

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2245 of 2011

=====

Niranjan Kumar Dutta S/O Late Mahendra Prasad Dutta Resident of Village Dalia,
P.S. Bounsi, District Banka At Present Posted As Executive Engineer (Current
Charge) Saran Canal Division, Marhaura, Water Resources Deptt. Marhaura,
District Chapra.

.... Petitioner

Versus

1. The State Of Bihar.
2. The Principal Secretary, Water Resources Deptt.
3. The Joint Secretary, Management (Water Resources Deptt.), Patna.

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Siya Ram Sahi and
Mr. Shailesh Kumar Sharma, Advocates.
For the Respondent/s : Mr. Pawan Kumar, AC to GA 1.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 03-01-2018

Heard learned counsel for the petitioner and learned
counsel representing the State.

2. The petitioner, in the present case, prays for the
following reliefs:-

“i. For issuance of an appropriate writ for direction to
the respondents to promote the petitioner to the regular
post of Executive Engineer with effect from the date his
similar situated juniors have been promoted to the said
post.

ii. For issuance of an appropriate writ for quashing the
notification of the Water Resources Deptt. contained in
notification no. 65 dated 14.01.11 by which the posting
of the petitioner to the post of Executive Engineer



current charge has been cancelled and the petitioner is directed to joint on the post of Assistant Engineer.

iii. For issuance of an appropriate writ to stay the operation of notification no. 65 dated 14.01.11 of the Water Resources Deptt. during the pendency of the writ petition.

iv. For issuance of an appropriate writ / writs, order / orders or direction for which the petitioner is found to be entitled for.”

BRIEF FACTS OF THE CASE

3. The petitioner joined as an Assistant Engineer in the Water Resources Department, Govt. of Bihar sometime in the year 1979. He was put in the current charge of the post of Executive Engineer, Flood Control Division, Naugachhia vide Notification No. 4750 dated 29.06.2002 issued by the Water Resources Department, Govt. of Bihar. While being posted as Executive Engineer Current Charge at Flood Control Division, Naugachhia, a proceeding was initiated against him under Rule 55A of the Civil Services (Classification, Control and Appeal) Rules, 1930 (in short, ‘the Rules’). He was served with an order of punishment vide Notification No. 1467 dated 09.12.2009 by which two minor punishments, namely, (i) Censure for the year 2004-05 and (ii) Stoppage of two annual



increments with non-cumulative effect were imposed upon him. The case of the petitioner is that his case was placed for regular promotion to the post of Executive Engineer (Civil) in the meeting of the Departmental Promotion Committee (DPC) held on 30.05.2008. The petitioner was placed at Sl. No. 46 in the proposal placed before the DPC but because he was already served with the Charge Memo which resulted in the minor punishments mentioned here-in-above, the case of the petitioner was kept pending. He claimed that he was otherwise fit to be promoted, therefore, a sealed cover procedure should have been adopted against him and the DPC was required to keep the result of the petitioner in a sealed cover which could have been opened after the final order in the proceeding but this procedure was not followed by the DPC. It is the claim of the petitioner that a large number of similarly situated juniors to the petitioner were promoted to the regular post of Executive Engineer.

4. The case of the petitioner is that his name was again placed for consideration before the DPC held on 16.12.2009. His name was listed at Sl. No. 8. Prior to that, vide notification no. 1467 dated 09.12.2009 (Annexure-3 series to the Writ Application) two minor punishments were imposed upon the petitioner but the effect of the minor punishment of 'Censure for the year 2004-05' had vanished after a period of three years and, therefore, that punishment would not



have come in the way of the petitioner being considered for regular promotion on 16.12.2009. Regarding the minor punishment of withholding of two increments with non-cumulative effect, learned counsel has pointed out the specific statements made in paragraph 12 of the Writ Application saying that the withholding of increments with non-cumulative effect would not affect the promotion of the petitioner because on that date (16.12.2009) there was no rule / provision by which the promotion could have been withheld due to withholding of two increments with non-cumulative effect. To strengthen his submission, learned counsel has further pointed out the statements made in paragraph 23 of the Writ Application where it is specifically stated that in the similar circumstances the Water Resources Department placed the case of one Binod Kumar Das for regular promotion to the post of Superintending Engineer in the DPC to be held in Bihar Public Service Commission. The DPC duly considered the case and found him fit for promotion and thereafter the Water Resources Department vide notification no. 148 dated 17.09.2009 issued the order of his promotion. The said Binod Kumar Das was also awarded punishment of withholding of two increments but with cumulative effect. Copies of the two notifications in case of Binod Kumar Das have been brought on the records as Annexure-10 series to the Writ Application. Learned counsel submits that these



specific statements made in paragraph 12 read with paragraph 23 of the Writ Application have not at all been denied by the State respondents in their counter affidavit.

5. It is his submission that in the DPC held on 16.12.2009 the name of the petitioner was shown as 'Unfit for promotion' without assigning any reason. He has placed the minutes of the DPC dated 16.12.2009 and the relevant part of the Chart annexed as Annexure-4 series to the Writ Application. The submission is that on 16.12.2009 the petitioner was fit to be considered under a sealed cover and when his juniors were being given promotions denial of the same in case of the petitioner was wholly unjustified. His submission is that there was no reason to show him 'Unfit for promotion'.

6. It is further pointed out by the learned counsel for the petitioner that another departmental proceeding was initiated against the petitioner vide Memo No. 764 dated 03.08.2009 under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (in short, 'the Rules of 2005'). A proceeding under Rule 17 was initiated against the petitioner but in the said enquiry none of the charges against the petitioner could be proved and the petitioner was completely exonerated by the Enquiry Officer. The opinion of the Enquiry Officer was duly accepted by the Disciplinary Authority which finally issued notifications vide letter



no. 897 dated 16.06.2010, as contained in Annexure-5 to the Writ Application. On the strength of Annexure-15, which is in the nature of a government order in the departmental proceeding under Rule 17 of the Rules of 2005, learned counsel for the petitioner submits that when the 3rd DPC was held on 03.09.2010, once again the name of the petitioner was placed in the proposal which is evident from Annexure-6 to the Writ Application. Annexure-6 further shows that the proposal itself says that no charge against the petitioner is in force. This Annexure-6 is said to be dated 03.09.2010, i.e., three months after issuance of Annexure-5, by which the petitioner was completely exonerated in the departmental proceeding under Rule 17 of the Rules of 2005.

7. Learned counsel submits that despite this clear position that the petitioner was completely exonerated once again in the III DPC, the name of the petitioner was not considered. Learned counsel submits that even if it is assumed that the effect of punishment of censure was in force till the year 2008, therefore, the petitioner was rightly not considered in the DPC held on 30.05.2008, still the petitioner has been repeatedly punished firstly by not considering his case for promotion in a sealed cover in the DPC held on 16.12.2009 and secondly when he was declared 'Unfit' in the DPC held on 03.09.2010 without there being any reason shown for the same. It is



his case that since the petitioner has already retired from service on 31.07.2011 and the persons junior to the petitioner have been granted actual promotion in the DPC held on 16.12.2009 when the petitioner was in service as also fit to be considered for promotion and a sealed cover procedure was required to be adopted, at this stage the petitioner would be entitled for notional promotion and his post-retiral dues should be fixed accordingly after granting him notional promotion. It is further submission that because persons junior to the petitioner were promoted in the DPC held on 16.12.2009 and the petitioner was already discharging the duties of the post of Executive Engineer though under current charge and not by way of regular promotion, the petitioner would be entitled for the actual salary of the said post at least from the date his juniors were granted the promotion pursuant to the DPC held on 16.12.2009 till the date of the retirement of the petitioner. It is submitted that in such circumstance, cancellation of his posting on the post of Executive Engineer only about six months before his retirement will not be of any consequence.

SUBMISSIONS OF THE STATE

8. Learned counsel for the State has though attempted to oppose the Writ Application but in view of the factual position emerging from the records and the legal position which have been settled by the Hon'ble Supreme Court in the case of **Union of India**



& Ors. Vs. K.V. Janki Raman, reported in (1991) 4 SCC 109, he could not offer much resistance to the submission of the learned counsel for the petitioner that in the DPC held on 16.12.2009 a sealed cover procedure was required to be adopted and by not adopting the said procedure, a valuable right of the petitioner to be considered for promotion has been violated. Since there is no denial in the counter affidavit, the learned counsel for the State could not offer any explanation to the submissions made in paragraphs 12 and 23 of the Writ Application where it has been specifically pleaded by the petitioner that on 16.12.2009 there was no rule or government notification under which the minor punishment of stoppage of two increments with non-cumulative effect could have come in the way of granting promotion to the petitioner. In fact, in paragraph 22 of the Writ Application also it has been repeatedly submitted on behalf of the petitioner that when the petitioner's case was being considered in the year 2009 there was no such rule and the result of the petitioner was required to be kept in a sealed cover which could have been opened after the final order in the departmental proceeding as contained in Annexure-5 to the present Writ Application where the petitioner was finally exonerated, this part of the pleading in the Writ Application has also not been denied in the counter affidavit filed on behalf of the State.



9. The State in its counter-affidavit does not deny that the persons junior to the petitioner have been granted promotion in the DPC held on 16.12.2009. Thus, on the facts pleaded in counter-affidavit only a feeble attempt was made to contest the Writ Application.

CONSIDERATION

10. Having heard learned counsel for the parties and upon perusal of the records as also keeping in mind the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. K.V. Janki Raman** (Supra), I am of the considered opinion that in the said case the Three-Judge Bench of the Hon'ble Supreme Court has gone into the issue of deemed sealed cover procedure and has even spelt out the conditions in which it has to be applied. The Hon'ble Supreme Court has, in fact, sanctified the deemed sealed cover procedure and what has been held by the Hon'ble Apex Court has to be taken as if the Court has established this deemed sealed cover procedure 'as a law' under Article 141 of the Constitution of India. The binding effect of the decision of the Hon'ble Supreme Court while acting under Article 141 or its law laying powers have never been under an iota of doubt. These principles have also been considered in the case of **Bihar State Government Secondary Teachers Association Vs. Bihar Education Service Association**



and Ors., reported in **JT 2012 (11) SC 539 = (2012) 13 SCC 33, Union of India & Ors. Vs. Major S.P. Sharma & Ors.** reported in **(2014) 6 SCC 351** and **Union of India & Ors. Vs. Dr. Sudha Salhan (Smt.)** reported in (1998) 3 SCC 394.

11. It is not in dispute that the Govt. of Bihar itself is following the deemed sealed cover procedure in the cases of government servants where a departmental proceeding is pending against them or a criminal proceeding is going on against a government employee while the said employee comes in zone of consideration and his case is placed for consideration before the DPC. In the present case, the pleadings on the record and the submissions made at the bar make it crystal clear that on 16.12.2009 when the DPC was held and the name of the petitioner was placed for consideration the sealed cover procedure was required to be adopted and, in fact, had this sealed cover procedure been adopted the same could have been opened immediately after 16.06.2010 (Annexure-5 to the Writ Application) when the petitioner came to be exonerated in the departmental proceeding which was under Rule 17 of the Rules of 2005. More so, when the 3rd DPC was held the petitioner was wrongly declared 'Unfit' without appreciating that on the said date no departmental proceeding or criminal proceeding was pending against the petitioner. There is no denial of the fact that on 16.12.2009 there



was no rule or government instruction saying that the minor punishment of stoppage of two increments with non-cumulative effect will have any consequence on the promotion of the petitioner. The specific pleading in this regard appearing in the Writ Application has not been denied by the State.

12. In the facts and circumstances of the case I would hold and declare that the petitioner has been deprived of a valuable right to be considered for promotion on 16.12.2009 when the DPC did not adopt a sealed cover procedure in his respect and the persons junior to the petitioner were given promotion to the regular post of Executive Engineer (Civil). Now, as the petitioner has already retired from service, the State respondents would be required to consider his case for notional promotion on the post of Executive Engineer (Civil) w.e.f. the date his juniors were granted promotion on the said post in the DPC held on 16.12.2009.

13. The State respondents are, therefore, directed to convene a DPC within a period of three months from the date of receipt / production of a copy of this order for consideration of the case of the petitioner for notional promotion on the post of Executive Engineer (Civil) w.e.f. the date his juniors were granted promotion in the DPC held on 16.12.2009 and once the DPC finds him fit for notional promotion, the same would be allowed with all consequential



benefits and his post retiral benefits would be fixed and the difference amount shall be paid accordingly within a further period of three months.

14. I am also of the considered opinion that because in this case the persons junior to the petitioner have been promoted in the DPC held on 16.12.2009 when the petitioner was already in service and was in fact rendering the duties of the post of Executive Engineer though in current charge, on being found fit for notional promotion w.e.f. the date his juniors were granted promotion in the DPC held on 16.12.2009, the petitioner shall also be entitled for the monetary benefits attached to the post of Executive Engineer (Civil) w.e.f. the date his juniors were granted the benefits till the date of his retirement. Such benefits shall also be paid simultaneously.

15. In the facts and circumstances of the case, the Writ Application is allowed to the extent indicated here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04.01.2018
Transmission Date	N/A

