

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12540 of 2012

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1. The State Of Bihar through the Chief Secretary, Bihar, Patna
2. The Secretary, Department of Personnel and Administrative Reform (Now known as General Administrative Department), Bihar, Patna
..... Petitioners

Versus

1. Radha Bihari Ojha son of Late Pandit Sheo Narayan Ojha, resident of village and Post Office - Semaria Ojhapatti, P.S - Sahpurpatti, District – Bhojpur
..... Respondent Ist set.
2. The Union Of India through the Secretary, Government Of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi
3. The Deputy Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi
4. The Chairman, Union Public Service Commission, Dhoolpur House, Shahjahan Road, New Delhi
5. Sri Arvind Kumar Singh, the then posted as the Special Secretary, General Administrative Department, Bihar.

..... Respondents 2nd set.

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Appearance :

For the Petitioners : Mr. Gautam Bose, Sr. Advocate, AAG. 8 and
Mr. Sanghamitra Ghosh, Advocate, A.C. to AAG 8.
For the UPSC : Mr. Kaushal Kumar Jha, Advocate.
For Respondent no.1 : Mr. Sanjay Kumar Ojha, Advocate.
For U.O.I. : Mr. Alok Kumar Jha, Advocate, C.G.C.
For Respondent No.5: Mr. Mritunjay Kumar, Advocate and
Mr. Sanjeet Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 03-02-2015

Heard learned counsel for the State, learned counsel for the Union Public Service Commission, learned counsel for private respondent no.1, who was the petitioner before the Central Administrative Tribunal (for short 'the Tribunal') and learned counsel

for other respondents and with their consent this writ petition is being disposed of at this stage itself.

2. The contention of respondent no.1 Radha Behari Ojha before the Tribunal was that he was within the consideration zone for being considered for appointment by way of promotion to the cadre of Indian Administrative Service from Bihar Administrative Service. His contention before the Tribunal was that there were certain uncommunicated adverse entries in his ACR, which had been taken into account by the Selection Committee and as such the decision not to recommend him for such consideration is vitiated. The Tribunal, noticing the regulation, which specifically provides that uncommunicated adverse entries in the ACR cannot be used, made out a case that the ACR of the petitioner before it had been wrongly considered. It, accordingly, directed the State to reconsider the entire matter in relation to the petitioner before it i.e. respondent no.1 before us. State being aggrieved has filed the present writ petition, challenging the decision of the Tribunal and has brought on record the entire deliberations of the Selection Committee dated 23.12.2001 and 13.04.2006, to show that the Selection Committee had clearly noticed that uncommunicated adverse entries in the ACR were not being taken into account.

3. From the proceeding of the subsequent meeting, it has

been shown that there being only 18 vacancies, there were more than 18 persons, whose over all assessment was 'Very Good', whereas, the assessment of respondent no.1 before us was only 'Good'. Thus, automatically respondent no.1 was beyond the spectrum of selection. These are matters on record. In our view, these records have not been impeached, or challenged in any manner before the Tribunal nor before this Court.

4. Thus, in view of the aforesaid records, we are unable to uphold the order of the Tribunal, which is set aside. The writ petition is consequently allowed. Accordingly, the consequential orders would follow the suit.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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