accounts Officer". Rule 6(iii) of the Rules provides that 5% of the vacancies arising every year against the post of Accounts Officer shall be filled up by promotion from amongst employees of the Board who have completed five years of service and possessed the qualification prescribed under Rule 7(i) of



the Rules. Rule 7 of the Rules prescribes the minimum eligibility criteria for direct recruitment to the post of Accounts Officer. Rule 7(i) lays down the minimum educational qualification according to which a candidate must have qualification of Chartered Accountancy/ICWA/MBA with specialization in Finance from any University or an Institution of repute having recognition by the State Government.

5. The petitioner asserts that he fulfilled the minimum eligibility criteria in terms of experience of service under the Board as well as the educational qualification. It has been asserted in paragraph 13 of the writ application that the Board issued a letter No. 43 dated 7.1.1997 inviting applications from employees of the Board for their promotion on the post of Accounts Officer in terms of Rule 6(iii) and Rule 7(i) of 1991 Rules. The eligible candidates were required to submit their applications, in terms of the said letter dated 7.1.1997 by 31.1.1997. Petitioner is said to have submitted his application and furnished the documents as required under the said internal advertisement dated 7.1.1997. It has further been stated that the petitioner's service history was more than satisfactory and nothing adverse was reported against him even by Vigilance. In Paragraph 21 of the writ application, there is averment that as per the Standing Order No. 716 dated 13.12.1990; a Departmental Promotion

Committee had been constituted. Averment made in paragraph 22 of the writ application is important which is being quoted hereinbelow, in view of the reply of the Board in its counter affidavit denying the statement to be false:-

“22. That since all the formalities regarding promotion of the petitioner on the post of Accounts Officer had been completed and the petitioner was fulfilling all the requisite qualifications for being promoted on the post of Accounts Officer, the matter regarding promotion of the petitioner and other employees was placed before the Departmental Promotion Committee on 21.8.1997. Agenda for granting promotion to the petitioner and other employees was prepared. Scrutiny of the papers of different candidates, including the petitioner was completed by the Departmental Promotion Committee and petitioner was found fit for promotion on the post of Accounts Officer against 5% reserved post in terms of Rule 6(iii) of the Rules and aforesaid decision by the Departmental Promotion Committee was taken on 21.8.1997. Petitioner has further learnt that he being the senior most among the four, his name for promotion was at the top of the panel prepared by the Departmental Promotion Committee.”

6. I consider it apposite to quote paragraphs 14 and 15 of the counter affidavit which contain the reply to the averment made in paragraph 22 of the writ application:-

“14. That the petitioner has suppressed the material facts and has not come out with clean hand. Instead, has furnished wrong information before this Hon’ble Court and on this score alone the writ application should be dismissed with cost. It is stated that none of the formalities has been completed nor the matter has been considered by the Departmental Promotion Committee (hereinafter referred to as the DPC for brevity), nor

the DPC has given any recommendation, as such question of taking up the final recommendation of the DPC does not arise.

15. That the statement in paragraph 22 of the writ application is incorrect, as such denied. It is a fact that date of meeting of the DPC was fixed for 21.8.1997, but it did not materialize till 21.11.1997 when it was decided to cancel the same and to make internal advertisement. Accordingly, it was decided not to summon meeting of DPC. Accordingly, DPC has not ever been met.”

7. This is not in dispute that the Bihar State Electricity Board introduced a minor amendment in Rule 6(iii) of the Bihar State Electricity Board Accounts Service Code Rules, 1991 inasmuch as, the word “Promotion” occurring in the said Rule 6(iii) was substituted by the word “selection”. The petitioner has a grievance that under the provisions of 1991 Rules prior to amendment in 1998, eligible candidates were required to be promoted after scrutiny of their papers, if such candidates fulfilled the eligibility criteria laid down under Rule 6(iii) read with Rule 7(i) of the Rules. It is the petitioner’s case that once the process of consideration for promotion under unamended Rule 6(iii) of 1991 Rules begun in the year 1997, the Respondent Board was required to bring that process of selection to a logical conclusion. The main grievance which the petitioner has in the present is that his case for promotion ought to have been considered on the basis of the

decision of the Departmental Promotion Committee.

7. As noted above in the counter affidavit, the Board has taken categorical stand that pursuant to letter dated 7.1.1997 (Annexure-1), name of only 4/5 candidates including the petitioners were forwarded to the Board Head Quarter. It has been admitted that vide letter No. 513 dated 4.4.1997, Annual Confidential Roll for the period 1992-93 to 1996-97 were called for, which were also received in the Board's Headquarter and Vigilance clearance was also obtained. It has further been stated in paragraph 12 of the counter affidavit that it was decided to cancel the meeting of the Departmental Promotion Committee and accordingly, internal advertisement No. 1 of 1998 dated 30.4.1998 was issued and was circulated among the employees of the Board for appointment to the post of Accounts Officer against said 5% quota. Dealing with the statement made by the petitioner with respect to the Departmental Promotion Committee, it has been stated in paragraph 15 that the meeting was fixed for 28.1.1997 but it could not materialize till 21.11.1997, whereafter it was decided to cancel the meeting and issue another internal advertisement. This is to be noted that the petitioner filed an Interlocutory Application being I. A. No. 12804 of 1998 seeking amendment in the writ application in order to challenge the Advertisement No. 1 of 1998 dated 30.4.1998 and the

amendment introduced by notification dated 14.10.1998. The said Interlocutory Application was rejected by this Court by an order dated 17.7.1998. From the said order it appears that Interlocutory Application challenging the internal advertisement inviting applications was rejected, as the petitioner had already applied pursuant to the said advertisement.

8. Mr. Sanjay Singh, learned counsel for the petitioner has contended that once the process of selection begun pursuant to issuance of letter No. 43 dated 7.1.1997 for the purpose of considering cases of employees of the Board for their promotion under Rule 6(iii) read with Rule 7(i) of the Rules, it should have been brought to a logical end either by completing the process or at least by cancelling the said letter. He would contend that the amendment brought in 1991 Rules amending Rule 6(iii) could not be applied retrospectively and ought to have been applied prospectively and for prospective vacancies only. He has reiterated that since the Departmental Promotion Committee has recommended the petitioner's name for promotion before coming into force of amendment introduced through Notification dated 14.10.1998, his case ought to have been considered in terms of the recommendation of the Departmental Promotion Committee.

9. Mr. Vinay Kirti Singh, learned counsel appearing on



behalf of the Bihar State Electricity Board, on the other hand, has submitted that the writ application deserves to be dismissed in limine as the petitioner has made false statement in paragraph 22 of the application that a meeting of Departmental Promotion Committee was held and his name was recommended for promotion, though there was no such meeting leading to any recommendation. He submits that the petitioner has made deliberately a false statement in paragraph 22 of the writ petition in order to mislead this Court and to obtain an order in his favour by misrepresentation.

10. He next submits that the posts were re-advertised through internal advertisement No. 1 of 1998 and the petitioner had in fact submitted his application pursuant to the said advertisement. Advertisement No. 1 of 1998 contemplated written examination and interview for the purpose of promotion against 5% of the posts of Accounts Officer from amongst the employees working in Bihar State Electricity Board. The petitioner has brought on record Annexure-12 to I. A. No. 12775 of 1998, which is letter dated 14.10.1998 issued by the Secretary of the Board whereby, he was required to appear for the written test. There is no averment in the pleadings filed on behalf of the petitioner as to whether any such written test was held and whether the petitioner participated in such

written test. This is admitted at the bar that the petitioner is no more in service as he attained the age of superannuation in the year 2009.

11. I.A. No. 5253 of 2004 had been filed on behalf of the petitioner seeking amendment in the writ application for quashing Annexure-11, being notification no. 14.10.1998 by which Rule 6(iii) of 1991 Rules was amended by substituting the word “selection” in place of “Promotion”. The challenge is basically on the ground that the said amendment is inoperative, having not been published in the official Gazettee.

12. For the present I do not need into the validity of the amendment introduced vide notification dated 14.10.1998 as I am of the opinion that even without such amendment, the Board could have resorted to initiate process of selection by holding limited Competitive Examination for the purpose of grant of promotion for filling up promotion or for the purpose of making appointment to the post of Accounts Officer against 5% quota from amongst employees of the Board, having requisite qualification under Rule 7 (i) of 1991 Rules.

13. No relief can be granted on the plea that petitioner's name was recommended by the Departmental Promotion Committee for the reasons that this fact has been denied in the counter affidavit. There is specific averment made in the counter affidavit that neither

any such meeting of the Departmental Promotion Committee was held nor was there any recommendation for promotion.

14. This is well established that promotion to higher post is not a right of an employee, though consideration for promotion can be treated to be right of an employee in the facts and circumstances of a given case. It is not the case of the petitioner that his case was not considered while cases of other similarly situated persons were considered. It is not his case that persons of inferior merits or less experience have been granted promotion to the post of Accounts Officer against the said 5% quota.

15. Mr. Sanjay Singh, learned counsel for the petitioner has relied upon a Division Bench decision of this Court in case of Dhamendra Brahmchari Vs State of Bihar reported in 2012 (1) PLJR 19 in order to submit that selection process once started must be brought to a logical end in accordance with the terms and conditions mentioned in the advertisement or extant rules in vogue at that time. The said observation of the Division Bench of this Court as contained in paragraph 23 is of no help to the petitioner for the reason that there was no terms and conditions in the advertisement nor any Rule which could have stopped the Board from adopting a selection procedure, either by way of written test or interview for the purpose of granting promotion to the post of

Accounts Officer or for making appointment to the said post from amongst the employees of the Board under Rule 6(iii) of 1991 Rules to fill up 5% of posts.

16. From the facts and circumstances of the case, I am of the opinion that the petitioner has not been able to make out a case that any of his legal or constitutional right has been infringed.

17. I do not find any merit in this application. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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