

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15089 of 2014**

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Ram Niranjan Roy, son of Shri Rameshwar Roy, resident of Village- Rasulpur,  
P.S.- Hayaghat, District- Darbhanga, ex-Deputy Superintendent of Police, Criminal  
Investigation Department, Bihar, Patna and President, Bihar Police Seva Sangh, N6,  
Officers' Flat, New Punai Chak, Patna- 23

.... .... Petitioner

Versus

1. The Union of India through Secretary, the Ministry of Home, Government of India, New Delhi
2. Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi
3. The State of Bihar
4. Secretary-cum-Commissioner, Home (Police) Department, Government of Bihar, Patna
5. Joint Secretary, Home (Police) Department, Government of Bihar, Patna
6. Director General-cum-Inspector General of Police, Bihar, Patna
7. Saurabh Kumar, Superintendent of Police, Gopalganj, Bihar

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Ram Niranjan Roy (Petitioner in person)

For the State : Mr. Sheoshankar Prasad, S.C. 10  
Mr. Sanjay Kumar, A.C. to S.C. 10

For the U.P.S.C. : Mr. Kaushal Kishore Jha, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

**Date: 05-05-2016**

Challenge in the present writ application is to an order dated



3<sup>rd</sup> of October, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as “the Tribunal”) in O.A. No. 333 of 2012 and the order dated 16<sup>th</sup> of January, 2014 passed in R.A. No. 52 of 2013 to seek review of the order dated 3<sup>rd</sup> of October, 2013.

2. The facts leading to the present petition is that the petitioner is an officer of Bihar Police Service, who joined the service on 17<sup>th</sup> of March, 1986. On completion of institutional training for one year after joining, an examination was conducted to test the training undergone but in the subjects of Drill and Horse-riding the petitioner was declared fail. He appeared again in the supplementary examination in the subsequent year but he qualified only in Horse-riding and failed in Drill. Second supplementary examination in Drill was conducted in Bihar Military Police 5, Patna under the orders of Additional Director General of Police on 23<sup>rd</sup> of March, 1993. He obtained 58 marks; whereas the pass marks was 62.5. In these circumstances, the Petitioner claims that there is a provision for awarding 10 per cent grace marks and that with addition of grace marks, he would have qualified the test. The grace marks were awarded to the candidates as a routine but even though the Deputy Inspector General of Police-cum-Principal, Police Training Centre, Hazaribagh made recommendation to the then I.G. (Training), Bihar

but the proposal was not approved. He has levelled allegation that the proposal was not approved on account of his strained relation with his wife, as the I.G. was her relation.

3. After the dismissal of the writ application, the petitioner submitted representation to the Union Public Service Commission that his name has not been sent from Bihar Police Service for promotion to I.P.S. while the name of his batch mates and juniors have been sent. He requested the Chairman, U.P.S.C. to consider his case for promotion to I.P.S. Since the representation was not decided, he filed a writ application C.W.J.C. No. 21977 of 2011 which was disposed of with observation that petitioner has a remedy before the Tribunal. It is thereafter; a writ application was filed which was dismissed on 3<sup>rd</sup> of October, 2013. The review of the said order also stood dismissed on 16<sup>th</sup> of January, 2014. Still aggrieved, the petitioner is before this Court.

4. The petitioner has vehemently argued that he is entitled to grace marks which would make him qualify the subject of Drill consequent to his undergoing one year training and thus he would be deemed to be confirmed officer, which would make him eligible for promotion. It is contended that declining of grace marks to the petitioner is discriminatory as many other similarly situated officers have been granted grace marks but the same benefit has been denied

to the petitioner. Once he qualifies the subject of Drill, he would be eligible for promotion to I.P.S.

5. It is also alleged that denial of grace marks is on account of *mala fide* of the authorities i.e. Respondent Nos. 3 to 5.

6. We have heard the petitioner and find no merit in the present writ application.

7. Suffice it to state that the petitioner alleges *mala fide* against Respondent Nos. 3 to 5 but none of the incumbents holding the said post has been impleaded as a party. The *mala fides* are always against the person and not against the office. Since the person holding the post had not been impleaded as a party, therefore, the allegation of *mala fide* cannot be examined.

Still further, the petitioner earlier filed C.W.J.C. No. 5820 of 2009 claiming grace marks for qualifying in the subject of Drill. The Court dismissed the writ application on 11<sup>th</sup> of May, 2009 holding as under:-

“This police order of 1993 laying down maximum permissible limit for grant of grace marks ipso facto cannot be made applicable to each and every candidate, inasmuch as, such decision is to be taken as per the direction of the Director General/Inspector General and/or the authorities named thereunder. Thus merely because there is some provision for relaxation and/or award of grace marks, that by itself will not make the petitioner entitled for grant of the same for his being considered to get promoted to the post of Superintendent of Police. The police department has to maintain its own standard of



norms laid therein and the same cannot be watered down at least by this Court by directing the respondents to either scale down the requirement or use its discretionary power in the case of petitioner. This Court, therefore, would hardly find any merit in this application which only seeks a direction to the respondents to exercise to their discretionary power to declare the petitioner to have passed the training examination by awarding grace marks. There being no vested right in the petitioner for exercise of this discretionary power, no writ of mandamus can be issued for this purpose.

While this part of order has been dictated counsel for petitioner would submit that as two representation of the petitioner dated 20.6.1995 and 4.6.2004 have remained pending and therefore this Court should at least direct for their disposal by the State Government.

As held above, this Court has not found any right of the petitioner for being awarded grace marks and therefore this Court is not in a position to issue such a direction to the respondents, but in the event the petitioner would like to pursue his internal remedy, he may continue to do so as he has been doing in the last 16 years.”

8. The petitioner filed Letters Patent Appeal No. 1272 of 2009, which was dismissed on 14<sup>th</sup> of January, 2010. As per the petitioner, he has filed Special Leave Petition which is stated to be still pending. It is thereafter; the petitioner invoked the jurisdiction of the Tribunal and remained unsuccessful.

9. The claim of grace marks stands denied unequivocally vide the order dated 11<sup>th</sup> of May, 2009. Such order has been affirmed in appeal as well. Therefore, within this Court, the question of grace

marks has attained finality. The petitioner cannot be permitted to raise demand of grant of grace marks again, either before the Tribunal or before this Court. The matter regarding grace marks stands concluded against the petitioner.

10. The stand of the Union of India is that sending name of eligible officers of the State Police Service is within the jurisdiction of the State Government. The consideration of officers for promotion is the role of Union Public Service Commission. The Union Public Service Commission in reply has pointed out that his name was not recommended by the State Government for consideration as he was not eligible for consideration having not been confirmed in the service for the years 2007-08. In the absence of qualifying training, the petitioner cannot claim to be substantively appointed officer of the State Police Service as is the requirement of I.P.S. (Appointment by Promotion) Rules. Therefore, exclusion of his name from zone of consideration cannot be said to be against the Rules.

11. The entire claim of the petitioner is his entitlement to get grace marks. He has remained unsuccessful in the earlier round of *lis*. He cannot be permitted to raise the same plea again before the Tribunal. Thus, we do not find any error in the order passed by the Tribunal on 3<sup>rd</sup> of October, 2013 or order in review dated 16<sup>th</sup> of January, 2014.

12. The writ application is, thus, dismissed.

**(Hemant Gupta, J)**

**I agree.**  
**Ahsanuddin Amanullah, J**

**(Ahsanuddin Amanullah, J)**

P.K.P.  
N.A.F.R.

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