

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.772 of 2015**

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1. The Union Of India through Director General of Post, Ministry of Communication, Department of Post, Sanchar Bhawan, New Delhi.
  2. The Chief Post Master General, Bihar Circle, Patna.
  3. The Director, Postal Service (HQ), O/O the Chief Post Master General, Bihar Circle, Patna.
  4. The Director, Accounts of Post, Patna.
  5. The Assistant Director (Staff AND Rectt) O/O the Chief Post Master General, Bihar Circle, Patna.
  6. The Additional Director General of A.P.S., C/O 56, APO.
  7. The Officer Incharge, P & T Admn. Cell, KAMPTEE, A.P.O. C/O 56, APO.

.... .... Petitioner/s

Versus

1. J.P.Mandal son of Late D.P.Mandal Office Superintendent (HSG-1), O/O the Chief Post Master General, Bihar Circle, Patna, Resident of Village- Kahalgaon Tola, P.O. Khawaspur, Police Station Pirpainti, District- Bhagalpur (Bihar).

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar(ASG)

For the Respondent/s : Mr. M.P.Dixit, Mr. Sanjay Kr. Choubey & Mr. Jailendra Kumar

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 01-09-2015**

The grievance of the Union of India is that the contesting respondent qualified and was appointed as U.D.C on 20-1-1982. Accordingly, after five years of service, he was granted L.S.G. on 30-1-1987 On completion of three years, he was granted H.S.G-II with effect from 1-2-1990, and thereafter on completion of ten years, he was then granted the scale of H.S.G –I with effect from 29-11-2001. The respondent contends that as there were vacancies of Scheduled



Tribe candidate in L.S.G., H.S.G.-II and H.S.G.-I, all in the year 1982 itself, considering that he was the sole Scheduled Tribe candidate available, he was required to be granted the three selection grades simultaneously in 1982 itself. He had managed to obtain an order in this regard from the Chief Post Master General. His office refused to carry it out, because it was unheard of. Being aggrieved, he moved the Central Administrative Tribunal for enforcement of the order of the Chief Post Master General. Curiously, before the Tribunal, the learned counsel for the Central Government on the very first day conceded the claim and the Tribunal accordingly directed for implementation of the order of the Chief Post Master General. The Postal Department, on coming to know of this order, filed a review application before the Tribunal, which was dismissed on the ground that it was too late and being barred by limitation with no power to condone. The Postal Department then filed a writ petition in the High Court. The writ petition was dismissed with cost of Rs.25,000/-, holding that the Department was trying to challenge the order of the Chief Post Master General, which was an order passed on consent. Learned counsel for the contesting respondent submits that this would show that the issue in favour of the contesting respondent in this writ petition stood, thus, decided and crystallized, and it should not be reopened again. We are afraid, we cannot subscribe to the view. There was no adjudication.



Contrary to all canons of service jurisprudence, the Chief Post Master General ordered that merely because the contesting respondent was a Scheduled Tribe candidate, and there being vacancies in different grades for a Scheduled Tribe candidate, he would travel from the basic grade of Upper Division Clerk to Lower Selection Grade, Higher Selection Grade-II and Higher Selection Grade-I, all within a span of few months. The Department never accepted that order, even though it was the order of the Chief Post Master General, and rightly so. Before the Tribunal, at the first instance, instead of adjudication, the lawyer for the Postal Department conceded without instruction. The Department came to know of it, and as such review was filed which was held to be barred by limitation by the Tribunal. In the writ petition again there was no adjudication. Thus, to say that the order of the Chief Post Master General stood affirmed by this Court, is wrong. The Department has all along explained that having been selected and appointed as U.D.C. after passing the examination on 20-1-1982, he was rightly given Lower Selection Grade with effect from 30-1-1987 upon completion of five years satisfactory service. That is in accordance with the rules. Thereafter, having completed three years and there being post available, he was granted Higher Selection Grade-II, with effect from 1-2-1990. Thereafter, as and when after ten years the Higher Selection Grade-I post was available, he was

accordingly granted the same with effect from 29-11-2001. This was communicated also to the contesting respondent, who then moved the Tribunal again for setting aside this order with specific prayer, as noted hereunder:

*(2) That Your Lordships may further be pleased to command/direct the respondents to grant the benefit of promotion to the Lower Selection Grade[LSG] with effect from 01.08.1982 instead of 30.01.1987, Higher Selection Grade-II[HSG-II] with effect from 31.10.1982 instead of 01.02.1990 and Higher Selection Grade-I[HSG-1] with effect from 01.11.1982 instead of 29.11.2001 with all consequential benefits including arrears and statutory interest thereupon.”*

This was in O.A.No. 939 of 2011.

2. The Tribunal once again without adjudicating upon the legal correctness of this relief, merely because of the past history of litigation, as noted above, allowed the O.A. No. 939 of 2011 by its judgment and order dated 2<sup>nd</sup> June, 2014. Hence, the Department is once again before this Court.

3.The only plea taken by the contesting respondent is that as he was the only Scheduled Tribe candidate, and there being vacancies at different grades, all in the year 1982, he rightly claimed and the Chief Post Master General rightly granted him all three grades in the same year, one after another. We are afraid, we cannot subscribe to the view. In the year 1976 statutory rules were enacted.

The rules do not provide for any such exception. Even otherwise, the service jurisprudence does not permit such escalation or increment, all rolled into one year. A person gets appointed to the cadre of U.D.C. and the same year he gets Selection Grade, Higher Selection Grade-II and Higher Selection Grade-I. It is unimaginable.

4. We are, therefore, constrained to set aside the order of the Tribunal dated 2<sup>nd</sup> June, 2014.

5. Learned counsel for the contesting respondent brings to our notice that for grant of Higher Selection Grade-I from Higher Selection Grade-II, the period has been reduced to five years from ten years. This was done sometime in the year 1986. The Postal Department is directed to look into this matter and, if necessary, and found correct, correction may be made in grant of Higher Selection Grade-I, subject to post being available.

6. With this observation and direction, the writ petition stands disposed of.

**(Navaniti Prasad Singh, J)**

BK.Roy/-

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**(Nilu Agrawal, J)**