

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13024 of 2013

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SHUBHENDRA LAL DAS SON OF RAM NARAYAN DAS RESIDENT
OF VILLAGE- BAHEDA, P.S.- BAHEDA, DISTRICT- DARBHANGA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Road Construction Department, Govt. Of Bihar,
Patna
3. The Under Secretary (H.Q.) Road Construction Department, Patna
4. The Under Secretary North Bihar (Communication) Wing Road Construction
Dept., Darbhanga
5. The Engineer-In-Chief-Cum- Commissioner Cum Special Secretary, Road
Construction Dept. Bihar, Patna
6. The Deputy Secretary, Road Construction Dept. Patna
7. The Chief Engineer (Communication) North Bihar Wing Road Construction
Dept. Darbhanga
8. Narendra Pandey, Lower Division Clerk In The Office Of The Chief
Engineer, Mechanical Wing, Road Construction Department, Patna
9. Siyaram Tiwary, Lower Division Clerk In The Office Of The Engineer In
Chief, Road Construction Dept. Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Lal Das
For the Respondent/s	:	Mr. Madhukar Krishna Sinha Sc1

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 17-04-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the
Constitution of India has been filed for promotion on the post of



Lower Division Clerk as petitioner is senior to respondent nos. 8 and 9, who have been promoted on the post of Lower Division Clerk.

3. Briefly stated, the case of the petitioner is that he is IVth grade employee working as Orderly in the Road Construction Department.

4. Respondent nos. 8 and 9 were also IVth grade employee and had been working as Orderly in the Road Construction Department. The department prepared and published the seniority list of fourth grade employees dated 02.07.2008 (Annexure-1). The petitioner was at serial no. 59 whereas respondent nos 8 and 9 were at serial no. 78 and 76 respectively.

5. It has been submitted on behalf of petitioner that in response to letter dated 14.05.2003, for consideration of promotion, the attested copy of matriculation certificate and other documents of petitioner and other Orderlies were sent to the Registrar (Head Office), Road Construction Department, Bihar, Patna by letter dated 26.05.2003 (Annexure-5). Deputy Secretary of the department requested all Chief Engineers to send photocopies of Service-Book along with attested copies of educational qualification of IVth grade employee by his letter



dated 31.08.2010 (Annexure-6) and in response to same on 22.09.2010, the Chief Engineer, North Bihar Wing send the Service-Book and educational qualification certificate of the petitioner to the Deputy Secretary of the department on 22.09.2010 (Annexure-7).

6. Petitioner submitted his application dated 08.06.2011(Annexure-8) for his promotion to the Engineer-in-Chief, Road Construction Department, Patna through the Chief Engineer, North Bihar Wing, Darbhanga and also to the Under Secretary that ignoring his seniority promotion has been granted to his juniors, which was sent on 10.01.2013(Annexure-9) to Head Office and petitioner was informed by letter dated 24.04.2013 (Annexure-10) that his claim for promotion to the post of Lower Division Clerk was not acceptable.

7. A counter affidavit has been filed on behalf of respondent nos. 1 and 2 in which it has been stated that a provisional seniority list was circulated vide letter dated 23.01.2008, and after considering objection, a final seniority list was published dated 2.07.2008 as contained in Annexure-1 of the writ petition in which petitioner has been placed at serial no. 59.

8. It has been further stated that after final allocation of



cadre between Bihar and Jharkhand, the post of Record Supplier and Treasury Sarkar became vacant and the work of the department was being hampered, as such applications were invited to fill up said vacant post, who were in the final gradation list for promotion on the post of Record Supplier and Treasury Sarkar.

9. 23 employees of IVth grade submitted their option for promotions but petitioner did not submit his option and after proper consideration by departmental selection committee among 23 candidates only 11 were promoted to the post of Record Supplier and Treasury Sarkar vide office order dated 29.07.2009. The Finance Department restricted to promote on the post of Record Supplier and Treasury Sarkar vide notification dated 26.03.2010, as such application of petitioner submitted in the year-2010 was not considered.

10. The Finance Department vide resolution dated 22.02.2011 decided to make senior those who were getting the Grade Pay of Rs. 1650/-, Rs. 1600/-, Rs. 1400/- and Rs. 1300/- working on the post of Record Supplier, Daftari and Orderly respectively, as such the Record Keeper who were getting the grade pay of Rs. 1650/- were made senior and accordingly, seniority list was prepared in accordance with circular no. 15784



dated 26.08.1972 of appointment and administrative department in which 11 Record Keepers, seniority list was published vide letter dated 29.03.2012 by the department. Among 11 Record Suppliers, only 7 have been promoted to the post of Lower Division Clerk vide office order no. 141 dated 14.09.2012.

11. A counter affidavit has also been filed on behalf of respondent nos. 8 and 9 in which they have stated that they were appointed on 14.08.1987 on Class-IV post under Road Construction Department. After reorganization of State of Bihar, a final seniority list of Class-IV employees was published vide letter dated 02.07.2008 by the Road Construction Department, in which they were placed at serial no. 78 and 76 whereas petitioner was placed at serial no. 59 which is an admitted fact. A notification dated 09.09.2008 was made by the department by which applications were invited from Class-IV employees for promotion to the post of Treasury Sarkar and Record Supplier and the last date of submission was 30.09.2008 and respondents applied for their promotion to the said post. Only 23 class-IV employees from the seniority list dated 2.07.2008 submitted their application for promotion on said post. Petitioner did not submit any application for his promotion on said posts. The claim of respondent nos. 8 and 9 was considered by the



Departmental Promotion Committee and they were found eligible and were promoted to the post of Treasury Sarkar and Record Supplier along with 11 other candidates and accordingly, notification dated 29.07.2009 was issued by the department granting them promotion in the pay scale of Rs. 2650-4000/-.

12. It has been further submitted that State Government vide resolution dated 22.02.2011 decided to prepare seniority list on the basis of pay scale as such employees who were getting Grade Pay of Rs. 1650/-, Rs. 1600/-, Rs. 1400/- and Rs. 1300/- working on the post of Record Supplier, Daftari and Orderly accordingly seniority list was prepared, the Record Keepers who were getting grade pay of Rs. 1650/- were made senior and their seniority list was prepared and published vide memo dated 29.03.2012.

13. It has been further submitted that case of 11 Record Suppliers working in the department were considered for promotion on the post of Lower Division Clerk in the light of circular dated 31.03.2010 of the Finance Department and 7 Record Suppliers were promoted to the post of Lower Division Clerk vide notification dated 14.09.2012, which includes respondent nos. 8 and 9 and they have joined and discharging their duty.



14. After hearing learned counsel for the parties and perusing the materials available on record, it is apparent that all IVth grade employees were given opportunity to give their option for promotion on the post of Record Keeper and Treasury Sarkar which was having higher pay scale, however, petitioner did not opt for it and respondent nos. 8 and 9 having opted, were also promoted on the post which was a promotional post of higher pay scale and subsequently, as per recommendation made by the Finance Department, a new seniority list was published on the basis of pay scale and fourth grade employees having higher pay scale were ranked higher in the seniority list and accordingly, Record Keeper and Treasury Sarkar having higher pay scale than the Daftari and Orderly were ranked higher in the seniority list and at the time of promotion on class-III post, it were Record Keeper and Treasury Sarkar having higher pay scale considered for promotion on the post of Lower Division Clerk. The petitioner was not even in the zone of consideration as he was having a lower pay scale of Orderly and as such at this stage, he cannot challenge the promotion of respondent nos. 8 and 9 on the ground that they were junior to him in the seniority list prepared in the year 2008, having not opted for promotion on promotional post with higher pay scale.



There is no merit in the writ petition and accordingly it
is dismissed, however, with no costs.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.05.2018
Transmission Date	N.A.

