

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2636 of 2016

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1. Ajay Kumar Verma Son of late Shyam Narayan Singh Resident of Village - Hajipur, P.S Kinjer District Arwal.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Adv.

For the Respondent/s : Mr. Rajeev Shekhar A.C. to G.A.13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-11-2017

Heard Mr. Prabhu Nath Pathak learned counsel for the petitioner and Mr. Rajeev Shekhar A.C. to G.A.13 for the State.

The petitioner is aggrieved by the order bearing Memo No.4943(E) dated 21.10.2014 of the Engineer- in- Chief-cum- Additional Commissioner- cum- Special Secretary, Road Construction Department, Government of Bihar, Patna impugned at Annexure-1 whereby the prayer of the petitioner for grant of first Assured Career Progression under the Assured Progression Scheme of 2003 and the second Assured Career Progression under the Modified Assured Career Progression Scheme with effect from 29.12.1999 and 1.1.2009 has been rejected inter alia on ground that a vigilance case arising from Vigilance P.S. Case No. 12 of 1999 was pending and in which



sanction was accorded by the Department vide Office order No. 135 dated 12.5.2009 and vide memo No. 282 dated 20.12.2013 chargesheet had been submitted.

Mr. Pathak learned counsel for the petitioner has submitted that as per the details found in the impugned order itself not only the sanction but even the chargesheet in the criminal case was submitted much after the date on which the right of progression had vested in the petitioner. Learned counsel in reference to the circular of the Personnel and Administrative Reforms dated 11.9.2002 at Annexure-10 has submitted that as per the own circular of the State, a criminal proceeding would said to initiate on the date on which a chargesheet is submitted thus since in the present case the chargesheet was submitted only on 20.12.2013, the petitioner could not have been denied the benefit under the two progression schemes because until 20.12.2013 no proceeding had been initiated against the petitioner.

Learned counsel in support of his submission has relied upon a bench decision of this Court arising from C.W.J.C. No. 19876 of 2011 at Annexure-7 and a Division Bench judgment of this Court reported in **2015 (2) PLJR 659 (Ram Kishwar Ram Vs. The State of Bihar)**. He submits that this Court in reference to the legal position settled by the Supreme Court in the case of **Union of India & Ors. Vs. K.V. Jankiraman & Ors.** since reported in **(1991) 4 SCC 109: (1992)1**



PLJR (SC) 27 has held that a mere pendency of a departmental proceeding or a criminal proceeding would not be sufficient to deny a promotion to an incumbent unless a charge memo in the disciplinary proceeding and a chargesheet in a criminal proceeding is submitted during the period of consideration.

Mr. Shekhar while defending the impugned order has relied upon Division Bench judgment of this Court reported in **(2016) 3 PLJR 392 (State of Bihar & Ors. Vs. Dhirendra Prasad Shrivastava)** to submit that the Division Bench has held that in case any proceeding is pending on the date of consideration, it would disentitle the incumbent to the benefit.

I have heard learned counsel for the parties and I have perused the records.

The facts are not in dispute and the petitioner prays for grant of first Assured Progression with effect from 29.12.1999 on completion of 12 years of service under the A.C.P. Scheme of 2003 and for a second progression with effect from 01.01.2009 under the Modified Assured Career Progression Scheme of 2010 which was made effective from 01.01.2009. It is again not in dispute that although the Vigilance Case in question was instituted way back in 1999 but it took almost a decade for the Department to accord sanction for prosecution of the petitioner which was done vide memo No.135 dated 12.5.2009



and it took a further four years for the vigilance to submit a chargesheet which was submitted only on 20.12.2013. On principle, Mr. Shekhar is correct and if any departmental proceeding or a judicial proceeding is pending against an incumbent on the date of consideration of his case for promotion, in which a charge memo/chargesheet is submitted, it certainly shall prejudice his case but a mere pendency of a departmental or a judicial proceeding has been held insufficient for denial of any promotional benefit to any Government employee. The judgment relied upon by Mr. Shekhar gives no different opinion. In fact, it confirms this position. In the case of **Dhirendra Prasad Srivastava** (supra) while the petitioner had been granted the first A.C.P. benefit, his claim for second benefit after 24 years of service was denied because the departmental proceeding was initiated on 20.8.2001 and culminated in a punishment order on 13.9.2004 and thus the Screening Committee meeting held on 25.11.2006 rejected his claim for the second progression benefit.

The Division Bench in the case of **Ram Kishwar Ram** (supra) while relying upon the case of **K.V. Jankiraman** (supra) has at paragraph 17 of the judgment held, that to deny a benefit of Promotion to a Government servant it has to be demonstrated that at the relevant time a charge memo or a chargesheet has already been issued to the employee concerned when his case was taken up for



consideration by the Screening Committee for considering the grant of such benefit.

Such is not the case here and when the Screening Committee met to consider the case of the petitioner for grant of first and second progression on 26.8.2013 the chargesheet was yet to be submitted in the case of the petitioner and which was submitted on 20.12.2013 and thus the pendency of the criminal case was not a relevant consideration for disallowing the benefit. In fact the proceedings of the Screening Committee appears ante dated because while the meeting was held on 26.8.2013, it notices the charge sheet yet to be submitted against the petitioner on 20.12.2013.

The petitioner claims benefit of progression under the A.CP Scheme (s) in force w.e.f 29.12.1999 and 01.01.2009 respectively and it is undisputed that until 01.01.2009 or even thereafter no proceeding was pending against the petitioner for being denied the benefits and a submission of chargesheet on 20.12.2013 could not deny the benefit to the petitioner.

For the reasons discussed, the order bearing memo No. 4943 (E) dated 21.10.2014 passed by the Engineer- in- Chief-cum- Additional Commissioner- cum- Special Secretary, Road Construction Department, Government of Bihar, Patna impugned at Annexure-1 is quashed. The writ petition is allowed.



Let the petitioner be provided with the progression benefits under the A.C.P. Scheme, 2003 and the MACP Scheme, 2010 from the date from which he has become entitled, for which order be passed by the competent authority within 8 weeks from the date of receipt production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2017
Transmission Date	NA

