

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.336 of 2011

1. State of Bihar through the Principal Secretary, Department of Environment and Forest, Government of Bihar, Sinchai Bhawan, Bihar, Patna.

2. Chief Secretary, Government of Bihar, Patna

3. Principal Secretary, Department of Environment and Forests, Government of Bihar, Sinchai Bhawan, Patna.

.... Petitioners

Versus

1. Basisth Narayan Jha S/O Late Rajeshwar Jha Resident of 48, A.N. Path, North Shri Krishna Puri, P.S. Patliputra, District Patna-13

2. The Union of India through the Secretary, Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road New Delhi.

3. The Secretary, Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road New Delhi.

4. The Principal Chief Conservator of Forests, Bihar, 4th Floor, Technology Bhawan, Patna.

5. The Accountant General (A&E), Bihar, Birchand Patel Marg, Patna.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Pratik Singh (AC-GA XII)

For the Accountant General : Mr. Madhuresh Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 21-05-2015

We have heard learned counsel for the State at length and we are satisfied that no case is made out for interference with the order of the Tribunal.

2. The sole contesting respondent was member of Indian Forest Service. He had moved the Central Administrative Tribunal, Patna Bench, Patna, with a prayer that he was made to work as Adhoc Chief Conservator of Forest, Bihar from 2001 when there was a vacancy. He was duly qualified for permanent promotion to the said post even in 2001. Ultimately he was granted this promotion, having worked on that post for four long years in 2005. Accordingly, he submitted that being qualified, being entitled to and there being a substantive vacancy, he ought to have been promoted in 2001 itself.

3. The defence of the State was that they were not at fault. The Departmental Promotion Committee (hereinafter referred to as 'D.P.C.') could not be held in time, therefore, as he was qualified and entitled to be promoted, the sole respondent was made to officiate on the post of Chief Conservator of Forest (C.C.F.) till finally D.P.C. met and made recommendation in his favour and then he was

- 3 -

substantively appointed on promotion as C.C.F.



4. In our view, this is no excuse. The Tribunal rightly rejected the same. If a person has the competence, eligibility and the right to be considered for promotion, promotion cannot be denied to him, merely because, State cannot find time to constitute D.P.C. This situation is virtually like what was dealt by Chief Justice Chagla and we can do no more but to quote what Chief Justice Chagla said in the case of ***All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 :***

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the

- 4 -

right is lost because of that default.”

5. In that view of the matter, we find no merit in this application. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Rajendra Kumar Mishra, J.)

Rajeev/NAFR

U			
---	--	--	--