

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12038 of 1998

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Shri Lila Bihari Kapoor, S/o Late Surya Narayan Singh. Resident of surya Bhawan
Salempur, P.S. – Town in the town of Chapra, District- Saran.

.... Petitioner/s

Versus

- 1.The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary to the Government of Bihar in the Department of Registration also holding the Post of Inspector General of Registration, Bailey Road, Patna.
3. The Departmental Promotion Committee through Secretary, Department of Registration- Cum- Convenor, Government of Bihar, Patna.
4. Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. A.B.Ojha, Sr. Adv.
Mr. Bharat Bhushan, Adv
Mr. Nitesh Kumar, Adv
Mr. Vinay Kumar Tiwary, Adv

For the Respondent/s : Mr. S. Raza Ahmad, Adv.
Mr. Alok Ranjan, AC to AAG- 5

For the Accountant General: Mr. L.P.K Rajgrihar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-05-2018

Heard Mr. A. B. Ojha learned Senior Counsel appearing for the
petitioner with Mr. Bharat Bhushan and Mr. Alok Ranjan, AC to
AAG - 5.

In the nature of order which this Court proposes to pass it
would not be required to delve into the merits of the case because all
that the petitioner chooses to submit before this Court through learned
Senior counsel Mr. A. B Ojha is, that his case should be considered at
parity with that of Mr. Arun Kumar Dubey, an Additional Registrar,
whose case was in similar manner, not being considered on account



of alleged charges but in view of the directions contained in the order of this Court in CWJC No.10882 of 1998 (Arun Kumar Dubey versus State) that his case was considered and he has been granted the Senior Selection Grade as well as the Super Time Scale.

Facts of the case briefly noted from the writ petition is that the petitioner was appointed as a Sub-Registrar in the Department of Registration, Government of Bihar on 22.03.1961 after being successful in the selection held by the Bihar Public Service Commission. According to the petitioner, it is after rendering satisfactory service that he superannuated on 30.11.1994. It is contended that the petitioner was allowed to cross efficiency bar in 1973 and 1976 as well, was granted Junior Selection Grade w.e.f. 01.11.1982 vide notification bearing No. 876 dated 06.07.1992 but, thereafter he was neither considered for Senior Selection Grade nor the Super Time Scale. The petitioner superannuated on 30.11.1994 as District Sub-Registrar, Godda.

Mr. A.B. Ojha has straight away invited the attention of this Court to a proceeding of D.P.C dated 30.01.1995 held under the Chairmanship of the Member, Board of Revenue for considering the case of promotion of the officials of the Registration Department and in reference to the notings at Annexure 4 running page 29 he submits that paragraph 4 deals with the case of the petitioner as well as one



Arun Kumar Dubey along with some others and the Committee finds them fit for promotion to the Senior Selection Grade. He submits that while the name of Arun Kumar Dubey appears at serial No.10, that of the petitioner appears at serial No. 25 and they have been found fit for Senior Selection Grade w.e.f. 01.05.1985 and 01.08.1990 respectively. It is stated that it is the Department themselves who took up the issue of the officials of the Registration Department for promotion and has cleared the case of the petitioner for such promotion. Since the result of this decision was not forthcoming rather from a resolution of the year 1998, it is reflecting that the petitioner was held not fit for promotion to the Senior Selection Grade because his service was not found satisfactory, that he approached this Court through the writ petition which was admitted for hearing vide order passed on 09.04.2003.

It is the argument of Mr. Ojha that no disciplinary proceeding was initiated against the petitioner until his superannuation and thus the decision of the Departmental Promotion Committee at Annexure-4 dated 30.01.1995 for grant of Senior Selection Grade could not have been interfered with. It is also his argument in reference to an order of this Court passed in the case of Arun Kumar Dubey in CWJC No. 10882 of 1998 that when similar objections were raised against the said official that he came before this Court and it is under the



directions so issued on the writ petition by a Coordinate bench on 01.07.1999 that, according to Mr. Ojha, the case of Arun Kumar Dubey was considered for promotion to the Senior Selection Grade as well as Super Time Scale and has been accepted.

Mr. Alok Ranjan learned counsel appearing for the State opposing the prayer has simply relied upon the supplementary counter affidavit filed on behalf of respondent No. 2 on 07.05.2012 to submit that Annexure- B thereof is a letter of the Inspector General of Police, Investigation Bureau, dated 02.03.2012 addressed to the Inspector General of Registration and confirms a charge sheet submitted against the petitioner in Vigilance Case No 28 of 2000. He also submits that since Arun Kumar Dubey also was made accused but evidence was found wanting, that may have led to acceptance of his claim. However, he fairly admits to the lack of current information as to whether the claim of Arun Kumar Dubey has been accepted or not for such promotion. Learned counsel has also invited the attention of this Court to the statement made in paragraph 4 of the said supplementary affidavit to submit that it is on the failure of the petitioner to get vigilance clearance that the Departmental Committee found him unfit for promotion as manifest from Annexure- A which is a proceeding dated 08.11.1997 enclosed at Annexure-A in which the name of the petitioner appears at Serial No. 4.



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

There is absolutely no dispute on the principles underlying a grant of Senior Selection Grade or Super Time Scale and unless the past service of the incumbent is found to be satisfactory, he has no right to claim such benefit. The question is whether in the nature of fitness given by the Departmental Promotion Committee headed by the Member, Board of Revenue on 30.01.1995 finding the petitioner fit for Senior Selection Grade w.e.f 01.08.1990, there was anything on the records of the respondents which showed his tainted service rendering him unfit for such claim. As per Mr. Ojha, had it been the case, the Departmental Promotion Committee would not have recommended the petitioner for promotion to senior selection grade on 30.01.1995. According to him, this issue is not answered by the respondents rather they have relied upon documents which have taken shape much after the entitlement of the petitioner to such benefit and much after his superannuation. There is again absolutely no contest on what Mr. Ojha submits for unless the respondents are able to demonstrate any infirmity in the recommendation of the Departmental Promotion Committee dated 30.01.1995, a right vested in the petitioner can not be mechanically taken away. What this Court finds is that even though both the petitioner as well as Arun Kumar Dubey



were found fit for promotion by the Departmental Promotion Committee on 30.01.1995 their consideration were sought to be obstructed in a subsequent meeting held on 08.11.1997 placed at Annexure-A of the supplementary counter affidavit inter alia on allegation of a pending charge. Agenda No.1 of the Departmental Promotion Committee discusses the cases of Time Bound Promotion in which the name of the petitioner appears at serial No. 4 and the recommendation is restricted due to pending allegations. The cases of Senior Selection Grade is at agenda No. 3 in which while the name of Arun Kumar Dubey appears at serial No. 8 that of the petitioner appears at serial No.10 and again their cases have not been recommended because of alleged unsatisfactory service records. According to Mr. Ojha, if the petitioner has not faced any proceeding in his service career nor any charge memo was served upon him, any subsequent development would not take away the legitimate claim created under the recommendation dated 30.01.1995 at Annexure 4.

In my opinion, since there is nothing on record to demonstrate;

- (a) whether or not there were any charges pending against the petitioner as until his superannuation on 30.11.1994;
- (b) whether or not he was served with the charge memo



or an adverse remarks; and

(c) whether or not the materials were existing when his case was taken up by the Departmental Promotion Committee on 30.01.1995;

any subsequent development would not take away his vested right to the grant of Senior Selection Grade as well as Super Time Scale.

In the nature of discussion made it would be but appropriate to direct respondent No. 2 to consider the grievance of the petitioner in the light of the facts discussed hereinabove and pass appropriate speaking orders disposing of the claim of the petitioner for promotion in the Senior Selection Grade as well as Super Time Scale, in accordance with law within a period of 3 months from the date of receipt/production of a copy of the order.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.06.2018
Transmission Date	NA

