

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.67 of 2006

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Mahendra Prasad Sinha, S/o Late Kuldip Sahay, Resident of Par Nawadah,
Sneh Sadan, Brahmasthan, Neem Tola, Gaya Road, P.S. Nawadah, District-
Nawadah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, having his office in Old Secretariat, P.S. Sachiwalaya, District- Patna.
2. The Finance Commissioner, Finance Department, having his office in Old Secretariat, P.S. Sachiwalaya, District- Patna.
3. The Secretary, Department of Tourism, Bihar, Old Secretariat Barrack No. 14, Patna.
4. The Director, Tourism, Finance Administration, Department of Tourism, Bihar, Old Secretariat Barrack No. 14, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rupak Kumar, Advocate
For the Respondent/s	:	Mr. Sunil Kumar, A.C. to G.P. 11

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 02-07-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner to consider his case for promotion to the post of Assistant Director/Deputy Director in pay scale of Rs. 6500/-10500/- from 01.01.1996 from the date his junior Bikramanath Singh was granted promotion vide office order dated 07.10.2004 after his retirement.

3. Briefly Stated, the facts of the case is that petitioner was appointed in the department of Tourism in the State



Government on 22.12.1962 on the post of Receptionist at the Tourism Information Centre, Jamshedpur.

4. Petitioner was promoted to the post of Assistant Tourism Information Officer by office order dated 07.12.1968 and thereafter to the post of Tourism Officer by office order dated 26.02.1976.

5. Final gradation list was issued vide office order dated 30.12.1996 in which petitioner was granted promotion to the post of Tourist Information Officer from 11.06.1975. The promotion granted to petitioner from the post of Tourist Information Officer was confirmed by office order dated 19.07.1989 issued by Director of Tourism, Bihar, Patna.

6. It has been submitted on behalf of the petitioner that one Sri Bikrama Nath Singh was granted Junior Selection Grade vide office order dated 19.11.1993 by Director of Tourism, Bihar, Patna. Petitioner represented on 01.09.1992 to the Director, Tourism Department for his promotion to the post of Regional Assistant Director on retirement of Binod Prasad Verma from the said post on 31.08.1992. Petitioner thereafter filed representation on 08.10.2004 for consideration of his case for promotion to the post of Assistant Tourism Director/Deputy Director in the pay scale of Rs. 6500/-10500/- Petitioner



represented on 02.03.2005 for consideration of his promotion to the post of Assistant Tourism Director/Deputy Director as said Bikrama Nath Singh and Purushotam Pandey who were juniors to petitioner were promoted to the post of Assistant Tourism Director from 01.01.1996. Pay scale of Assistant Tourism Director, Deputy Tourism Director and Regional Assistant Director are the same and case of petitioner for promotion to the post of Assistant Tourism Director was ignored although vacant post since 01.09.1992 was available after retirement of Binod Prasad Verma. Promotion of two persons Purushotam Pandey and Bikramanath Singh who were admittedly junior to petitioner was granted after their retirement vide office order dated 22.07.2004 but same was denied to petitioner for no valid reasons.

7. A counter affidavit has been filed on behalf of respondents in which they have stated that promotion of petitioner to the post of Assistant Director/Deputy Director in the pay scale of Rs. 6500-10500/- with effect from 01.01.1996 was denied although same was granted to juniors to the petitioner.

8. It has been contended that vide order dated 29.09.1994 the Government of Bihar reorganized the tourism



department and 150 staffs were transferred to different offices under the same department. Petitioner was transferred to Tourist Information Centre, Calcutta but he did not join on the transferred post. Department vide letter dated 03.12.1994 and 12.04.1995 directed petitioner to join on transferred post within three days but petitioner did not submit his joining on the transferred post. A notice was also published by the department in daily newspaper 'Hindustan' on 18.04.1995 directing all the employees including petitioner to submit their joining at the transferred post within three days otherwise Disciplinary action will be initiated against them.

9. Petitioner was suspended vide office order dated 06.04.1996 as he did not join on the transferred post and his headquarter was fixed at Calcutta. Subsistence allowance was to be paid on the basis of attendance marked by the petitioner at the transferred post but still petitioner did not join at the headquarter during suspension period.

10. Writ petition was filed by Staffs of Tourism Department including petitioner being C.W.J.C. No. 4795 of 1996 which was disposed of by order dated 06.11.1996 by which order of suspension was revoked and staffs including the petitioner were directed to join their new posting within 15



days. Accordingly the department vide order dated 09.12.1996 vacated the suspension order with effect from 06.11.1996 but no decision with respect to period of absence from 16.11.1994 to 05.04.1996 and period of suspension from 06.04.1996 to 05.11.1996 was taken as to how this period will be treated. Subsequently by office order dated 06.11.2002 it was resolved that said period will be treated as extraordinary leave without salary but will be counted for the purpose of pensionary benefit.

11. The respondents have further stated in their counter affidavit that petitioner was not promoted on the post of Assistant Director/Deputy Director because he was not found fit for promotion because of misconduct as stated above which was treated as indiscipline and disobeying the order of superior Authority.

12. In the rejoinder to the counter affidavit, it has been stated by the petitioner that pursuant to order dated 06.11.1996 passed in C.W.J.C. No. 4795 of 1996 two other employees Rabindra Sharma and Jwala Prasad who were also under suspension alongwith petitioner and were subsequently allotted Jharkhand cadre were paid full salary for the period from 06.10.1994 to 05.11.1996 in compliance of order passed by this Court but same was denied to petitioner.



13. After hearing the counsel for the petitioner and counsel for the State it is apparent that petitioner and other employees aggrieved by the order of transfer did not join on the transferred post and were put under suspension in contemplation of departmental proceeding but on account of order passed by High Court in C.W.J.C. No. 4795 of 1996 the issue was resolved and High Court quashed the order of suspension which means that order of suspension was quashed from date of its inception and it never existed and pursuant to order passed by the High Court petitioner and others joined at their transferred post and the matter was finally resolved. No departmental proceeding was initiated nor any charges were framed against petitioner for any misconduct, as such, he cannot be denied promotion on the alleged ground of misconduct as no punishment was ever imposed upon petitioner. The period of absence was treated as on duty by the State of Jharkhand whereas period of absence was treated as extraordinary leave by the State of Bihar and same cannot be treated as order of punishment as such, denial of promotion to the petitioner on the post of Assistant Director/Deputy Director in the pay scale of Rs. 6500-10500 from 01.01.1996 is *non est* and without any valid reason. The respondents are directed to consider the promotion of petitioner



on the post of Assistant Director/Deputy Director in the pay scale of Rs. 6500-10500/-, from the date on which his juniors were granted promotion within three months from the date of production/receipt of copy of this order passed by this Court.

14. The writ petition is allowed, however without any costs.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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