

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18243 of 2021

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Upendra Kumar Bhagat, Son of Late Basudev Bhagat, Resident of Village-
Hans Raj Ki Deodhi, P.O.- Patna City, P.S.- Khaje Kalam District- Patna.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna, through its Registrar General
2. The Registrar General, High Court of Judicature at Patna.
3. The Registrar Administration, High Court of Judicature at Patna.
4. The Registrar (Establishment), High Court of Judicature at Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr. Satyabir Bharti, Sr. Advocate
		Ms. Kanupriya, Advocate
		Mr. Abhishek Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 25-03-2025

This Court has heard Mr. Brisketu Sharan Pandey, learned Advocate for the petitioner and Mr. Satyabir Bharti, learned Senior Advocate along with Ms. Kanupriya, learned Advocate for the respondent Patna High Court.

2. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents to consider the candidature of the petitioner for promotion to the post of Section Officer with effect from its due date i.e. on 01.01.2016, as also to the post of Assistant Registrar w.e.f. 05.02.2019 and further to the post of Deputy Registrar w.e.f. 30.01.2021, the date on which other identical situated



persons/contemporaries have been promoted to such post. The petitioner also prays for a direction to the respondents concerned to extend the benefit of promotion in the higher scale by way of 2nd ACP w.e.f. 01.01.2016 and MACP w.e.f. 01.07.2020 to which the petitioner is entitled to upon completion of more than 20 years and 30 years of service respectively, reckoning from his date of joining. The petitioner finally sought a direction to hold and declare that the petitioner is entitled for the reliefs prayed for in para.1 of the writ petition and whereupon grant notional/monetary benefits admissible to him in accordance with law.

3. The petitioner was duly appointed as an Assistant on 28.06.1990 in Patna High Court after following the due selection procedure in furtherance of advertisement. In course of service, on replacement of one Ejaz Ahmad, the petitioner was posted in his place as an Assistant in LPA Section on 01.06.2011. In the meanwhile, a learned Division Bench of this Court vide its order dated 18.03.2011 in L.P.A. No. 473 of 2011 issued notice to the respondent through Court process for final disposal of the Appeal and on the point of Limitation, which was made returnable on 29.04.2011. Notwithstanding the order of this Court, notice could not be served, which led to issuance



of show-cause explanation from the Section Officer in the matter of causing delay of 2 ½ years in notifying the matter to the Court. The Section Officer was asked for explanation regarding inaction of the Registry, who in turn directed the petitioner to submit explanation; accordingly, the petitioner tendered his explanation. Learned Division bench of this Court on Judicial side was pleased to direct the Registrar General to make further enquiry and place the report before the Hon'ble Chief Justice. In the meantime, L.P.A. No. 473 of 2011 came to be dismissed.

4. A Memo of charge was duly framed on 25.01.2014 and served upon the petitioner directing him to submit his written statement in his defence. The petitioner offered his written statement on 05.03.2014. However, the same did not find in order and thus the petitioner was asked to furnish another written statement. The petitioner furnished a detailed written statement and presented a chain of events in chronological manner. On consideration of the written statement/explanation, the petitioner was awarded minor penalty of punishment of censure and his next increment was withheld for six months vide order dated 13.06.2014 (Annexure-P/8).

5. The petitioner immediately vide his



representation dated 20.07.2015 requested to the Patna High Court on Administrative side to expunge the remark of censure and mitigate the punishment so that he could be promoted in the forthcoming year. The representation of the petitioner came to be rejected. Owing to the operation of such order, the case of the petitioner has not been considered for promotion to the post of Section Officer. The other identically situated persons, in the meanwhile, have been allowed promotion. The petitioner thereafter immediately represented before the concerned respondents on 20.02.2016, but it also came to be rejected on the ground that no fresh ground has been urged in the representation. Finally in the year 2018, mercy petition of the petitioner was accepted by the Patna High Court and the impugned order of punishment was pleased to set aside, which order was communicated through Memo No. 42359 dated 31.05.2018, issued under the Signature of Registrar General I/C. The punishment of censure along with that of withholding of one increment for six months with future effect, inflicted upon the petitioner vide order dated 13.06.2014 has been converted in a warning to remain careful in future w.e.f. 13.06.2014 itself. Subsequent to the order aforementioned, the High Court released the annual increment in favour of the petitioner, which was earlier



withheld. The matter with regard to the promotion of the petitioner was thus placed before the Establishment committee on 08.03.2019, 09.03.2019 and 27.03.2019, however, the petitioner was denied promotion to the post of Section Officer owing to the punishment.

6. The petitioner on being aggrieved immediately filed representation before the Patna High Court on Administrative side requesting therein to grant promotion to the post of Section Officer on the premise that the order of punishment had stood set aside and converted into warning w.e.f. 13.06.2014. The said representation of the petitioner came to be rejected by the learned Registrar (Establishment) vide order dated 20.05.2019 (Annexure- P/13). Subsequently, the petitioner was promoted to the post of Section Officer in the year 2020 vide notification dated 21.10.2020. The petitioner filed another representation on 02.12.2020 before the Patna High Court on Administrative side requesting therein to enhance the pay scale at level 11 w.e.f. 01.01.2016 or July, 2017, as his promotion has been delayed for five years, in the meantime, his contemporaries of 1990 and even junior to the petitioner of 1997 were not only promoted to the senior post, as compared to the petitioner, but they have also been extended the salary at level



11. The said representation of the petitioner was rejected on 04.03.2021 (Annexure-P/15). Similarly, representation was made on 24.07.2021, which also came to be rejected on 05.10.2021 (Annexure-P/16). Aggrieved by the action of the respondents, the petitioner preferred the present writ petition.

7. Learned Advocate for the petitioner Mr. Brisketu Sharan Pandey, advertng to the facts, aforementioned, has strenuously argued that the punishment of censure imposed on 13.06.2014 was set aside on 31.05.2018 with a warning effective from 13.06.2014. In terms of Rule 14 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (in brevity 'Rules, 2005') the effect of warning last only for one year and thus the petitioner should not have been deprived of promotion after 2015. The disciplinary proceeding ended with the order dated 31.05.2018, but the benefit of the order of punishment having been set aside, never extended to him. The respondent misinterpreted the order dated 31.05.2018 by treating it merely modifying the earlier punishment instead of setting aside the order of punishment and thereby denied the petitioner from his due promotion and consequential benefits. The Establishment Cell provided an incomplete note-sheet before the Promotion Committee in the year 2018 by incorrectly



stating that the warning was imposed on 31.05.2018, instead of 13.06.2014, which led to denial of the petitioner's promotion. Based upon such incorrect noting, the Promotion Committee has rejected the claim of the petitioner. The order rejecting the representation of the petitioner, is submitted to be most laconic and without citing any reason, which reveals non-application of mind. The respondent on Administrative side has failed to appreciate that the petitioner has been wrongly deprived of promotion/ consideration of his candidature for promotion to the post of Section Officer, Assistant Registrar and further to the post of Deputy Registrar with effect from the due date or the date from which his contemporaries and other similarly situated persons have been promoted. The petitioner is also said to be entitled for higher scale of pay by way of 2nd ACP and further MACP after completion of more than 24 years and 30 years of service respectively reckoning from his date of his joining i.e. on 28.06.1990.

8. To support the submissions advanced, learned Advocate for the petitioner also placed reliance upon the decision of this Court in the case of **Rabindra Jha Vs. Bihar State Electricity Board & Ors.**, reported in **2007 (4) PLJR 502**, **Ram Lal Prasad Vs. State of Bihar and Others**, reported



in **2014 (1) PLJR 175** to the effect that warning of an employee is not a punishment.

9. It is further urged before this Court that once the claim for entitlement of the petitioner for promotion to the higher post, if stands culminated by this Court, the petitioner ought to be accorded notional promotion along with monetary benefits. To fortify his contention, reliance has been placed on a decision of the Apex Court in the case of **S. Krishnamurthy Vs. The General Manager, Southern Railways**, reported in **(1976) 4 SCC 825** and further a decision of the learned Division Bench of this Court in the case of **Dr. Paras Nath Prasad Vs. The State of Bihar & Ors.**, reported in **1990 (2) PLJR 248**.

10. Mr. Satyabir Bharti, learned Senior Advocate, representing the respondents, has contended that on account of gross negligence and dereliction of assigned duty, the petitioner was put to departmental proceeding after appointment of the Enquiry Officer as well as Presenting Officer. Upon conducting the due process of enquiry, the learned Enquiry Officer expressed his findings and on consideration thereof, the petitioner was awarded with aforementioned minor punishment. It is the admitted position that the representation of the petitioner, against the order of punishment, has been rejected thrice and



finally the punishment having been inflicted upon the petitioner was set aside on mercy petition preferred by the petitioner vide order dated 31.05.2018 converting the punishment to be a warning w.e.f. 13.06.2014.

11. As per Explanation 2(i) of Rule 14 of the Rules, 2005, the adverse effect of 'Censure' on the confirmation and promotion of concerned Government servant shall be for next three consecutive years after the year of allegation or omission and commission, for which he/she is censured. For the year 2013-2014, its adverse effect was from the year 2014-2015 to 2016-2017 and, as such, the petitioner was not found fit for promotion during this period. The petitioner's case along with other eligible Assistants were placed for promotion to the post of Section Officer in the year 2014, but he was not found fit to be considered on account of continuance of the adverse effect of the punishment. Subsequently, the case of the petitioner was further placed for consideration for his promotion in the year 2016, but was not found fit to be considered. In the year 2019, the Committee again did not find the petitioner suitable for promotion and finally in the year 2020, the name of the petitioner was recommended by the Promotion Committee for promotion to the post of Section Officer.



12. In view of the aforesaid facts, now the petitioner could not be considered for reconsideration of his case for promotion to the post of Section Officer retrospectively, as the order modifying the punishment was passed on 31.05.2018.

13. Learned Senior Advocate, Mr. Satyabir Bharti, has further argued that it is the admitted position that the petitioner has never chosen to challenge the order of punishment by preferring an appeal to the higher authorities (Administrative side) or before the Court and thus he has admitted his guilt. The punishment has been set aside only on account of mercy shown by the respondent Patna High Court. Reliance has also been placed on the judgment of the Apex Court in the case of **Rama Negi Vs. Union of India & Ors**, reported in **(2022) 5 SCC 150**, especially paragraph 24 and 25.

14. Lastly the learned Senior Advocate by concluding his argument urged that an employee has no right to promotion; he has only a right to be considered for promotion to the post and, more so, to a selection post, which depends upon several circumstances. To qualify for promotion, the least that is expected from an employee is to have an unblemished record. An employee held guilty and penalized in departmental



proceeding cannot be placed on par with the other employees, hence there is no discrimination when the matter of promotion, the petitioner is treated differently.

15. It is also well settled that an employee cannot be given a promotion retrospectively from a date when, for his conduct before that date he is penalized in praesenti. A denial of promotion in such circumstances is not a penalty, but a necessary consequence of his conduct. The Promotion Committee after taking into consideration the penalties imposed upon the employee, denied the promotion and such denial cannot be said to be illegal and unjustified, is the contention of learned Senior Advocate

16. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocate for the respective parties and meticulously perused the record. Since the facts are admitted, the same does not need to be reiterated, except the fact that the proceeding drawn against the petitioner culminating into award of punishment of censure and his next increment for six months was withheld for future effect vide order dated 13.06.2014 pleased to be set aside by the Patna High Court on the Administrative side and in place thereof the petitioner was warned to be careful in future with effect from



the earlier date of punishment i.e. 13.06.2014. The effect of warning is for one year only and the employee on whom such punishment is imposed can be deprived of promotion or consideration for promotion for next one year only in terms of the prescription of Explanation 'C' of Rule 14 of the Bihar CCA Rules, 2005.

17. The natural corollary of the order of punishment, having been set aside by the Court or any competent authority would be one and only that there is no such order of punishment in existence, unless it is expressly mentioned in the order passed by the Court or the authority. In case, it is modified, it would be confined only to the extent of such modification and nothing else.

18. From bare perusal of the order dated 31.05.2018, there is no scintilla of uncertainty that the impugned order of punishment was set aside and the petitioner was warned to be careful in future, although the order having been passed upon the mercy petition filed by the petitioner. Although it is true that the illegality of the order has never been questioned, but to see the predicament that despite the order of punishment having been set aside and being no more in existence, the effect of suffering still persists. This Court is constrained to take into



consideration the relevant facts that the learned Division Bench in L.P.A. No. 473 of 2011 issued notice to the respondent on both the Appeal as well as Limitation matter, the rule of which was made returnable on 29.04.2011; admittedly the petitioner joined in L.P.A. Section on 01.06.2011 as replacement of one Ejaz Ahmad. The response of the petitioner specifically attracted the attention of this Court that apart from the order directing the rule returnable on 29.04.2011, it was neither brought to the knowledge of the petitioner nor did it find place in forwarding diary, resulting into undue delay in placing the matter before the Court concerned. It would also be worth noticing that the explanation was called for from the Section Officer of L.P.A. Section, but on direction being made, the petitioner who had been discharging the duty as Dealing Assistant to submit the explanation, without asking any show-cause from the said gentleman, who was at the relevant period i.e. 18.03.2011 had been Dealing Assistant, the date on which rule is made returnable on 29.04.2011, the petitioner submitted his explanation, which did not find favour. From the materials available on record, this Court finds that said gentleman, who was the then Dealing Assistant had neither been show-caused nor put to departmental proceeding or inflicted with even a



warning.

19. The counter affidavit filed on behalf of respondent Patna High Court does not whisper as to whether there had been any reconsideration for promotion of the petitioner on his respective promotional post after the order of punishment having been set aside and more so when the effect of warning came to an end. The averment in the counter affidavit is only to the extent that the case of the petitioner was placed for consideration for his promotion to the post of Section Officer in the year 2014, further in the year 2016, but he was not found fit to be considered due to continuance of adverse effect of punishment of censure and withholding of increment for six months awarded to him vide Memo dated 13.06.2014. It has further been averred that the case of the petitioner was further placed for consideration in the year 2019, but the Committee did not find him suitable for promotion. The statement noted hereinabove only suggests that on all the times when the case of the petitioner was placed for consideration for promotion, his case was not found fit on account of the punishment of censure or later on warning, which also fortified from the extract of the proceeding of the Establishment Committee held on 08.03.2019, 09.03.2019 and 27.03.2019, the copy of which is marked as



Annexure- P/12.

20. In the aforementioned factual position, this Court comes to the only conclusion that notwithstanding the order of punishment having been set aside, the case of the petitioner for promotion to the post of Section Officer and further to the post of Assistant Registrar or any other promotional post had never been considered with effect from the due date for which, the petitioner was entitled, in case had there been no order of punishment. The order of the Patna High Court on Administrative side is unambiguous and crystallized that the order of censure has been set aside, in any view of the matter the respondents ought to reconsider the matter. Failure to do so has completely nullified the effect of the order of Patna High Court setting aside the order of punishment and modified it to a warning.

21. The position stood settled by the Apex Court that right to be considered for promotion is a fundamental right. It is not the mere consideration for promotion that is important but the consideration must be fair according to established principles governing service jurisprudence. True it is that the Courts will not interfere with assessment made by Departmental Promotion Committees unless the aggrieved officer establishes



that the non-promotion was bad according to Wednesbury Principles or it was mala fide. Similarly adverse remarks of an officer for the entire period of service can be taken into consideration while promoting an officer or while passing the adverse order. But the weight which must be attached to the adverse remarks depends upon certain sound principles of fairness.

22. The principle aforementioned summarized by the Apex Court in the case of **Badrinath v. Government of Tamil Nadu and others**, reported in **(2000) 8 SCC 395** crystallized that consideration must be fair.

23. In the case in hand, this Court does not find that after setting aside the order of punishment, the case of the petitioner has ever been considered with effect from the due date by accepting the position that there had never been a punishment of censure. The plea of the learned Senior Advocate appearing for the respondent Patna High Court that the order of the Patna High Court setting aside the order of punishment is based on a mercy petition does not persuade this Court as that would amount to rewriting of the order dated 31.05.2018 afresh and rendering the same to be meaningless and hence there would not be any reason or occasion on the part of the Patna



High Court to set aside the impugned order of punishment once the effect of censure had already lost its effect much prior to passing of the order on 31.05.2018 and modifying it only to a warning.

24. It has been reminded time and again that the order of punishment having been set aside relates back to the date on which the order was passed unless it is made prospective in nature. The order of the Patna High Court dated 31.05.2018 in no uncertain term has set aside the order of censure dated 13.06.2014 and modified it to be a warning to the petitioner remained careful in future with effect from 13.06.2014. Thus in any view of the matter the effect of warning also came to an end by 13.06.2015.

25. In the case of **Union of India & Ors Vs P. Gunasekaran**, reported in **(2015) 2 SCC 610**, the aforesaid issue has been clarified that whenever the original punishment is subsequently modified into a lesser punishment, the date of giving effect to the lesser punishment would revert to the date of original punishment. In other words, the modified punishment imposed, is deemed to have been imposed on the original date of punishment.

26. There is no quarrel with regard to the settled



proposition, as has been raised by the learned Senior Advocate representing the Patna High Court placing reliance upon the decision in the case of **Rama Negi** (supra) that while considering an employee for promotion, his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified.

27. It is also true that an employee found guilty of misconduct cannot be placed at par with the other employees, his case has to be treated differently and it cannot be said to be discriminatory, when in the matter of promotion he is treated differently. Denial of such promotion, in such circumstances, is not a penalty, but a necessary consequences of his conduct, but with due regard the present is not the case where the aforesaid mandate of the Apex Court would be applicable, once the order of penalty stands set aside by the Patna High Court.

28. This Court has also been reminded that the employee who has been denied due seniority and/or promotion in accordance with law even after his superannuation is entitled to a notional seniority and consequential benefits. In the case of **State of Mysore Vs. C. R. Sheshadri & Ors., (1974) 4 SCC**



308, the Hon'ble Supreme Court ruled that when a person is found to have been denied his due promotion, the Court may hold that he had been entitled to such promotion with retrospective effect.

29. The learned Division Bench of this Court in **Dr. Paras Nath Prasad** (supra), while holding the petitioner entitled to be promoted to Junior Selection Grade, Senior Selection Grade and Super Time Scale of Pay, has negated the objection of the State respondents, who contended that though he would be entitled to promotion with retrospective effect, but he would not be entitled to any promotional benefits as per circular of the Finance Department, contained in Memo No. 2074 dated 04.04.1985. The Court while solidifying its decision has observed in paragraph no.21, which is as follows:

“**21.** The other contentions of the learned counsel for the respondents that Rule 58 of the Bihar Service Code prohibits any grant of pay and allowances to the petitioner on a fictional and notional promotion granted to him is, in my view, misconceived. A notional promotion has to be as if, for service benefits, he had been given due promotion. A person, who is entitled to promotion and is not promoted, can always invoke the jurisdiction of this Court under Article 226 of the Constitution for a



mandamus to the employer State to consider his case for such promotion. Such due promotion is not a claim of anything notional but it is something that is really attached to the status and the service contract of the employee concerned. In the case of *Alappat Narana Menon v. State of Kerala*, (1977 Volume II S.L.R. 656) the Supreme court has stated:

“The foregoing discussion with reference to the pronouncement of the Supreme Court and the Gujarat, Allahabad and Mysore High Courts clearly establish that a Government servant cannot be said to have forfeited his claims for arrears of salary when he did not get his due promotion for no fault of his. The Government's plea the petitioner was given only a notional promotion is not sustainable in law. What the petitioner got was not a notional promotion and it is wrong to call this promotion as ‘notional’ in the context of the peculiar facts and circumstances of this case. The concept of notional promotion cannot enter the realm of discussion in this case. Notional promotion is one which a Government servant gets under particular exigencies of situation, which he cannot claim as of right. Here the petitioner is entitled as of



right to get the promotion from 1.4.1955 and, therefore, his claim for arrears of salary and other material benefits cannot be denied to him on the plea that what was given to him was only a notional promotion and the policy of the Government is not to give the arrears of salary in such cases. It is no argument to say that many have been promoted ignoring the petitioner's claim. I, therefore, hold that the petitioner is entitled to succeed.”

30. In view of the discussions within the four corners of the law discussed hereinabove, this Court finds substance in the present writ petition and thus hereby direct the respondents to consider the candidature of the petitioner for promotion to the post of Section Officer, as also to the post of Assistant Registrar and Deputy Registrar, with effect from the due date and extend the benefit of promotion as well as higher scale of pay with the consequential benefits to which the petitioner is otherwise found entitled, as has been prayed for in para. 1 of the writ petition.

31. It is expected that the entire exercise must be completed preferably within a period of three months from the date of receipt/production of a copy of this order.



32. The writ petition stands allowed. There shall be no order as to cost.

33. Pending application, if any, shall also stand disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	11.02.2025
Uploading Date	27.03.2025
Transmission Date	NA

