IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7487 of 2016

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Devendra Prasad Dinker son of Late Narsinh Sah, resident of village- Dhanauti, P.O.- Khanpur Pakri, P.S.- Bidupur, District- Vaishali Bihar

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Finance, Government of Bihar, Patna.
2. The Commissioner, Commercial Taxes-cum-Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
3. The Joint Secretary, Department of General Administration, Government of Bihar, Patna.
4. The Deputy Commissioner to the Government, Department of Finance, Government of Bihar, Patna.
5. The Deputy Secretary to the Government, Department of Commercial Taxes, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Satish Chandra Mishra, Adv.
For the State	:	Mr.Sanjay Prasad, AC to AAG-4
For the Respondent/s	:	Mr.Nurul Hoda, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

2 19-10-2023 1. The present writ petition has been filed seeking the following relief(s):-

> *"1.(i) For issuance appropriate writ/writs in the nature of Certiorari for quashing the impugned order contained in Memo No.2409 dated 22.05.2014 (Annexure-7) with all consequential benefits which has been passed and issued by Respondent No. 2 i.e. the Commissioner, Commercial Taxes-cum-Principal the Secretary, Department of Commercial Taxes, Government of Bihar, Patna whereby and whereunder the representation dated 26.08.2010 (Annexure-2)*

submitted for expunging the adverse entry in the Annual Confidential Report (ACR) of the petitioner has been rejected after about four years unreasonably and without considering the matter in its right perspective with malafide intention and due to which the petitioner is bound to suffer irreparable loss and injuries in many ways and this writ application is filed on behalf of the petitioner in pursuance of the order dated 28.09.2015 (Annexure-8) passed by this Hon'ble Court in petitioner's C.W.J.C. No.5787 of 2014.

(ii) For issuance of further appropriate writ/writs in the nature of Mandamus directing/commanding the Respondents to consider the case of petitioner for his promotion to the post of Deputy Commissioner Commercial Taxes with effect from 22.02.2012 from the post of Assistant Commissioner Commercial taxes without any delay even by calling and holding special DPC meeting under special circumstances as on that date several persons holding the post of Assistant Commissioner Commercial Taxes either junior or similar to the petitioner have been granted promotion to the post of Deputy Commissioner Commercial Taxes vide notification dated 22.02.2012 (Annexure-13) and 03.12.2013 (Annexure-14).

(iii) For holding and adjudicating that the impugned adverse entry in the ACR of the petitioner in the year 2009-10 has been made erroneously and wrongly without application of mind in right

perspective cannot be taken into account for refusing promotion to him inasmuch even after so-called adverse entry in the ACR was made available to the petitioner, and in the meantime his juniors were promoted and the petitioner's case was not considered, rather refused, without considering his representation.

(iv) For holding and adjudicating that the entry made in the ACR can only be to the extent good, bad, excellent and extraordinary and it cannot be an order of punishment so far as the case of the petitioner is concerned as the concerned authorities have explicitly written "not fit for promotion" and only in that view of the matter, the petitioner has been denied his promotion as such the ACR is wholly without jurisdiction, malafide, arbitrary and cannot be used against the petitioner as well as the same amounts to punishment to the petitioner without any proceeding against him and without any allegation against him.

(v) For holding and adjudicating that the petitioner was within the zone of consideration for his promotion in the year 2011-12 when the rules and practices of bench mark system and other parameters of the period were not applicable and as such he ought to have been promoted applying the same rule according to which any junior to him was promoted to the post of Deputy Commissioner Commercial Taxes.

(vi) For commanding the Respondent Authorities to

grant the petitioner all the benefits of the promotion after granting him promotion to the post of Deputy Commissioner Commercial Taxes to which he would have been promoted with effect from the date ie. 22.02.2012 any of his juniors has been granted promotion to the said post of Deputy Commissioner Commercial Taxes.”

2. At the outset, the learned counsel for the respondent-State submits by referring to the counter affidavit filed in the present case that the petitioner has already been granted promotion on the post of Deputy Commissioner, Commercial Taxes, vide notification dated 15.06.2016.

3. On the contrary, the learned counsel for the petitioner submits that the petitioner should have been granted promotion on the post of Deputy Commissioner, Commercial Taxes, with effect from 22.02.2012, hence the petitioner be granted liberty to agitate his subsisting grievances, before the respondent-authorities, in accordance with law. Liberty so sought is granted.

4. The present writ petition stands disposed off.

(Mohit Kumar Shah, J)

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