

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4612 of 2015

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1. Abhay Kumar Pusan son of Late Yamuna Prasad resident of At & P.O. - Rajapakar, P.S. - Rajapakar, Ditriect- Hajipur, Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department , Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department , Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department , Patna.
4. The Superintending Engineer, Drawing and Monitoring Circle, Anisabad, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha
Mr. Pranav Kumar Jha
For the Respondent/s : Mr. Kinkar Kumar
Mr. Sushant Pravez

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 07-07-2015

07.07.2015

Heard learned counsel for the parties.

On a previous direction issued by the High Court in C.W.J.C. No. 794 of 2013, claim of the petitioner for grant of promotion on the basis of restoring his seniority in the gradation list was ordered to be considered. Annexure-10 which is under challenge in the present writ application is outcome of that exercise conducted at the level of Chief Engineer, Water Resources Department, Patna. Claim of the petitioner to restore him back to his original post in the gradation list created at the level of the Chief Engineer has been

negated and reasons have been duly assigned. Annexure-10 is dated 04.10.2013.

In short, the facts are that the petitioner was initially appointed as Steno-Typist. He was given selection grades and at the time of his superannuation on 31.01.2011 he was grade-III Steno-Typist. It is his assertion that during the period he was in service no gradation list of Steno-Typist at any point of time was drawn up. It was only done for the first time after his superannuation on 01.09.2012. The said notification is Annexure-1. There is insinuation that this was done only with the object of defeating the claim of the petitioner.

Petitioner seriously disputes the finding given in the impugned order that his transfer to Daltonganj was not a choice and request transfer, but he was transferred as an effort to adjust surplus staff for which he relies on Annexure-C brought on record by the respondents. He also submits that he had made an application for grant of TA, but it was not processed therefore the surrounding facts that his order of transfer indicate that he will not be entitled to TA is a mistake and too much should not be read into the said order.

The reason why the petitioner is taking such a bold plea is that the original order of transfer somehow



had gone missing. The petitioner has been sanguine of this fact and, therefore, is trying to take a plea that it was not transfer out of choice and request but otherwise.

The Court has gone through the detailed order, contained in Annexure-10. The sequence of events and the surrounding circumstances leading to his transfer only leads to one conclusion that the petitioner was transferred on his request and it was because of the said reason he lost his seniority and there was order of non-payment of transfer allowance and he should not be restored to his position back when he returned from Daltonganj back to Patna. The fact now stands corroborated by Annexure-D, dated 09.06.1999.

Petitioner cannot draw advantage and wish away the previous history merely because original order of transfer was not available initially. The counter affidavit which has now been filed on behalf of respondent nos. 3 and 4 brings adequate material on record to show that the petitioner's transfer was by choice and since it was at his request, therefore, he had to lose his position and seniority as is the prevalent rules in this regard and for such transfers the employee is not entitled to traveling allowance. Those materials as well as the orders are part of the counter affidavit which

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supports the rational and reasoning given in the impugned order, contained in Annexure-10.

If the petitioner is smug because with the passage of time some how curtains has been drawn on the past deeds, then the only thing the Court can record is that atleast he should have been truthful and honest to the Court in asserting what he has in the writ application.

The Court comes to a considered opinion that the reasoning given by the Chief Engineer in Annexure-10 not only does not require interference but even otherwise since the petitioner has not approached the High Court with clean hands, writ application is required to be dismissed and is dismissed.

(Ajay Kumar Tripathi, J.)

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