

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5231 of 2021

=====

Arun Kumar Son of Late Gyanchand Prasad Resident of Mohalla-Arfabad Colony, Near Jatahi Mandir, Nalapar, P.O.Gulzarbagh, P.S.-Alamganj, District-Patna, Presently Posted as Executive Engineer, Minor Water Resources Department, Minor Irrigation Division, Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-Cum-Additional Secretary-Cum-Special Secretary, Minor Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Kumar Manglam, Advocate
For the Respondent/s : Mr. Santosh Chandra Bhaskar, AC to GP-11

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 07-04-2022

Heard the learned counsels for the parties.

In the instant petition, petitioner has prayed for
following reliefs:-

“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing of a part of the proceedings of the Departmental Promotion Committee of Minor Water Resources Department, Government of Bihar, Patna dated 07.03.2019 convened for consideration of promotion of Executive Engineers to the post of Superintending Engineer, to the extent when the Departmental Promotion Committee had found the petitioner ineligible for promotion to the post of Superintending Engineer for the reason that the order of punishment passed against the petitioner is still operative.



(II) For a declaration that even if vide order dated 05.10.2017 contained in memo no. 4207 dated 05.10.2017, a punishment of censure (Nindan) was imposed against the petitioner for his alleged unauthorized absence from duty from 23.07.2017 to 06.12.2015, the Respondents were obliged to adopt sealed cover process in respect of the petitioner's case for promotion to the post of Superintending Engineer since the effect of the punishment was to expire on 31st March, 2019 when the meeting of Departmental Promotion was held on 07.03.2019.

(III) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to consider the petitioner's case for promotion to the post of Superintending Engineer with effect from the date since when the Executive Engineers junior to the petitioner have been granted the benefits of that promotion with all consequential benefits including his seniority in the cadre of Superintending Engineer as also for payment of monetary benefits.

(IV) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner is found entitled under the facts and circumstances of the case.”

On 31.03.2022 following order was passed:-

“Heard learned counsel for respective parties.

In the instant petition, crux of the matter is whether the petitioner is entitled to be promoted to the post of Superintending Engineer on 07.03.2019, the date on which the Departmental Promotion Committee met for promotion to the post of Superintending Engineer from the source cadre Executive Engineer



or not?

Undisputedly, petitioner was facing a disciplinary proceedings in the year 2017 and it was concluded in imposition of penalty of censure on 05.10.2017 and it was not communicated to the petitioner. Such un-communicated penalty order has not been taken into consideration for the purpose of ignoring the claim of the petitioner by the Departmental Promotion Committee which is the subject matter of the present petition as to whether un-communicated penalty order would not be a hurdle for promotion or not?

Learned counsel for the petitioner relied on Hon'ble Apex Court decision in the case of **Sukhdev Singh vs. Union of India & Ors.** reported in (2013) 9 SCC 566 (Paragraph 8). Further, he has relied on the decision of Hon'ble Apex Court dated 28.08.2018 passed in **Civil Appeal No. 32 of 2013 (Rukhsana Shaheen Khan vs. Union of India & Ors)**.

The aforesaid decisions are relating to un-communicated Annual Confidential Report, thus, on facts present case is distinguishable. It is to be noted that if the disciplinary authority failed to communicate the penalty order of censure to the petitioner dated 05.10.2017 as on 07.03.2019, however, one has to draw inference that as on 07.03.2019 inquiry would be pending consideration. It is further noticed that under Bihar Government Servants (Classification, Control and Appeal) (Third Amendment) Rules, 2010. Rule 14 of the said Rules, it is made clear that if penalty of censure is imposed in such an event an employee is not entitled for promotion for a period of three years from the date of alleged charge. Thus, petitioner is not entitled for



promotion for a period of three years from the date of allegation in the present case.

At this juncture, learned counsel for the petitioner seeks time to make some more research on the issue in order to support the petitioner involved in the present petition.

Relist this matter on 07.04.2022.”

Undisputed facts are that as on the date of DPC for the purpose of promotion to the post of Superintending Engineer on 07.03.2019, petitioner was facing a disciplinary proceedings as per the petitioner’s version. On the other hand, penalty of censure was imposed on 05.10.2017 and it was not communicated to the petitioner. If it is not communicated to the petitioner in that event one has to draw inference that enquiry was still pending. If the penalty order of censure dated 05.10.2017 is taken into consideration with reference to the criteria that Executive Engineer must have good record for the previous three years. Therefore, the censure penalty would be hurdle till 31.03.2019. Consequently, petitioner is not entitled for promotion with reference to DPC dated 07.03.2019.

If the authorities have not conducted any DPC for the purpose of promotion to the post of Superintending Engineer between 07.03.2019 to this day, the concerned official respondent is hereby directed to constitute DPC for the purpose



of promotion to the post of Superintending Engineer from the Executive Engineer and consider the petitioner’s name in the ensuing DPC. The process of filling up of future vacancies i.e. beyond 07.03.2019 shall be completed within a period of three months from the date of receipt of this order if the Superintending Engineer post/s are available.

With the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2022
Transmission Date	

