

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15509 of 2007

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Ram Nandan Pd.Srivastava son of late Bharat Prasad, resident of Marappa Bhawan,
Subhash Colony, Balua Tar, P.S. Motihari, District East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Development Department,
Vishwaswaraiya Bhawan, Bailey Road, Patna.
2. Engineer-in-Chief, Rural Works Department, Vishwaswaraiya Bhawan, Bailey
Road, Patna.
3. Superintending Engineer, Rural Works Department, Bettiah Circle, Bettiah,
West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. DHANENDRA CHAUBEY
Mr. Pramod Pandey

For the Respondent/s : Mr. (GA2)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 06-02-2017

Heard learned counsel for the petitioner and the
State.

The present writ application has been filed for a
direction to the respondent authorities to promote the petitioner
on the post of Head Clerk with effect from 29.9.1996, from
which date juniors to the petitioner, have been promoted and
further to allow the consequential payment of financial benefits
from the date of actual promotion.

The factual matrix would unveil that the petitioner
joined on 8.1.1971 as Correspondence Clerk in Rural
Engineering Organization at Works Division, Motihari. The
petitioner was granted junior selection grade on 1.4.1981 vide
Government's letter no. 949 dated 29.4.1985, as contained in



Annexure 1, wherein, the name of the petitioner appears at serial no. 6, while the name of Narendra Kumar Verma appeared at serial no. 7. Subsequently, the petitioner was promoted to the post of Head Clerk, though the writ petition does not disclose the same, but Annexure 2 which is final seniority list of Head Clerks issued on 17.6.2005 reflects that the petitioner joined as Head Clerk on 11.4.2005. In Annexure 2, for the first time, Narendra Kumar Verma was placed at serial no. 4 since he gave joining as Head Clerk on 29.9.1996 whereas the name of the petitioner was placed at serial no. 23 as he joined as Head Clerk on 11.4.2005. Thereafter, the six Head Clerks were promoted as Head Assistants vide Memo No. 3229 dated 20.8.2005, issued under the signature of Secretary to Engineer-in-Chief as contained in Annexure 4 in the payscale of Rs.5500-9000 on adhoc basis where the name of Narendra Kumar Verma finds place at serial no. 4, but the name of the petitioner does not find place in Annexure 4.

It is submitted by learned Counsel for the petitioner that the petitioner has only prayed for granting him promotion on the post of Head Clerk with effect from 29.9.1996 but the same has been denied, only due to creation of new Works Circle, Bettiah from the old Works Circle, Muzaffarpur, whereupon the



services of the petitioner fell under new Works Circle, Bettiah but the juniors to the petitioner were promoted in Muzaffarpur Works Circle, while the petitioner was not promoted as such.

The attention of this Court has been brought to letter no. 5265 dated 9.8.1977, as contained in Annexure 3, issued under the signature of the Chief Engineer, REO to the effect that in case of transfer of clerks on administrative reasons from one circle to another, they will retain the seniority of the circle where they were initially posted and they will be given their due promotions, but contrary to that the petitioner's promotion as Head Clerk has been denied. Though the petitioner submitted a detailed representation to Engineer-in-Chief vide Annexure 5 on 30.1.2004 but the same has not been disposed of, and the petitioner has now retired as Head Clerk on 28.2.2010.

Learned counsel for respondent State submits that the petitioner joined on 8.1.1971 in the office of Rural Works Division, Motihari, which fell under Rural Engineering Organization, Works Circle, Muzaffarpur. It is next contended that in the year 1986, Bettiah Work Circle was newly created from old Works Circle, Muzaffarpur, after that the service of the petitioner fell under the newly created R.E.O., Works Circle, Bettiah, under Work Division, Motihari. Consequent to this,



Works Division Motihari now came under Works Circle, Bettiah and the Superintending Engineer, Works Circle, Bettiah became the cadre controlling authority of the petitioner.

It is further contended on behalf of the respondent State that, while the petitioner was posted under the REO Work Circle, Muzaffarpur, he was promoted to Junior Selection Grade w.e.f. 1.4.1981 vide Office Memo no.949 dated 29.4.1985, which was issued by the Superintending Engineer, REO, Works Circle, Muzaffarpur. In the same list, Shri Narendra Kumar Verma, who was at serial no.7, was also promoted to Junior Selection Grade w.e.f. 6.3.1982, as is contained in Annexure-1, to the writ application. Further contention is that, from perusal of this office order, it seems that petitioner is senior to Shri Narendra Kumar Verma.

Submission on behalf of the respondent State is also that on account of creation of new Circles/Divisions/Sub-Divisions, all the Chief Engineers and Superintending Engineers of the Department had been directed vide Department Letter No.537 dated 16.02.1990, as contained in Annexure-A to the counter affidavit, that some employees had been transferred and posted from one Circle to another Circle, due to the creation of new Circle and as such, the employees, where they had been



posted, may be provided promotion to the post of Junior/Senior Selection Grade after their permanent adjustment in the same Circle.

Learned counsel for the respondent State lays stress on the fact that the cadre and post of Head Clerks (Senior Selection Grade) are of Circle level. Hence, the gradation of correspondence clerk is prepared at the Circle level by the concerned Superintending Engineer and from that gradation list of correspondence clerk, promotion is given on the post of Head Clerk. The petitioner was promoted on the post of Head Clerk from correspondence clerk vide memo no.109 dated 29.3.2005 by the Superintending Engineer, REO, Works Circle, Bettiah and posted him in the REO Works Division, Bettiah, pursuant to which, the petitioner joined on the post of Head Clerk on 11.4.2005.

It is next contended by the respondent State that similar gradation list of correspondence clerk was prepared in the REO, Works Circle, Muzaffarpur and Narendra Kumar Verma was promoted to the post of Head Clerk vide Memo No.745 dated 29.9.1996 issued by the Superintending Engineer, REO, Works Circle, Muzaffarpur and he joined on the said post on 29.9.1996. Thus, the petitioner and Narendra Kumar Verma,



were separately promoted to the post of Head Clerks, in their respective Work Circles, i.e., Bettiah and Muzaffarpur, on the basis of the respective gradation list of correspondence clerks, in the light of letter no.537 dated 16.2.1990, as contained in Annexure-A to the counter affidavit. Learned counsel for the respondent State, thus, sums up say that under such circumstances, petitioner's claim for promotion to the post of Head Clerk, on or before 29.9.1996, from which date his junior Narendra Kumar Verma was promoted to the post of Head Clerk, is not maintainable.

Considering the rival submissions of the parties, it appears that vide order dated 2.12.2014 the petitioner was granted two weeks' time to implead his juniors who have been granted promotion as party respondents but the order was not complied. Thereafter, vide order dated 11.2.2015 the petitioner was granted further peremptory time till 18.2.2015 to comply the earlier order dated 2.12.2014. Thereafter, vide order dated 20.2.2015 the writ petition stood dismissed for non compliance of peremptory order whereafter M.J.C. No. 900 of 2015 was filed for restoration where also vide order dated 1.7.2015 the writ petition was restored and the petitioner was directed to comply the initial order within two weeks. Thereafter, I.A. No. 8593 of



2015 was preferred suggesting that the petitioner wants to proceed without impleading Narendra Kumar Verma as party respondent as he is dead. The said I.A. was allowed vide order dated 16.1.2017 passed by a Co-ordinate Bench of this Court at the risk of the petitioner .

It appears from the records that the petitioner was promoted as Head Clerk vide Memo No. 109 dated 29.3.2005 and the petitioner joined as Head Clerk on 11.4.2005 whereas Narendra Prasad Verma, a junior to him, was promoted vide Memo No. 745 dated 29.9.1996 issued by Superintending Engineer, REO, Muzaffarpur Circle and he consequently joined on 29.9.1996 itself at REO, West Circle, Muzaffarpur, but the said notification has neither been brought on record nor it has been challenged. The petitioner has also not challenged the seniority list contained in Annexure 2 whereby the final gradation list of Head Clerks was published for the first time, whereby Narendra Kumar Verma was placed at Serial no. 4. It further appears that the date of joining of Narendra Kumar Verma as Head Clerk is 29.9.1996, whereas the petitioner's date of joining as Head Clerk is 11.4.2005. The petitioner has also not challenged the office order issued vide Memo No. 105 dated 20.8.2005 as contained in Annexure 4 whereby the Ex Head



Clerks were promoted on ad hoc basis as Head Assistants, wherein the name of Narendra Kumar Verma finds place at serial no. 4, but the petitioner's name did not figure there, nor there is any prayer by the petitioner, in the writ application, for being promoted as Head Assistant.

In view of the fact that the petitioner chose not to implead his juniors as party respondents at his own risk and has not challenged either his initial promotion as Head Clerk, or the final gradation list of Head Clerks, as contained in Annexure-2, nor the order of promotion of his junior as Head Assistant as contained in Annexure 4, hence no specific order can be passed in favour of the petitioner.

Learned Counsel for the respondent State also failed to suggest, as to under what circumstances, though the petitioner was senior to Narendra Kumar Verma in initial cadre of Correspondence Clerk, but was promoted as Head Clerk subsequent to Narendra Kumar Verma, only because he was being posted in newly created Works Circle, Bettiah, when Annexure 3 suggests that the transfer of clerks from one circle to another circle, will not deprive them of their seniority and promotion. Hence, prima facie, the action of the respondent authorities appears to be contrary to their own policy decision, as



is contained in Annexure 3 to the writ application.

Considering the fact that the respondent authorities have not disposed of the representation of the petitioner, which is pending since 2004, moreover, the counter affidavit also does not suggest, whether such representation has been disposed of, the respondent authorities are directed to dispose of the said representation, in consonance with the policy decision, as contained in Annexure 3, within a period of six weeks from the date of receipt/production of a copy of this order.

With the aforementioned observation/direction, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

Anil/-

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

