

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2902 of 2006

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Nandjee Ram son of late Ghura Ram resident of village Bahuara P.O Bahuara P.S. Jagdishpur Dist. Bhojpur Ara at present posted as Incharge Executive Engineer, Public Health Engineering Division Saharsa, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Secretary, Public Health Engineering Department Govt. of Bihar, Patna
3. Deputy Secretary, Public Health Engineer Department Govt. of Bihar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar Verma, Advocate
Mr. Jitendra Prasad Singh, Advocate

For the Respondent/s : Mr. (SC1)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 13-03-2018

Heard counsel for the petitioner and the respondents.

2. In spite of repeated calls none has appeared on behalf of the State.

3. Counsel for the petitioner submits that though he was eligible for promotion as Executive Engineer with effect from 01.04.1998 his case for promotion has not been considered in the meeting of the Departmental Promotion Committee on 16.12.2000 even though he was placed at serial no. 23 in the said meeting, minutes of which has been enclosed as Annexure 4 of the writ petition.

4. It is pointed out by the counsel for the petitioner that in respect of the petitioner, the Departmental Promotion Committee has communicated that some allegations may be treated as *prima facie*



proved and the proceedings in respect of his promotion have been kept in a sealed cover procedure.

5. Counsel for the petitioner submits that the short point which arises for consideration is that whether in such a circumstance where no charge memo in the departmental proceedings or charge sheet in the criminal trial has been issued, the act of the respondents resorting to sealed cover procedure in respect of the petitioner's promotion is sustainable in the eyes of law or not. It is a clear and specific case of the petitioner that there was nothing on record regarding any departmental proceedings or a criminal proceeding against the petitioner as charge has not been framed against him. His specific assertion is that there was no reliable material whatsoever justifying resort to the sealed cover procedure in considering the petitioner's claim for promotion to the post of Executive Engineer in the proceedings of the Departmental Promotion Committee dated 16.12.2000.

6. The counter affidavit on behalf of the State of Bihar is on record. The same stand has been taken in the counter affidavit as has been noted in the minutes of the Departmental Promotion Committee that due to *prima facie* proved charges against the petitioner his promotion has been kept pending. No details of the charge memo in the departmental proceedings or charge sheet in any criminal proceedings have been placed on record justifying resorting



to the sealed cover procedure in respect of the petitioner's claim for promotion to the post of Executive Engineer.

7. One relevant development during pendency of the instant writ petition is that the petitioner was compulsorily retired from service on 30.05.2007. It is the stand of the State Government in the counter affidavit that the petitioner's writ petition challenging the order of the compulsory retirement was dismissed by the order dated 23.01.2008 passed in C.W.J.C. No. 7407 of 2007 which is Annexure B to the counter affidavit filed by the State.

8. It is fairly submitted by the counsel for the petitioner that the order of compulsory retirement has been affirmed up to the Apex Court as is evident from the order dated 13.01.2014 passed in Civil Appeal No. 219 of 2014 (State of Bihar & others vs. Nandjee Ram).

9. Be that as it may the order of compulsory retirement is much later in time than the claim in respect of which the instant proceedings were initiated. As such the subsequent development regarding the petitioner's compulsory retirement with effect from 30.05.2007 did not come in the way of grant of relief to the petitioner in terms of his consideration for promotion to the post of Executive Engineer with effect from 16.12.2000 i.e., the date of DPC as on that date no proceedings whatsoever in respect of which a charge memo was required to be issued against the petitioner were pending. There



was no basis for resorting to sealed cover proceedings other than a baseless communication by the departmental secretary stating “prima facie proved charges”.

10. Counsel for the petitioner has drawn attention of the Court to the case of another person whose claim for promotion to the post of Executive Engineer was considered by the same Departmental Promotion Committee meeting whose name appears at Serial No. 14 (Nageshwar Sharma), whereas the proceedings in respect of his promotion have been kept in a sealed cover procedure.

11. The petitioner has relied upon the decision of the Division Bench in the case of said Nageshwar Sharma decided on 18.08.2005 in LPA No 751 of 2005 wherein considering the claim of the said Nageshwar Sharma whose case was identical to that of the instant petitioner, this Court relying upon earlier judgment of the Hon'ble Apex Court has held it to be unsustainable in law and directed the respondents to consider the case only on the materials which were available to them on 16.12.2000 and open the sealed cover procedure containing the petitioner's consideration for promotion to the post of Executive Engineer.

12. Having considered the aforesaid submissions and in view of the fact that the case of the instant petitioner apart from being identical to that of Nageshwar Sharma, is otherwise also eligible for consideration for promotion on 16.12.2000 as on that date there was



nothing on record other than the baseless communication of the departmental Secretary as noticed above, which could not have been made the basis of resort to sealed cover procedure.

13. This Court would therefore direct that the proceedings of the Departmental Promotion Committee in respect of the petitioner's claim for promotion to the post of Executive Engineer which has been kept in a sealed cover on 16.12.2000 be opened and the same may be given effect to after taking into consideration only materials which were available as on that date and grant the monitory benefits if found payable to the petitioner arising as a consequence of such decision.

14. The writ petition stands allowed to the extent indicated above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
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