

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6673 of 1999

Hari Charan Das, Son of late Sri Mogal Das, Electrical Superintending Engineer,
Bihar State Electricity Board, Patna, resident of Officers Hostel, Bihar State
Electricity Board Colony, Patna, P.S.-Shastri Nagar, Town and District-Patna.

.... **Petitioner/s**

Versus

1. Bihar State Electricity Board through Chairman.
2. Chairman, Bihar State Electricity Board.
3. Secretary, Bihar State Electricity Board.
4. Joint Secretary, Bihar State Electricity Board.

All respondent nos. 1 to 4 having their offices at Board Headquarters, Vidyut
Bhawan, Bailey Road, P.S.-Kotwali, Town and District-Patna.

.... **Respondent/s**

Appearance :

For the Petitioner/s : Mr. R.P. Birnavay, Advocate

Mr. Anand Sharan, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate

Mr. Vijay Kumar Verma, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 29-04-2015

Heard learned counsel appearing on behalf of the
parties.

2. The petitioner, in the present writ application, has
sought for a direction to the respondents to promote him to



the post of Chief Engineer in the erstwhile Bihar State Electricity Board (now South Bihar Power Distribution Company Limited) [hereinafter referred to as the “erstwhile Board”] with effect from a date, other similarly situated persons in the rank of Electrical Superintending Engineer, who were junior to him in the gradation list, came to be promoted by notifications issued under Memo No. 475 dated 23.05.1998.

3. It has been stated at the outset in Paragraph No. 1 of the writ application that the Departmental Promotion Committee in its meeting dated 21.05.1998, declared the petitioner unfit on an erroneous ground and granted promotion to others. The petitioner belongs to scheduled caste category and at the relevant point of time, he held the post of Electrical Superintending Engineer in the erstwhile Board. This is not in dispute that he was the senior most Electrical Superintending Engineer on the date when the Departmental Promotion Committee met, for considering the cases for promotion on 21.05.1998, to the rank of Chief Engineer.

4. This is not in dispute that a departmental proceeding was initiated against the petitioner for



deliberately making wrong entry with respect to date of birth of an employee in his service book in the year 1987 when he was posted as Electrical Executive Engineer, Darbhanga. It is true that the Enquiry Officer, after holding enquiry, found the said charge against the petitioner not to be proved, however, the Disciplinary Authority disagreed with the findings of the Enquiry Officer and imposed upon the petitioner, punishment of withholding of two annual increments with cumulative effect vide Resolution No. 2708 dated 02.11.1995, issued by the erstwhile Board.

5. It is the case of the petitioner that earlier in the year 1995, though he was entitled for such promotion, the promotion was not granted and his claim for promotion was kept reserved. In the year 1996, when the Departmental Promotion Committee considered the cases for promotion to the post of Chief Engineer, he was found to be unfit for the promotion in view of imposition of punishment, as noted above. In the year 1998 on 21.05.1998, when the Departmental Promotion Committee met, he was declared to be unfit for promotion in view of the same punishment imposed upon him vide resolution

dated 02.11.1995.

6. This is also not in dispute that in the year 1999, his case for promotion to the rank of Chief Engineer was considered, however, no promotion was granted to him, though one post was kept reserved. Finally, by another resolution dated 30.05.2000, the petitioner has, in fact, been granted promotion to the Chief Engineer. He has retired with effect from 31.12.2003 thus, while holding the post of Chief Engineer.

7. Mr. R.P. Birnavay, learned counsel appearing on behalf of the petitioner, has extraneously submitted that the petitioner was wrongly denied promotion to the rank of Chief Engineer in the year 1995, though there was no punishment imposed upon him by the date when the matters were considered for the promotion to the rank of Chief Engineer. He has submitted that in any event, the Departmental Promotion Committee in its meeting dated 21.05.1998 ought not to have declared the petitioner unfit for promotion on the ground that a minor punishment was imposed upon him, by the resolution/order dated 02.11.1995. He submits that the order imposing said punishment upon the petitioner lost its force much prior to



the date when Departmental Promotion Committee held its meeting for considering the promotion to the rank of Chief Engineer and has also contended that denial of such promotion on that account amounts to double jeopardy. He has further submitted that the Departmental Promotion Committee considered the cases of other officers, who were junior to the petitioner against, whom there were vigilance enquiries and criminal cases pending. He has, accordingly, submitted that the petitioner has been discriminated by granting promotion to juniors against whom there were serious charges of criminal liability pending and they were granted promotion to the rank of Chief Engineer.

8. Mr. Vinay Kirti Singh, learned counsel appearing on behalf of erstwhile Board, on the other hand, has submitted, referring to Rule 12 (C) of the Bihar State Electricity Board Electrical Engineers General Cadre Rules, 1976 that promotion to the rank of Chief Engineer is granted on the basis of “merit-cum-seniority”. He submits that Departmental Promotion Committee is a body of experts and on the basis of evaluation of the petitioner’s performance and also taking into account the



fact that a punishment was imposed upon him, the Departmental Promotion Committee held the petitioner unfit for promotion to the post of Chief Engineer, in its meeting held on 21.05.1998. He has contended that the criteria being “merit-cum-seniority” for promotion to such posts, relative merits of the persons falling within the zone of consideration has to be adjudged. He has submitted that no *mala fide* has been alleged against the members of the Departmental Promotion Committee. The decision to grant promotion to the rank of Chief Engineer to others and refusal of such promotion to the petitioner is based on the recommendation of the Departmental Promotion Committee, which is not required to be interfered with in the present proceeding under Article 226 of the Constitution of India.

9. Mr. Singh has also referred to Regulation 86 of the Bihar State Electricity Board Service Regulations, 1976 and has contended that an employee of the erstwhile Board is not entitled to promotion from his existing post if, *prima facie*, the charges of corruption, bribery, gross negligence, misappropriation or any other charge involving lack of integrity, serious lapse of duty and act of



indiscipline, are pending enquiry or any departmental enquiry is being conducted against him. He has further submitted that the erstwhile Board (successor Company) had power under Regulation 86 of the Bihar State Electricity Board Service Regulations, 1976 to reserve post for such employee in suitable cases, pending for disposal of enquiry on recommendation of a promotion/selection committee. Referring to the cases, which have been referred by learned counsel for the petitioner, where promotions have been given to the juniors, despite pendency of enquiries against them. Mr. Vinay Kirti Singh has submitted that it cannot be said that, *prima facie*, charges of corruption of bribery etc. were established against them. He has further submitted in those cases that such enquires were merely pending and no charges were framed against them on the date when the Departmental Promotion Committee met on 21.05.1998, for considering the cases of promotion to the rank of Chief Engineer. He has submitted that no grounds are available for the High Court to interfere with the proceedings of Departmental Promotion Committee as there is nothing to demonstrate that decision of Departmental Promotion

Committee to refuse the petitioner promotion to the rank of Chief Engineer and grant others promotion to the said rank, suffered from any infirmity in the present proceeding under Article 226 of the Constitution of India.

10. This is well settled principle that an employee has a right to be considered for promotion and he does not have any right to promotion unless he is in a position to establish that he has been discriminated against the persons similarly situated or juniors having been granted promotion, ignoring his claim thus violating Articles 14 and 16 of the Constitution of India. There is no dispute about the fact that merit-cum-seniority is the criteria for grant of promotion to the rank of Chief Electrical Engineer from the post of Electrical Superintending Engineer. Rule 12 (C) of the Bihar State Electricity Board, Electrical Engineers General Cadre Rules, 1976, reliance upon which has been placed by Mr. Singh, learned counsel for the erstwhile Board, is being extracted hereinbelow for ready reference:-

***“Promotion to the rank of
Chief Engineer from Superintending
Engineer shall be on the basis of the
merit cum seniority and suitability***

subject to the minimum of five years of experience as Superintending Engineer.”

11. This is not in dispute that in the year 1995, the petitioner was punished in a departmental enquiry and punishment of withholding of two annual increments with cumulative effect was imposed upon him. The said punishment cannot be said to be minor as it has cumulative effect, adversely affecting his salary for his entire career. The Departmental Promotion Committee, on the basis of materials available on the record, including admitted fact that the petitioner was punished in a departmental proceeding for a proved charge of deliberately making wrong entry of date of birth in the records of an employee, found the petitioner unsuitable for promotion. The finding of the Departmental Promotion Committee cannot be said to be perverse, warranting interference by this Court in the present proceeding. The minutes of the Departmental Promotion Committee (DPC) meeting dated 21.05.1998, has been brought on record alongwith the counter affidavit filed on behalf of respondents-erstwhile Board by way of Annexure-A. The

DPC consisted of the Chairman of the Board, the Member, Administration, the Member, Technical and the Secretary of the erstwhile Board, all of them appears to be high officials. As has been noticed above, there is no allegation of *mala fide* against anyone of them.

12. Learned counsel for the petitioner has drawn my attention to the cases of other officers, namely, Vinod Kumar Maldahiyar, Fahimuddin Ahmad, Kumar Vijay Pratap Singh and Ajay Kumar Singh, who were juniors to the petitioner and there were enquires containing allegation of serious nature pending against them, who were granted promotion to the rank of Chief Engineer based, on the recommendation of Departmental Promotion Committee in its meeting dated 21.05.1998.

13. Nothing has been shown from the records that *prima facie* charges were established against them on the date when their cases were being considered for promotion nor there is anything to suggest that departmental proceeding were initiated against them.

14. In view of the discussions made above, I do not find any merit in this application, requiring interference as the petitioner's right to be considered for promotion has

not been infringed. His matter was considered for promotion and upon considering his service records compared with the service records of other persons, the Departmental Promotion Committee, thought is proper, not to recommend the petitioner's name for promotion. Secondly, the petitioner has not impleaded such persons as party respondents, who according to him, though being juniors, have been granted promotion to the rank of Chief Engineer, despite adverse materials available against them.

15. This application, in view of the discussions as above, fails and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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