

THE STATE OF BIHAR AND ORS

v.

BATESHWAR SHARMA

MARCH 14, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Service Law :*

*Promotion—Executive Engineer—Working as ad hoc superintending Engineer—Several departmental proceedings pending against the Officer—D.P.C. found the Officer unfit for promotion to the post of Superintending Engineer—High Court directing that Officer would be deemed to have been promoted retrospectively with all consequential benefits—Held, order of High Court is illegal—Once the D.P.C. found that the officer was unfit for promotion upto the date of consideration, the matter should have been remitted to the Government for Constitution of DPC to consider the case of the Officer for promotion in later period—Government is directed to constitute the DPC to consider the case of the officer on merits in accordance with law.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2227 of 1997.

From the Judgment and Order dated 31.3.95 of the Central Administrative Tribunal, Delhi in O.A. No 1801 of 1994.

N.N. Goswami, Mrs. Indu Goswami, Ms. Kanu Priya Mittal and Arvind Kr. Sharma for the Appellants.

Kishore Kr. Patel and S.M. Garg for the Respondent.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

This appeal, by special leave, arises from the judgment of the Division Bench of the Patna High Court, passed on May 2, 1996 in L.P.A. No. 815/95.

The admitted facts are that while the respondent was working temporarily as Superintending Engineer, several proceedings were initiated

A against him statedly for his own misconduct in the matter of financial transactions etc. It is not necessary to dilate upon all facts in detail. Suffice it to state that the Departmental Promotion Committee (DPC), duly constituted by the Government, had gone into the question whether the respondent was fit for promotion from the post of Executive Engineer as Superintending Engineer on regular basis in the proceedings dated 13.9.1995, the DPC found as under :

B "Hence the Departmental Promotion Committee examined in its meeting all the relevant papers/documents made available by the Department. After examination the Committee found the Officer proposed unfit for promotion upto 16.1.1994."

C In view of the above finding of fact by the competent Committee, the question arises : whether the High Court could record finding that the respondent could be deemed to have been promoted from January 17, 1989 with all consequential benefits. The view taken by the High Court is palpably illegal for the reason that once the DPC had found that the respondent was unfit for promotion upto that date, the only course that requires to be adopted by the High Court was to remit the matter to the Government for constitution of the DPC to consider his fitment for promotion in later period. in that event, the DPC would go into the merits afresh and find out whether the respondent would be fit for promotion. If he would be found fit and recommendation is made in that behalf, the Government would appoint him on regular basis and he would get seniority only from the date of his promotion; and not from the earlier date when he was working on *ad hoc* basis. We are not inclined to express any opinion on merits either way. The D.P.C. is the only competent authority to decide on merits.

F Under these circumstances, the order of the High Court stands set aside. The Government is directed to constitute the D.P.C. which would consider the case of the respondent in accordance with the rules on merits and then give appropriate direction in accordance therewith to the Government. We direct the Government to do the entire exercise within three months from the date of the receipt of this order.

G The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.