

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1399 of 2017

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Madhusudan Pathak, S/o late Binda Pathak, Resident of Village Bargaon, P.S. Ram Nagar, District West Champaran, at present resident of Mohalla C-12, Saket Vihar, Anisabad, P.O. Anisabad, District Patna.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Communication and Informant Technology, Department of Telecommunication, New Delhi.
2. The Secretary-cum-Chairman, Department of Telecommunication, Sanchar Bhawan, Ashoka Road, New Delhi.
3. The Member (P), Department of Telecommunication, Sanchar Bhawan, Ashoka Road, New Delhi.
4. Union Public Service Commission through its under Secretary, New Delhi.
5. The Director(C) DOT (HQ), Government of India, Ministry of Communications, Department of Telecommunication, Sanchar, Bhawan, New Delhi.
6. The Under Secretary, Department of Telecommunication, Sanchar, Bhawan, Ashoka Road, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
For the Respondent/s	:	Mr. S.D Sanjay, ASG.
		Mr. Satyavrat Verma, CGC.
		Mr. K.K. Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-04-2017

In this writ petition filed under Article 227 of the Constitution, petitioner calls in question tenability of an order dated 26th of August, 2016 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 489 of 2011. A representation of the petitioner was considered in the backdrop of certain orders passed by the Principal Bench of the Central Administrative Tribunal at New



Delhi on 19.10.2010 in O.A. No. 2199 of 2006. Challenging rejection of the representation on 20th of April, 2011 the present case was filed and the prayer made before the Administrative Tribunal was to grant promotion to the petitioner on the post of Superintending Engineer with effect from 1994 with certain monetary benefit or to grant notional promotion as a Chief Engineer. It is seen that the claim of the petitioner was made before the Tribunal on account of the fact that A.C.R. Gradings for the year 1994-1995 were not communicated to the petitioner and, therefore, in view of the law laid down by the Supreme Court in the case of **Dev Dutt Vs. Union of India & Ors.- (2008) 8 SCC 725**, the proceedings in which the D.P.C. recorded a finding that the petitioner was unfit for promotion is alleged to be bad.

2. This aspect of the matter was considered by the learned Tribunal and in Paragraph 9 the learned Tribunal recorded the following reasons for rejecting the claim of the petitioner:-

“9. There is no dispute about the legal proposition but the applicant stands on a different footing. Had the applicant agitated all these points in his earlier OA filed in 2006, the matter could have been adjudicated. Now, such a plea taken by the applicant is hit by principles of constructive res judicata. Since in the earlier OA, this Tribunal had directed to assign reason for not giving



promotion by the DPC, in the speaking order, the respondents have clarified the position, why the applicant was not found fit for the year 1994-95 but was found fit for the year 1995-96. There is a practical aspect of remitting the matter to the respondents to communicate the below bench mark ACR at this distance of time because by efflux of time, the ACR has been destroyed. The respondents, in pursuance to the direction of this Tribunal, vide order dated 03.02.2016 to produce copy of the ACRs of the applicant in the DPC held in December, 2004, the respondents have come up with a supplementary written statement pleading therein that the applicant was permanently absorbed in BSNL w.e.f. 01.10.2000 by virtue of order passed in August, 2006 [Annexure-A/1], and after absorption of the employee in BSNL, all the dockets of the concerned officers were handed over to the BSNL by the Department of Telecommunication. The DOT had asked ACR of the applicant from BSNL and it was communicated by the BSNBL vide their letter dated 16.06.2016 [Annexure-C/1] that since the applicant had already retired in 2008, no ACR dossier of the applicant is available with them. The respondents have further come up with the plea that as per the Rules of preservation of records of ACR of retired employee is kept only for five years from the date of retirement. So, at this distance of time, the respondents cannot be faulted for not preserving the



ACRs of the applicant. Had the applicant taken the pain of calling for the ACRs in his earlier OA filed in 2006, the documents could have been made available at that time and the matter could have been adjudicated basing on such available documents. Considering from all angles, we did not notice anything irrational in the approach of the respondents calling for interference. Hence ordered.”

3. Keeping in view the aforesaid reasons that weighed with the Tribunal for rejecting the application, we find no error in the same warranting reconsideration in these proceedings under Article 227 of the Constitution. The Tribunal having considered the matter in the right perspective, as is evident from Paragraph 9 of the order passed by the Tribunal, which is reproduced hereinabove, we see no reason to make any indulgence. The writ petition is, therefore, dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.04.2017
Transmission Date	

