

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2914 of 2020

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Anand Deo Sharma, Son of Janeshwar Sharma, Resident of Village-Uchita,
Post Office-Sakurabad, Police Station-Sakurabad, District-Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Bihar, Patna.
3. The Under Secretary, General Administration Department, Bihar, Patna.
4. The Principal Secretary, Department of Finance, Bihar, Patna.
5. The Principal Secretary, Law Department, Bihar, Patna.
6. The Registrar General, Patna High Court, Patna.
7. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Parijat Saurav, Adv.
For the State	:	Mr. Suman Kumar Jha, AC to AAG3
For the High Court	:	Mr. Satyabir Bharti, Adv.
For the A.G.	:	Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-02-2023

Heard Mr. Parijat Saurav, learned advocate for the

petitioner, Mr. Satyabir Bharti for the High Court and Mr.

Bindhyachal Rai for the Accountant General. The State is

represented by Mr. Suman Kumar Jha.

The petitioner is aggrieved by the order contained in

letter no. 5816 dated 03.05.2019 whereby his representation



for pay protection has not been accepted only for the reason of delay.

The petitioner claims that his pay is required to be stepped-up in consonance with with principle of equal pay and pay protection to an employee who cannot be paid less than his juniors.

It appears that the petitioner was granted promotion to the post of Additional District and Sessions Judge with effect from 14.11.2003. At that time, he had not exercised his option under FR 22(I)(A)(i), which Rule is being extracted herein below:-

"Availability of option for choosing date for fixation of pay on promotion should be indicated in the promotion order-in terms of the orders contained in Dept. of Per. & A.R., O.M. No. F. 13/26/82-Estt. (P-1), dated 82-1983 and saving clause of FR 22 (1) (a) (1). in all cases, except in cases of appointment on deputation to an ex-cadre post or to a post on ad hoc basis, the Government servant subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, on his appointment to another



post carrying duties and responsibilities of greater importance than those attaching to the post held by him, has an option to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage on a time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of lower grade or post. In the order of appointment or promotion, a clause to this effect is required to be incorporated. Some instances have, however, come to the notice of this Department where the administrative Ministries/Departments, etc., have failed to incorporate such a clause in the promotion order resulting in the requests from the promoted officers at a subsequent stage for condonation of delay in exercise of option for fixation of pay. It has, therefore, been decided to reiterate these instructions to ensure that in the order of promotion/appointment covered by FR 22 (1) (a) (1), a clause should invariably be incorporated to this effect with a view to avoiding undue hardship to the officials as well as unnecessary references to this Department.



2. The Ministries of Agriculture and Co-operation, etc., are requested to bring these instructions to the notice of all concerned for guidance and strict compliance."

The petitioner has been getting the pay of 16,350/- in the scale of 12850-17550. As such, after his promotion to the post of A.D.J., his pay was fixed at 17150/- in the scale of 16750-20500 with next DNI 1/11 each year. There does not remain any dispute with this. The dispute arose only when the petitioner realized after his retirement that his juniors namely Ajit Kumar Sinha and Manmohan Choudhary were granted promotion to the post of ADJ with effect from 13.02.2004 and 17.02.2004 respectively who, after their promotion, were having paid Rs. 17,550/- in the scale of 16750-20550 with the next DNI 01/02 each year as per the provision.

The Accountant General's Office reported that at the time of their promotion, the aforesaid two Officers were getting their pay of 16,750/- in the scale of 12850-17550 immediately before their promotion. It was for this reason that on their promotion, their pay was fixed at Rs. 17,550/-, unlike in the case of the petitioner whose pay was fixed at Rs.



17,150/-. This was only for the reason of the petitioner not having exercised his option under fundamental rule 22(I)(A)(i).

It is the case of the petitioner that such option had to be made available to the petitioner at the time of promotion in the promotional order only, which admittedly has not been done. Though a further opportunity was given to the petitioner during his tenure of service but, that also does not appear to have been exercised.

This time again, the explanation of the petitioner is the same namely his having retired from service and having come to know about lesser pay being paid to him than his juniors, at his village home.

Hence, the delay in approaching this Court.

The learned counsel for the petitioner has drawn attention of this Court towards two of the orders dated 06.04.2015 passed in CWJC No. 9302 of 2012 and CWJC No. 16294 of 2013 respectively by a Division Bench of this Court both of which have been affirmed by the Hon'ble Apex Court in SLP CC No. 19017 of 2016 and SLP CC No. 20608 of 2016 on identical set of facts where pay protection was made available



to those officers but with a cut of 25% for having approached the Court after considerable delay.

In both the cases, the Division Bench took note of the fact that the provisions contained in FR 22(I)(A)(i) is required to be made available to the incumbent. It is not expected that any pay escalation would be objected by any incumbent.

Thus, we find that the explanation of the Accountant General's Office for rejecting the application of the petitioner only on the ground of his not having exercised his option at the time of his promotion and later also when such option was given to him which could not be communicated to the petitioner, is not wholly sustainable.

The upshot of the aforementioned discussion is that the petitioner would be entitled for his pay protection i.e. stepping up his pay and for consequential determination of his pension in terms of what was paid to his juniors and to which any officer of his rank would be entitled to but with a 25% cut in the emoluments that he shall receive for his late coming.

It is ordered accordingly.



The Accountant General’s Office shall make necessary calculation within four weeks of the presentation of a copy of this order by the petitioner in the Accountant General’s Office and the amount so determined shall be paid to the petitioner and such payment shall continue hereinafter.

The writ petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2023
Transmission Date	

