

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16632 of 2007

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Ganesh Prasad Choudhari, son of Late Rit Lal Choudhari, resident of village
Khilwat, Bidupur Bazar, P.S. Bidupur Bazar, District Vaishali

.... Petitioner

Versus

1. The State of Bihar through the Commissioner and Secretary, Road Construction Department having his office in Vishwesharaiya Bhawan, P.S. Shastrinagar, District Patna.
2. The Finance Commissioner, Finance Department having its office in Old Secretariat, P.S. Sachivalaya, District Patna.
3. The Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
4. The Principal Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
5. The Additional Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
6. The Under Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
7. The Superintendent of Police, Vigilance Department, Jharkhand, Ranchi.

.... Respondents

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Appearance:

For the Petitioner : Mr. Rupak Kumar, Advocate

For the State : Ms. Divya Verma, AC to AAG 3

For the State of Jharkhand : Mr. Satyavrat Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

C.A.V. JUDGMENT

Date: 19.07.2017

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

2. The present writ petition has been filed for a direction to
the respondents to grant second Assured Career Progression (for short
“2nd ACP”) to the petitioner on completion of 24 years of service from
09.08.1999 in the pay scale of Rs. 14,300-18,300/- as granted to the
persons junior to the petitioner.

3. Subsequently a prayer for quashing a part of the meeting



of the Screening Committee dated 26.07.2007 has been made in I.A. No. 5916 of 2008, which has been permitted to be treated as part of the writ petition by order dated 27.02.2015.

4. I.A. No. 1159 of 2017 has been filed for quashing the subsequent proceedings of the Screening Committee dated 18.08.2010 whereby the claim of the petitioner for grant of 2nd ACP with effect from 09.08.1999 has been kept pending/denied on account of grant of sanction and adverse Vigilance clearance report. Having regard to the nature of the prayer, the same is also treated as part of the writ petition.

5. The short facts of the case according to the petitioner are that the petitioner was appointed in the year 1975 and posted as Assistant Engineer in Rural Engineering Organization, Advance Planning Division, Gaya. He was promoted to the post of Executive Engineer by Notification dated 26.04.1994 wherein his seniority gradation stood at No. 1039 and was placed above Sri Hari Narayan Sinha, Sri Bajrangi Prasad Singh, Sri Bipin Kuamr Verma, Sri Jai Nandan Prasad Singh, Sri Chandeshwar Sharma and Sri Surendra Prasad No. 1, who stood at seniority gradation Nos. 1041, 1043, 1045, 1051, 1052 and 1053, respectively. In due course he was posted at Hazaribagh, Ranchi and Dumka. Consequent upon bifurcation of the State of Bihar, the petitioner was allotted cadre division of Executive Engineer in the State of Bihar. The petitioner accordingly gave his joining in the office



of the Secretary, Road Construction Department, Bihar on 04.11.2004, where he remained in waiting for posting until he finally superannuated on 31.01.2005.

6. Learned counsel for the petitioner submits that having completed 24 years of service, he became entitled to 2nd ACP on 09.08.1999 in view of the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter 'the Rules'). It is submitted that other persons such as Sri Hari Narayan Sinha whose seniority gradation stood below the petitioner, have already been granted the benefit of 2nd ACP, to which the petitioner is also entitled.

7. It is submitted that in the instant case, it is admitted that Vigilance Case No. 23/02 was instituted in the year 2002 relating to a bribe allegedly taken by the petitioner during his posting in Jharkhand, and for which sanction for prosecution against the petitioner was issued on 08.01.2007 by Law Department, Government of Jharkhand. These events were subsequent in point of time and could not have been taken into consideration for grant of 2nd ACP as the petitioner had admittedly become otherwise eligible for the same on 09.08.1999 itself. As evident from the various proceedings of the Screening Committee impugned herein, the benefit of 2nd ACP has not been granted to the petitioner in view of the adverse Vigilance clearance report against him, which is illegal in view of the principles laid down



in various judicial decisions.

8. Learned counsel for the petitioner refers to a judgment of a Division Bench of this Court reported in *Ram Keshwar Ram vs. The State of Bihar and others*, 2015(2) PLJR 659. Relying on two judgments of the Apex Court reported in the case of *Union of India and others vs. K.V. Jankiraman and others*, (1991) 4 SCC 109; and *Union of India and others vs. Sangram Keshari Nayak*, (2007) 6 SCC 704, the said Division Bench of this Court observed as follows —

“In K.V.Jankiraman’s case (supra) it has been clearly held by the Apex Court that criminal proceedings are considered to have been initiated only on the date when the charge-sheet is submitted and with regard to departmental proceedings when the charge-memo is issued. It is not in dispute that on 8.11.1988 there was neither any charge-sheet nor charge-memo issued against the petitioner. As a matter of fact, from the materials on the record it does not appear that there was even any charge for irregularity prior to the said date against the petitioner-appellant. The earliest case of one irregularity in the year 1992 for which recovery has been ordered by the department in the year 1998 is much after 8.11.1988.

Thus, in our view when the DPC met to consider the case of the petitioner on 16.5.2000 it ought to have taken into account only the factual situation as prevailing on and not the consequential events after the said date, i.e., 8.11.1988, contrary to the law laid down in K.V. Jankiraman’s case (supra). In the aforesaid view of the matter, the appeal is allowed. The impugned judgment and order dated 20.5.2005



is set aside. The writ petitioner-appellant is stated to have retired on 30.9.2002. It is directed that he shall be granted promotion to the post of Superintending Engineer with effect from 8.11.1988 and would also be entitled to all consequential benefits thereafter subject to any order passed subsequently in any departmental proceedings or otherwise by the department.”

9. Learned counsel for the respondents on the other hand, submits that the proceedings of the Screening Committee are valid and in accordance with law. It is submitted that the Rules were notified on 25.06.2003, and became effective retrospectively from 09.08.1999. It is submitted that firstly, the Vigilance Case No. 23/02 had already been instituted against the petitioner and was pending in the year 2003 when the aforesaid Rules were notified even though the same may have come into force from a prior date. It is evident therefore, that inasmuch as the Rules were prescribed in the year 2003, there could have been no occasion to consider the same in a matter of grant any time prior to 2003. Secondly, Rule 4(5) of the said Rules states that the procedure for grant of Assured Career Progression under the Scheme would be the same as that laid down for consideration for regular promotion. The Personnel and Administrative Reforms Department has issued a Resolution No. 7457 dated 11.09.2002 in connection with procedure for promotion in respect of Government servant against whom departmental or criminal proceedings are pending. It is evident



from para 2 of the Resolution that if any departmental or criminal proceeding are pending against a Government servant on the date meeting (when the matter is under consideration by the Screening Committee), then the recommendation of the Committee is required to be kept in a sealed envelope to be opened after disposal of the pending proceeding, and in case of exoneration the promotion is to be granted from the due date. It has specifically also been provided that in case the D.P.C. is considering granting of promotion with retrospective effect, even then the sealed cover procedure requires to be adopted. In that view of the matter, it is submitted that Vigilance Case No. 23/02 having been registered against the petitioner in which prosecution was sanctioned and a charge sheet has been filed, the petitioner having been placed under suspension from 02.04.2002 and a departmental proceeding initiated, the Screening Committee has rightly kept the consideration of the petitioner for promotion in abeyance.

10. Learned counsel for the respondents relies on a recent Division Bench judgment of this Court in the case of *The State of Bihar and ors. vs. Dharendra Prasad Srivastava*, reported in 2016(3) PLJR 392 in which the aforesaid Resolution No. 7457 dated 11.09.2002 has been taken note of in the context of claim for grant of 2nd ACP as in the present case. After a detailed consideration of the matter, this Court observed as follows :-

“Having considered the rival contentions, we find force in the submissions of learned counsel for the appellants.



The ACP Rules came only in the year 2003 and much prior to that, in the year 2001 itself the respondent was suspended and departmental proceeding initiated against him. Thus, even though the effective date of grant of 2nd ACP to him would technically be from the year 1999 but on the date of consideration, which obviously is after 2003 when the ACP Rules came into force, the respondent stood disentitled to grant of regular promotion in view of his suspension and pending departmental proceeding in light of the resolution of the State Government bearing No. 7457 dated 11.09.2002. Thus, though the case of the respondent was considered thrice by the Screening Committee, but on 25.11.2006 his case was not recommended due to pendency of the departmental proceeding and again on 02.11.2007 on account of pendency of departmental proceeding and vigilance case and finally on 18.08.2010 due to punishment having been awarded to the respondent. We do not find such action of the authorities is arbitrary or unreasonable."

11. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. The proposition canvassed by the petitioner on the strength of K.V. Jankiraman's case and other decisions relied upon by him are no doubt quite attractive at first brush. It must however be remembered that K.V. Jankiraman's case was decided in the year 1991, well before the Personnel & Administrative Reforms Department's Resolution No.



7457 dated 11.09.2002 came into existence. The other decision of the Apex Court in Sangram Keshari Nayak's case (supra) is also distinguishable from the instant case. In para 11 of the said judgment, it has clearly been observed that indisputably the D.P.C. had recommended the case for promotion, and on the date on which the D.P.C. held its meeting no vigilance enquiry was pending. In the instant case, however, it is not in dispute that the vigilance case, having been instituted in the year 2002, was pending on the date when the Screening Committee held its meeting in the year 2007. The Division Bench of this Court reported in *Ram Keshwar Ram vs. The State of Bihar and others*, 2015(2) PLJR 659 was based mainly on K.V. Jankiraman's case (supra) and did not consider the Resolution No. 7457 dated 11.09.2002. On the other hand, the later decision of the Division Bench of this Court in the case of *The State of Bihar and ors. vs. Dhirendra Prasad Srivastava*, reported in 2016(3) PLJR 392 dealing with the issue of 2nd ACP in the backdrop of Resolution No. 7457 dated 11.09.2002 covers the case of the petitioner directly. It has been clearly held therein that the action of the authorities which is similar to the action in the present case, was not unreasonable. The validity of the aforesaid resolution has not been challenged by the petitioner. In this view of the matter, the respondents cannot be said to have acted arbitrarily as their actions were in accordance with the Department's guidelines in terms of the Resolution referred to above.



12. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
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