

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4717 of 2002

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Upendra Prasad Mandal, Son of Sri Sagar Mandal, resident of village Maul Tola, P.S. Pirpanti, District- Bhagalpur, presently posted as Accounts Clerk, Investigation and Planning Division, Gandak Command Area Development Agency, Chhapra, Saran.

.... Petitioner.

Versus

1. The State of Bihar through Secretary, Agriculture (Special Programme) Department, Bihar, Patna.
2. Area Development Commissioner-cum-Chairman, Gandak Command Area Development Agency, Muzaffarpur.
3. Secretary, Gandak Command Area Development Agency, Muzaffarpur.
4. Superintending Engineer-II, Gandak Command Area Development Agency, Muzaffarpur.
5. The Executive Engineer, Investigation and Planning Division, Gandak Command Area Development Agency, Chhapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh- I, Advocate

For the Respondent/s : Mr. (GP1)

Mr. Nanhe Prasad

Mr. Kumar Madhurendra

Mr. Rabindra Nath Singh

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH


ORAL JUDGMENT

Date: 29-02-2016

The petitioner seeks quashing of the order, dated 13.02.2002 issued by the Secretary, Gandak Command Area Development Agency, respondent no.3, cancelling his promotion to the post of clerk from the date of promotion with a further direction to recover the difference of salary paid to him.

2. The short facts of the case necessary for disposal of the case is indicated herein below:

3. The petitioner was appointed as Chaukidar in Gandak



Area Command Development Agency (hereinafter referred to as 'GADA') on 31.03.1978. At the relevant time, the petitioner had already appeared in Matriculation examination, the result of which was published in July, 1978. The petitioner was subsequently made Treasurer Guard. In the year 1979, the GADA sought instructions from the Government whether it could frame service condition of its employees, which was answered in affirmative. The GADA accordingly framed certain conditions for promotion of Class-IV employees to Class-III post. In the meantime, the petitioner was promoted to the post of Treasurer Guard vide Memo no. 222 dated 08.02.1980 and his service was regularized on 22.09.1980. In terms of the service conditions framed by GADA, the petitioner was promoted to the post of clerk vide letter no. 232, dated 11.02.1982. In the year 1996, the petitioner was served charge-sheet as to why the promotion granted to him to the post of Accounts Clerk be not cancelled. The petitioner filed his show-cause reply. The enquiry officer exonerated the petitioner of the charge vide enquiry report, dated 25.09.1996. However, the respondent no.3 acting under the direction dated 13.02.2002 of Secretary, Agriculture (Special Programme) Department, Bihar, Patna, cancelled the promotion granted to the petitioner and directed for recovery of the difference of excess amount paid as clerk.

4. In my view, the impugned order is not sustainable in law.

The enquiry report was in favour of the petitioner and as such it was imperative for the respondents to issue show-cause before cancelling his promotion. By not providing an opportunity to defend himself, the respondents acted in breach of principles of natural justice, as the enquiry report was in his favour.

5. In the result, the impugned order cancelling the promotion of the petitioner is set aside with liberty to the respondents to proceed afresh in accordance with law.

6. With the aforesaid observation, this application stand allowed.

(Samarendra Pratap Singh, J.)

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