

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.594 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 24013 of 2013**

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1. Binod Kumar Saha, I.D. Code No. 1909, Son of Yogendra Prasad Saha, Main Road, Kasba, At & Post Kasba, District- Purnea. At present Director, Dam Safety Cell, Water Resources Department, Patna
 2. Raj Kumar Sinha, I.D. Code No. 1938 Son of Late B.N. Sinha, Resident of A-1/503, Nutan Towers, Kankarbagh Main Road, P.S.- Kankarbagh, Patna-800020, At present working as Superintending Engineer, Sone Canal Modernization Circle, Rohtas
 3. Shiv Prakash, I.D. Code No. 1983, Son of Late Jagdish Narayan Singh, Resident of G-6, P.C. Colony, Kankarbagh, P.S. Kankarbagh, Patna. at present working as Superintending Engineer, Command Area Development Directorate, Water Resources Department, Patna
 4. Md. Raziuddin I.D. No. 1919, Son of Late Md. Bashiruddin, Resident of House No. 315/D Zakaria Colony Sadpura, P.O. Ramna, District- Muzaffarpur. At present working as Superintending Engineer, Project Investigation And Project Preparation Circle, Muzaffarpur
 5. Dinesh Kumar Sinha, I.D. Code No. 1090, Son of Late Jang Bahadur Singh, Resident of A-302, Lekhraj Parisar, Road No. 3, East Patel Nagar Patna. At present working as Superintending Engineer, Planning Investigation And Project Preparation Circle, Patna

.... Appellant/s

Versus

1. The State of Bihar
2. Principal Secretary, Water Resources Department, Government of Bihar.
3. Joint Secretary, (Management), Water Resources Department, Sinchai Bhawan, Patna
4. Principal Secretary to the State Government, General Administration Department, Patna
5. Chairman, Bihar Public Service Commission, Patna
6. Ashok Kumar, I.D. Code No. 1912, Son of Late Sri H.N. Sah, Resident of 201, Prernakunj Apartment, S.K. Puram Lane No. 4, Aryasamaj Road, R.P.S. More, Bailey Road, Patna- 801503, P.S. Rupaspur, District- Patna at present working

as Superintending Engineer (Professor A.R.P. AND P.I.M.) Walmi Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar, Advocate.
Mr. Surendra Prasad Singh, Advocate.

For the State : Mr. Rakesh Prabhat, AC to SC-21

For the BPSC : Mr. Kumar Prajendra Nath, Advocate.
Mr. Subodh Chandra Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 09-09-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order dated 3rd March 2014, whereby the claim of the appellant for promotion to the post of Superintending Engineer remained unsuccessful.

3. The appellants are the Executive Engineers and were given temporary charges of the post of Superintending Engineer. The benchmark was fixed vide Circular dated 30th March 2011 in respect of the promotional post having Grade Pay of Rs. 7600/-, which was required to be “very good”. Such benchmark was for the substantive promotion to the post of Superintending Engineer. In terms of the said Circular, the annual confidential reports of the appellants as well as some of the juniors to the present Appeal were considered. It was

found that ACRs of the appellants do not fulfill the required benchmark. The relevant extract from the counter affidavit of respondent no. 5 reads as follows:

“5- That so far the involvement of the commission in this case is concerned, it is stated that the matter relating to the promotion of the petitioners was taken up in the meeting of the Departmental Promotion Committee (D.P.C.) held on 09.10.2013 presided over by the Commission. The minutes of the meeting of the D.P.C. clearly reveals that the petitioners were not recommended for regular promotion to the posts of Superintending Engineer, because their benchmark in the light of para-7 of the letter No. 922 dated 30.03.2011 (Ann.-5) of the General Administration Department and thus they were not found fit for such a promotion.

6- That from the letter of the General Administration Department of the Govt. of Bihar dated 30.03.2011(Ann.5), it will be evident that for promotion to the posts having Grade pay of Rs. 7600/- and above, the ACR should essentially be of “very good” category for at least 36 months in the last five years. The petitioners do not have the ACR of this category as can be seen at Sl. Nos. 39, 38, 47, 59, 41 and 28 of the consolidated list sent by the Department and thus they were not found fit for such a promotion.”

4. There is no challenge to the gradation criteria fixed on 30th March, 2011. The claim of promotion of the appellants has been considered by the Departmental Promotion Committee and the appellant was not considered fit for promotion for the reason that he

did not meet the benchmark fixed. Therefore, the juniors to the appellants, who had better grading, came to be promoted.

5. We do not find any illegality in promoting the juniors who have better grading and who have made the minimum benchmark fixed by the Circular dated 30th November, 2011 before the promotion was effected on 9th October, 2013.

6. In view thereof, we do not find any merit in the present Letters Patent Appeal which may warrant interference. It is, accordingly, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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