

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No 13788 of 2007**

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Rama Nand Mishra, son of late Laxmikant Mishra, Resident of Mohalla – Sanjay Gandhi Nagar, Road No 1, Hanuman Nagar, Kankarbagh, Patna – 20, Police Station – Patrakar Nagar, District – Patna, presently posted as Electrical Executive Engineer (Current Charge), Electric Supply Division, Barh, Patna

.... .... Petitioner/s

Versus

- 1 The Bihar State Electricity Board through its Secretary, Vidyut Bhawan, Bailey Road, Patna
- 2 The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
- 3 The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
- 4 The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : M/s Sanjeet Kumar, A K Karn, Advocates

For the Respondent/s : Mr Vinay Kirti Singh, Sr Advocate with  
M/s Akhileshwar Singh, Vijay Kr Verma, Adv

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**CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date: 27-03-2018**

Heard learned counsel for the petitioner and the  
respondent-Company

2 The short issue which arises for consideration in the instant case is whether the petitioner, who was working as Assistant Electrical Engineer in the respondent-Company, would be entitled to benefit of promotion with effect from 01.02.2000 on the post of Electrical Executive Engineer, which is the date on which others, juniors to him, have been granted the said promotion.

3 The fact is that the promotion was considered on



10.10.2000 in respect of all the other persons and promotion was granted to juniors to the petitioner with effect from 01.02.2000. The petitioner's claim for promotion as Electrical Executive Engineer was considered by the Departmental Promotion Committee (for brevity, *DPC*) on 31.07.2003 and 21.08.2002. The benefits have been denied to the petitioner.

4 The stand of the respondent-Company is that the promotion of the petitioner was kept pending for recommendation due to pendency of departmental proceeding and one post was kept reserved in respect of the petitioner. It is also the stand of the respondent-Company that the promotion of the petitioner to the post of Electrical Executive Engineer was kept pending due to pendency of vigilance case.

5 This Court, on basis of the seniority list of Assistant Electrical Engineers, that is Annexure 3 to the writ petition dated 16.05.1991, would notice that juniors to the petitioner have been granted the benefit of promotion to the post of Electrical Executive Engineer with effect from 01.02.2000. This issue is not disputed in the instant proceeding, but the petitioner's entitlement to the benefit is being disputed by the respondent-Company by saying that due to pendency of the departmental proceeding as well as the vigilance case, the benefit of the promotion had been kept pending.



**6** The stand of the respondent-Company is that in view of pendency of the said two proceedings, resort had been made to the sealed cover procedure in case of the petitioner and a post had been kept reserved with effect from 01.02.2000.

**7** Learned counsel for the petitioner submits that as on 01.02.2000, neither the punishment of censure dated 20.11.2001 had come into existence nor there was any vigilance case pending against the petitioner. He points out that the effect of censure dated 20.11.2001 was subsequently withdrawn with effect from 17.08.2002. As regards the vigilance case, it is pointed out that the vigilance case came into existence by lodging first information report on 05.03.2002. It is clear that as on 01.02.2000, that is the date on which the petitioner is claiming the benefit of promotion with regard to other juniors to the petitioner who have been granted promotion to the post of Electrical Executive Engineer, neither the effect of censure was there nor there was any vigilance case pending against the petitioner.

**8** In the circumstances noted above, the issue which arises for consideration is whether the petitioner could be deprived of the benefits of the promotion to the post of Electrical Executive Engineer with effect from 01.02.2000 that is the date juniors to the petitioner have been granted promotion, by assigning the reason that on the date DPC was considering the promotion that is 31.07.2003



and 21.08.2002, the vigilance case had not been lodged against the petitioner.

**9** Learned counsel for the petitioner, in support of his submission that since on the relevant date, that is 01.02.2000, no proceedings either departmental or criminal were pending against him, he could not have been deprived of the benefit of promotion from the due date, has relied upon the decision of this Court in the case of *Awadhesh Pandey –Versus- State of Bihar & Others, 2006 (3) PLJR 617*. This Court, considering earlier pronouncements of the Apex Court, has clearly held that the prospective punishment order cannot deprive the employee of the benefit of promotion on the due date of promotion on which no charge or proceeding were pending against him.

**10** The submission of the learned counsel for the petitioner, therefore, appears to be correct. The petitioner would be entitled to benefit of promotion to the post of Electrical Executive Engineer with effect from 01.02.2000 that is the date on which his juniors have been promoted as on that date neither any punishment in departmental proceeding was pending against the petitioner nor the vigilance case had come into existence. The stand of the respondent-Company otherwise is, therefore, unsustainable.

**11** During pendency of the case, the petitioner



superannuated on 31.01.2008. In view of the pendency of the criminal proceeding after 2002, learned counsel for the petitioner has fairly submitted that he would not press the writ application for further promotion to the post of Superintending Engineer as in the meantime, he has already retired.

**12** In view of the aforesaid development, subsequent to filing of the writ petition, this Court would direct that the notional benefits arising out of promotion of the petitioner to the post of Electrical Executive Engineer with effect from 01.02.2000, that is the date on which his juniors have been so promoted, may be granted to the petitioner.

**13** The writ petition is allowed to the extent indicated hereinabove.

**14** The consequential benefits arising out of such notional grant of promotion may be calculated and made available to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

**(Madhuresh Prasad, J)**

**M.E.H./-**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 28.03.2018 |
| Transmission Date | NA         |

