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SLP(C)No. 14961 OF 2000

ITEM No.44

Court No. 4

SECTION XVII  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.14961/2000

(From the judgement and order dated 04/05/2000 in LPA 408/99  
of The HIGH COURT OF PATNA)

BIHAR STATE ELECTRICITY BOARD & ANR.

Petitioner (s)

VERSUS

CHITRANJAN KUMAR BIRNAVAY & ANR.

Respondent (s)

(With prayer for interim relief)  
With

SLP(C)No.16439/2000

Date : 05/02/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MR. JUSTICE U.C. BANERJEE  
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s)

Mr. S.B. Upadhyay,Adv.

For Respondent (s)

M/s. Manish Mohan,Kirti Sinha and  
Mr. Ugra Shankar Pd.,Adv

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....J.  
.SP2

Leave granted.  
The appeals are allowed.

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(Y.P.Dhamija) (Suneet Bala Sharma)@@  
AA  
COURT MASTER COURT MASTER

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO...../2001@@  
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(arising out of SLP(C) No.14961/2000)

Bihar State Electricity Board & Anr. ..Appellants

Vs.

Chitranjan Kr.Birnavay & Anr. ..Respondens

C.A.No...../2001 @ SLP(C)No.16439 of 2001@@  
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O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....T.....J.  
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Leave granted.

These two appeals by the Bihar State Electricity Board are directed against the impugned judgment of the Patna High Court directing promotion of the respondent w.e.f. 1.3.1982. The respondent appears to have claimed promotion to the post of Under-Secretary from the Administrative Officer w.e.f. 1.3.1982, inter-alia, on the ground that the resoulution of the Board entitles the same. Be it be stated that the respondent filed a Writ Petition in the year 1991 claiming promotion w.e.f. 1.3.1982, which was registered as CWJC No. 800/1991. That application stood disposed of by a direction that the respondent should file a representation and on such representation being filed, the Board should dispose of the same. Pursuance of the direction, the said representation of the respondent having been rejected by the Board,he again filed a Writ Petition which was registered as CWJC No.3355/1993. That Writ Petition was disposed of by order dated 5.1.1994 on a finding that before disposal of the

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representation the respondent had not been heard, therefore, he should be given an opportunity of hearing. Pursuance to this direction, the Board heard the respondent and passed a fresh order on 12.2.1994 rejecting his representation. The respondent being filed a fresh Writ Petition, which was CWJC No. 3178/1994 that was disposed of by order dated 4.9.1997 with the direction:

(a) The appropriate authorities of the Board must consider the petitioner's case for promotion to the post of Under-Secretary with effect from 1st March, 1982 in as much as petitioner is eligible for consideration on that date and there is no impediment to such consideration.

(b) If as a result of such consideration, the petitioner is found entitled to promotion to the post of Under-Secretary from an earlier date, the petitioner's promotion should be suitably prepounded and the order at Annexure-3 will be suitably altered.

(c) In the event, the petitioner's promotion to the post of Under-Secretary is prepounded, in that case his case for promotion to the post of the Joint Secretary after completion of seven years of Kalawdhi from the date of preparing of promotion to the post of Under-Secretary should

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be considered keeping in mind the fact that the petitioner

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was holding the current charge of Joint Secretary at the time of his retirement.

(d) All the aforesaid exercises mentioned in clause (a) to (c) above must be completed within a period of four months from the date of service/production of a copy of this order on the appropriate authorities of the Board by the petitioner.

(e) Consequential financial benefits by way of difference of salary and in the matters of calculation of pensionary benefits may be made available to the petitioner within a period of three months from the date of expiry of the period mentioned in clause (d)."

Pursuance to the aforesaid direction, the departmental promotion committee met on 11th May 1999 and then on consideration of the claim of the respondent refused to grant the claim that he is entitled to get the promotion w.e.f. 1.3.1982. The committee found that no Administrative Officer was considered for promotion w.e.f. 1.3.1982 and even the case of promotion of the immediate senior to him had been considered only in March and April, 1986 and therefore the question of granting promotion to the respondent w.e.f. 1.3.1982 does not arise. Notwithstanding the aforesaid decision of the departmental promotion committee, the

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respondent having approached the High Court again, the impugned judgment has emanated. The learned Judges of the High Court have never focussed their attention to the aforesaid conclusion of the departmental promotion committee nor is there any finding arrived at that the aforesaid conclusion is incorrect in any way. The respondent, if at all, was entitled for being considered for promotion on satisfying the eligibility clause. As it appears the respondent was facing some vigilance enquiry and got clearance from the vigilance enquiry by letter dated 15.5.1986 and therefore he had been promoted w.e.f. 28.4.1986. The respondent's non-promotion w.e.f. 1.3.1982, as claimed by him, cannot be held to have conferred any right for promotion on that date, particularly, when the seniors to the respondent were considered for promotion only in March and April, 1986. In the aforesaid premises, the impugned direction of the High Court directing promotion of the respondent to the post of Under-Secretary w.e.f. 1.3.1982 cannot be sustained in law. We accordingly quash the said direction. These appeals are allowed accordingly.

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.....J.  
(G.B. PATTANAİK)

.....J.  
(U.C. BANERJEE)

New Delhi,  
February 5, 2001.

.....J.  
(S.N. VARIAVA)