

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8400 of 2014

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Arun Kumar Paswan son of Late Amirchand Paswan Deputy Commandant, Border Security Force, presently posted at 14th Battalion, B.S.F. Kishanganj, permanent residet of New Colony, Saharsa, Police Station + District - Saharsa.

.... Petitioner

Versus

1. The Union of India through the Union Home Secretary, North Block, Central Secretariat, New Delhi.
2. The Border Security Force through its Director General, C.G.O. Complex, New Delhi.
3. The Director General, Border Security Force, C.G.O. Complex, New Delhi.
4. The Commandant, Personnel, Border Security Force, C.G.O. Complex, New Delhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinesh Kumar Khoorpiwala, Adv.
For the Respondent/s : Mr. Anjani Kumar Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 23-02-2015 Heard learned counsel for the parties.

2. At the end of the day the petitioner working on the post of Deputy Commandant in the Border Security Force has only a grievance that his promotion notified on 25.8.2004 was delayed for none of his fault and that he ought to have been given such promotion with effect from 14th July, 2003.

3. Learned counsel for the petitioner has explained that actually on 14.7.2003 all his batch-mates were promoted and therefore, the date of promotion of the petitioner also instead of 25.8.2004 ought to have been 14.7.2003.

4. In this case a counter affidavit has been filed in which the respondents have explained the reason for not promoting the

petitioner by giving all the information in a tabular chart in paragraph no. 5 of the counter affidavit which reads as follows:

"5. That the petitioner was considered for promotion to the rank of DC by the following DPCs:-

Date of DPC	Vacancy year of the DPC	DPCs recommendation	Remarks
16.2.2001	2001-02	Since the GSFC trial proceedings were in motion for confirmation by the competent authority, the assessment of the DPC was kept in 'sealed cover'	The sentence awarded by the GSFC was confirmed by the competent authority and attained finality. The Officer was found 'Guilty' by the GSFC and awarded sentences as mentioned above. As such, 'sealed cover' was not acted upon.
23.4.2002	2002-03	Officer was assessed by the DPC 'Unfit' for promotion due to insufficient confidential record of service.	
23.5.2003	2003-04	'Fit' subject to SHAPE-1 medical category	The Officer could not regain medical category SHAPE-1 during the validity period of the DPC.
23.6.2004	2004-05	'Fit' subject to medical category SHAPE-1	The officer regained SHAPE-1 medical category on 17.11.2004 and he was promoted to the rank of DC on 2.5.2005 w.e.f. 25.8.2004 i.e. the

			date on which officer junior to him in the panel of promotion of the year 2004-05 was promoted.
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5. On the basis of the aforementioned statement in paragraph no.5 of the counter affidavit learned counsel for the respondents has sought to defend that the petitioner having been serving sentence in the year 2001 was found unfit by the DPC and again on 23.4.2002 when his case was considered he on that occasion was found unfit due to insufficient confidential record of service. He has also sought to justify the promotion of the petitioner with effect from 25.8.2004 by suggesting that in the first Medical Board held in terms of the DPC dated 23.5.2003 the petitioner was not found to be medically fit and in fact he ultimately on being again considered by the DPC on 23.6.2004 was declared to be fit under the medical Category Shape-I.

6. In the considered opinion of this Court the crucial date for claiming promotion is always the date on which the junior to an incumbent gets promoted. In the present case learned counsel for the petitioner miserably fails to explain as to when his junior was promoted. To say that the batch-mates were promoted on 25.8.2004 may not be the correct answer at least for the purposes of shifting back the date of promotion of the petitioner keeping in view that the petitioner also has been promoted ultimately on

25.8.2004.

7. The respondents also have not been very clear because when they take a plea that in the first DPC held on 16.2.2001 the petitioner was found unfit they had to give the date of sentence awarded to the petitioner by the GSFC and its confirmation by the competent authority. In any event this question may not have much bearing because in the first DPC none of his batch-mates were promoted pursuant to recommendation of the DPC dated 16.2.2001 or even 23.4.2002 because such promotion was given to them only on 14.7.2003 i.e. pursuant to the recommendation of the third DPC dated 23.5.2003.

8. Nonetheless since the petitioner himself has assailed all these as part of the case in his representation, this Court instead of keeping the matter pending would direct the respondents to consider the grievance of the petitioner with regard to shifting of date of promotion of the petitioner from 25.8.2004 to 14.7.2003 by taking into account the facts which have been mentioned in the representation filed by him, as contained in Annexure 7 to this writ application.

9. It is, however, made clear that while disposing of the representation of the petitioner the respondent authority of the BSF will be guided by own Rules and Regulation regarding promotion but at the same time will not non-suit the petitioner if

there was no fault on his part in getting his medical category improved. Thus, whatever consideration has to be made by the authorities of the BSF while disposing of the representation of the petitioner must be reflected by a reasoned order.

10. At this stage learned counsel for the respondents has tried to come out with a plea that the representation filed by the petitioner vide Annexure 7 has already been disposed of but when this Court wanted to see the order which was passed, learned counsel for the respondents do not have a copy of the same.

11. In that view of the matter, this Court would give liberty to the petitioner to file a fresh representation giving all the details on the basis of which he would claim his promotion with effect from 14.7.2003 with all other consequential benefit dependent on shifting of date of his promotion with effect from 25.8.2004 to 14.7.2003. The said representation of the petitioner shall be disposed of expeditiously and by a reasoned order.

12. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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