

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14905 of 2007

SURESH PRASAD SINGH, SON OF LATE RAMDEO SINGH, RESIDENT OF
VILLAGE HATHIDAH, POLICE STATION HATHIDAH, DISTRICT PATNA

.... Petitioner

Versus

1. THE STATE OF BIHAR THROUGH THE COMMISSIONER CUM SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF BIHAR, PATNA
2. THE CHAIRMAN, DEPARTMENTAL PROMOTION COMMITTEE CUM MEMBER,
BOARD OF REVENUE, GOVERNMENT OF BIHAR, PATNA
3. THE COMMISSIONER CUM SECRETARY, DEPARTMENT OF COMMERCIAL TAXES,
GOVERNMENT OF BIHAR, PATNA

.... Respondents

Appearance :

For the Petitioner : Mr. Lallan Kumar, Advocate
For the Respondents : Mr. Shiv Kumar, AC to GA 7
For respondent no.4 : Mr. Sanjay Kumar, SC, CBI

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 28-01-2016

The petitioner, who is working as District Accounts Officer in the rank of Assistant Commissioner, Commercial Taxes seeks quashing of the part of recommendation of Departmental Promotion Committee (herein after referred to as “the DPC”) dated 18.4.2007, whereby his promotion has been withheld awaiting sanction for prosecution, keeping a post reserved for him. He further seeks directions to the respondents to give him promotion to the post of Dy. Commissioner, Commercial Taxes in the scale of Rs.12000-16500/- and also to give all other consequential benefits in accordance with law from the date his juniors have been promoted.

2. Before I consider the submissions of rival parties, it would be relevant to notice the facts of the case in brief.



3. The petitioner was working on the post of the District Accounts Officer, East Champaran at Motihari in the rank of Assistant Commissioner. It appears that the first DPC met on 18.04.2007, in which cases of 24 persons were taken up out of which 11 persons were promoted. Petitioner's case could not be considered on merit because of absence of confidential character roll for the relevant period. The next DPC met on 21.11.2007 which recommended seven persons for promotion. Third DPC met on 30.11.2009 which also recommended five persons for promotion. Again case of the petitioner was not recommended for promotion. Being aggrieved, petitioner filed CWJC No. 6221 of 2005 which was disposed of on 21.02.2007 directing the Chairman, DPC-cum-Board of Revenue, Government of Bihar, Patna to convene a meeting of DPC at an early date and consider the case of the petitioner, ensuring that the relevant documents are taken into consideration. Pursuant to order of this court, dated 21.2.2007, passed in C.W.J.C.No. 6221 of 2005, DPC considered the matter of promotion of the petitioner to the post of Deputy Commissioner and kept a post reserved for him. Again on 21.11.2007, DPC considered the matter of promotion of the petitioner and decided to keep his matter with respect to promotion in sealed cover.

4. The petitioner submits that the impugned

actions of the respondents are contrary to settled law decided by the Hon'ble Apex Court in cases of Union of India and others Vrs. K.V. Jankiraman, etc., reported in 1992 (1) PLJR SC 27 and Union of India Vrs. Anil Kumar Sarkar, reported in (2013) 4 SCC 161 and in case of Ramjee Singh vrs. State of Bihar and ors., reported 2016 (1) PLJR 226.

5. The case of the petitioner in short is that neither he has been subjected to departmental proceeding nor charge-sheet was submitted in the criminal proceeding, when DPC met on 18.4.2009 for consideration of promotion of officers from post of Assistant Commissioner to Deputy Commissioner. He submits that sealed cover procedure is adopted only, where a departmental proceeding or charge-sheet is submitted against the delinquent or if there is order of suspension. He thus submits that the respondents could not have withheld the matter of promotion only on the ground of institution of a criminal case against the petitioner.

6. Learned counsel for the Vigilance submitted that of late they have received sanction for prosecuting the petitioner but as sanction, in respect of other officers facing prosecution, had not been granted, the charge sheet in the instant case could not be filed. Counsel for the State submits that the DPC in its meeting, dated 18.4.2009 considered the matter of promotion

of the petitioner to the post of Deputy Commissioner and kept a post reserved for him. On 21.11.2007, DPC, again considered the matter of promotion of the petitioner to the post of Deputy Commissioner and decided to keep his case in sealed cover.

7. I have heard learned counsel for the parties.

8. The issue before this court is whether respondents adopted correct approach in not considering the case of the petitioner for promotion and keeping his case under sealed cover only because of institution of a criminal case, when admittedly no charge sheet has not been submitted.

9. It is not in dispute that no departmental proceeding has been initiated against the petitioner himself. A somewhat similar matter was subject of consideration in case of K.V. Jankiraman (supra). Laying down law, the Hon'ble Apex Court observed that "the sealed cover procedure" is adopted when an employee is due for promotion, increment, etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the finding of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hon'ble Apex Court further clarified that a disciplinary or criminal proceeding would deem to have been commenced only after charge-memo/ charge-sheet is submitted in the case or the person concerned has been put under

suspension. The said view was reiterated in case of Anil Kumar Sarkar (supra). Paragraph 12 of the said judgment is quoted herein below for easy reference:-



It is not in dispute that the respondent had joined the Northern Railways as a Junior Clerk on 04.11.1977, and got promoted time and again. While he was working as a Group 'B' Officer, his case was taken up for promotion to Group 'A' (Junior Scale) of the Indian Railways Accounts Service (IRAS). It is also not in dispute that in the meetings of the DPC conducted on 26.02.2002 and 27.02.2002, the respondent's name was considered and he was placed in the extended select panel. It is further seen that up to 21.04.2003, the date on which the respondent's batch mates were promoted to IRAS, neither any criminal proceedings was initiated against him nor any departmental enquiry was initiated, nor any charge sheet was served upon him and nor he was placed under suspension. Aggrieved by the non-consideration of his representations for promotion, the respondent filed O.A. before the Central Administrative Tribunal. Learned counsel for the Railways, by placing reliance on the Office Memorandum dated 14.09.1992, contended before the Tribunal that a Government servant who is recommended for promotion by the DPC and in whose case the circumstances mentioned in paragraph 2 are in existence, he shall not be promoted. Accepting the above stand of the Railways, the Tribunal rejected the petition filed by the respondent herein.

10. Recently, a Division bench of this court in case of Ramjee Singh Vs. State of Bihar, reported in 2016(1) PLJR 226 reiterated the law laid down by the Hon'ble Apex Court and observed that the "sealed cover procedure" can be adopted in case the departmental proceeding has been initiated or charge-sheet is submitted in a criminal case. There could not be any justification

for the respondents to adopt “sealed cover procedure” when there is no departmental proceeding or criminal proceeding against the delinquent. The Division Bench directed the respondents to forthwith open the sealed cover and to proceed further in the matter.

11. It is well established from catena of decisions that the matter of promotion of a person could be kept in sealed cover only when a departmental or criminal proceeding is pending against him. A Departmental or criminal proceeding is deemed to be pending only when a charge memo is served in a proceeding or charge sheet is filed in criminal case against the delinquent. Only in such circumstances, and also in case a person is put under suspension, “a sealed cover procedure” can be adopted. It is not in dispute that neither any departmental proceeding was initiated against the petitioner nor he was under suspension during the relevant period. Furthermore, no charge sheet has been submitted in the criminal case also. There was no departmental or criminal proceeding against the petitioner when DPC met on 18.4.2007, 21.11.2007 and 30.11.2009. As such, respondents were not correct in adopting “sealed cover procedure”. The Division bench of this court in case of Ramjee Singh observed as follows:-

“Therefore, the Appeal is allowed and the order under appeal is set aside. Consequently, the writ petition is allowed and the sealed cover procedure adopted by the respondents vis-à-vis the petitioner is held to be not in accordance with law. The respondents shall forthwith

open the sealed cover and proceed as though there was no necessity to adopt the sealed cover procedure when the Departmental Promotion Committee met on 7.4.2014. In case the appellant has been cleared by the Committee, he shall be deemed to have been promoted on par with other persons who are cleared by the Departmental Promotion Committee, duly maintaining the seniority as per the rules.”

11. In the light of law laid down by Hon'ble Apex court as noticed above in foregoing paragraphs, respondents I hold that the “sealed cover procedure” adopted by the respondents is not in accordance with law. As such, the respondents are directed to forthwith open the sealed cover content and consider the matter of promotion to the petitioner from the date his juniors have been promoted, preferably within two months from the date of receipt of a copy of this order.

(Samarendra Pratap Singh, J)

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