

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4191 of 2011

=====

Satendra Kumar Singh, Son of Late Rupkant Singh, Resident of Village Harahiyan, P.O. and P.S. Shiwaipatti, District Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Engineer-In-Chief, Road Construction Department, Government of Bihar, Patna
4. The Chief Engineer, Road Construction Department, North Bihar Wing, Darbhanga.
5. The Superintending Engineer, Road Construction Department, North Bihar Circle, Maripur, Muzaffarpur.
6. The Divisional Commissioner, Tirhut Division, Muzaffarpur.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Jitesh Singh, Advocate

For the Respondent/s : Mr. Nasrool Hoda Khan, SC-1

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 05-10-2016

Heard Sri Jitesh Singh, learned counsel for the petitioner and Mr. Nasrul Hoda Khan, learned Standing Counsel – 1.

2. The petitioner has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order, contained in letter no. 1022 dated 30-03-2009, passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur (**Annexure – 2**), whereby time bound promotion granted to the petitioner in the year 1993 w.e.f. 05-03-1991 was disapproved. He has further prayed for quashing of consequential order i.e. order contained in Memo No. 2598 dated 13-11-2009 issued under the

signature of Superintending Engineer/respondent no. 5 (**Annexure - 3**), whereby time bound promotion granted to the petitioner w.e.f. 1991 alongwith one Sri Bhulan Kumar Srivastava and Sri Brahmadeo Singh was cancelled. The petitioner had further prayed for restraining the respondents from taking any step for recovery.

3. In this case, by order dated 09-05-2011, while directing the respondents to file counter affidavit, a Bench of this Court had directed that during pendency of this petition, no recovery shall be made from salary of the petitioner on account of cancellation of his time bound promotion, vide **Annexure - 3**. Learned counsel for the petitioner accepts that no recovery has been effected till date.

4. Short fact of the case is that the petitioner was initially appointed as Correspondence Clerk on 05-03-1981. After completion of about ten years he was granted 1st time bound promotion, vide Office Order No. 7083 dated 31st March, 1993. The said time bound promotion was granted w.e.f. 05-03-1991. Thereafter, the petitioner started to discharge his duty honestly and during the further period, he was granted 1st A.C.P. also and subsequently, he was granted 2nd A.C.P. However, 1st time bound promotion, which was granted in the year 1993, was suddenly disapproved by the Divisional Commissioner in the year 2009, vide **Annexure - 2** to the present petition. A plea was taken in refusing to approve the 1st time bound promotion that petitioner had not passed departmental accounts



examination, whereas, fact remains that the petitioner passed Accounts Examination in the year 2008. After the order of disapproval of 1st time bound promotion in the year 2009 was passed, a consequential order has been issued, vide **Annexure - 3** by the Superintending Engineer/respondent no. 5 and 1st time bound promotion of the petitioner has been cancelled.

5. It has been argued that after about 28 years from the date of grant of 1st time bound promotion without any notice or without affording any opportunity to the petitioner, suddenly decision was taken to cancel 1st time bound promotion of the petitioner. Learned counsel for the petitioner, by way of referring to **Annexure - 6** series to the petition i.e. at page 20, submits that in respect of cancellation of time bound promotion, one of the person namely Sri Bhulan Kumar Srivastava, whose name was also incorporated in **Annexure - 3**, a Bench of this Court on 19-01-2011 in C.W.J.C. No. 1022 of 2011 restrained the respondents to take any coercive steps. Learned counsel for the petitioner has brought to the notice of this Court the final judgment passed in C.W.J.C. No. 1022 of 2011, which was passed by this Court on 29-06-2016. This Court in case of Sri Bhulan Kumar Srivastava has quashed the order of cancellation of the 1st time bound promotion taking aid of number of judgments of this Court. Learned counsel for the petitioner submits that petitioner's case stands exactly on similar footing.

6. In this case, counter affidavit has been filed on behalf of respondent no. 5 and from counter affidavit, it is evident that no recovery has been effected.

7. Learned Standing Counsel No. 1, though has opposed the prayer of the writ petition, he was not in a position to distinguish the case of the petitioner with the case of Sri Bhulan Kumar Srivastava i.e. C.W.J.C. No. 1022 of 2011.

8. Keeping in view the fact that in similar circumstance and in respect of one of the person of the same order i.e. Annexure – 3, this Court has allowed the writ petition, there is no reason to pass a different order in the present case.

9. Accordingly, the order contained in Annexure – 2 i.e. order, contained in letter no. 1022 dated 30-03-2009, passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur and Annexure - 3 i.e. order contained in Memo No. 2598 dated 13-11-2009 issued under the signature of Superintending Engineer are hereby set aside.

10. The writ petition is allowed with all consequential benefit.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	
CAV DATE	
Uploading Date	08.10.2016
Transmission Date	