IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13481 of 2013

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1. The Union of India through the Secretary cum D.G., Department Of Posts Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Director of Accounts (Postal) GPO Complex, Patna.
4. The Postmaster General, Northern Region, Muzaffarpur
5. The Superintendent of Post Office, Begusarai Division, Begusarai.

.... Petitioner/s

Versus

Md Umarruddin S/O Late Abdul Gaffar Resident Of At+ P.O- Bari Ballia, District- Begusarai.

.... Respondent/s

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For the Appellants : M/s Sanjay Kumar, ASG &
Rakesh Kr Sinha, CGC
For the Respondent/s : Mr Hemand Kr Karn, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 23-02-2015

Pursuant to order dated 04.02.2015, learned counsel for the Union of India and the Postal Department had sought time to inform the Court as to the outcome of the Special Leave Petition (SLP) filed by them as against the judgment and order of another Division Bench judgment of this Court on the same issue which was decided in favour of the employee and as against the Union of India and the Postal Department. Very fairly today, Shri Sanjay Kumar states that SLP preferred by the Department has been summarily dismissed though a curative petition in the shape of Review Petition (Civil) No 492 of 2015 is pending. Learned counsel for the private respondent rightly contends that the SLP having been dismissed, at least for the time being, it would be appropriate to hold that the earlier Division Bench judgment of this Court has not been interfered with by the Apex Court and in that situation that would bind this Division Bench as well.

2 In that view of the matter, with consent of parties, we have heard them at length and finally disposing of this writ petition.

3 The petitioner before the Central Administrative Tribunal (Tribunal), who is the sole respondent before us, was working as an extra departmental mail carrier under the Postal Department for over 20 years. Under the scheme applicable to them, subject to vacancies available, they are to be taken into the permanent cadre of employees of the Postal Department. It is not in dispute that as against vacancies that were available for the year 1991, the sole respondent was recommended for consideration but due to delay in holding the Departmental Promotion Committee (DPC) meeting, his case could only be considered in 1992 and, accordingly, he was appointed as a permanent employee of the Postal Department in 1992. When he superannuated, he was denied pensionary benefits on the ground that his service, as a permanent member of the cadre in the service of the

Postal Department, was only 9 years 5 months and 10 days as a Postman and, accordingly, being less than 10 years, he did not meet the eligibility criteria for being entitled to retiral benefits. This is what prompted him to move the Tribunal. The Tribunal, following precedents which had been affirmed by the Division Bench of this Court, held that had DPC meeting held in due time, petitioner would have been in service for 10 or more years. Because of delay on ground of DPC meeting and not because of any fault on the part of the employee, he was denied retiral benefits which was wrong. The Tribunal, accordingly, ordered that the employee would be entitled to retiral benefits.

4 The Union of India and the Department have filed this writ petition against the order of the Tribunal. On record is one of the orders passed by the Division Bench of this Court being judgment and order dated 21.10.2013 passed in **CWJC No 5427 of 2013 (Union of India & Others –Versus- Vishwanath Pandit)** where, under virtually identical situation, Division Bench of this Court refused to interfere with the order of the Tribunal. The said decision is a binding precedent, as noted above. The challenge to such decision of this Court has failed before the Apex Court. We have no option but to follow the same. We would only like to add what Chief Justice ***Chagla*** said in the case of ***All India Groundnut Syndicate Limited -***

Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 which is a complete answer on behalf of the Union of India and the Department. The relevant part is quoted hereunder:

> *"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."*

5 In view of the aforesaid, we have no option but to dismiss this writ petition and hold that the Tribunal was correct in holding that the petitioner before it, that is the sole respondent before us, is entitled to retiral benefits. We may note that there are very few people who are entitled to this benefit and we do not think it would be proper for us to interfere in any manner with the order of the Tribunal.

6 The writ petition is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Jitendra Mohan Sharma, J)

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