IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7073 of 2017

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Dhrub Narain Sahu, Son of Shri Jagannath Sahu, Resident of Village-Dharampatti, P.O.-Jiaram Raghopur, P.S.-Raghopur, District-Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary-cum-Commissioner, Commercial Taxes Department, Bihar, Patna.
3. Principal Secretary, General Administration Department, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

For the Respondent/s : Mr. Harishankar Rai, AC to AG

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 15-04-2019

Heard Mr. Abhinav Srivastava, the learned counsel for the petitioner and Mr. Harishankar Rai, learned AC to the Advocate General.

2. The petitioner had intitially come before this Court for a direction to the concerned respondents to consider his case for promotion to the post of Deputy Commissioner and thereafter Joint Commissioner,

Commercial Taxes, in the same manner as such privilege has been done with respect to the other similarly situated persons, some of whom are even juniors to the petitioner and extending all such consequential benefits to him, in case his prayer of grant of promotion is allowed.

2. During the pendency of the present writ petition, the State Government took a decision on 19.12.2017 to promote the petitioner to the post of Deputy Commissioner, Commercial Taxes with effect from the date of the issuance of the order, *i.e.*, 19.12.2017. The petitioner claims that he ought to have been promoted from 03.12.2013 and therefore has preferred I.A. No. 7185 of 2018, bringing on record the order dated 19.12.2017 and seeking an amendment in the prayer, *viz.*, direction to the respondent authorities to make rectification in the date of promotion and make it recknonable from 03.12.2013, as has been done in the case of officers who are admittedly juniors to the petitioner.

3. The response of the State to the aforesaid request of the petitioner is that the promotion of the

petitioner was delayed because of laches on his part and in view of the Letter No. 7020 dated 24.12.2005 of the Finance Department, any person, who is promoted later than his juniors because of his laches, would not be given promotion with an anterior date keeping in view that juniors to him have been promoted. However, the said rule shall not apply in case of delayed promotion on account of laches on the part of the employer in which case promotion shall be admissible with all monetary benefits from the date when his juniors got such promotion.

4. Taking shelter of the aforesaid letter, it has been submitted on behalf of the State that the A.C.R. of the petitioner was incomplete and there was an adverse comment because of one punishment having been given to him in a departmental proceeding. Thus, the delayed promotion was squarely attributable to the conduct of the petitioner and not the employer and hence no retrospectivity to the promotion could be given as desired in the writ petition/I.A. No. 7185 of 2018.

5. The learned counsel appearing for the

petitioner, however, has countered the aforesaid response of the State by giving details of the earlier litigation and the fact that the delayed promotion could not be attributed to the petitioner.

6. In the aforesaid context, it has been submitted that despite Departmental Promotion Committee *(in short the D.P.C.)* having been held on three dates which recommended for grant of promotion to the petitioner to the rank of Assistant Commissioner, Commercial Taxes from 05.05.2008, such promotion was not given to him. This led the petitioner to file a writ petition before this Court *vide* C.W.J.C. No. 9365 of 2015 and a Bench of this Court *vide* order dated 07.09.2015, directed the concerned authorities to consider the case of the petitioner in the light of the recommendation made by the D.P.C. The case of the petitioner thereafter, it has been argued, was placed before the D.P.C. on 18.05.2016, but instead of promoting the petitioner to the post of Assistant Commissioner, Commercial Taxes from 05.05.2008, as was recommended by the earlier D.P.C., the petitioner was promoted to the said post from

01.07.2010. A contempt petition, thereafter, was lodged by the petitioner *vide* M.J.C. No. 4388 of 2016, whereafter the date of promotion was shifted back to 05.05.2008.

7. It has further been argued on behalf of the petitioner that with the notification dated 19.12.2017, referred to above, twenty three Assistant Commissioners, Commercial Taxes were granted promotion, which was made effective from the date of the issuance of the order. It has also been brought to the notice of this Court that some of the juniors to the petitioner have been promoted to the post of Deputy Commissioner with effect from 03.12.2013 by notification dated 15.06.2016, entitling the petitioner also to be promoted from the same date, *i.e.*, from the same date, *i.e.*, from the year 2013.

8. The punishment which was given to the petitioner of withholding of two increments but without cumulative effect on 01.01.2007 was withdrawn on 21.05.2009. Thus, with the withdrawal of the aforesaid punishment, the waterfall effect naturally ceased and the petitioner become entitled for promotion. In any view of the

matter, even if it (punishment) was not withdrawn on such date, the consideration of promotion of the petitioner would have been carried out under the sealed-cover. Thus, for no apparent reason, which could be attributable to the petitioner, was there a delay in the promotion to the post of Assistant Commissioner and, thereafter, to the post of Deputy Commissioner.

9. It has thus been argued by the learned counsel for the petitioner that the State cannot take shelter of the letter of the Finance Department, which permits of parity only in case of the delayed promotion not being on account of the conduct of the petitioner. But for a general statement in the counter affidavit regarding late submission of appraisal form, no ground has been shown by the State for denying the same date of promotion to the petitioner as has been given to the others/juniors.

10. Considering the aforestated facts, this Court deems it appropriate to direct the petitioner to make a representation before the Principal Secretary-Cum-Commissioner, Commercial Taxes Department, Bihar, Patna

(respondent No. 2) along with a copy of this order seeking shifting of the date of promotion of the petitioner on the post of Deputy Commissioner, Commercial Taxes from 03.12.2013 within a period of four weeks from today. On receipt of such representation, the concerned respondent No. 2, after verifying the records, shall pass a reasoned order in accordance with law within a further period of four weeks thereafter.

11. Needless to state that if the claim of the petitioner is found to be acceptable/tenable, necessary sequel orders, making correction in the date of promotion, shall be passed within the aforesaid stipulated time.

12. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.04.2019
Transmission Date	N/A