IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4882 of 2018

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Gupteshwar Prasad, Son of late Gopalji, Resident of Village - Dumraon, P.S.- Dumraon, District - Buxar.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary-Cum-Commissioner, Commercial Taxes Department, Bihar, Patna
2. The Principal Secretary-Cum-Commissioner, Commercial Taxes Department, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate Mr. Arpit Anand, Advocate Mr. Pushkar Bharadwaj, Advocate Mr. Raushan, Advocate
For the State	:	Mr. Krishna, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 16-01-2024

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Krishna, learned counsel for the State.

2. Learned counsel for the petitioner submits that the present writ petition has been filed for quashing of the order dated 15.02.2018 contained in Memo No. 450 passed by the Principal Secretary, Commercial Taxes Department, Bihar, Patna by which the claim of the petitioner for being extended the benefits of financial progression under the Modified Assured Career Progression Scheme with effect from 18.07.2009 as also grant of promotions in the rank of Deputy Commissioner, as

well as Joint Commissioner, Commercial Taxes with effect from the dates persons junior to the petitioner, had been made the said promotions has been rejected on the ground that petitioner's marking in the annual confidential report was not as per the benchmark prescribed for the said purpose by a letter dated 30.03.2011 bearing letter no.922 issued by the General Administration Department of the State Government. Further prayer has been made to grant the benefit of second financial progression under the Modified Assured Career Progression Scheme in favour of the petitioner upon completion of 20 years of regular service in the year 2009. The petitioner has further prayed for shifting the date of promotion granted to the petitioner against the post of Deputy Commissioner, Commercial Taxes with effect from 22.02.2012.

3. Learned counsel for the petitioner further submits that the prayer has also been made for the grant of promotion against the post of Joint Commissioner, Commercial Taxes with effect from 04/06/2014, i.e. the date from which a number of persons admittedly junior to the petitioner had been granted promotion against the said post and the petitioner has been denied the said promotion without there being any just and valid reason. The petitioner has also prayed for a direction to the

respondent authorities to consider the case of the petitioner for granting him promotion against the post of Additional Commissioner, Commercial Taxes, Bihar, Patna after shifting the dates of his promotion to the rank of Joint Commissioner, Commercial Taxes as well as Deputy Commissioner, Commercial Taxes.

4. Learned counsel for the petitioner further submits that the petitioner joined service after completion of Bihar Public Service Commission in the year 18.07.1989 on the post of Commercial Taxes Officer. Subsequently, on the basis of his performance and fulfillment of other requirements, the petitioner was granted promotion against the post of Assistant Commissioner, Commercial Taxes with effect from 11.05.2006. Thereafter, while the petitioner was discharging his duties in the capacity of Assistant Commissioner, Commercial Taxes, Patna City East, by a letter dated 11.05.2009 issued by the concerned authorities under the Commercial Taxes Department, the petitioner was directed to submit his explanations with respect to not achieving the target of revenue collection for the financial year 2007-08, following the same, petitioner submitted his explanations. Thereafter, vide notification dated 05.10.2009 issued by the Principal Secretary-cum-Commissioner,

Commercial Taxes Department, Bihar, Patna, punishment of censure was inflicted upon the petitioner purportedly for the allegations of his failure to achieve the target of revenue collection during the financial year 2007-08 and dereliction of duty.

5. Learned counsel further submits that against the said punishment order dated 05.10.2009, the petitioner moved before this Hon’ble Court by filing CWJC No. 292/2010 which was disposed of vide order dated 26.08.2010 wherein the notification dated 05.10.2009 inflicting the punishment of censure upon the petitioner was set aside. Learned counsel for the petitioner further submits that while the petitioner was continuing in the capacity of the Deputy Commissioner, Commercial Taxes, a Letter No. 922 dated 30.03.2011, published by which the State of Bihar has decided to consider the cases of its employees for granting promotion on the basis of entries made into their Annual Confidential Report and the benchmarks. Counsel further submits that the petitioner has made several representations to the respondent authorities, but the benefit of the Modified Assured Career Progression scheme has not been granted to him. Learned counsel for the petitioner further submits that the petitioner has filed another writ petition

bearing CWJC No. 786/2018 for the redressal of his grievances. The said writ petition was disposed off vide order dated 16.01.2018 directing the Principal Secretary-cum-Commissioner, Commercial Taxes Department, Bihar, Patna to dispose of the representation to be filed by the petitioner within a period of five weeks by a reasoned and speaking order. In compliance with the said order, the petitioner submitted a representation dated 23.01.2018 before the Principal Secretary-cum-Commissioner, Commercial Taxes Department, Bihar, Patna, and in the light of the said representation order has been passed and communicated to the petitioner vide Memo No. 450 dated 15.02.2018 by which his claim for promotion and granting benefit of second Modified Assured Career Progression Scheme, has been rejected. Then, the petitioner preferred the present writ petition.

6. Learned counsel for the petitioner has argued this writ petition raising two points. The first point, he has raised that the petitioner was entitled for the benefit of Modified Assured Career Progression Scheme in the year 2009 itself and particularly after 26.08.2010 when the order of punishment imposing censure and dereliction of duty was quashed, by the order dated 26.08.2010 passed by this Hon’ble Court in CWJC

No. 292/2010. From 26.08.2010 onwards, he became entitled for the benefit of Modified Assured Career Progression which has not been provided to the petitioner. Such entitlement of the petitioner was due with effect from 2009 itself. The second point on which the counsel for the petitioner has put emphasis that from Letter No. 922 dated 30.03.2011, the Government has decided to grant promotion to its employees on the basis of entries made into their annual confidential reports. But. in this regard, counsel for the petitioner relied on paragraph 17 of the judgment rendered in the case of ***Dev Dutt Vs. Union of India & Ors.*** reported in ***(2008) 8 Supreme Court Cases 725*** and paragraph no.3 of the judgment rendered in the case of ***Rukhsana Shaheen Khan Vs. Union of India and Ors.*** Reported in ***(2018) 18 SCC 640*** wherein it has been held that uncommunicated adverse ACRs cannot be relied upon for consideration of promotion. Counsel further submits that from the impugned order, it is clear that the claim of the petitioner has been rejected on the ground that the entries in the ACRs are not up to the benchmarks. It is the specific pleading of the petitioner that prior to the order dated 15.02.2018, the respondent authorities had never communicated about any entry like 'not up to the benchmarks' in his ACR. As such, in the light of these two judgments mentioned above, the order passed by the Principal Secretary, Commercial Taxes Department, Bihar, Patna which is impugned in the writ petition may be set aside and direction may be given to the authority concerned to pass order afresh in compliance of the above two decisions of the Hon'ble Supreme Court.

7. Learned counsel for the State on the other hand submits that from the pleadings, it transpires that the below benchmark entries in the ACR had not communicated to the petitioner on any occasion prior to passing of the final order which is impugned. Therefore, the petitioner may be directed to file a fresh representation before the authorities against the said entry 'below benchmark' in his ACR, and the authorities concerned be permitted to pass a fresh order in the light of the decision made by the Hon'ble Supreme Court mentioned above.

8. In light of the submissions made above by the parties and for complete adjudication of the matter, it is necessary to quote paragraph 17 of the judgment rendered in the case of ***Dev Dutt Vs. Union of India & Ors.*** reported in ***(2008) 8 Supreme Court Cases 725,*** as under:-

> ***"17.*** *In our opinion, every entry in the ACR of a public servant must be communicated*

to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution."

Similarly paragraph no.3 of the judgment rendered in the case of ***Rukhsana Shaheen Khan Vs. Union of India and Ors.*** Reported in ***(2018) 18 SCC 640,*** is quoted as under :-

"3. This appeal is, accordingly, allowed and the impugned judgment is set aside with the following directions:

(a) The competent authority is directed to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with law.

(b) The appellant shall be afforded an opportunity of hearing in the process.

4. It will be open to the appellant to make all available submissions, including the reference to the judgment of this Court in Prabhu Dayal Khandelwal V. UPSC.

5. The above exercise shall be completed within a period of two months from today. No costs."

9. From the document available on record, it transpires to this Court that the decision for grant of promotion by virtue of entries made in the ACR was taken on 30.03.2011 for the first time and prior to that there was no such restriction. It is also apparent from the pleading that the petitioner became entitled to promotion in 2009 but due to the punishment order, his case has not been considered. It is also true from the pleading that after the final decision of the order dated 26.08.2010 passed in CWJC No. 292/2010, there was entitlement of the petitioner for the MACP. From the judgments of the Hon'ble Apex Court in the case of ***Dev Dutt (supra) and Rukhsana Shaheen Khan (supra),*** it is very much clear that every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an

entry may adversely affect the employee in two ways :(1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified and pray for its upgradation. In the case of ***Rukhsana Shaheen Khan (supra),*** it has been directed to the competent authority to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with the law, and the appellant was also directed to be afforded the opportunity of hearing in the process.

10. In this background, particularly, this Court is of the view that the impugned order dated 15.02.2018, contained in Memo No. 450 has been passed without communication of any entries in the ACR of the petitioner. Therefore, this court sets aside the order dated 15.02.2018 contained in Memo No.450 passed by the Principal Secretary, Commercial Taxes Department, Bihar, Patna.

11. The respondent authorities are directed to pass a fresh order with regard to the petitioner’s case after affording adequate opportunity of hearing to the petitioner in the process, ignoring the uncommunicated adverse ACRs, as observed by the

Hon'ble Apex Court in the case of ***Rukhsana Shaheen Khan (supra).***

12. Needless to add, all the exercises shall be done by the respondents within 90 days from the date of production of a copy of this order.

13. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18/01/2024
Transmission Date	NA