

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15808 of 2017

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Ashok Kumar, son of Narayan Shahi, resident of Village Khopi, P.S. Runnisaipur, District Sitamarhi at present residing at Flat No. 205, S.S. Palace, North Shastrinagar, P.S. Shastrinagar, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary (Home), Govt. of Bihar, Patna.
3. The Special Secretary Home (Police), Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. Bihar Public Service Commission through its Secretary, 15, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar, Adv.
For the Respondent/s : Mr.Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 08-01-2020

The petitioner is a member of Indian Police Service. He had initially joined Bihar Police Service, as Deputy Superintendent of Police and was promoted to the rank of Additional Superintendent of Police with effect from 31.12.2010. Staff Officer is the highest promotional post in the cadre of Bihar Police Service in Pay Band-4, with the Grade Pay of Rs. 87,00/-. One post of Staff Officer had become vacant on 01.10.2013, consequent upon retirement of an incumbent to the post, for filling up of which a process was initiated by the Department in September 2013. A proposal was sent by the Department to the



Bihar Public Service Commission (hereinafter referred to as 'the BPSC') on 21.10.2013 for convening a meeting of Departmental promotion Committee (hereinafter referred to as the DPC). A meeting of DPC was convened for 26.11.2013. Before the case of the petitioner and other officers for promotion as Staff Officer could be considered by the BPSC, they were granted promotion to the cadre of Indian Police Service with effect from 21.10.2013 and, therefore, the meeting of the DPC was postponed.

2. It is the petitioner's case that he had become entitled to promotion to the post of Staff Officer with effect from 01.10.2013, when the post had fallen vacant, he being the next seniormost officer in the cadre of Bihar Police Service, and in that background this writ application has been filed seeking direction to the respondents to grant him promotion on the post of Staff Officer in the Pay Band-4 with Grade Pay of Rs. 8700/- with effect from 01.10.2013, with consequential monetary and other admissible benefits. It is the petitioner's case that because of denial of promotion to the post of Staff Officer with effect from 01.10.2013, the petitioner has suffered huge monetary loss, which is recurring in nature. He has done his own calculation of difference of pay between what he has received from the date of his promotion to the Indian Police Service until June 2019 and, what he would have received had he been given promotion to the



rank of Staff Officer. It is the petitioner's case that fixation of pay on his promotion in IPS cadre is dependent on the pay which he was getting prior to entry into the said cadre and accordingly, had promotion to Staff Officer in Bihar Police Service been granted to him with effect from 01.10.2013, substantially higher pay would have been fixed than what has been fixed.

3. It is to be noted that this writ application has been filed more than four years after the petitioner was promoted to the rank of Indian Police Service and the date with effect from which he has claimed his promotion to the rank of Staff Officer in Bihar Police Service. It is the petitioner's case that when he learnt in 2013 that his promotion to the post of Staff Officer was not considered on account of his promotion to the cadre of IPS, he had filed a representation on 01.11.2013 and since then he had been waiting for a positive response from the Home (Police) Department. He filed yet another representation on 18.06.2017, in response to which he received a communication on 11.07.2017 to the effect that since the petitioner, along with two other officers in the zone of consideration were promoted to the cadre of IPS with effect from 21.10.2013, no promotion could be granted to him to the rank of Staff Officer in the cadre of Bihar Police Service.

4. It is the petitioner's plea that non-consideration of his case for promotion to Staff Officer with effect from 01.10.2013 on



the ground of his promotion to the cadre of IPS is wholly irrational and arbitrary as, according to him, his case was required to be considered for promotion to the rank of Staff Officer with effect from the retrospective date, preceding the date of his promotion to the cadre of IPS, as the said post had fallen vacant on 01.10.2013.

5. A counter affidavit has been filed on behalf of the respondents-State of Bihar stating therein that earlier, a proposal for convening a meeting of DPC for promotion to the post of Staff Officer had been sent to the BPSC vide letter No. 443 dated 22.01.2013, when there were five vacancies of the post of Staff Officer. The petitioner's name was not there in the consideration zone, he being below in the seniority-list. A meeting of DPC was convened on 22.02.2013 and after making necessary formalities, the Home Department (Police Branch) vide notification nos. 2224 dated 28.06.2013 and 4933 dated 28.06.2013 promoted the officers to the rank of Staff Officer. It has further been stated that after a gap of merely one month and nine days of the issuance of the said notification dated 28.06.2013, the Department, after calculation of vacancies and completing other essential formalities, again initiated a process for granting promotion to the post of Staff Officer and the matter was sent to the General Administration Department for roster clearance on 10.08.2013. The General Administration Department, after clearing the roster points,



returned the concerned file on 26.09.2013. After obtaining roster clearance from General Administration Department and Vigilance clearance, a proposal for convening meeting of the DPC for promotion to the post of Staff Officer was sent to the BPSC on 21.10.2013. On 21.10.2013, there was only one vacancy of Staff Officer against which the Home Department had sent three names, including the petitioner's name as the first name. Coincidentally, the petitioner was granted promotion in the Indian Police Service on 21.10.2013. Evidently, thus, when proposal for convening a meeting of the DPC was sent and the DPC was yet to be convened, the petitioner was already promoted in the rank of IPS.

6. It is the case of the State of Bihar that under Regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'the Regulations'), appointment of a State Service Officer to all India Service against the promotional quota or otherwise, is appointment in a substantive capacity outside his cadre. His lien on the post in the State Service, therefore, stood suspended by virtue of Rule 14(a)(2) of the Fundamental Rules. There is specific statement made in paragraph 11 of the counter affidavit on behalf of respondents no. 1 to 3 that no officer junior to the petitioner was promoted to the rank of Staff Officer, till the petitioner was in Bihar Police Service.



7. A counter affidavit has been filed on behalf of the BPSC also, from which it appears that the meeting of the DPC convened for 26.11.2013 was postponed in the light of letter dated 22.11.2013 issued by the Home (Police) Department, because of promotion of the officers in the zone of consideration to Indian Police Service.

8. A reply has been filed on behalf of the petitioner to the counter affidavit stating therein that the Regulations do not stipulate transfer or lien and the ground taken on behalf of the State of Bihar that lien of the petitioner no longer subsists with the State cadre and, therefore, he cannot be given promotion in the State cadre is in teeth of the Government of India decision under Regulation 9 of the Regulations as contained in M.H.A. letter No. 4/4/60-AIS (III), dated 15.10.1960. The part of the said letter dated 15.10.1960, which has been quoted in the reply to the counter affidavit, is being reproduced hereinbelow :-

“1. The appointment of a State Service Officer to an all India Service against the promotion quota or otherwise is appointment in a substantive capacity outside his cadre. His lien on the post in the State Service shall, therefore, be suspended under Fundamental Rule 14(a)(2) and his written consent obtained for the termination of his lien on the post in the State Service before he is confirmed in the All India Service. The written consent should be obtained by



the State Government while recommending the names of State Service Officers for appointment to the All India Service

[G.I., M.H.A. letter No. 4/4/60-AIS (III), dated 15.10.1960]”

9. The petitioner is relying on paragraph 2 of the said letter to make out his case that an officer on appointment in All India Service on probation would retain his lien in the State Service and, therefore, would be entitled to all benefits that might accrue to him. Paragraph 2 of the said letter reads thus :-

“2. A State Service Officer, on appointment to an All India Service on probation, would retain his lien in the State Service and therefore be entitled to all the benefits that may accrue to him in that Service (such as confirmation in the Selection Grade of the State Police Service) before his confirmation in the All India Service. [G.I., M.H.A. letter No. 4/4/60-AIS (III), dated 15.10.1960.]”

10. It is accordingly the petitioner’s case that promotion, which was legitimately due to the petitioner, has been denied, which is gross abuse of power. The petitioner has placed reliance on the Supreme Court’s decision in case of **Major General H.M. Singh vs. Union of India** reported in **(2014) 3 SCC 670** and has relied on following passage of the Supreme Court’s decision rendered in the said case :-



“The factual position depicted in the counter affidavit reveals, that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable failing which, he would be deprived of his fundamental right of equality before the law and equal protection of the laws, extended by Article 14 of the Constitution of India.”

11. Reliance has also been placed on a Supreme Court’s decisions in case of ***Union of India vs. Hemraj Singh Chauhan*** reported in ***(2010) 4 SCC 290*** and ***Union of India vs. N.R. Banerjee*** reported in ***1977(9) SCC 287***.

12. In the supplementary affidavit filed on behalf of the petitioner it has been stated that the respondents have allowed promotion to the officers to the rank of Staff Officer even after their promotion to Indian Police Service, with retrospective effect. Instances have been given in paragraph 5 of the supplementary affidavit, which are as under :-



Sr. No.	Name of Officer	Notification No.	Dated
1.	Mr. Rajendra Prasad	Home(Police) Dept. Notification no. 3638	10/05/2016
2.	Md. Abdullah	Home(Police) Dept. Notification no. 3717	04/05/2018
3.	Mr. Arbind Thakur	Home(Police) Dept. Notification no. 5535	26/06/2018
4.	Mr. Amjad Ali	Home(Police) Dept. Notification no. 5535	26/06/2018
5.	Mr. Wasiruddin Ahmad	Home(Police) Dept. Notification no. 3070	22/03/2007
6.	Mr. Jaglal Choudhary	Home(Police) Dept. Notification no. 3070	22/03/2007
7.	Mr. Jai Prakash Narayan Singh	Home(Police) Dept. Notification no. 3070	22/03/2007

13. It has been stated in the supplementary affidavit that the persons at serial no. 3 and 4 were junior to the petitioner in State Police Service. There is no averment, however, either in the writ application or other pleadings of the petitioner that any officer junior to the petitioner has been given promotion to the rank of Staff Officer with effect from 01.10.2013.

14. The only question, which arises to be answered by this Court on the basis of the pleadings on record and submissions advanced on behalf of the parties, is as to whether the petitioner has been able to establish his legal right to be promoted to the rank of Staff Officer with effect from the date a vacancy of the said post arose on 01.10.2013.



15. This question is no more *res integra* in view of clear judicial pronouncements by the supreme Court in a series of decisions, some of which are being referred to, illustratively, in present judgment.

16. In case of *Union of India vs. K.K.Vadera and others* reported in *1989 Supp(2) SCC 625*, the respondents were promoted from the post of Junior Scientific Officer (Group B posts) to the posts of Scientists 'B' with effect from 16.10.1985 or from the date they would actually assume charge. They claimed promotion from a retrospective date with effect from 01.07.1984, by making an application before the Central Administrative Tribunal. While rejecting the prayer for grant of promotion with effect from 01.07.1989, the Tribunal had directed to that their promotion should take effect from the date on which the promotional posts were created. Reversing the judgment of the Tribunal the Supreme Court in no uncertain terms held that there was no law or rule under which promotion to a post is to be given from the date such post falls vacant.

17. Similarly, in case of *Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur* reported in *(1998)7 SCC 44*, a judicial officer of Rajasthan Judicial Service claimed consideration of his promotion to higher judicial service with effect from the date a vacancy had arisen. By the time he filed his writ application,



he had superannuated. Relying on the exposition of law in case of ***K.K.Vadera (supra)*** the Apex Court observed that the judicial officer could certainly have a case had any of his juniors been given promotion from a date prior to his superannuation. Despite noticing inaction on the part of the High Court on its administrative side and expressing regrets for the same, the Supreme Court observed that it did not give any comfort to the appellant of that case and held that mere administrative inaction resulting in delayed promotion would not entitle an employee to claim retrospective promotion from the date the vacancy arose.

18. An employee, it is trite, though has a right to be considered for promotion in accordance with the Rules governing service conditions of the cadre to which he belongs, chance of promotion is neither a fundamental nor legal right.

19. It would be beneficial to notice at this juncture another Supreme Court decision in case of ***Nirmal Chandra Sinha vs. Union of India reported in (2008) 14 SCC 29***, paragraphs 7 and 10 read thus:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India and Ors. v. K.K. Vadera, State of Uttaranchal v. Dinesh Kumar Sharma, K.V. Subba Rao v. Govt.



of A.P., Sanjay K. Sinha-II v. State of Bihar, etc.

10. In the present case, appellant Nirmal Chandra Sinha was promoted as General Manager on 29-11-1996, but he claims that he should be deemed to have been promoted w.e.f. 13-3-1996 with consequential benefits. We are afraid this relief cannot be granted to him. It is settled law that the date of occurrence of vacancy is not relevant for this purpose.”

20. In a relatively recent decision in case of ***Union of India vs. N.C. Murli, reported in (2017) 13 SCC 575*** the Supreme Court had to consider a situation where, though, large number of promotional posts were vacant, DPC was not held for one reason or the other for nearly 18 years effecting promotion to such posts. Subsequently, when the DPC met, the officers were allowed promotion on the basis of recommendation by the DPC, prospectively. The officers moved the Central Administrative Tribunal claiming promotion retrospectively. The Central Administrative Tribunal, in order to meet the ends of justice allowed *pro forma* promotion according to the seniority and eligibility with retrospective effect against the vacancies of the respective years when they qualified for those posts. A writ petition preferred against the judgment of the Tribunal was dismissed by the High Court. The Supreme Court, while refusing to interfere with the decision of the Tribunal and the High court in



the facts and circumstances of that case, where there was no DPC held for 14 years, reiterated the law that unless there is specific rule entitling an employee to receive to promotion from the date of occurrence of vacancy, right of promotion does not crystalise on the date of occurrence of vacancy.

21. In case of *Union of India vs. Hemraj Singh Chauhan* (supra), reliance on which has been placed by the learned counsel for the petitioner, the Supreme Court acknowledged the right of eligible employees to be considered for promotion. The said case related to promotion to Indian Administrative Service from State Civil Service. There had been delay of two years in the cadre review, which was found to be mainly due to inaction on the part of the State Government. In the meanwhile, some of the officers of the State Civil Service had crossed the upper age limit of 54 years and had thus become ineligible for consideration for promotion. The contention of such officers that their cadre review should be given effect to retrospectively from 2003 and they should be considered for promotion accordingly, was initially rejected by the Administrative Tribunal. The High Court, setting aside the order of the Tribunal, had held that the cadre review done in 2005 should be deemed to have been done in 2003 and the officers be considered for promotion accordingly. The Supreme Court in the facts and



circumstances of the said case and invoking Article 142 had held in paragraph 48 as follows :-

“48. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article [142](#) of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.”

22. The said decision does not lay down a law that promotion is to be granted as of legal right with retrospective effect from the date a vacancy occurs. It must be noticed here that in the present case there has been no administrative delay at all, inasmuch as, according to the petitioner's own case, he could be considered for promotion to the rank of Staff Officer which had fallen vacant on 01.10.2013. In the same year, in February 2013, an exercise was already undertaken by the State respondents to consider promotion to the said post when the petitioner was not even in zone of consideration. Promotional orders were issued in June 2013. It is also an admitted fact that one month and nine days



after issuance of notification on 28.06.2013, the Home Department had again started the process for convening a meeting of the DPC for grant of promotion to the post of Staff Officer. No statutory rule has been shown to this Court nor any executive instruction that promotion is to be given to the post of Staff Officer with effect from the date of vacancy.

23. The Supreme Court's decision in case of ***N.R. Banerjee*** (supra) emphasized the need of holding DPC on regular basis. In the present case, in February 2013, DPC meeting was held for promotion to the post in question when the petitioner was not eligible. When a post had fallen vacant and the petitioner was found in the zone of consideration for the said post, steps were taken in August 2013 itself and a meeting was convened of the DPC. The petitioner was granted, in the meanwhile, promotion to IPS cadre because of which the meeting was postponed. The said decision in case of ***N.R. Banerjee*** (supra) also does not lay down a law that promotion should be granted from the date the vacancy occurs.

24. In view of the law laid down by the Supreme Court in case of ***K.K.Vadera*** (supra), ***Baij Nath Sharma*** (supra), ***Nirmal Chandra Sinha*** (Supra) and ***N.C.Murli*** (Supra), as discussed above, in my opinion, the petitioner cannot claim retrospective promotion from the date the vacancy had arisen. The petitioner



has not been able to establish infringement of any of his legal or fundamental rights requiring this Court’s interference by issuing direction to the respondents to allow him promotion with effect from the date the vacancy arose, in the absence of any plea of discrimination to the effect that any officer junior to him has been granted promotion to the post of Staff Officer, with effect from any date when he was in State Police Service.

25. For the reasons aforesaid, I do not find any merit this application, which is accordingly dismissed.

26. There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2020
Transmission Date	NA

