

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13978 of 2007

=====

Ram Britt Paswan Son of Late Panchu Paswan, R/o Village-Purkhopatti, P.S.-
Bahadurpur, P.O.-Laheria Sarai. District-Darbhanga. Petitioner/s
Versus

1. THE STATE OF BIHAR.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General, Bihar, Military Police, Bihar, Patna.
4. The D.I.G., B.M.P. (E.Z.)Muzaffarpur.
5. The Commandant, B.M.P.-7, Katihar. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr.Ravi Bhushan Prasad Verma, Advocate
For the Respondent/s : Mr.Birju Prasad, G.P.-13
: Ms. Shweta Anand, Advocate
: Mr. Ajit Anand, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 24-06-2024

Heard Mr. Ravi Bhushan Prasad Verma, learned
counsel for the petitioner and Mr. Birju Prasad, learned G.P.-13 for
the State.

2. This writ application has been filed for the following
reliefs:

(I) Praying for quashing the order dated 18.07.2006
passed by the respondents which is contrary to the order and
judgment dated 29.04.2005 passed by this Hon'ble Court in CWJC
No.1705 of 2002 and this Hon'ble Court in MJC No. 550 of 2006
by order dated 30.04.2007 granted liberty to challenge the same.

(II) Praying for a direction to the respondents to grant
promotion to the petitioner to the post of Inspector with effect
from 15.10.1996 with all consequential benefits as the above
grievances of the petitioner raised in the earlier writ petition



CWJC No.1705 of 2002 has been allowed by this Hon'ble Court by order dated 29.04.2005.

3. Learned counsel for the petitioner submits that the petitioner was earlier filed a writ application bearing CWJC No.1705 of 2002 for a direction to the respondents to promote the petitioner to the post of Inspector w.e.f. 15.10.1996 when juniors of the petitioner were promoted with all consequential benefits and after hearing the parties the Court was pleased to allow the writ application vide order and judgment dated 29.04.2005. Learned counsel for the petitioner further submits that the respondents have not complied the order dated 29.04.2005 passed in CWJC No.1705 of 2002 then the petitioner had filed a contempt application bearing MJC No. 550 of 2006 in which the respondents have filed their show cause by which the respondents again rejected the claim of promotion to the post of Inspector on the ground that the petitioner was failed in the Field Board Test which is impugned in the present writ application. Learned counsel for the petitioner further submits that the Court has rejected the show cause filed on behalf of the respondents and given liberty to the petitioner to challenge the same by filing a separate writ petition.

4. Learned counsel for the petitioner submits that the petitioner was qualifying in the Field Board Test and the name of



the petitioner was recommended for promotion to the post of Inspector and the name of the petitioner was placed at Sl.No.63 in the proceeding of the D.G. Board constituted on 15.10.1996 and after consideration of the D.G. Board the petitioner was found fit for the promotion to the post of Inspector and out of 76 selected person the petitioner ranked at Sl.No.17 in the General list for promotion published vide Memo No.1679 dated 24.10.1996 and number of persons, ranked junior to this petitioner in the above list of promotion, were promoted but the petitioner was illegally denied his due promotion.

5. Learned counsel for the petitioner submits that it is relevant to mention that a departmental proceeding was initiated against the petitioner and a chargesheet has been served upon him on 18.01.2000 and petitioner has inflicted punishment by order of dismissal passed on 31.07.2002 but the same was set aside by the appellate order dated 22.11.2002 and the petitioner was taken back in service with full salary of the entire period and the petitioner retired on 01.05.2003 by the post of Sub Inspector.

6. Learned counsel for the petitioner submits that from a bare perusal of the order dated 29.04.2005 passed in CWJC No.1705 of 2002 and it appears that the respondents have not given the promotion to the post of Inspector to the petitioner from



1996 but he was kept denied for promotion only on account of pendency of so called departmental proceeding. Learned counsel for the petitioner submits that earlier the petitioner has filed CWJC No.1705 of 2002 in which the State has filed a counter affidavit and stating in para-5 and 6 that it was admitted that the petitioner was qualified for the post of Inspector in the year 1996 but due to Rules of reservation and roster he was not promoted and result of the promotion of the post of Inspector in which the petitioner was placed at Sl.No.63 and in the present proceeding the State has filed their counter affidavit and taken stand that the petitioner was failed in the Field Board Test but by order dated 13.02.2017 passed in the present case, the Court has called for the original record of the Field Board Test of 2000 then the respondents had taken another stand that due to departmental proceeding pending against the petitioner, the case of the petitioner was not considered and in the present case, 3rd supplementary counter affidavit filed on 09.02.2018. it was mentioned that due to pendency of the departmental proceeding in 2000 his promotion was not considered and respondent had taken categorical stand as the petitioner was not failed as he was qualified in D.G.Board in the year 1996. In view of the aforesaid it appears that the respondents due to one reason to another reason with willful intention not grant



the promotion to the post of the Inspector to the petitioner. It appears from the counter affidavit filed on behalf of the respondents that the respondents had taken different stand in their counter affidavit and somewhere respondent had admitted that the petitioner was qualified for the post of Inspector in the year 1996 but due to Rules of reservation and roster he was not promoted and on another hand, respondent had taken stand that the petitioner was failed in the Field Board Test but when the Court has called for the original record, the respondent had taken stand that the record was not available and in the 3rd supplementary counter affidavit respondent had taken that due to pendency of departmental proceeding, the case of the petitioner was not considered.

7. It appears from the order dated 29.04.2005 passed in CWJC No.1705 of 2002 that this Court after considering all the facts has given direction to the respondents to consider the case of the petitioner for promotion alongwith other consequential benefits but the same was rejected on the ground that the petitioner was failed in the Field Board Test. The order dated 29.04.2005 passed in CWJC No.1705 of 2002 is reproduced hereinbelow:-

“ *The petitioner was kept deprived of the said promotion only on account of pendency of*



departmental proceeding which ended by the order of his dismissal passed on 31st July, 2002, contained in Annexure 9, and finally by the order passed on his appeal on 22.11.2002, contained in Annexure-10. By the said order (Annexure-10) the petitioner was taken back in service from the date of his dismissal treating entire period since initiation of proceeding as in service and, further, directing for payment of the due salary for the entire period. However, the matter was remitted back for fresh enquiry by some competent officer but, in the meantime, the petitioner retired on 01.05.2003 and no final order could be passed till his retirement.

It is contended that though the juniors of the petitioner were promoted from 1996, but he was kept denied of the promotion only on account of pendency of the so called departmental proceeding. Learned counsel further contended that the letter of the District Accounts Officer to the District Magistrate, Katihar, dated 28th June, 2003, contained in Annexure 11, would show that the proceeding related to the non-governmental



organization and no money of the Government was involved. Further, he submitted that the District Accounts Officer has mentioned in the letter that no cashbook and other papers were produced and as such it was not possible for him to hold enquiry.

Learned counsel for the State, however, has not been able to show that the proceeding remained pending as it was ever converted into one under Rule 43(b) of the Bihar Pension Rules after the retirement of the petitioner.

Under such circumstances, in my opinion, the petitioner cannot be kept denied of his due promotion and other consequential benefits arising therefrom.

The writ application is, thus, allowed. The respondents are directed to consider the case of the petitioner for promotion along with other consequential benefits within six weeks of the receipt/production of a copy of this order”.

8. Under such circumstances, in my opinion, the petitioner was entitled for promotion for the post of Inspector



w.e.f. 1996 and respondents cannot deny of his due promotion due to different reasons as stated in their counter affidavits.

9. The impugned order dated 18.07.2006 (contained in Annexure-2) is hereby quashed. The respondents are directed to consider the case of the petitioner for promotion w.e.f. 15.10.1996, when juniors of the petitioner were promoted to the post of Inspector with all consequential benefits, within a period of eight weeks from the date of receipt/production of a copy of this order. While considering the case of the petitioner, the respondents will take into consideration that the petitioner was passed in the Field Board Test in the year 1996 itself the same was admitted by respondents in 3rd supplementary counter affidavit dated 09.02.2018 and in the departmental proceeding, the petitioner was dismissed from service w.e.f 31.07.2002 but the above dismissal order was set aside by the Appellate Authority vide order dated 22.11.2002 itself and petitioner had already retired long back on 01.05.2003.

10. The writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	10.04.2024
Uploading Date	24.06.2024
Transmission Date	NA

