

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.720 of 2019

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Surendra Prasad son of Rameshwar Prasad Resident of Mohalla-Rashtriyaganj, P.S. Phulwarisharif, District- Patna, presently posted as the Assistant Engineer, Bihar Police Bhawan Nirman Nigam, Kautilya Nagar, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Director General of Police, Bihar, Patna.
2. Bihar Police Bhawan Nirman Nigam, Kautilya Nagar, Patna through the Secretary.
3. The Director General of Police-cum- Chairman-cum- Managing Director Bihar Police Bhawan Nirman Nigam, Kautilya Nagar, Patna through the Secretary.
4. The Secretary, Bihar Police Bhawan Nirman Nigam Kautilya Nagar, Patna.
5. The Chief Engineer, Bihar Police Bhawan Nirman Nigam Kautilya Nagar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Singh, Advocate
For the Bihar Police Building Construction Corporation	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 11-09-2023 Heard Mr. Vijay Kumar Singh, learned Counsel for the petitioner and Mr. Prasoon Sinha, learned Counsel who represent the Bihar Police Building Construction Corporation (henceforth for short, 'the Corporation')

2. This application has been preferred for following reliefs:

(i) for issuance of an appropriate writ in the nature of CERTIORARI for quashing the part of the office order no.327/2015 dated 24.09.2015



passed by the Respondent no.3 and contained in memo no. 4480 dated 24.09.2015 issued under the signature of the Respondent no.4 whereby and where under the Respondent no.3 had granted approval of promotion to the petitioner to the post of Assistant Engineer in the pay-scale of PB-2-9,300-34,800 and Grade Pay-5400 from the date of issuance of the order and not from the retrospective date of grant of Ad-hoc promotion to the post of Assistant Engineer i.e. 31.08.2010 merely on the ground that the petitioner had not completed the required period of five years in the cadre of Junior Engineer since he was promoted to the post of Junior Engineer on 15.06.2010 notwithstanding the fact that the petitioner was discharging the work of Junior Engineer since 06.07.1999;

(ii) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to grant approval of promotion to the petitioner to the post of Assistant Engineer since the date of his officiating of the said post i.e. 31.08.2010 on the ground that by the office order dated 31.08.2010 passed by the Respondent no.3 contained in memo no.3130 dated 31.08.2010 issued under the signature of the Respondent no.4, the petitioner was granted ad-hoc promotion to the post of Assistant Engineer and he was granted regular promotion to the said post by the Respondent no.3 himself vide office order contained in memo



no.3343 dated 29.08.2011 issued under the signature of the Respondent no.4;

(iii) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to make payment of consequential monetary benefits to the petitioner admissible to the post of Assistant Engineer in the pay- scale of Rs. PB-2-9300-34800 Grade Pay 5400 with effect from 31.08.2010.

3. It is the case of the petitioner that after he was promoted as Junior Engineer vide memo No. 2176 dated 15.06.2010 (Annexure-R2/C of the counter affidavit), in August 2011, he was made to work as an Assistant Engineer vide memo No. 3130 dated 31.08.2010 (Annexure-P-6 to the petition). He submits that subsequently, he was posted at Nalanda sub-Division-Nalanda, Biharsharif vide memo No. 4105 dated 02.12.2010 (Annexure-P/7 to the petition).

4. It is his submission that later on 29.08.2011, he was granted promotion as Assistant Engineer vide memo No. 3343 dated 29.07.2011 (Annexure-P/8 to the petition).

5. The case of the petitioner is that subsequently 'the Corporation' vide memo No. 4480 dated 24.09.2015 taking into account that he has been promoted as a Junior Engineer on 15.06.2010, the minimum period of next promotion is five years, granted promotion effective from 2015 which is under



challenge.

6. 'The Corporation' has filed its counter affidavit in which the letter vide memo No. 2176 dated 15.06.2010 (Annexure-R2/C to the counter affidavit) has been attached which shows that he was promoted to the post of Junior Engineer only in the year 2010. The further submission is that the minimum period for next promotion is five years and as such he has rightly been promoted to the post of Assistant Engineer in the year 2015 vide Office order no. 327/2015 which has been challenged by the petitioner. Further submission is that it is not the case of the petitioner that he challenged his promotion order passed in 2010.

7. Further by way of paragraph 4 (ix), it has been stated as follows:

(ix) As a result of regular promotion of the petitioner approved by the Board of Directors and pursuant to the joining reported by the petitioner, one additional given increment of salary was to the petitioner w.e.f 26.09.2015. It is pertinent to mention here that promotion, on the basis of Adhoc the benefit of additional increment of salary or the scale/salary of the higher post (promoted post) cannot be granted. It is further submitted that since petitioner has



not completed the period of five years, as such he is not entitled to get the pay scale of Rs. 5400/-to 6600/-.

8. He as such submits that there is no error on the part of 'the Corporation' and the writ petition is fit to be dismissed.

9. Learned Counsel for the petitioner submits that in the aforesaid circumstances, now he is not agitating the promotion year rather as he has worked as an Assistant Engineer from August 2010 till his regular promotion in 2015, at least he is entitled for the said salary in the light of a decision of Patna High Court in **Yogendra Prasad vs the Union of India through General Manager, N.F. Railways and Ors** reported in **2023 (1) PLJR 175**.

10. A perusal of the said case put forward by learned Counsel for the petitioner shows that the Division Bench held as follows:

On 03.11.2022, the following order was passed:

"None appears for the Railways.

Matter is relating to fixation of pension.

Therefore, Railway counsel is hereby directed to secure service record (Service Book of the petitioner – Yogendra Prasad). He is also hereby directed to ascertain from the concerned official- respondent even though petitioner was



promoted to the post of Senior Section Engineer on temporary basis, however he has been extended pay scale of Senior Section Engineer, once he has been extended pay scale attached to the post of Senior Section Engineer in the year 1997 and he continued to hold such post till 31.03.2015, the date on which he has attained age of superannuation and retired from service, the concerned authority have undertaken any action to consider the petitioner name for regular promotion to the post of Senior Section Engineer during the period from 31.10.1997 till 31.03.2015. Further whether the petitioner has been extended annual increment from 1998 to 2015 and so also whether has he been extended any benefit of TBA/MACP. If it is so, necessary material be placed on record in order to examine whether petitioner is entitled to fixation of his pension with reference to last pay drawn in the post of Senior Section Engineer or not.

If the aforesaid direction is not complied, in that event, second Respondent – The General Manager (Construction), North Frontier Railway, Maligaon, Guwahati, Assam is hereby directed to draft an official who is well conversant with the matter.

Relist this matter on 01.12.2022 as a last chance.”

2. Today, learned counsel for the respondent furnished Service Book of the petitioner



– *Yogendra Prasad. On 18.11.1997, there is entry in the Service Book of the petitioner as under:*

“Promoted to Sr. Section Engineer (Ad-hoc) in Scale Rs. 7450-225-11550 (RP) w.e.f. 21.10.1997 vide Office Order No. 178/1997 dated 31.10.1997 and the pay fixed on Rs.7450/- w.e.f. 21.10.1997 in Scale Rs. 7450-11550.”

3. The Tribunal refused to grant relief to the petitioner in so far as fixation of pay and pension in the post of Sr. Section Engineer while recording at Para-6 and 7 as under:

“6. The only question to be examined in this OA is whether a person on an ad-hoc promotion in a temporary organization can claim pension on the basis of that last pay drawn if his substantive lien is at a lower post in the parent permanent organization. It transpires that those working in the Construction organization have no permanent status and their permanent lien is maintained in the different cadres in open line in the Railways. As and when they become due for promotion in the open line cadre, such persons are considered and if there is a requirement for some test, the persons in Construction Wing are also invited to take the test. In the present case, the applicant on his own volition declined to take the test for promotion from Technician Grade-III to Technician Grade-II, apparently because he was already in higher grade in the Construction Wing on ad-hoc basis. It is seen from the Annexure at R/3



i.e. the order dated 25.08.2014 that a large number of persons similarly situated in Construction Wing took the said test and passed whereas the applicant has been shown unwilling.

7. The applicant has not been able to show any specific rules on the point that in the Railways, Construction Wing people are granted pension on the basis of ad-hoc promotion in the higher grade even though their substantive lien in open line in lower grade, nor has he cited any such case.”

4. In the present case, it is to be noted that from 21.10.1997 till 31.03.2015, the petitioner has discharged duties of the post of Sr. Section Engineer and pay scale attached to the post has been extended. The reasons for not extending pension with reference to Sr. Section Engineer is that petitioner declined to take test for promotion from Technician Grade-III to Technician Grade-II on the score that he had already occupied the next higher grade / post in the Construction Wing. It is to be noted that during the period from 22.10.1997 till 31.03.2015, the respondents have not taken any action to revert the petitioner from the post of Sr. Section Engineer on the score that petitioner was required to pass certain test for promotion to the post of Technician Grade-II from Technician Grade-III. Further, it is to be noted that if the petitioner is not eligible to



hold the post of Technician Grade-II, as to how petitioner was promoted to the post of Sr. Section Engineer on Ad-hoc basis. Further, no order of reversion has been passed and so also there is no observation made by the respondent-Department that there were any deficiency in petitioner's services while discharging the post of Sr. Section Engineer from 21.10.1997 till 31.03.2015, the date on which he has attained age of superannuation and retired from service. Further, no material have been placed on record by the respondents that they have undertaken review of promotion to the post of Technician Grade-II so as to revert such of those persons who have not fulfilled the requisite criteria to hold the post of Technician Grade-II. Therefore, the contention of the respondent that petitioner failed to pass certain test to the post of Technician Grade-II cannot be appreciated. The aforesaid material have not been taken into consideration by the Tribunal while deciding OA No. 487 of 2015. Due to inaction on the part of the respondent in not taking timely action against the petitioner in reverting him or conducting promotional test from time to time. Further, Respondents have not produced materials like Rules of Recruitment or Executive Orders and final seniority list of feeder cadre in order to ascertain the eligibility criteria and whether petitioner fulfills criteria or not.

5. In the light of the fact that petitioner has rendered service more than a decade in the



post of Sr. Section Engineer with pay scale attached to the post, only the word used in the promotion order is that such a promotion order is on adhoc, an employee or officer cannot be promoted to higher post on adhoc basis for more than a decade. In such circumstances, meaning of adhoc may not exist.

6. Having regard to the fact that petitioner had rendered service in the post of Sr. Section Engineer for more than one decade, one has to draw inference that he is a regular holder of the post of Sr. Section Engineer. Therefore, revisit of eligibility to promotion at this distance of time would be a daunting exercise for the Respondent-Department. Retrieving correct data to rework seniority commencing from the year 1997 or earlier would be extremely difficult, resulting further litigation among retired persons. The matter, in our view, must rest there so that the pensioner is not left in a stake of uncertainty at this stage of his life after rendering decades of service to the Respondent-Department.

7. In view of these facts and circumstances, petitioner has made out a prima facie case so as to interfere with the order of the Tribunal dated 23.12.2015 passed in O.A. No. 487 of 2015 and it is set aside and O.A. No. 487/2015 is allowed.

8. In the result, the concerned respondent is hereby directed to extend all service and



monetary benefits from time to time during the period from 21.10.1997 till 31.03.2015 against the post of Sr. Section Engineer as if he is a regular holder of the post of Sr. Section Engineer. Further, concerned respondent is hereby directed to undertake re-fixation of pay and pension of the petitioner in the post of Sr. Section Engineer and calculate arrears of pay and pension. Difference of pay and pension shall be disbursed within a period of three months from the date of receipt of this order, failing which the petitioner is entitled to interest on arrears amount at the rate of 8% per annum.

9. Accordingly, writ petition stands allowed.

11. Mr. Prasoon Sinha, learned Counsel appearing for 'the Corporation' submits that since now the petitioner has changed track, it would be appropriate that he submits a proper representation before the concerned Authority so that the same be taken up for consideration.

12. In view of the aforesaid limited submission put forward by the learned Counsel for the petitioner that the period he has worked as an Assistant Engineer till he was granted regular promotion, his case for payment of the salary of the Assistant Engineer be considered in the light of the aforesaid judgment in Yogendra Prasad (supra), this Court restrict him to



file such representation with limited prayer alongwith all the supporting documents within a period of four weeks from today.

13. If such representation is filed by the petitioner claiming the payment for the period he has worked as an Assistant Engineer, the same shall be considered and a reasoned order be passed within three months of the receipt of the copy of the representation.

14. The writ petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

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