

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.83 of 2019

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Ajay Kumar Son of Late Jawahar Lal Resident of Village -Pakri, Police Station Nawada, District Bhojpur (Arrah), at Present residing at Saubhagya Sharma Path, Opposite Lakhan Enclav, Bailey Road, Rukanpura, Police Station Rupaspur, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Vishwesharaiya Bhawan, Patna.
2. The Secretary, Road Construction department, Bihar, Vishwesharaiya Bhawan, Patna
3. The Principal Secretary, Finance Department, Bihar, Old Secretariat, Patna
4. The Joint Secretary, Road Construction Department, Bihar, Vishwesharaiya Bhawan, Patna
5. The Special Secretary, Road Construction Department, Bihar, Vishwesharaiya Bhawan, Patna.
6. The Deputy Secretary (Vigilance), Road Construction Department, Bihar, Vishwesharaiya Bhawan, Patna.
7. The Accountant General (Accounts and Entitlement), Bihar, Patna, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rupak Kumar, Advocate
For the State	:	Mr. Swapnil Kumar Singh, AC to GP-19
For the Accountant General	:	Mr. Chaitnay Sworooop, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

7 19-06-2023 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General.

2. The petitioner has assailed the reasoned order dated 04.12.2018, passed by the Principal Secretary, Road Construction Department, Patna, Bihar after opening the sealed cover, wherein the proceedings and conclusion of the Departmental Promotion Committee (for brevity 'DPC') dated



23.09.2008, which were kept in a sealed cover has been opened.

The order records as follows :-

“....बन्द लिफाफा में श्री अजय कुमार (647) के संबंध में ("प्रोन्नति के अयोग्य") अनुशंसा विभागीय प्रोन्नति समिति द्वारा की गई है। विभागीय प्रोन्नति समिति की उक्त अनुशंसा के आलोक में इन्हें प्रोन्नति नहीं दी जा सकती है। अतएव उपर्युक्त तथ्यों के आलोक में सम्यक विचारोपरान्त श्री कुमार के आवेदन को अस्वीकृत करते हुए मामले को निष्पादित किया जाता है। सभी संबंधित को सूचित कर दिया जाय।....”

3. It is apparent from the order that the DPC had found the petitioner unfit for promotion. The findings, however were in a sealed cover and not acted upon earlier due to pendency of the criminal proceedings arising out of R.C. No.- 15(A)/1997. The same resulted in acquittal of the petitioner on 18.06.2016, by order of the learned Special Judge CBI-2, Patna, whereafter the Authorities have, under orders of this Court, passed on the petitioner's earlier writ petition bearing C.W.J.C. No. 4370 of 2017, opened the sealed cover, and it came to light that the DPC had found the petitioner unfit for promotion.

4. Learned counsel for the petitioner submits that the denial of promotion is only on account of pendency of the



criminal proceedings.

5. Learned counsel for the State, however, submits that consideration by DPC dated 23.09.2008 and its conclusions, were opened after acquittal of the petitioner and it was found that the DPC had held the petitioner unfit for promotion. The Authorities, therefore, are merely abiding by the conclusion of the DPC. Petitioner's apprehension that the denial is on account of the pendency of the criminal case is unfounded, which is apparent from the reasoned order dated 04.12.2018.

6. The Court finds that from the order dated 04.12.2018, it is manifest that the proceedings of the DPC, dated 23.09.2008 were considered and upon opening of the sealed cover, it was found that the DPC had found the petitioner unfit for promotion.

7. Learned counsel for the petitioner has also raised another submission that in the future DPC, the petitioner's claim for promotion should be considered, having regard to the fact that some junior, namely, Mukesh Kumar, has been promoted in November, 2008, i.e., after the DPC which found the petitioner to be unfit. The submission is that he would be filing a detailed representation to facilitate consideration in the next DPC, but he raises an apprehension that the order dated 04.12.2018, may stand in the way of consideration.



8. The Reasoned order dated 04.12.2018, is upheld by this Court, as no infirmity is found in the same. The petitioner's apprehension that it is based on the pendency of the criminal case appears to be incorrect from bare reading of the order. However, if the petitioner makes an application for consideration of promotion from Assistant Engineer to Executive Engineer with effect from the date his juniors have been granted promotion, then the same is required to be considered in subsequent DPC in accordance with law and on its own merits.

9. Accordingly, the writ application is disposed of.

(Madhuresh Prasad, J)

Raj kishore/-

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