

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11954 of 2013

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Deepak Kumar Sinha Son Of Sri Ram Nath Prasad Sinha Resident Of Village -
Amarai Nawada, P.S. Bihiya, District - Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Department Of Home, Government Of Bihar, Old Secretariat, Patna
3. The Director General Of Police, Bihar Old Secretariat, Patna
4. The Additional Director General Of Police, Headquarters, Old Secretariat, Patna
5. The Additional Director General Of Police, Muzaffarpur Range, Muzaffarpur
6. The Inspector General Of Police (Head Quarters & Administration), Bihar, Old Secretariat, Patna
7. The Bihar Public Service Commission, Through Its Chairman Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gouranga Chatterjee, Adv. Mr. Nilanjan Chatterjee, Adv.
For the Respondent/s	:	Mr. Ajay Kumar Rastogi, AAG-10 Mr. Amiya Kunal, J.C. to AAG-10
For the BPSC	:	Mr. Amrendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-10-2016

Heard learned counsel for the petitioner and counsel for the State.

In this case a very limited question has been raised that the date of promotion of the petitioner from 20.6.2011 vide notification no. 4447 be shifted to 25.05.2010.

The petitioner had earlier approached this Court in C.W.J.C. No. 14344 of 2010 wherein he had claimed granting of



promotion and grant of 3rd A.C.P. which was disposed of by this Court with a direction to consider the case with respect to both the benefits claimed by the petitioner. The Additional Inspector General of Police, Headquarter vide order dated 24.8.2013 has given a reasoning for granting the benefit from 20.6.2011 but, in passing the order, it has been recorded the effect of major penalty has ended on 25.5.2010 while the case of the petitioner was under consideration by the Departmental Promotion Committee and recommendation was made that he should be given the benefit of promotion from 25.5.2010 but, that could not be acted upon on account of receipt of the information that the petitioner was facing departmental proceeding vide Departmental Proceeding No. 21 of 2009 in which ultimately the petitioner was given a punishment of censure which will not have any effect on promotion of the petitioner. Again the case was considered along with Deepak Kumar Sinha and the petitioner was granted benefit on 20.6.2011.

A limited prayer has been made by the petitioner that as the effect of the major punishment has ended on 25.5.2010, in terms of Rule 838 of the Police Manual, the minor penalty has no effect on the promotion and thus, the deprivation of his promotion from the due date is illegal.

Learned counsel for the State has dully accepted that if

there is a special rule in the police manual or police order, the Bihar Government Servants (Classification, Control and Appeal) Rule, 2005 will not be applicable to the extent of the conflict in view of Rule 3(d) which reads as follows:-

"3(d) any person for whom special provision is made, in respect of matter covered by these Rules, by or under any law for the time being in force or by or under any agreement entered into with the previous approval of the Government before or after the commencement of these Rules, in regard to matter covered by such special provisions."

Rule 3(d) specifically provides that if a person is covered by the special provision or by any agreement to the extent of the conflict, the employee will be covered by the special provision i.e. Bihar Police Manual. Admittedly, in terms of Police Manual, minor punishment has no effect on granting benefit of promotion which itself appears from the order passed by the competent authority who has deprived promotion for one year.

In such circumstances, this Court directs that the petitioner should be granted benefit of promotion with effect from 25.5.2010 and, for that, the Notification No. 4447 dated 20.6.2011 is directed to be modified to the aforesaid extent and he should be given consequential benefit of the aforesaid period. The curative action will be taken within a period of four weeks from the date of

receipt/production of a copy of this order.

This application is, accordingly, allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.10.2016
Transmission Date	