

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12235 of 2016**

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The Union Public Service Commission through Secretary, Dholpur House,  
Shahjahan Road, New Delhi.

.... .... Petitioner

Versus

1. Prantosh Kumar Das, son of Late Nakul Kumar Das, resident of Uma Charan Lane, Kharamancha, P.S Kotwali in the town and district- Bhagalpur.
2. The Union of India through Secretary, Ministry of Home Affairs North Block, New Delhi-110011
3. The Under Secretary, Ministry of Home Affairs, Government of India, New Delhi.
4. The Director (Police), Ministry of Home Affairs, Government of India, New Delhi.
5. The Home Secretary, Government of Bihar, Patna.
6. The Additional Secretary, Government of Bihar, Home (Police), Department, Bihar, Patna.
7. The Deputy Secretary, Government of Bihar, Home (Police), Department, Bihar, Patna.
8. Sri Jitendra Kumar Mishra, son of not known, posted as AIG. BMP Bihar, Patna, Presently posted as S.P. (Rail), P.S Gandhi Maidan, District- Patna, Bihar.
9. Shri Shekhar Kumar, son of not known, posted as Commandant, Home Guards, Bihar, Patna, Presently posted as S.P. (Home Guard), P.S- Gandhi Maidan, District- Patna, Bihar.
10. Sri Sudhir Kumar Singh, son of not known, posted as S.P (Training), Patna, Presently posted as Commandant, B.M.P-8, Town & P.S- Begusarai, District- Begusarai, Bihar.
11. Sri Shankar Jha, son of not known, posted as Commandant, Bihar Military Police (B.M.P) 03, Bodh Gaya, Presently Posted as S.P, Economy Offence Unit, P.S- Shastri Nagar, District- Patna.

.... .... Respondents

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**Appearance:**

- For the Petitioner/s : Mr. Sushant Kumar Dutta with  
Mr. Kumar Pradeep Narayan, Advocates.
- For the Respondent no.1 : Mr. Prashant Kumar Sahi, Sr. Advocate and  
Mr. Sachindra Kumar Tiwari, Advocate.
- For the Respondent no.2-8: Mr. S.D. Sanjay, Addl. Solicitor General &  
Mr. Akshay Bahadur Mathur, C.G.C.
- For the Respondent 5,6&7: Mr. Lalit Kishore, PAAG &  
Mr. H.S. Roy, AC to PAAG I.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**and**  
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 17-07-2017



Heard Mr. Sushant Kumar Dutta, learned Advocate assisted by Mr. Kumar Pradeep Narayan, learned Advocate for the petitioner; Mr. Prashant Kumar Sahi, learned Senior Advocate assisted by Mr. Sachindra Kumar Tiwari, learned Advocate for respondent no. 1; Mr. S.D. Sanjay, learned Senior Advocate and Additional Solicitor General for respondent no. 2 and Mr. H.S. Roy, learned AC to PAAG 1 for respondents no. 5, 6 & 7.

**2.** The Union Public Service Commission (in short “the UPSC”) through its Secretary has invoked the writ jurisdiction of this Court with a prayer to quash the judgment / order dated 02.12.2015 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as “the CAT, Patna Bench”) in Original Application (in short “OA”) no. 830/2012 by which while disposing of the OA, the learned CAT, Patna Bench has directed the petitioner herein to convene a review Departmental Promotion Committee meeting with respect to the OA applicant, who is the respondent no. 1 in the Writ Application, and to reconsider his name for induction into Indian Police Service for the Select List of the Year 2010 of Bihar Cadre.

**3.** O.A. No. 830/2012 was filed by the Applicant – Respondent No. 1 for a direction to the Respondents to include the name of the applicant in Annexure A/1 of the O.A. and also in the



impugned order issued by the Ministry of Home Affairs, Govt. of India on the basis of which Annexure A/1 has been issued in between the name of Sri Virendra Narayan Jha and Sri Shankar Jha. Applicant also prayed for setting aside the Select List of 2010 and the respondents be directed to issue promotion order of the Applicant to the post of IPS cadre for the vacancies of the year 2010. he also prayed for consequential reliefs.

4. In order to fully appreciate the case of the Applicant and the Respondents in which the impugned order has been passed by the CAT, Patna Bench we need to go into the background facts and judicial pronouncements in the earlier round of proceedings.

#### **Facts of the Case**

5. The respondent no. 1 was appointed in the rank of Deputy Superintendent of Police on 19.06.1990, against direct recruitment quota through the Bihar Public Service Commission, 35<sup>th</sup> Batch. The respondent no. 1 was served with a chargesheet with an allegation that he had illegally supervised Biraul P.S. Case No. 31/2000 as false. He submitted his show cause reply, however, not being satisfied with the show cause reply of the respondent no. 1, the Home (Police) Department initiated a departmental proceeding against him. In the departmental proceeding, the respondent no. 1 took a stand that the opinion tendered in course of supervision of a case cannot constitute misconduct unless motive is attached to such a



report.

6. In the year 2008 a Departmental Promotion Committee (in short “DPC) was constituted to consider the promotion of the incumbents holding the post of Deputy Superintendent of Police to the next higher post of Senior Deputy Superintendent of Police, however, the respondent no. 1 was not considered because of pendency of the departmental proceeding against him; even sealed cover procedure was not adopted and some junior Deputy Superintendents of Police were promoted vide Notification dated 08.08.2008 with effect from due date, i.e., 01.11.2000. The respondent no. 1 was held guilty. Penalty of ‘Censure’ and withholding of one increment with non-cumulative effect was awarded against Respondent no. 1 vide order dated 02.03.2009 passed by the disciplinary authority. An appeal preferred by the respondent no. 1 was also rejected; thereafter, the respondent no. 1 filed a Writ Application being CWJC No. 9157/2010 in this Court.

7. CWJC No. 9157/2010, which was filed against the order of punishment, was finally allowed vide order dated 14.10.2011 and the punishment awarded to the respondent no. 1 was set aside; the matter was remitted to the disciplinary authority to consider the matter afresh from the stage of submission of reply of the respondent no. 1 to the second show cause notice. The department, after issuing second show cause to the respondent no. 1 and upon getting his reply,



reiterated the penalty of 'Censure' and withholding of one increment without cumulative effect which was passed earlier on 02.03.2009.

8. In the meantime the petitioner was promoted to the post of Senior Deputy Superintendent of Police vide order dated 05.07.2010 with effect from 03.03.2010.

9. The respondent no. 1 filed another Writ Application being CWJC No. 20090/2010 for quashing a part of Memo no. 5447 dated 05.07.2010, issued under the signature of the Deputy Secretary, Home (Police) Department whereby he had been promoted to the post of Senior Deputy Superintendent of Police with effect from 03.03.2010 instead of 01.11.2000 with all consequential benefits. On 31.12.2010, juniors to the respondent no. 1 were promoted to the post of Additional Superintendent of Police with effect from the same date; however, the petitioner was promoted to the post of Additional Superintendent of Police on 31.03.2011 with effect from 03.03.2011. The respondent no. 1 challenged the date of promotion as according to him he ought to have been promoted to the post of Additional Superintendent of Police with effect from 31.12.2010. This challenge was made by filing I.A. No. 3729/2013 in the said Writ Application. During pendency of the writ the disciplinary authority passed a fresh order of punishment on 22.02.2013 reiterating the punishment imposed vide order dated 02.03.2009. The said Writ Application came up for consideration on 12.08.2013. The learned Single Judge upheld



the contention of the writ petitioner – respondent no. 1 that he was entitled to promotion to the post of Deputy Superintendent of Police with effect from 01.11.2000, i.e., the date on which his juniors were promoted, and to the post of Additional Superintendent of Police with effect from 31.12.2010, i.e. the date on which his juniors were granted promotion. The learned Single Judge was also of the view that both the punishment of ‘Censure’ and withholding of one increment with non-cumulative effect imposed on the petitioner – respondent no. 1 vide order dated 02.03.2009 are minor punishments, the effect of which would last only for a year. The adverse effect thereof lasted only for a year, i.e. upto 02.09.2010. The learned Single Judge also observed that the writ petitioner – respondent no. 1 did not suffer from any disability in the year 2000 because no proceeding was pending against him at that point of time and his case ought to have been considered for promotion to the post of Senior Deputy Superintendent of Police. The learned Single Judge noted that no DPC meeting was held till 08.08.2008, though promotion became due in November, 2000 and had the DPC meeting been held promptly or even before 2007, the petitioner would have got his promotion as there was no disability against him inasmuch as the departmental proceeding was started against the petitioner in the year 2007 only.

**10.** Being aggrieved by the order dated 12.08.2013 in CWJC No. 20090/2010, a Letters Patent Appeal, being LPA No.



667/2014, was filed by the State of Bihar and its authorities. A number of grounds were taken to assail the order passed by the learned Single Judge. The Hon'ble Division Bench of this Court referred the relevant portion of the judgments in the case of **All India Groundnut Syndicate Ltd. v. Commissioner of Income Tax, Bombay CT**, reported in **AIR 1954 Bombay 232**, and **Mangalor Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes and Ors.**, reported in **1992 Suppl. (1) SCC 21**; in both these cases the ratio laid down is that the State cannot take advantage of its own delay. Having observed that the delay in holding DPC meeting cannot extinguish the right of a person to be considered for promotion. The Hon'ble Division bench proceeded to consider an issue:

As to whether the punishment of 'Censure' would operate prospectively as held by the learned Single Judge or would relate back to the period of omission and commission of the occurrence?

**11.** The State had taken a stand that the punishment of 'Censure' would operate retrospectively and would relate back to the period of occurrence; in support thereof reliance was placed on the Explanation 2(i) to Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) (Third Amendment) Rules, 2010.

**12.** Upon a careful consideration of the Government



Resolution, the Hon'ble Division bench came to a conclusion which reads thus:

“25. In view of the Government Resolution aforementioned, the adverse effect of the ‘censure’ disabled the writ petitioner from being considered for promotion up to the year 2002-03. The State Government erred in law in coming to the conclusion that the writ petitioner could be considered for promotion only with effect from 31.12.2010. The learned single Judge, too, was incorrect in taking the view that the writ petitioner did not suffer from any disability in the year 2000-01. As per the Government’s said Resolution, the censure, though awarded in the year 2009, ought to be entered in the character roll of the employee for the year 1999-2000 and the effect thereof would operate till 2002-03, i.e., 31.03.2003. The writ petitioner, as such, would be entitled for promotion to the post of Senior Deputy Superintendent of Police with effect from 31.03.2003 and not with effect from 31.12.2010, as initially held by the Government, or with effect from 01.11.2000, as has been ordered by the learned single Judge.”

**13.** The Hon'ble Division Bench noted further that the Government too realised the position of law and admitted in its counter affidavit that the writ petitioner – respondent no. 1 had become fit for consideration for promotion after 31.03.2003. Further, the Hon'ble Division Bench affirmed the view of the learned Single Judge as respect the effect of the punishment of stopping increment with non-cumulative effect for one year. Further, as regards the fresh order of punishment passed on 22.02.2013, the Hon'ble Division Bench took a view that the government had adopted a peculiar stand that the writ petitioner – respondent no. 1 would now remain unfit for



promotion till 31.06.2014. It was observed by the Division Bench that the order of this Court in another Writ Petition directing the disciplinary authorities to consider the guilt as well as quantum of punishment, cannot be turned to disadvantage of the petitioner; more so, when the earlier punishment withholding one increment on 02.03.2009 was, in fact, reiterated by the Government on 22.02.2013. Relying upon a judgment of the Hon'ble Apex Court in **L. Rajaiah v. Inspector General of Registration & Stamps, Hyderabad & Ors.**, reported in (1996) 8 SCC 246, the Hon'ble Division Bench finally held that the effect of withholding of increment would also relate back to the date of original punishment awarded on 02.03.2009. Hence, the adverse effect of stoppage of increment would continue from the date it becomes due, i.e., 30.06.2009 for one year, i.e., upto 30.06.2010. The Division Bench affirmed the observation of the learned Single Judge that the petitioner – respondent no. 1 did not suffer from any disability on 31.12.2010, when his juniors were granted promotion to the post of Additional Superintendent of Police.

**Cause of Action for O.A. and the Developments during its pendency**

14. The cause of action for filing OA was the Select List published pursuant to the DPC meeting held on 30.07.2012 in which respondent no. 1 was declared unfit for promotion to the Indian Police Service cadre in the Select Lists of 2009 and 2010. During the



pendency of the OA, the judgment of the Hon'ble High Court in CWJC No. 20090/2010 and LPA No. 667/2014 had already been delivered, therefore, those orders being available on record, the CAT, Patna Bench noticed the developments, particularly, that this Court had already dealt with the issues involved in the OA.

### **Stand of the UPSC**

**15.** The stand of the UPSC has been specifically taken note of in paragraph 6 of the impugned order; the essence of the stand is that the name of the applicant was though considered but the same was rejected due to penalty of 'Censure' along with withholding of one increment without cumulative effect imposed on the officer on 02.03.2009. The UPSC informed the CAT, Patna Bench that the order dated 14.10.2011 passed in CWJC No. 9157/2010 setting aside the order dated 02.03.2009 was not informed by the State Government to UPSC in their proposal.

### **Stand of the State of Bihar**

**16.** We are also surprised on the stand taken by the State of Bihar at the time of final hearing of the OA on 02.12.2015. On that day, the Division Bench judgment in LPA No. 667/2014 was very much available on the record and the same had attained finality, still a plea was taken on behalf of the State that even though the order dated 14.10.2011 was passed by the learned Single Judge in CWJC No. 9157/2010 but the High Court did not exonerate the applicant from



the charges levelled against him and the departmental proceeding was still pending on the date the meeting of the Selection Committee was held.

**17.** The stand taken by UPSC is definitely a matter of concern to be noted by this Court as it clearly shows the unfairness on the part of the State Government and its authorities who did not place true and correct facts in the proposal submitted to the Selection Committee who met on 30.07.2012.

**18.** The plea taken on behalf of the State was not a *bona fide* plea as the Hon'ble Division Bench had already concluded the issue by holding that the effect of the punishment order dated 23.03.2013 would not extend to the period beyond 30.06.2010, i.e., one year from the first order of punishment dated 02.03.2009 was effective.

**19.** Having considered the submissions of the parties, the CAT, Patna Bench came to a conclusion and, in our opinion, rightly so that the applicant – respondent no. 1 did not suffer from any disability as on 31.12.2010 and thus he was eligible to be considered for promotion for the vacancy year 2010. On 30.07.2012, when the DPC held its meeting, the committee was not informed of the order passed by the learned Single Judge on 14.10.2011 which is an admitted fact and hence the learned CAT, Patna Bench set aside the observation made in the Selection Committee meeting held on



30.07.2012 to the extent it relates to the case of the applicant against the vacancy year 2010 and then the Bench issued a direction to the UPSC to convene the review DPC with respect to the applicant against the vacancy year 2010 within a period of two months from the date of receipt / production of the order.

**20.** It is worth pointing out that the applicant had impleaded the private respondents no. 8 to 11, who were likely to be affected by the order passed in the OA, however, despite service of notice they did not choose to appear in the proceeding and have not contested the issue. After filing of the OA, the CAT, Patna Bench passed an interim order dated 28.09.2012 with a direction that if any appointment to the IPS cadre is made on the basis of the Select List of the year 2010 and options called for, then the appointment of junior most person shall be subject to the outcome of the OA. The Patna Bench of the CAT has now directed the respondent authorities that if the applicant is found otherwise eligible, the respondents shall grant him appointment against the vacancy year 2010 with all consequential benefits.

**21.** Mr. Sushant Kumar Dutta, learned advocate, though attempted to assail the order passed by the CAT, Patna Bench on 02.12.2015 in the OA No. 830/2012, however, he admitted in course of hearing that the DPC was not aware of the order passed by the learned Single Judge on 14.10.2011 as the same was not brought to its



notice by the concerned department of the Government of Bihar in the proposal placed before the committee. In view of this admitted position, Mr. Dutta could not and, in our opinion, has rightly not gone into the issue of the effect of the punishment order passed against the applicant – respondent no. 1 as the issue had already been settled by a co-ordinate bench of this Court in LPA No. 667/2014.

**22.** Mr. Prashant Kumar Sahi, learned Senior Counsel appearing on behalf of the respondent no. 1 has submitted that it is the own stand of UPSC before the CAT, Patna Bench that the Selection Committee had no information about the order of the learned Single Judge dated 14.10.2011, therefore, there was no reason why the UPSC chose to file the present Writ Application. The learned Senior Counsel submitted that in the facts and circumstances the applicant – respondent no. 1 has, in fact, been made to suffer despite repeated judicial orders passed by this Court on earlier occasions. Although a counter affidavit has been filed on behalf of the respondents no. 5 to 7, however, at the time of hearing, no explanation could be offered as to why the State Government did not place the true and correct facts before the Selection Committee. In the entire counter affidavit only the facts relating to passing of the punishment orders have been reiterated. In the last paragraph of the counter affidavit, only a vague statement has been made that the State Government is only responsible for placing the service records of the officers in the zone



of consideration before the Selection Committee and that the respondents placed the relevant records of the applicant before the Selection Committee. In the opinion of this Court, the stand of the State of Bihar is totally vague and there is no explanation to the reasons shown by the UPSC saying that in the proposal there was no information about the order of the Hon'ble Court.

**23.** Having heard the counsel for the parties and upon perusal of the records, we are of the considered opinion that the effect of punishment imposed upon the Respondent No. 1 came to an end on 30.06.2010 as has been concluded by a co-ordinate Bench of this Court and on 30.07.2012 when the DPC was held there was no order of punishment which fact was not brought to the notice of UPSC which resulted in miscarriage of justice as against the Respondent No. 1; therefore, we do not find any illegality or infirmity in the order dated 02.12.2015 passed by the learned CAT, Patna Bench in OA No. 830/2012.

**24.** Before we part with this order, the UPSC is reminded of the interim order dated 28.09.2012 and then the direction of the CAT, Patna Bench to convene a review DPC with respect to the applicant within a period of two months from the date of receipt / production of a copy of this order. Instead of two months almost one and half years have gone by now and, therefore, it would be in the fitness of things to direct the UPSC to convene review DPC in respect



of the applicant – respondent no. 1 as ordered by the Tribunal and the whole exercise must be completed within a period of one month from the date of receipt / production of a copy of this order.

**25.** The Writ Application is dismissed. No order as to costs.

**(Rajeev Ranjan Prasad, J)**

**Agree**  
**Ajay Kumar Tripathi, J.-**

**(Ajay Kumar Tripathi, J)**

Dilip, AR

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| AFR/NAFR          | <b>AFR</b> |
| CAV DATE          | 11.07.2017 |
| Uploading Date    | 17.07.2017 |
| Transmission Date | N/A        |

