

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14742 of 2011

=====

Ganga, Sharan son of Late Gajar Prasad Resident of Mohalla- C-C56, P.C. Colony,
Kankarbagh, P.S.- Kankarbagh, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Road Construction Department, Bihar, Patna
3. The Deputy Secretary (Management Cell) Road Construction Department,
Bihar, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak

For the Respondent/s : AC to GA 12

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 20-07-2016

Heard Sri Prabhu Nath Pathak, learned counsel for the
petitioner and learned AC to GA No. 12.

The petitioner , invoking writ jurisdiction of this court
under Article 226 of the Constitution of India, has prayed for
quashing of an order contained in Memo No. 16175 (S) dated
3.12.2010 issued under the signature of Secretary, Road Construction
Department, Government of Bihar, whereby representation filed by
the petitioner in compliance with the order dated 26.7.2010 passed in
CWJC No. 1274 of 2010 and representation of the petitioner for grant
of benefit of 2nd A.C.P. with effect from 13.7.2005 was rejected on
the ground that the petitioner was imposed certain punishment in the
departmental proceeding.



It is specific case of the petitioner that on completion of 24 years which was completed some time in the year 2005 the petitioner was entitled to get the benefit of 2nd A.C.P. whereas persons junior to the petitioner were already granted such benefit vide notification dated 30.5.2006 ignoring the case of the petitioner. There is specific stand in paragraph no. 13 of the writ petition that on the said date there was no departmental proceeding or criminal proceeding pending against the petitioner. Learned counsel for the petitioner by way of referring to the punishment order i.e. Annexure – '7' of the writ petition has drawn attention of this court that a proceeding was initiated subsequently in the year 2007 and thereafter minor punishment was imposed in the year 2010. It has been categorically stated that on the date juniors to the petitioner were granted the benefit of 2nd A.C.P. no proceeding was pending against the petitioner and as such on the ground of pendency or on the ground of subsequent event the petitioner's claim was not required to be rejected. On this very point he submits that the issue has already been set at rest that the situation which was prevailing on the date of claim is to be considered and no subsequent event was required to be taken note of while considering the claim.

In this case counter affidavit has already been filed. Learned AC to GA No. 12 by way of referring to the statement made



in paragraph no. 19 and 20 of the counter affidavit filed on behalf of the respondent no. 3 on 19th April 2016 submits that the claim of the petitioner has rightly been rejected. He submits that while granting benefit under the scheme of A.C.P. same principle is required to be applied which is applicable in respect of grant of promotion. He submits that petitioner was proceeded departmentally and punishment was also imposed and as such he has submitted that the Secretary has rightly rejected the claim of the petitioner vide Annexure – ‘1’ to the writ petition.

Besides hearing I have perused the material available on record. In paragraph no. 13 of the writ petition the petitioner has made specific statement as follows:-

“ 13. That it is reiterated by the petitioner that no criminal case or departmental proceeding was pending against the petitioner on the date of falling of Second A.C.P., i.e., 13-07-2005 or on the date of issuance of Notification, i.e., 30-05-2006 whereunder juniors to the petitioner were given Second A.C.P. with due date”

This statement has been replied by the respondent no. 3 in paragraph no. 12 of its counter affidavit which was filed on 19th April 2016. It would be appropriate to quote the reply given by the respondent no. 3 in paragraph no. 12 which is as follows:-

“12. That it is stated that to consider the promotion in those cases in which against the Government Servant suspension / disciplinary / criminal proceeding is pending, procedure and direction was issued by Personnel and Administrative Reforms Department vide its resolution no. 7457 dated 11.09.2002. From para – 2 of this resolution it is evident that in those cases in which at the date of meeting if departmental / criminal proceeding is pending against the government servant, the recommendation of the committee will be kept in sealed envelope, which will open after disposal of the proceeding and in case of exoneration the government servant will get the promotion from due date. Further para – 2(V) is as follows:-

यदि विभागीय प्रोन्नति समिति किसी भूतलक्षी तिथि के प्रभाव से प्रोन्नति पर विचार कर रही तो भी उपर्युक्त प्रक्रिया के अनुसार मुहरबन्द लिफाफे में निष्कर्ष रखा जायेगा।

Para – 11 of the above resolution provides that if a Departmental Promotion Committee approves the promotion of a Government servant, but information with respect of clause 2(i) is actually received before granting the promotion, in that circumstances, the sealed cover procedure will be adopted.”

On going through the reply the court is satisfied that the reply is completely evasive and it is not specific on the point as to whether on the date on which juniors to the petitioner were granted the benefit of A.C.P. whether any departmental proceeding was pending against the petitioner or not. Accordingly, the court is satisfied that on the date on which the petitioner was eligible for

being given benefit of 2nd A.C.P. no proceeding was pending against the petitioner and as such in view of law settled the petitioner is entitled to get the benefit of 2nd A.C.P. from the date on which juniors to the petitioner were granted the same. The writ petition is allowed. The impugned order is hereby set aside with a direction to the respondents to grant the benefit of A.C.P. and all consequential benefits to the petitioner from the date on which juniors to the petitioner were granted the same.

All the formalities must be completed within a period of three months from the date of receipt /production of a copy of this order.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22-07-2016
Transmission Date	N.A.