

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16057 of 2013

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1. The Union of India Through, The Secretary, Government of India, Ministry of Communication, Department of Posts, Sanchar Bhawan, New Delhi
 2. The Director General of Post, Ministry of Communication, Department of Post, Government of India, Sanchar Bhawan, New Delhi
 3. The Chief Post Master General, Bihar Circle, Patna
 4. The Director, Postal Service (HQ) Office of the Chief Post Master General, Bihar Circle, Patna
 5. The Chief Postmaster, Patna GPO, Patna
 6. The Senior Superintendent of Post Offices, Munger Postal Division, Munger

.... Petitioners

Versus

Rajeshwar Prasad Son of Sri Jatai Rai, Sub Post Master, Shekhpura, P.O. Patna

.... Respondents

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Appearance :

For the Petitioners: : Mr. Sanjay Kumar, A.S.G.
For the Respondent : Mr. Jayant Kumar Karn, Advocate
Mr. Hemant Kumar Karn, Advocate

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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: 31-07-2015

As the contesting respondent, who was the applicant before the Central Administrative Tribunal, has

appeared, notice need not be issued.

We have heard both the parties and with their consent this writ application is being disposed of at the admission stage itself.

This writ petition is directed against order dated 3rd August, 2012 passed in OA No. 291/2011 (Rameshwar Prasad vs. Union of India and others). The original application was allowed and that is how the Union of India being aggrieved preferred the writ petition before this Court.

Here, the dispute is with regard the issue to appear in examination for promotion to the cadre of Group-B in Postal Services in pursuance to the advertisement issued in the year 2011. It is specifically provided that persons who are working in the pay scale of Lower Selection Grade (in short the “LSG”) of Postal Assistant would not be eligible if they were getting the said pay scale by virtue of Time Bound One Time Promotion or BCR (Biennial Career Progression Scheme).

Learned counsel for the respondents submits that the Tribunal followed its earlier order and is correct in holding that persons like the petitioner who had got the said pay scale of LSG upon Time Bound One Time Promotion or BCR were



eligible to sit in the said examination.

On the other hand, Sri Sanjay Kumar, learned counsel for the Union of India submits that though the applicants and their likes were in the pay scale of LSG, that they were receiving by virtue of financial upgradation and not by virtue of promotion to the said post. As such, it cannot be held that they were substantively in regular service as Postal Assistants, and therefore, eligible for examination.

In our view, the order of the Tribunal cannot be sustained and this writ petition must succeed.

Learned counsel for the contesting respondents relies on a clarification issued from the Office of Chief Post Master General, Bihar Circle, Patna on 13.08.2003 (Annexure 3 to the counter affidavit) clearly stating that officers promoted under TBOP/BCR are eligible to take the examination on completion of five years of service in LSG and the five years is to be counted from the notional date of promotion to the LSG.

Had this clarification be continuing and applicable, we would have certainly dismissed the writ petition, but this clarification having been issued in the year 2003 and the same was known to the department when it





issued in 2009 Notification/Advertisement for conducting the Limited Competitive Examination. In spite of that a clear provision was made in the said advertisement clearly stipulating just the other way i.e. the promotion being financial upgradation and a notional promotion and not a promotion, in fact, the benefit of five years service therein cannot be equated to five years in the LSG to be eligible to sit in the Limited Competitive Examination.

It is well settled that if an authority has power to relax then it has power to recall the relaxation as well. In view of specific terms of the 2011 Advertisement, one has to quote that the concession as made in the year 2003 would automatically stand withdrawn.

However, this does not end the controversy. In a way what is financial upgradation can be considered by what the Apex Court said in the case of **Lalit Mohan Vs. Union of India** since reported in **AIR 1972 SC 995**; that promotion to a higher post connotes to a higher pay and a higher post with higher responsibility. A selection grade is nothing but a higher pay but in the same post. This is what the financial upgradation is as well. Both are indeed anti-stagnation methods, but, both lack the promotional aspects. They remain

in their substantive cadre. They are in a pay scale equivalent to the higher post but not on the higher post.

Thus, the effect of the 2011 Advertisement was that the concession granted in 2003 was taken away and now the contesting respondents and his like, even though, they were in the pay scale equivalent to that of LSG, substantively they were not there. Thus, they are in the same pay scale but they are not in the same post. Accordingly, they are ineligible for sitting in the said Limited Competitive Examination.

Thus, we are unable to uphold the order of the Tribunal. We, accordingly, set aside the order of the Tribunal and dismiss the original application filed by the contesting respondents.

This writ application is, accordingly, allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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