

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15728 of 2011

SHIVSHANKAR UPADHYAY S/O Sri Sheo Kumar Upadhyay Resident Of
Shidharthpuram Lane No.- 1 Atardah Muzaffarpur, Bihar

... .. Petitioner/s

Versus

1. THE UNION OF INDIA through Home Secretary, Government of India
2. The Home Secretary, Govt. Of India, North Block, New Delhi-11
3. The Director General Of C.R.P.F., C.G.O. Complex, Block No 1, Lodhi Road, New Delhi
4. The Inspector General Of C.R.P.F. Bihar Sector, C.R.P.F. Complex, Ashiyana Digha Road, Patna

... .. Respondent/s

For the Petitioner/s : M/s Rajeev Kr Singh, Gyanendra Kr Diwakar,
Advocates
For the Respondent/s : Ms Nivedita Nirvikar, CGC

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the petitioner as well as the learned counsel for the Union of India.

2 By Departmental Promotion Committee (for brevity, DPC) Meeting dated 25.02.2008, the petitioner has been promoted as Second-in-Commandant. Writ petition has been filed in the year, 2011 after approaching the Authorities that he should have been given the promotion as Second-in-Commandant with effect from 12.10.2004.

3 Two submissions basically have been advanced by the petitioner's counsel. One is that juniors have been promoted with effect from 12.10.2004 and the other is that the petitioner's



representation against the adverse entry dated 10.08.2002 in the Annual Confidential Report in the year, 2002 has not been considered.

4 Respondent-Union of India has filed counter affidavit. It is its specific stand in the counter affidavit that in response to the adverse entry dated 10.08.2002, the petitioner filed his representation on 09.10.2003 after lapse of one year. This is contrary to the extant provisions as per GIDP & AR OM dated 30.01.1978 wherein the petitioner was required to make his application within a month.

5 Thereafter, the petitioner was considered for promotion as Second-in-Commandant on 24.03.2005, 05.05.2006, 16.03.2007 and 15.06.2007. At all the four DPC Meetings, he was graded as unfit. The petitioner was found fit for promotion as Second-in-Commandant in the DPC Meeting dated 25.02.2008 and, therefore, he has been duly granted the promotion on being found fit for the same. The petitioner has not assailed the finding of the four DPC Meetings to the extent that he was unfit for promotion.

6 In this connection, Mr Rajeev Kumar Singh appearing for the petitioner submits that great prejudice was caused to the petitioner in not taking action in time.



7 This Court finds that against the adverse entries dated 10.08.2002, the petitioner approached the Authorities after lapse of one year which was time barred. Subsequently, on four occasions, he was graded unfit which too has remained unchallenged. The promotion granted with effect from 25.02.2008 when he was fit for promotion is perfectly in accordance with law as prior to the said date, as per the record, petitioner was not fit for promotion.

8 This Court does not find any reason to direct for granting him promotion with effect from any earlier date as the petitioner, at best, had a right for consideration for promotion which consideration was done repeatedly and either there was an adverse entry in his ACR or he had been graded as unfit. It is only when the petitioner was found fit when he was duly granted the promotion.

9 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2019
Transmission Date	NA

