

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.684 of 2014

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1. Manoj Kumar Son Of Bharat Prasad Yadav Resident Of Flat No. 202, Prem Kunj Apartment, Mazar Gali, Shekhpura, Patna- 14

.... Petitioner/s

Versus

1. The Union Of India Through The Secretary, Ministry Of Shipping, Road Transport And Highways, Border Roads Development Board, 'B' Wing, 4th Floor, Sena Bhawan, New Delhi- 11
2. The Secretary, Public Works Department, Bihar, Patna
3. The Secretary, Road Construction Department, Bihar, Patna
4. The Deputy Secretary, Road Construction Department, Bihar, Patna
5. The Managing Director, Bihar Rajya Pul Nirman Nigam Limited, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MRIGANK MAULI

For the Respondent/s : Ms Kanak Verma C.G.S & Mr. Dev Kr. Pandey, AC to G.P.6

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT

Date: 04-02-2015

The petitioner has filed the present writ application, seeking quashing of certain communication already made with him, claiming for pay-protection, some of which is communication dated 16-12-2006, contained in Annexure-13, dated 25-2-2009, contained in Annexure-15 and dated 23-12-2011, contained in Annexure-17. By virtue of all these annexures, the claim of the petitioner for pay-protection has been rejected time and again by the authorities of the State of Bihar, primarily on the ground that there is no provision or rule, which provides for grant of pay-protection merely because the petitioner had given up higher post

in another Organisation or employer to join the present post under the State of Bihar.

It is not in dispute that the petitioner was working under the Union of India as Assistant Executive Engineer in the Border Road Organisation. He was selected through U.P.S.C. examination held in the year 1998, but allured by the Advertisement issued by the State of Bihar, he decided to serve the State of Bihar instead of Union of India, and accepted the post as Assistant Engineer.

From the narration in the writ application, it seems that the petitioner had worked hard to opt out of the services of Union of India and join the State of Bihar some time in the year 2006, though the selection was made in the year 2005. Therefore, it can be safely inferred that it was a conscious decision of the petitioner to work under the State of Bihar by intentionally giving up assignment and responsibility under the Union of India. Now, when the package and perks of the State of Bihar does not match his expectation as to what he was drawing under Border Road Organisation, he is before this Court seeking pay protection.

There was no element of surprise, because the petitioner knew all along as to what the service condition, if not the working condition, is going to be like in the State of Bihar. The appointment under the State of Bihar was a fresh selection and it is not that the service of the petitioner was offered to the State of Bihar or the petitioner was sent by the Union of India for the services in the State of Bihar.

With these parameters and facts, and in absence of requisite rules which can extend protection of pay, which the petitioner is looking for, the respondent-authorities have rightly taken a decision not to give him the benefit, which is not provided in the service condition and rules.

Counsel for the petitioner submits that there are certain provisions in the Service Code, which provides for relaxation of rules under undue hardship

condition.

The relaxation of rules presumes existence of rule. I do not find any rule in the Bihar Service Code which provides for any kind of pay-protection, which the petitioner is looking for which has been reiterated time and again in the various orders. If that is so, obviously the petitioner is looking for advantage which is not available to him within the terms of the rules governing his service condition.

The writ application stands dismissed.

(Ajay Kumar Tripathi, J)

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