

(2001) 02 PAT CK 0110**Patna High Court****Case No:** L.P.A. No. 930 of 1999

Umesh Prasad and Others

APPELLANT

Vs

Bihar State Electronic
Development Corpon. Ltd.

RESPONDENT

Date of Decision: Feb. 12, 2001**Citation:** (2001) 2 PLJR 616**Hon'ble Judges:** Ravi S. Dhavan, C.J; Aftab Alam, J**Bench:** Division Bench**Advocate:** Anjana Mishra, M/s A.K. Choudhary and Jai Shankar Pathak, for the Appellant;
Rajendra Prasad and Pramod Kumar for the Corporation and Mr. S.S. Nayer Hussain for
Respondents 2 and 3, for the Respondent**Final Decision:** Allowed**Judgement**

Aftab Alam, J.

This appeal has been filed against the judgment and order passed in C.W.J.C. No. 13207 of 1993 by a Hon'ble Judge of this court sitting single and it is now being pursued by the heirs and legal representatives (the parents, the brothers and a sister) of the writ petitioner, a certain Anil Kumar Sinha, who died during the pendency of this litigation before this court. The aforesaid Anil Kumar Sinha was an employee of the Bihar State Electronics Development Corporation Ltd. He came to this court seeking its direction to the concerned authorities to pay him his salary to the scale of Rs. 1350-2000 which was admissible to him on his being designated/promoted to the post of Dy. Manager (Accounts) w.e.f. 28.3.1990 following the decision taken in the 53rd meeting of the Board of Directors of the Corporation.

2. The petitioner was working in the Corporation as Internal Auditor. He became a Chartered Accountant on passing the examination held by the Institute of Chartered Accountants of India in January, 1990. He informed the Corporation about his acquiring this qualification whereupon the Board of Directors of the Corporation in

its 53rd meeting designated/promoted the petitioner as Dy. Manager (Accounts) in the scale of Rs. 1000-1820 (unrevised). Following the decision taken by the Board of Directors, an office order, dated 28.3.1990 was issued, a copy whereof is at Annexure-1. The grant of the higher scale of pay to Shri Sinha was, however, made subject to the approval by the Bureau of Public Enterprises as the Corporation which is an undertaking of the Government of Bihar could incur any financial obligations only with the prior approval of the Bureau in the Finance Department, Government of Bihar. In pursuance of the office order, dated 28.3.1990 the case of Shri Sinha was referred to the Bureau of Public Enterprises with a recommendation by the Corporation's Managing Director to allow him the pay scale of Rs. 1350-2000 w.e.f. 28.3.1990. The Bureau of Public Enterprises declined to give its approval to the proposal to give Shri Sinha the higher scale of Rs. 1350-2000 and the decision of the Government was communicated to the Managing Director of the Corporation by letter, dated 13.11.1990 written by the Dy. Secretary to the Government in the department of Industries (Annexure-6). According to the writ petitioner, even after his claim was turned down by the government, the Managing Director of the Corporation took up the matter with the Industries Department and sent another proposal for reconsidering his case, making a strong recommendation in his favour. In reply, the Joint Secretary in the department of Industries, Government of Bihar asked for further clarifications from the Corporation. Unfortunately, however, no answer was given to the queries made by the Industries Department and despite a number of representations made by him no favourable decision was taken in his favour. Finally Shri Sinha was compelled to come to this court seeking its intervention as appropriate direction for payment of his pay in the higher scale of Rs. 1350-2000.

3. The writ petition was dismissed by a Single Judge of this court, sitting single, by judgment and order, dated 2.7.1990 which comes under appeal under clause 10 of the Letters Patent of this court. The Hon'ble Judge proceeded on the basis that following the decision of the Corporation's Board of Directors though the writ petitioner was given the designation of Dy. Manager (Accounts), the grant of the higher scale of pay admissible to the post was expressly made subject to the approval by the Bureau of Public Enterprises. The writ petitioner had accepted this condition with his eyes open and, therefore, he could not make a grievance against the higher scale of pay not being given to him following the rejection of the proposal for his promotion by the Government.

4. We are constrained to say that we do not feel wholly satisfied with the manner in which this matter has been dealt with. In our view it is somewhat unfair to say that the petitioner could not make a grievance because he had accepted the condition that the grant of higher pay scale to him will be subject to the approval by the Government. The question of acceptance or non-acceptance of a condition would arise only if the concerned person had a circumstance of this case it is evident that the petitioner had no choice but to accept the condition made in the office order

that the grant of higher scale of pay to him will be subject to the approval by the government. The question, therefore, arises how far the action of the government was reasonable, just and fair in refusing to give its approval to the proposal for the promotion of the petitioner in the higher scale of pay.

5. In this regard, it may be noted that the letter of the Dy. Secretary, dated 13.11.1990 is completely silent on this point. It says no more than the government had expressed its inability to give its approval for the promotion of the petitioner in the scale of Rs. 1350-2000. The counter affidavits filed in the writ case and in this appeal hardly improve the position. All that appears from the counter affidavit filed on behalf of the respondent authorities is that the proposal for the petitioner's promotion was not made following the correct procedure and was not routed through the correct Committee's/bodies. In the counter affidavit filed on behalf of the Bureau of Public Enterprises it is stated in this regard as follows:

The proposal is made out by the P.S.U. (the Corporation) and then it is examined by the administrative department. Finding the case to be fit the administrative department is required to send the proposal with its recommendation to the Chairman, Bureau of Public Enterprises requesting him to convene the meeting of high level committee. In the instant case no such proposal of promotion of the writ petitioner was duly brought before the Chairman, Bureau of Public Enterprises.

6. It is thus to be seen that the objection of the respondent authorities was mainly about the non-observance of the correct procedure. It is no one's case that the writ petitioner, after having acquired the qualification of Chartered Accountant, was not qualified for being promoted to the post of Dy. Manager (Accounts). In these facts and circumstances, we are of the view that the correct course would have been to ask the respondent authorities to consider the petitioner's case for promotion to the post of Dy. Manager (Accounts) in the scale of Rs. 1350-2000, following the procedure as provided under the rules and we propose to direct the respondent authorities accordingly. We, therefore, set aside the decision of the State Government, refusing to give its approval for the petitioner's promotion as communicated under letter dated 13.1.1990 (Annexure-6) and direct the respondent authorities to reconsider the case of promotion to Shri Anil Kumar Sinha (deceased) in accordance with the relevant rules.

7. As Shri Sinha is now dead, he cannot be subjected to any persoal interview in case the rules so warrant and his case for promotion must, therefore, be considered on the basis of the materials available on the records. The authorities in the Corporation and the Bureau of Public Enterprises are jointly directed to reconsider his case for promotion and to take a final decision within two months from the date of receipt/production of a copy of this order.

8. Before parting with the records of this case it must be pointed out that there was another alternative prayer made by the writ petitioner which seems to have been

overlooked by the writ court. It appears that the writ petitioner had taken the stand that if the higher scale was not allowed to him he must be given in any event an allowance @ 20% of his pay for working on the higher post of Dy. Manager (Accounts) pursuant to the order, dated 28.3.1990. The respondent authorities will also take into account this alternative claim of the petitioner.

9. In case any part of the writ petitioner's claim is disallowed the authorities will pass a speaking order briefly giving reasons in support of the decision.

10. Needless to say that the decision taken by the authorities will be duly communicated to the appellants within the time as directed in this order. In the result, this appeal is allowed to the extent indicated above. No order as to costs.