

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2952 of 2011

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Nawal Kishore Prasad Singh, son of Deo Sharan Singh, resident of village Berahana, P.S. Barh, District Patna at present Employee in Bharat Wagon and Engineering Company Ltd., Mokama, P.S. Mokama, District Patna

.... Petitioner

Versus

1. The Bharat Wagon And Engineering Company Limited, Mokama Workds, Mokama, Patna
2. Managing Director, The Bharat Wagon and Engineering Company Limited, 5th Floor, Maurya Complex, P.S. Kotwali, District Patna
3. Dy. General Manager, The Bharat Wagon and Engineering Company Limited, Mokama Works, Mokama, P.S. Mokama, District Patna
4. The Dy. Manager (Personnel), The Bharat Wagon and Engineering Company Limited, Mokama Workds, Mokama, P.S. Mokama, District Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Adv.

For the Respondent/s : Mr. Raj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 08-07-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:

“ For quashing the minutes of meeting of the Departmental Promotion Committee held on 29.11.2010 whereby the claim of the petitioner has been rejected vide D.P.C. on the same day and the same has been communicated to petitioner vide letter no. B.W.B./9002/22C dated 29.11.2010.”

Learned counsel for the petitioner has made strenuous efforts to assail the decision of the Departmental Promotion Committee (D.P.C.) dated 29.11.2010 and according to him, the



subsequent DPC has no reason to annul the decision of the earlier DPC wherein while awarding points of experience in course of consideration of the petitioner and others it was held that each and every candidate for experience shall be given two points for each year and if he has completed more than six months beyond completed year that will also be treated as one completed year for award of two further points. He has also submitted that the petitioner's denial of promotion in any event could not be justified by the subsequent DPC as he was more meritorious in all respect had he be given only two marks for the experience as was decided by the earlier DPC.

Mr. Raj Kumar, learned counsel appearing on behalf of the respondents, on the other hand, has submitted that first of all whatever was said by this Court had itself vested jurisdiction in DPC to review the whole thing. As a matter of fact he relies on the operative portion of the order dated 30.9.2010 in C.W.J.C.No. 14672/2010 filed by the petitioner questioning the earlier decision of the authority not to grant him promotion.

Mr. Rajkumar learned counsel for the Respondents seems to be correct inasmuch as this Court as a matter of fact having gone into the pleadings on record including the proceeding of the DPC on an earlier occasion had passed the following order:



“6. Having heard counsel for the petitioner and the company, I set aside the order dated 23.7.2010, Annexure-4 as the same does not appear to have considered the submission of the petitioner about grant of 16 marks for having completed 7 years 9 months and 30 days in Grade IV, which was one of the primal criteria for promotion in Grade V. Accordingly, I direct the Departmental Promotion Committee to reconsider the matter not only in regard to the marks allotted to the petitioner for experience in Grade IV but also in regard to his qualification and performance in interview in accordance with law as early as possible in any case within two months from the date of receipt/ production of a copy of the order before the Departmental Promotion Committee/ Deputy General Manager.”

As would be noted this Court had again remitted the matter to the DPC. The DPC in fact had examined each and every case thereafter and had come to a finding that none alongwith the petitioner, who had entered in service on 1.6.2001, were given any benefit of truncated year of experience of service. To that extent the consideration of the DPC in the light of the direction given by this Court being relevant is quoted hereinbelow:

**“ BHARAT WAGON & ENGINEERING COMPANY
LIMITED, MOKAMA WORKS, MOKAMA
MINUTES OF THE MEETING OF
DEPARTMENTAL PROMOTION COMMITTEE,
HELD ON 29.11.2010 AT MOKAMA WORKS,**

MOKAMA.

Pursuant to the receipt of the representation of Shri Nawal Kishore Prasad Singh on 9.10.2010 annexing the order dated 30.9.2010 of the Hon’ble High Court, Patna passed in CWJC No. 14672 of 2010 the DPC met on 29.11.2010 at Mokama Works, Mokama to reconsider the matter not only in regard to marks allotted for experience in grade IV but also in regard to the qualification and performance in interview in accordance with the law, i.e. ‘promotion policy’.

MARKS ALLOTTED FOR EXPERIENCE:

The experience has been calculated keeping the 31.3.2009 the cutoff date and @ 02 points per completed year have been allotted for experience in the present grade i.e. grade IV. As such, the points gathered by the candidates were as under:-

Sl. No.	Name of candidates	Dt. Of Ent. in Pr. Gd.	Period for Calculation	Points obtained
1.	Shri Nawal Kishor Pd. Singh	1.6.2001	7y 9m 11d	14
2.	„ Krishna Pd.Mistry	1.4.2003	6 yrs	12
3.	„ Pramod Kr.Roy	1.4.2003	6 yrs	12
4.	„ Mantu Pd.Yadav	1.4.2003	6 yrs	12

As per the Promotion Policy marking done @ 02 points per completed year.

The matter became confusing with the recommendation of DPC, inter alia, that “if the services rendered exceeds six months & more, it will be treated as completed year” But no candidates were given advantage of the noting of DPC having same date i.e. 1.6.2001 of entering in present Gd.IV and were allotted 14 marks each viz.

SN Name of Candidates ECNo Sl.No.as per DPC Cal.

sheet

- | | | | |
|---------------------------|-------|----|--------|
| 1. Shri Mahendra Prasad | 20963 | 13 | 6y ½ m |
| 2. „, Deo Rameshwar Murar | 20866 | | 14 |
| 3. „, Suresh Prasad | 20848 | | 15 |
| 4. „, Nand Lal Rai | 20978 | | 17 |
| 5. „, Shankar Sharma | 20952 | | 18 |
| 6. „, Mahesh Pd. Singh | 20897 | | 19 |

(whereas Shri Nawal K.Pd.Singh happens to be at Sl.No. 16 as DPC calculation sheet)

QUALIFICATION:

As long as qualification is concerned there is 04 points allotted which was to be given to those who have achieved more than required qualification i.e. Matric as per promotion policy.

PERFORMANCE:

As regard the performance of Shri Nawal Kishore Prasad Singh, he has been awarded proper marks i.e. 68% marks by the committee.

Over and above on recommendation of DPC the competent authority i.e. General Manager approved the candidates by name and Sl.No. displayed in the sheet.

In the aforesaid circumstances the representation of Shri Nawal Kishore Prasad Singh, Empl.Code No. 22521, dated 9.10.2010 is hereby rejected.

Sanjay Kumar P.K.Sinha Balram Pd Atul Sinha Diwakar Mishra

AM(P&A) Ex.(A/C) Mgr.(Works) Mgr.(P&A) Mgr(Mat)

HO Rep. HO Rep.

BKPandeya

Brij Lal

CM(Mat & Maint)

Dy.G.M.Chairman”



As noted above, there is already a provision under the agreement that the decision of the DPC is not binding and in fact such decision of the DPC was ultimately subject to approval of the competent authority. This becomes clear from the perusal of the promotion policy brought into force after the agreement was arrived at between the management and the employee union. The promotion policy nowhere in fact lays down the norms of giving points for in completed years of service and in fact from perusal of the promotion policy it becomes very clear that certain decision with regard to norms has to be taken by the DPC but then its ultimate approval has to be given by the competent authority. In the present case, the case of the petitioner was earlier considered and he was denied promotion because he had obtained only 37 points, whereas five posts were filled up by giving promotion to them, who had secured more than 37 points. The same was notified only after approval of the proceedings of the DPC by the competent authority and the Managing Director of the Corporation.

Judged from this angle since the award of giving promotion of the petitioner was not based only on the basis of experience but also on other parameters, such as his work evaluation including attendance, ACR etc., it cannot be said that

the case of the petitioner was not objectively considered by the authorities of the Corporation.

That being so, this Court does not find any error in the decision of denying promotion to the petitioner because admittedly such promotion was to be made on the basis of over all performance and evaluation, wherein the petitioner having secured only 37 marks was not found fit for promotion because at least five of them had secured more than 37 marks.

Thus, for all these reasons this Court does not find any merit in this application and it is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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