IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8542 of 2016

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Rajesh Pati Tripathi Son of Sri Narendra Pati Tripathi Permanent resident of House no. A-7 Mohalla-Sadhanapuri, PS-Gardanibagh, District-Patna at Present posted as Commercial taxes Officer, VAT Audit, Purnea Division Purnea.

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Sahi, Sr. Advocate
		Mr. Mritunjay Kumar, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3
		Mr. Bipin Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV ORDER

Date : 20-02-2024

1. Heard Mr. P.N. Sahi, learned Senior Counsel for the petitioner assisted by Mr. Mritunjay Kumar and Mr. Sunil Kumar Mandal, learned SC-3 assisted by Mr. Bipin Kumar learned AC to SC-3 for the State.

2. The present writ petition has been filed for direction upon the respondents to grant of benefit of first ACP to the petitioner with effect from 31.12.2005, promotion to the post of Assistant Commissioner, Commercial Taxes with effect from 05.05.2008 and to the post of the Deputy Commissioner, Commercial Taxes with effect from 03.12.2013 with all consequential and other incidental benefits.

3. The petitioner was a direct recruit and member of the Bihar Finance Service selected and appointed on the basis of 36th Bihar Public Service Commission Combined Competitive Examination and he joined the service on 15.05.1992 and after his joining service on 15.05.1992 under the cadre of Bihar Finance Service he appeared in the last departmental examination on 31.12.2005 and passed the same, thereafter the petitioned had passed in all the departmental examination and on 31.12.2005 the petitioner become entitled for grant of first ACP .

4. The learned counsel for the petitioner submits that when the petitioner was posted as Treasury Officer, Siwan a departmental proceeding was initiated against him under departmental dissolution no.612 dated 03.08.2006 and after completion of departmental proceeding vide notification no.380

dated 11.09.2008 issued under the signature of the respondent no.2 penalties i.e. censer along with withholding of two annual increments in pay with cumulative effect and nothing paid except the subsistence allowance to be granted for the period of suspension were awarded to the petitioner.

5. The learned counsel for the petitioner submits that thereafter the petitioner has preferred a revision application before the respondent no.1 and vide notification no.284 dated 19.08.2010 the aforesaid penalties under notification dated 11.09.2008 were confirmed but the censer was directed to be entertained into the petitioner's service book in the year 2005-06.

6. Learned counsel for the petitioner further submits that the petitioner has challenged the order dated 11.09.2008 and 19.10.2010 in CWJC No.21685 of 2012 and the Hon'ble Court after hearing the parties has been pleased to set aside the aforesaid order vide order dated 31.03.2014 (Annexure-7), passed in C.W.J.C. No.21685 of 2012.

7. Learned counsel for the petitioner submits that the department vide notification no.1743 dated 05.05.2008 and departmental notification no.5471 dated 11.12.2008, both issued under the signature of the respondent no.5, the persons junior to

the petitioner in the seniority list of the officers of Bihar Finance Service had been granted promotion to the post of the Assistant Commissioner, Commercial Tax from the date of the taking of the charge of the said sanctioned post and it is pertinent to mention here that in the seniority list the petitioner was found in place at serial no.90 whereas name of one Sri Kamlakant Chaudhary who has been granted promotion to the post of Assistant Commissioner, Commercial Tax vide notification number 1743 dated 05.04.2008 stand at serial no.91 of the said seniority list. In the meantime, wife of the petitioner has sought an information under the RTI with respect to the grant of the benefit of the ACP to the petitioner and it has been informed by the department vide letter no.6657 dated 10.10.2012 that the case of the petitioner for grant of benefits of ACP was considered but due to non-availability of the complete ACR the same was kept pending. However, it was also informed that on the next date of the meeting of the Department Promotion Committee the case of the petitioner shall be considered. Further submits that from perusal of the departmental notification no.4337 dated 03.12.2013, it appears that the person even junior to the petitioner in the seniority list have been granted promotion to the post of the Deputy Commissioner, Commercial

Tax from the date of the said notification, even the person who are junior to the petitioner namely, Kamlakant Chaudhary who is at serial no.91 of the seniority list has been promoted the post of Deputy Commissioner, Commercial Tax. In fact the petitioner was entitled for the grant of benefits of first ACP with effect from 31.12.2005 i.e. the date of appearing in the last departmental examination in which the petitioner was declared passed but the same has been kept pending on the ground of non-availability of the ACR, the ACR of the employer is departmental itself and not for the employee concerned to produce the ACR before the DPC.

8. In the meantime, a departmental proceeding was initiated against the petitioner vide resolution no.612 dated 03.08.2006 and after completion of the said departmental proceeding penalties of censer along with holding of two annual increments in pay with cumulative effect and nothing except subsistence allowance to be granted for the period suspension which inflict on the petitioner vide department notification no.380 dated 11.09.2008 and the aforesaid penalties were affirmed in the revision application and penalty of censer were enter in the petitioner’s service in the year 2005-06.

9. Learned counsel for the petitioner submits that

petitioner approached this Hon’ble Court in CWJC No.21685 of 2012 which was allowed vide order dated 31.03.2014 and the notification dated 11.09.2008 and notification dated 19.10.2010 quahsed by this Hon’ble Court and after disposal of the writ petition the petitioner has filed his representation dated 10.04.2014 along with a copy of the order dated 31.03.2014 passed in CWJC No.21685 of 2012 and prayed for grant of the all consequential and financial benefits to the petitioner.

10. Learned counsel for the petitioner submits that the department had issued a notification no.73(C) dated 23.02.2015 and the petitioner in the light of the aforesaid notification filed a detailed representation dated 04.04.2015, 19.08.2015 and 15.01.2016 for grant of benefits of first ACP with effect from 31.12.2005 promotion to the post of Assistant Commissioner, Commercial Tax with effect from 05.05.2008 and to the post of Deputy Commissioner, Commercial Tax with effect from 03.12.2013 with all consequential benefits and other incidental benefits which the petitioner is entitled in pursuance of the notification no.73(C) dated 23.02.2015, but no action whatsoever was taken by the department then the petitioner has approached this Hon’ble Court.

11. Learned counsel for the State has filed the

counter affidavit as well as supplementary counter affidavit clearly stating therein that after nullifying the punishment the petitioner has become entitled to be considered for his promotion since 05.05.2008 and accordingly the petitioner's due promotion has been considered by the departmental in its DPC meeting dated 30.05.2016, calling the available character remark (ACR of last 5 years) i.e. from 2000-2001 to 2004-2005. However, the ACR of the petitioner was not found to be up to mark, accordingly the matter of the petitioner's promotion has been considered by DPC in terms of clause-8 of the guideline/notification issued by the General Administrative Department contained in letter no.922 dated 13.03.2011. Accordingly, the ACR of the petitioner of the year 2010-2011 to 2012-13 have been taken into account and finding of the ACR of the said 36 months as complete to the benchmark and accordingly the DPC has recommended to be promoted from 01.04.2023 to the cadre of Assistant Commissioner, Commercial Tax. Accordingly, vide notification no.3892 dated 14.10.2016 granting promotion to the petitioner in the cadre of the Assistant Commissioner, Commercial Tax with effect from 01.04.2013. As per guideline of the General Administrative Department contained in memo no.1800 dated 09.06.2011 (relevant clause-

3(iv)) which suggest that in order to get promotion from the rank of the Assistant Commissioner post to the Deputy Commissioner, it is mandatory to require tenure of experience of one year at least and the Departmental Promotion Committee vide its meeting dated 04.12.20217 recommending the name of the petitioner for promotion to the post of the Deputy Commissioner, Commercial Tax. Accordingly, department had issued notification no.4555 dated 09.12.2017 granting promotion to the petitioner to the rank of the Deputy Commissioner, Commercial Tax and accordingly the grievance of the petitioner has been redressed.

12. Learned counsel for the petitioner in reply to the submission made on behalf of the State submits that in view of the order passed by this Hon'ble Court on 31.03.2014 in C.W.J.C. No.21685 of 2012 (Annexure-7), the department itself rescinded notification no.380 dated 11.09.2008 and notification no.284 dated 19.10.2020. The effect of such notification and it was that the punishment effected upon the petitioner stood nullified and in that view of the matter the case of the petitioner for consideration to the post of Assistant Commissioner of the Commercial Taxes had to be done in the manner as if there was no punishment order in existence against the petitioner and with

regard to the remark in the ACR of the relevant period which evidently had been entered on account of the punishment orders stood nullified.

13. The petitioner is entitled for promotion with effect from the date when he is immediate junior to the petitioner who was promoted on the post of Assistant Commissioner, Commercial Tax with effect from 05.05.2008 and the petitioner is entitled for the same on the date from which his junior had been granted promotion on the post of the Assistant Commissioner, Commercial Tax and the action of the respondents is not sustainable in the eye of law and amount of the hostile discrimination against the petitioner.

14. In view of the aforesaid facts and circumstances, it is admitted fact that the person immediate junior to the petitioner was granted promotion on the post of Assistant Commissioner, Commercial Tax with effect from 05.05.2008 and the department itself rescinded notification dated 18.09.2008 and 19.10.2020 and in view of the aforesaid the respondents are directed to issue necessary order and shift the date of promotion of the petitioner on the post of Assistant Commissioner, Commercial Tax from the date when his immediate junior was promoted i.e. 05.05.2008 in place of

promotion to the post of Assistant Commissioner, Commercial Tax with effect from 01.4.2013 within period of eight weeks and the petitioner is directed to file a representation before the respondent no.2 to consider the case of the petitioner to promotion to the petitioner to the post of Deputy Commissioner with effect from 03.12.2013 the respondent no.2 is directed to pass necessary order with respect to the promotion to the post of Deputy Commissioner with effect from 03.12.2013 on the representation of the petitioner within a period of eight weeks from the date of receipt/production of the order.

15. Accordingly, the writ petition is allowed with the aforesaid observation.

(Rajesh Kumar Verma, J)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	09.02.2024
Uploading Date	22.02.2024
Transmission Date	