

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16294 of 2013

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Raj Kishore Singh, S/O Late Dineshwar Prasad Singh, Resident of Village-
Chandwara, Police Station- Lalganj in the district of Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
4. The Officer on Special Duty, General Administration Department, Government of Bihar, Patna.
5. The Accountant General, Bihar, Patna.
6. The High Court, Patna through its Registrar General.
7. The Registrar General, Patna High Court, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Sunil Kumar, Advocate
For the Respondent-State : Mr. Md. Faiz Ahmad, AC to GP-7
For the Respondent No. 5 : Mr. Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-04-2015

The petitioner joined the Bihar Subordinate Judicial Service on 12.3.1984. Thereafter, he was promoted to the post of Subordinate Judge, and then, to the post of Additional District & Sessions Judge (hereinafter referred to as the A.D.J. for short) on 1.11.2003. He retired from service on attaining the age of superannuation on 31.1.2012. Almost on the verge of retirement, he realized that he was drawing less scale of pay than his immediate



juniors, by name Manmohan Choudhary and Ajit Kumar Sinha, who were promoted to the post of A.D.J. on 13.2.2004 and 17.2.2004 respectively. He made representation in this behalf and, since there was no reply to that, he filed the present writ petition. He contends that once his juniors are placed in the pay scale of Rs.17,550.00, there was no basis for the respondents to place him in the pay-scale of Rs.17,150.00 in the year 2004.

On behalf of the respondents 1 and 2, a detailed counter affidavit is filed. They did not dispute the dates of promotion of the petitioner, on the one hand, and his two junior, on the other hand. However, the justification pleaded for the anomaly in the pay-scale is that the petitioner did not exercise the option as provided for in F.R.22(I)(a)(i) of the Fundamental Rules. They contend that the petitioner, as well as the two officers named above, became eligible for increment in the post of A.D.J. in January, 2004, and since the promotion of the petitioner took place before that date, his pay-scale in the post of A.D.J. was fixed without the increment, whereas for other two officers, the increments were taken into account since they were promoted, after they earned increment. An objection is also raised as to the delay and laches in filing of

the writ petition.

Heard Shri Prabhakar Dwivedi, learned counsel for the petitioner, and Shri Rajeev Ranjan Kumar Pandey and others, learned counsel for the respondents.

Three dates are important in this case. The petitioner was promoted to the post of A.D.J. on 1.11.2003, whereas the two juniors to him were promoted to that very post on 13.2.2004 and 17.2.2004 respectively. While the petitioner was placed in the pay-scale of Rs.17,150.00, the two juniors were placed in the pay-scale of Rs.17,550.00. The result is that the petitioner was drawing lesser pay-scale than his two juniors.

It is fairly well settled principle of law that no employee shall draw lesser scale of pay in a particular post than that of his juniors. If there exists any exception to this, it must be supported by relevant provisions of law. The respondents are not able to cite any Rule which justifies the fixation of a higher pay-scale to juniors.

The anomaly occurred just on account of the timings at which the three officers, including the petitioner, were promoted. All the three were working as Subordinate Judges in the year 2003. The next increment for them became due in January, 2004.



F.R. 22 of the Fundamental Rules mandates that the pay-scale of an employee who is promoted to a next higher post, shall be fixed on a day, chosen by the employee and, in a given case, he would have the option to stipulate a date which occurs subsequent to the date on which the increment in the lower post becomes due. This aspect was clarified by the Central Government itself, through para- 17 of the clarification for F.R. 22 vide General Instructions issued by the Department of Personnel & Training dated 12.12. 1997.

The petitioner did have an option to indicate that his pay-scale in the post of A.D.J. be fixed with reference to a date in January, 2004, by which time the increment in the post of Subordinate Judge became due. That not having been done, his pay-scale was fixed at Rs.17,150.00, which is bereft of the increment that became due in January, 2004.

In contrast, the pay-scales of the two junior colleagues were fixed at Rs.17,550.00 because the increment in the post of Subordinate Judge accrued to them in January, 2004 and the promotion has taken place in February, 2004. The nature of exercise undertaken by the respondents can, in a way, be treated valid and legal.



However, the clarification issued by the Central Government is to the effect that in the order of promotion itself, the employee must be informed that he has an option to stipulate the date in such a way that he can reap the benefit of the increment, which is immediately due, in the post in the feeder cadre. Admittedly, no such stipulation was made in the order of promotion of the petitioner, nor was an indication given to that effect. The resultant situation is opposed to the very service jurisprudence.

It is true that there is inordinate delay on part of the petitioner in raising the claim. Further, he was casual in furnishing his particulars in the writ petition also. Therefore, we are of the view that ends of justice would be met if 25% cut is effected in the amount due to the petitioner on account of denial of the pay-scale on par with his junior colleagues.

We, therefore, allow the writ petition holding that the petitioner is entitled to draw the same scale of pay as was drawn by his junior officers, by name Manmohan Choudhary and Ajit Kumar Sinha, from March, 2003, and the arrears that accrued to the petitioner in this context, to the extent of 75% shall be paid to him, within three months. The pension shall also be revised and re-fixed accordingly,

but the pension at the revised rate shall be paid to the petitioner from 1.6.2015, and he shall not be entitled for any arrears of pension on account of such revision.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Ashwani Kumar Singh, J)

A.F.R.
Sanjeet/k.c.jha-

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