

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4779 of 2018

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Vibhuti Narayan (Retired Assistant Controller Digha Grid, Patna), Son of Late Rameshwar Prasad, Resident of Flat No. 105, Mahendra Apartment, Gosai Tola, P.S. + P.O.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
2. The Managing Director, Bihar State Power Transmission Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
3. The Director (Administration), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
4. The General Manager (H.R.), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
5. The Deputy General Manager (Personal), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Sharma, Adv.
For the BSPHCL	:	Mr. Ritesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 04-10-2023

Heard learned counsel for the petitioner and learned counsel for the Bihar State Power Holding Company Limited.

2. The present writ application has been filed directing the respondent authorities to grant promotion to the petitioner to the post of Controller *w.e.f.* 19.11.2016 which has not been granted to the petitioner without any cogent reason and also to direct the respondent to pay the consequential benefits to the petitioner with interest.

3. Learned counsel for the petitioner submits that

the petitioner has been appointed on the post of Assistant Operator/ Technician Grade- III vide letter no. 1445 dated 18.07.1984 in Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur on the basic qualification of Matric with I.T.I. Counsel submits that at the time of appointment, the channel of promotion was Assistant Operator Grade- II to Assistant Operator to Operator to Assistant Controller and then to Controller. Counsel submits that the petitioner worked to the satisfaction of the respondent authorities and as such, he was granted first promotion on the post of Operator on 25.11.2009 vide Office Order No. 187 (Annexure- 2) of the writ petition.

4. Learned counsel for the petitioner further submits that the next promotion was granted to the petitioner in the year 2011, particularly, vide Office Order No. 201 dated 18.11.2011 to the post of Assistant Controller. Counsel further submits that the final gradation list of Assistant Controller working in the Transmission Cadre was published vide letter no. 101 dated 28.01.2015 in which petitioner was figured at serial no. 27.

5. Learned counsel for the petitioner further submits that there were several posts of Controller and accordingly, the requirement has been sent by the Electrical Superintending Engineer, Transmission Circle, Patna to the Electrical Executive Engineer for availability of Broad Sheet

regarding promotion on the post of Controller from Assistant Controller.

6. Learned counsel for the petitioner further submits that the Electrical Executive Engineer has sent the Broad Sheet of two names, the petitioner and one another for the promotion on the post of Controller vide Gyapank No. 149 dated 14.03.2016. Counsel further submits that by virtue of the Board Meeting, the General Manager (H.R.) has sent the name of the petitioner and another for promotion on the said post but instead of the fact that the petitioner have qualification for the promotion on the post of Controller, promotion was not granted on the pretext that examination has to be conducted but the said examination has not taken place and subsequently, the petitioner has filed representation on 06.03.2017 that he is going to retire, so promotion may be granted. Thereafter, the petitioner has filed representation through his lawyer on 22.03.2017 but promotion was not made, the petitioner made several representations but promotion was not granted instead of the fact that the post of Controller was vacant since, year 2015 and finally the petitioner retired on 31.03.2017, thereafter the petitioner has filed the present writ application.

7. Learned counsel for the petitioner further submits that the promotion of the petitioner was due *w.e.f.* 19.11.2016 and recommendations were made by his high

officials for promotion but promotion was not granted at the highest level also and as such, he filed the writ petition that the stoppage of promotion created by the Board may be looked into and the writ petition may be allowed in his favour granting promotion and his consequential benefits.

8. Learned counsel for the Bihar State Power Holding Company Ltd. has filed counter-affidavit and submits that Annexure- 1 is the appointment letter of the petitioner. Counsel has put emphasis on clause- 4 of the appointment letter which indicates that:

“Your service condition will be governed as per provisions of the certified standing order of the Board.”

9. Learned counsel for the Bihar State Power Holding Company Ltd. further submits that the Board has taken decision vide Office Order No. 662 dated 16.06.2016 in its Board meeting, particularly, for the promotion on the post of Controller and according to that the condition imposed was two years I.T.I. in Electrical Trade and should possess Electrical Supervisor Certificate of competency or Diploma in Electrical Engineering.

10. Learned counsel for the Bihar State Power Holding Company Ltd. further submits that from the pleading of the petition itself, it transpires from Annexure- 7 that Memo No.

2031 dated 01.07.2016 was issued for appearing in the examination to provide the Electrical Supervisor Certificate of competency for all eligible candidates but in the lack of those qualifications, as mentioned by the Board, the case of petitioner as well as other similarly situated persons were not taken into consideration for the post of Controller.

11. Learned counsel for the Bihar State Power Holding Company Ltd. further submits that there was no intentional delay from the Department rather it is a policy simplicitor, which is applicable to all similarly situated persons and the petitioner has not opted to sue against Annexure- 7 rather he has filed the present writ petition, only after his retirement, therefore, there is no laches on the part of the respondents. Since, the said service condition has been governed in accordance with the letter of appointment of the petitioner and similarly situated persons, there is no illegality done from the respondents.

12. Upon going through the contents of the pleading and arguments made by the parties, this Court is of the opinion that creating service condition is the decision of the Board which has already been indicated in clause- 4 of the initial appointment letter of the petitioner. The Court is also of the view that the said service condition has been created not only for the petitioner rather it is a service condition simplicitor

applicable upon all similarly situated persons for which the employer is competent to do so.

13. The petitioner ought to come before this Court prior to his retirement but reasons best known to him, he has opted to come before this Court only after his retirement, particularly, when the letter vide Memo No. 2031 dated 01.07.2016 has already been issued to the petitioner and others for their appearance in the oral examination to provide the eligible Electrical Supervisor Certificate.

14. In this view of the matter, this Court is of the opinion that there is no illegality done by the respondents but found latches on the part of the petitioner itself.

15. With this direction, the present writ application is hereby dismissed.

(Dr. Anshuman, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.10.2023
Transmission Date	NA