

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.199 of 2013

In

Civil Writ Jurisdiction Case No.4540 of 2011

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KAUSHAL KISHORE MISHRA SON OF SRI SHEO KUMAR MISHRA
RESIDENT OF MOHALLA - DHIRACHAK, P.S. - ANISABAD, DISTRICT
- PATNA

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. THE CHIEF SECRETARY, GOVT. OF BIHAR, PATNA
3. THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATION
DEPARTMENT, GOVT. OF BIHAR, PATNA
4. THE JOINT SECRETARY, GENERAL ADMINISTRATION
DEPARTMENT, GOVT. OF BIHAR, PATNA
5. THE UNDER SECRETARY, GENERAL ADMINISTRATION
DEPARTMENT, GOVT. OF BIHAR, PATNA

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh
For the Respondent/s : Mr. Aditya Nath Jha, AC to SC 18

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 17-07-2018

Heard Mr. Shambhu Sharan Singh, learned counsel,
appearing for the appellant-writ petitioner and Mr. Aditya Nath
Jha, assisting counsel to SC-18 for the State.

This is a second round consideration of the present
appeal, on being remitted by the Supreme Court while allowing
the appeal of the appellant-writ petitioner arising from Civil
Appeal Nos. 14-15 of 2018, whereby, while setting aside the



earlier order of dismissal dated 04.03.2013 passed by a division bench of this Court, holding the Letters Patent Appeal barred by limitation, the matter has been remitted for disposal in accordance with law on its own merits. Though voluminous writ petition is the foundation of the appeal and equally voluminous is the Letters Patent Appeal, but the issue raised by the appellant-writ petitioner lies in a very narrow compass.

The appellant-writ petitioner prays for promotion to the post of Deputy Secretary and while raising such claim on his meritorious eligibility, it is his grievance that he has been discriminated, because though his juniors were granted promotion way back on 31.01.2011, his case has been overlooked. While raising such claim and questioning the action of the respondents, he came before this Court in the writ petition in question and which has been dismissed by a learned Single Judge of this Court vide order dated 09.07.2012. According to the learned Single Judge, the petitioner was given protection on the post of Under Secretary under the Supreme Court's order until the finalization of the seniority list and thus the promotion on the post of Under Secretary was ad hoc. It was held that until such time that this promotion was regularized, it would be treated as a personal promotion and his seniority in the cadre of



Under Secretary would be determined from such date.

It is feeling aggrieved by the conclusion drawn by the learned Single Judge to deny the claim of the appellant-writ petitioner for consideration of his case for promotion to the post of Deputy Secretary, while holding the promotion of the appellant-writ petitioner to the post of Under Secretary as ad hoc, that the present appeal came to be filed but was dismissed by a Co-ordinate Bench of this Court vide order passed on 04.03.2013, inter alia, not being satisfied by the reasons assigned for condonation of delay. The judgment and order of the Co-ordinate Bench dated 04.03.2013, as discussed above, was the subject-matter of Civil Appeal which has been allowed and hence on remand the matter has been heard on its own merit.

While espousing the claim of the appellant-writ petitioner for promotion to the post of Deputy Secretary, Mr. Singh, learned counsel for the appellant-writ petitioner, has been rather precise in his submission to invite the attention of this Court to the final gradation list in the cadre of Under Secretary, a copy of which is enclosed as Annexure-F to the appeal, to submit that while the name of the appellant-writ petitioner appears at serial no. 20, those officers whose names appear at



serial nos. 23 (Sunil Kumar Singh), 24 (Gyan Chandra), 30 (Haridayal Chaudhary) and 31 (Shyam Lal Ram) were granted promotion to the post of Deputy Secretary vide order dated 31.01.2011, which is enclosed at Annexure-G, overlooking the claim of the appellant-writ petitioner.

On query made from Mr. Jha, learned State Counsel as to the reasons for denying the promotion to the appellant-writ petitioner while allowing his juniors to supersede him, Mr. Jha reiterates the opinion expressed by the learned Single Judge in treating the promotion of the appellant-writ petitioner as Under Secretary on ad hoc basis but there is nothing on record which either supports the submission of learned State Counsel or the conclusion drawn by learned Single Judge. On the contrary, the covering letter to the gradation list dated 30.11.2009 issued under the signature of the Deputy Secretary and addressed to all the Principal Secretaries makes it eloquent that the gradation list was a final gradation list. Perhaps this relevant aspect of the matter has escaped the notice of the learned Single Judge in failing to appreciate the status of the appellant-writ petitioner as an Under Secretary and equally off target are the submission of the learned State Counsel which runs counter to the position reflected from the letter of the Deputy Secretary, Department of



Personnel and Administrative Reforms dated 30.11.2009 and attaches finality to the position of the appellant-writ petitioner as Under Secretary. Such being the factual position, definitely, the appellant has been discriminated by the promotion of Sunil Kumar Singh, Gyan Chandra, Haridayal Chaudhary and Shyam Lal Ram, who are admittedly juniors to the appellant-writ petitioner and there is no material on record to justify the impugned action.

A feeble attempt has been made by Mr. Jha to contest the submission advanced by Mr. Singh by drawing our attention to letter dated 25.01.2012 of the Joint Secretary, General Administration Department, addressed to all the Principal Secretaries, a copy of which is enclosed at Annexure-R-3 to submit that a second gradation list was published in which the name of the appellant-writ petitioner appears at serial no. 129. We fail to appreciate as to how the gradation list published on 25.01.2012, showing the status of the Under Secretary as on 01.04.2011 can provide an explanation to the illegality committed by the respondents in not considering the case of the appellant-writ petitioner for promotion along with juniors, who were promoted on 31.01.2011 i.e. much prior to the date on which the gradation list dated 25.01.2012 came into being. In



fact, this document is a confirmation of the illegality complained of by the appellant-writ petitioner at the hands of the respondents in down-scaling his position even further to reach at serial no. 129, when the appellant-writ petitioner figured at serial no. 20 in the gradation list of 2009.

In the circumstances noted, if the appellant-writ petitioner raises a grievance of being targeted, he is perhaps correct. The gradation list dated 25.01.2012 obviously would not include the names of those juniors, who had already been granted promotion on 31.01.2011 to the post of Deputy Secretary and thus would give no explanation to the discriminatory treatment meted out to the appellant-writ petitioner at the hands of the respondents which stands confirmed from the gradation list of 2009 enclosed at Annexure-F.

We need not detain ourselves any further to hold that the appellant-writ petitioner has been illegally denied consideration for promotion to the post of Deputy Secretary with effect from the date his juniors, referred to above, were granted promotion vide Memo No. 320 dated 31.01.2011 and since this position is no more in contest, the respondent-Department is put under obligation to consider the claim of the



appellant-writ petitioner for promotion to the post of Deputy Secretary with effect from 31.01.2011 i.e. the date from which the juniors, referred to above, have been granted promotion.

The legal position in this regard is well-settled and even if nobody has a right to claim promotion, definitely the appellant-writ petitioner has a right to such consideration at the stage when he was superseded by his juniors. Let such consideration take place expeditiously and preferably within a period of 08 weeks from the date of receipt/production of a copy of this order.

For the reasons so discussed, the judgment and order dated 09.07.2012, passed in CWJC No.4540 of 2011 by the learned Single Judge is set aside.

With the directions/observation as above, the appeal is allowed, but with no order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
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