

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14259 of 2007

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Ashok Kumar Chaudhary, son of Late Ramprit Chaudhary, resident of Village, P.O., P.S. Garkha, District- Saran presently posted in the District Land Acquisition Office, Chapra, Saran on the post of Draftman.

.... Petitioner

Versus

1. The State of Bihar.
2. Land Reforms Commissioner, Patna, Bihar.
3. Commissioner Saran, Pramandal, Chapra, Saran
4. District Magistrate, Chapra
5. District Land Acquisition Officer, Chapra, Saran.

.... Respondents

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Appearance :

For the Petitioner : Mr. Birendra Nath Mishra, Advocate.
For the Respondents : Mr. Anshuman Singh, AC to PAAG-1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 28-07-2017

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 promotion to the petitioner to the post of Circle Inspector/Kanoongo with consequential benefits.

3. The short facts of the case according to the petitioner, are that he joined Government service on 15th November, 1990 on the post of Draftsman. The promotional post of Circle Inspector/Kanoongo fell vacant for which the process for promotion started in the year 1999-2000 when the seniority list was directed to be prepared at the Pramandal level of the Revenue Office. Despite the petitioner's eligibility however, he was not granted promotion until finally an order of provisional promotion was issued vide memo no.



379 dated 07.02.2012 (Annexure-1 to the I.A. No. 3463 of 2017). Such order was cancelled soon thereafter in terms of letter dated 16.04.2012 by the Principal Secretary, Revenue and Land Reforms Department, Patna (Annexure-B to the counter affidavit filed on behalf of respondent nos. 4 and 5). Consequential order was passed by the District Magistrate, Saran at Chapra vide memo no. 124 dated 31.01.2013 (Annexure-C to the counter affidavit). The said orders of cancellation dated 16.04.2012 and dated 31.01.2013 (Annexures- B and C), have also been challenged in I.A. No. 3463 of 2017.

4. Learned counsel for the petitioner submits that the petitioner ought to have been promoted to the post of Circle Inspector/Kanoongo as he was eligible at the time when there was vacancy and for which the process for promotion had commenced in the year 1999-2000. It is submitted that a provisional order of promotion was passed as far back as on 21.08.1991 (Annexure-7) but the benefits were never made available to the petitioner. It is further submitted that similarly situated persons being Amins had been granted relief pursuant to two orders of this Court passed in C.W.J.C. No. 11263 of 1993 and C.W.J.C. No. 9787 of 2005 (Annexure-9 series). In this regard, he submits that the petitioner being a Draftsman stands at par with Amin and Surveyor for purposes of promotion in view of memo no. 1157 dated 24.09.1985 (Annexure-2).

5. Learned counsel for the respondents, on the other hand, opposes the writ petition, submitting that the petitioner was



granted provisional promotion by memo no. 379 dated 07.02.2012. The same however had to be cancelled in terms of the impugned order dated 16.04.2012 issued by the Principal Secretary, Revenue and Land Reforms Department, Patna on the ground that the petitioner was not eligible for promotion having regard to para 8(kha)(i)(ii)(iii) of the Bihar Revenue Service Rules, 2010 which required a minimum qualification of Graduate as well as passing the Departmental Limited Competitive Examination. It was held that the provisional promotion granted to the petitioner was not in accordance with Rules and accordingly the same was cancelled.

6. Having heard the parties and on consideration of the material on record, this Court finds merit in the writ petition. It is not in dispute that a provisional order of promotion was issued in the year 1991 (Annexure-7) which was not cancelled but at the same time not giving effect to either. In any event, it is also not in dispute that the petitioner was otherwise eligible for promotion when the post of Circle Inspector/Kanoongo fell vacant and for which a process of promotion was commenced in the year 1999-2000. Learned counsel for the respondents have not demonstrated that at that point of time there was any requirement for clearing the Departmental Limited Competitive Examination. It also becomes apparent from the orders of this Court dated 11.11.2004 and dated 08.11.2006 (Annexure-9 series) that relief was granted to Anchal Amins who are clearly similarly situated as the petitioner in view of memo no. 1157 dated 24.09.1985



(Annexure-2) according to which Amin, Surveyor and Draftsman were eligible for promotion to the post of Circle Inspector/Kanoongo alike. In that view of the matter, the petitioner could not have been denied the benefit of promotion as granted to other similarly situated persons as noticed above. The cancellation of the provisional promotion granted to the petitioner is also not in accordance with law as the same has been made with reference to the 2010 Rules which were not applicable to the petitioner at the time when he was already eligible for promotion as far back as in the year 1999-2000 itself.

7. The impugned orders dated 16.04.2012 and dated 31.01.2013 (Annexures- B and C to the counter affidavit of respondent nos. 4 and 5) are accordingly hereby quashed with a direction to the concerned respondents to consider the case of the petitioner for promotion to the post of Circle Inspector/Kanoongo in the light of the observations made hereinabove.

8. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
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