

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6331 of 1998

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Chitta Ranjan Prasad Sinha, Son of Late Ram Narain Singh, resident of Village-Karhatti, P.S.-Aurai, District-Muzaffarpur. At present C/o Shri Vibhisan Singh-17, Anugrah Narain Path, Patna-800013.

.... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner and Secretary, Water Resources Department, Sichai Bhawan, Patna.
2. Commissioner-Secretary, Water Resources Department, Govt. of Bihar, Sichai Bhawan, Patna.
3. The Joint Secretary, Water Resources Department, Govt. of Bihar, Sichai Bhawan, Patna.
4. The Deputy Secretary, Water Resources Department, Govt. of Bihar, Sichai Bhawan, Patna.
5. The Vigilance Commissioner, Govt. of Bihar, Bailey Road, Patna.
6. The Bihar Public Service Commission, through the Chairman, Bihar Public Service Commission, 15, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Kumar Singh, Sr. Advocate Mr. Ram Naresh Shukla, Advocate
For the State	:	Mr. Shivendra Kishore, Sr. Advocate (AAG-7) Mr. Jai Kishore Poddar, Advocate
For B.P.S.C.	:	Mr. Ranjit Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 16-03-2015

The petitioner, in the present writ application, under Article 226 of the Constitution of India, has sought for a direction to the respondents to consider his case for



regular promotion to the post of Superintending Engineer (Civil) in Bihar Engineering Service Class - I, with effect from 14.08.1991, the date with effect from which his juniors came to be promoted as such. He has also sought for a direction to consider his case for promotion to the post of Chief Engineer (Civil), with effect from the date on which, the persons junior to the petitioner have been granted such promotion. He has further sought for a direction to provide him with all consequential benefits arising out of grant of such promotion to the post of Superintending Engineer (Civil) and Chief Engineer (Civil), in terms of arrears of salary etc. The petitioner retired with effect from 31.07.1998, while holding the post of Executive Engineer (Civil), which date coincides with the date of filing of the present writ application.

2. After filing of the writ application, the petitioner had filed I.A. No. 8337 of 1999 in the present case, seeking amendment, in order to challenge certain orders passed by the respondents-State of Bihar, imposing upon him certain punishments. The said interlocutory application was allowed by an order dated 06.07.1999. However, he has not pressed the reliefs sought for through I.A. No. 8337 of 1999, in view of subsequent

decision of this Court dated 21.10.2005 rendered in C.W.J.C. No. 6818 of 2003 (**Chitranjan Prasad Sinha Vs. The State of Bihar and Others**) reported in “**2005 (4) PLJR 510**”, wherein, the punishments imposed upon the petitioner came to be finally upheld by Division Bench of this Court.

3. The relief in the present proceeding is thus confined to the petitioner's claim for consideration of his case for promotion to the post of Superintending Engineer (Civil), with effect from 14.08.1991, from which date, the persons junior to him have been promoted to the said rank and consideration for further promotion as Chief Engineer, with effect from 01.06.1998, when his juniors were promoted.

4. For the purpose of decision in the present case, facts are not much in dispute. I must indicate at the outset that the case of the petitioner in nutshell is that while considering the cases for promotion to the post of Superintending Engineer (Civil), the case of the petitioner was also placed before the statutory Departmental Promotion Committee on different dates. The Departmental Promotion Committee did not consider the petitioner's case for promotion on the basis of certain



reports of the Vigilance as regards pendency of certain enquiries against the petitioner. While refusing to consider the petitioner's case in its meeting held by Departmental Promotion Committee on 17.04.1990, 20.04.1990 and 30.04.1990, alongwith other eligible persons, one post was kept reserved for him. It is the case of the petitioner that as on the dates when the Departmental Promotion Committee met on 17.04.1990, 20.04.1990 and 30.04.1990, no departmental proceeding or criminal charge was pending against the petitioner and, therefore, he was wrongly denied his right of consideration for promotion to the post of Superintending Engineer (Civil), by the Departmental Promotion Committee. During the subsequent years also, the Departmental Promotion Committee met, but despite the fact that there was no departmental proceeding pending against the petitioner at the relevant point of time, his case for promotion was not considered on the ground of pendency of certain Vigilance enquiry.

5. It is the petitioner's case that he joined as Assistant Engineer in Water Resources Development Department of State Government of Bihar on 17.02.1965. He was granted promotion to the post of Executive



Engineer by a notification dated 25.03.1986 with effect from 31.05.1979 and was subsequently confirmed as Executive Engineer with effect from 01.04.1985, by a subsequent notification dated 19.09.1986. The recommendation of Bihar Public Service Commission for promotion to the rank of Superintending Engineer, on the basis of the meetings of Departmental Promotion Committee held on 17.04.1990, 20.04.1990 and 30.04.1990, was received for promotion to the post of Superintending Engineer on 15.06.1990, wherein, the petitioner's case was kept pending keeping one post reserved for him, though no departmental proceeding was pending against him on that date. On the basis of recommendation made by the Bihar Public Service Commission, notification promoting 11 persons as Superintending Engineer was issued and 3 persons, below the petitioner in the seniority list at Serial Nos. 368, 370 and 372, were granted promotion, but the petitioner's case was not considered, whose name figured at Serial No. 366 of the seniority list. The Departmental Promotion Committee again held meeting on 04.05.1992 for promotion to the rank of Superintending Engineer (Civil). Again the petitioner's case was not considered.



On the basis of the said meeting held on 04.05.1992, and subsequent recommendation made by the Bihar Public Service Commission, the State Government issued another notification dated 04.01.1993, promoting the persons junior to the petitioner to the rank of Superintending Engineer. Reference has been made in this regard to an Officer, whose name has figured at Serial No. 376, who subsequently came to be promoted as Chief Engineer recruited from 01.06.1998, by a notification issued on 05.11.1999. There are several statements of fact in the writ application with respect to the manner in which certain allegations were made against the petitioner, which were subsequently dropped prior to the Departmental Promotion Committee held in its meeting in April, 1990, on dates, noted above, and charges framed against the petitioner in the year 1994 but, in my view, those facts are not relevant for the purpose of the reliefs sought for in the present writ application, which is based on the ground that no departmental enquiry or criminal charge was pending as on the date when the petitioner's case was required to be considered by the Departmental Promotion Committee in the year 1990.



6. A counter affidavit has been filed on behalf of the respondents-State of Bihar in which, there is no denial of the fact that no departmental enquiry was pending against the petitioner nor any criminal charge was pending as on 17.04.1990, 20.04.1990 and 30.04.1990, when the Departmental Promotion Committee held its meeting for considering the cases for promotion to the rank of Superintending Engineer (Civil), from the post of Executive Engineer (Civil). It has been stated in the counter affidavit that the reason behind keeping the name of the petitioner in the 'pending list' was that he was facing Vigilance charges enquiries with respect to which pending in Cabinet (Vigilance Department), as communicated vide its report dated 14.03.1990. It has also been stated that the Departmental Promotion Committee in its meeting held on 04.05.1992, again deferred the petitioner's case for promotion on account of Vigilance charges and subsequently also the Departmental Promotion Committee in its meeting held on 07.04.1994, 30.12.1995 and 20.04.1998, deferred the case of the petitioner on account of different Vigilance charges. However, all the time, one post of Superintending Engineer was kept reserved for the

petitioner. In Paragraph – 9 of the counter affidavit, so filed, it is the stand of the State of Bihar that the service record of the petitioner is tainted and blemished and apart from Cabinet Vigilance charges, various departmental proceedings were contemplated from time to time against the petitioner. The relevant portion of Paragraph – 9 of the counter affidavit, which contains the details of proceedings initiated against the petitioner, is being quoted hereinbelow:-

Sl. No.	Letter & date of initiation charges/Proceedings (Internal)	Description in brief	Nature of Proceeding	Letter & date of completion of proceedings.
1.	2	3	4	5
1.	2953 dt. 6.10.94	Delay in sanctioning estimate which caused delay in completion of work.	Rule 55A of Civil Classification (Control & Appeal) rule	14.2.97
2.	37 dt. 12.5.95	Walls of town hall constructed under his supervision during 90-93 as E.E., Saran Canal Division, Chapra collapsed on 9.5.93	do	Still pending due to non-co-operation of the petitioner.
3.	1639 dt. 10.8.96	Various irregularities in the construction of Red Cross Building and town hall, Chapra	do	187 dated 23.1.98
4.	1800 dt. 24.8.96	Not co-operating in the investigation conducted by the Flying Squad team of the department.	do	24.6.98
5.	1662 dt. 27.5.97	Fefunded security deposits in irregular manner to the constructors without passing final bills in 68 works during his posting as E.E., Flood Control Division, Khagaria.	do	235 dated 31.7.98

7. It has further been stated in the counter affidavit that Annual Confidential Report of the petitioner in the



year 1988-89 was adverse and was communicated to him and the external Vigilance Clearance Report sent by the Cabinet (Vigilance Department) through its Letter No. 396 dated 04.03.1990 was adverse. Referring to this contention in the counter affidavit, as regards entry of adverse remarks in the Confidential Report for the year 1988-89, it has been asserted by the petitioner in reply that no such adverse remarks was communicated to the petitioner on the dates when the Departmental Promotion Committee held its meeting on 17.04.1990. The said adverse remarks were communicated to the petitioner much after that in the year 1991, that too, in violation of the Government decision, as contained in letter dated 08.03.1973, issued by the Personnel Department, Government of Bihar. It has also been asserted by the petitioner that apart from the said adverse remarks for the year 1988-89, no other adverse remark has been communicated to the petitioner during his long service career of more than 33 years. The petitioner, by way of second supplementary affidavit, has brought on record certain documents received by him from Vigilance (Cabinet Department), under the Right To Information Act, 2005 and on the basis of the abstract of the Cabinet

Vigilance Reports, sent to the Department regarding result of action taken thereon between the year 1990 to 1997, it has been stated that in remarks column, it has been mentioned that the charge cannot be said to be, “*prima facie* proved”.

8. Mr. Abhay Kumar Singh, learned senior counsel, appearing on behalf of the petitioner, has submitted that in the month of April, 1990, when the Departmental Promotion Committee held its meetings considering the cases of Officers for promotion to the post of Superintending Engineer (Civil) from the post of Executive Engineer (Civil), neither any disciplinary proceeding was pending against the petitioner nor any criminal charge was pending. He has submitted that this aspect has been admitted by the respondents-State of Bihar also in their counter affidavit, wherein, the first charge-sheet with respect to departmental proceeding is said to have been issued vide letter dated 06.10.1994. Prior to said date dated 06.10.1994, admittedly, no charge of misconduct for the purpose of departmental proceeding was framed against the petitioner and, in the meanwhile, in three successive Departmental Promotion Committee Meeting, held in the years 1990, 1992 and



1994, prior to 06.10.1994, the petitioner was wrongly denied his right to be considered for promotion to the post of Superintending Engineer (Civil). He has argued that the Departmental Promotion Committee, in its meeting held in the month of April, 1990 ought not to have deferred the consideration of petitioner's case for promotion on the ground of pendency of any enquiry in the Vigilance (Cabinet Department), as neither any case was instituted ever nor any other proceeding was initiated against the petitioner. He has contended that the petitioner had thus a right to be considered for promotion as on 17.04.1990, 20.04.1990 and 30.04.1990 which was wrongly denied to him and such denial is arbitrary and illegal infringing petitioner's fundamental rights under Article 226 of the Constitution of India. He has further submitted that since his juniors have been granted promotion to the rank of Superintending Engineer, with effect from 14.08.1991, upon consideration by the Departmental Promotion Committee, the petitioner is also entitled for promotion to the post of Superintending Engineer (Civil) with effect from 14.08.1991. He has further submitted that before the petitioner retired with effect from 31.07.1998, a person, junior to the petitioner,

has been given promotion with effect from 01.06.1998 to the rank of Chief Engineer and, therefore, the petitioner's case also deserves to be considered for such promotion to the rank of Chief Engineer with effect from 01.06.1998, after granting him promotion to the rank of Superintending Engineer (Civil) with effect from 14.08.1991.

9. Mr. Singh, learned senior counsel, has placed reliance upon Supreme Court decision in the case of **“Union of India and Others Versus K.V. Jankiraman and Others”**, reported in **“(1991) 4 Supreme Court Cases 109”**, in support of his submission that consideration of petitioner's case for promotion to the rank of Superintending Engineer could not have been denied by the Departmental Promotion Committee, as at the relevant point of time, no disciplinary or criminal proceeding was pending, inasmuch as, no charge memo was issued with respect to departmental enquiry or charge-sheet was submitted in a criminal case against him.

10. Mr. Shivendra Kishore, learned Additional Advocate General No. 7, appearing on behalf of the State of Bihar, on the other hand, while countering the



submission made on behalf of the petitioner, has submitted, with reference, to the counter affidavit filed on behalf of the State, that there were several serious allegations of misconduct against the petitioner, some of them resulted into imposition of punishment subsequently. He submits that at the time of consideration of petitioner's case for promotion to the rank of Superintending Engineer (Civil), there were adverse Vigilance reports and awaiting outcome of the Vigilance enquiry, the petitioner's case was kept pending for consideration in future. He has defended the decision of the respondents in not granting promotion on the ground of the fact that there were several proceedings initiated against the petitioner and, therefore, he (petitioner) did not deserve to be promoted to the post of Superintending Engineer.

11. A counter affidavit has been filed on behalf of the respondent-Bihar Public Service Commission, on whose recommendation, the promotion to the post of Superintending Engineer is granted. The Departmental Promotion Committee is constituted by the Commission, once proposal is received from the State Government in this regard. It is their case that the Departmental

Promotion Committee, so constituted by the Commission in the present case, had deferred the petitioner's case for promotion on the basis of information provided by the Department concerned and authenticity and veracity of such information rests with the concerned Department.

12. From the facts asserted in various pleadings in the present proceeding and the submissions made on behalf of the respondents, there remains no doubt about the fact that as on 17.04.1990, 20.04.1990 and 30.04.1990, when the Departmental Promotion Committee, constituted by the Bihar Public Service Commission, met considering the cases for promotion to the post of Superintending Engineer (Civil) from the post of Executive Engineer (Civil), neither any departmental nor criminal proceeding was pending against the petitioner. In such circumstance, in my view, the Departmental Promotion Committee ought to have considered the petitioner's case for promotion and ought not to have deferred his case on the ground of report by Vigilance (Cabinet Department) that some enquiry was pending. The charges with respect to which the said enquires were pending before the Vigilance department, were admittedly not even *prima facie* proved. In



subsequent two meetings also, the Departmental Promotion Committee wrongly deferred the petitioner's case for promotion, keeping one post pending for him on similar grounds, despite the fact that no departmental proceeding or criminal charge was pending against the petitioner. In my view, mere pendency of the said Vigilance enquiry, as reported by Cabinet (Vigilance) Department of State-Government of Bihar was not sufficient for the Departmental Promotion committee for deferring the consideration of petitioner's case for promotion, in absence of definite charge issued to the petitioner for the purpose of departmental enquiry and/or submission of charge-sheet in a criminal case against the petitioner.

13. Learned senior counsel, appearing on behalf of the petitioner, has rightly relied upon the Supreme Court decision in the case of Union of India and Ors. Versus K.V. Jankiraman and Ors. (**Supra**), Paragraph – 17 of which reads as follows:-

“17. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To

deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

14. The Supreme Court in most unequivocal terms has held that even sealed cover procedure cannot be resorted to while considering the case of promotion by the Departmental Promotion Committee when the proceeding, departmental or criminal, was in fact not pending on the date of such consideration and pendency of preliminary investigation will not be sufficient to enable the authorities to adopt such sealed cover procedure.

15. In view of law laid down by the Supreme court in the case of Union of India and Ors. Versus K.V. Jankiraman and Ors. (**Supra**), I am of the view that the petitioner was wrongly denied his right to be considered for promotion to the post of Superintending Engineer (Civil) by the Departmental Promotion Committee in its meetings held between 17.04.1990 to 30.04.1990, as there was no valid, justifiable reason for the Departmental Promotion Committee to defer the

consideration of petitioner's case.

16. I, accordingly, direct the respondent-Bihar Public Service Commission to constitute a Departmental Promotion Committee to consider the petitioner's case for promotion to the rank of Superintending Engineer (Civil) and the Departmental Promotion Committee, so constituted, shall accordingly holds its meeting, as if the meeting were being held in between 17.04.1990 to 30.04.1990 and consider the petitioner's case for promotion accordingly on the basis of the materials available as on 17.04.1990 to 30.04.1990. The Departmental Promotion Committee must be constituted within a period of one month from the date of receipt/production of a copy of this judgment. The Departmental Promotion Committee shall hold its meeting in the light of the present judgment within one month thereafter. If the petitioner's case is found fit for promotion, the Commission shall make recommendation accordingly, whereupon, the State Government will be required to issue notification promoting the petitioner to the rank of Superintending Engineer (Civil) with effect from 14.08.1991, the date with effect from which the persons junior to the petitioner, have been promoted to



the said post. If, however, the Departmental Promotion Committee does not find the petitioner suitable for promotion, it will be required to briefly record reasons for the same. It goes without saying that the petitioner will be at liberty to question any adverse decision at the level of Departmental Promotion Committee, in appropriate proceeding. Once the petitioner is found entitled for promotion to the post of Superintending Engineer (Civil), the respondents-State of Bihar will be required to consider his case for notional promotion to the post of Chief Engineer (Civil) with effect from the date his junior came to be promoted to the post of Chief Engineer (Civil). Such consideration should be made within a period of three months from the date the petitioner is found entitled for promotion to the post of Superintending Engineer (Civil).

17. If the petitioner is found entitled for promotion to the post of Superintending Engineer (Civil), the respondents-State of Bihar will be required to pay to him the difference of pay, consequent upon grant of promotion, in the light of the present judgment. He will be also entitled to re-fixation of all post retiral benefits accordingly. I, accordingly, direct that in case the

petitioner is granted promotion to the post of Superintending Engineer (Civil), the difference of pay due to grant of such promotion must be paid to the petitioner within a period of six months from the date of grant of such promotion.

18. In the facts and circumstances of the case, as discussed above, this writ application is allowed with the aforesaid direction.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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