

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12098 of 2015

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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 Postmaster General, Bihar Circle, Patna.
 3. The Director Accounts (Postal), GPO Campus, Patna.
 4. The Post Master General, Northern Region, Muzaffarpur.
 5. The Superintendent, RMS-NB Division, Samastipur.

.... Petitioner/s

Versus

1. Hari Prasad Hariaudh, Son of Shri Ram Lochan Prasad Gupta, Resident of Village and P.O.- Deodha, via Jai Nagar, District- Madhubani.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Jayant Kumar Karn

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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: 05-10-2015

The Union of India, in the Department of Posts, has filed this writ petition against the judgment and order of the Central Administrative Tribunal, Patna Bench, Patna, being judgment and order dated 11th August, 2014 in O.A.No.802/2012. The contesting private respondent, who was the applicant before the Tribunal, has appeared, and a counter-affidavit has been filed.

2. We have heard the parties, and with their consent,

dispose of this writ petition at this stage itself.

3. The applicant before the Tribunal was primarily aggrieved by non-grant of pensionable service, instead being granted service covered under the New Non-Pensionary Scheme. The reason for this, as given by the Department of Posts, is that he was, in fact, appointed after the cut-off date, that was 1-1-2004.

4. The stand of the contesting respondent-applicant is that he along with several others were selected for appointment, much prior to this cut-off date; but because of certain confusion at the hands of the Department of Posts, the matter had to be taken to the Tribunal for resolution. It is only after the Tribunal ordered in favour of the applicant that he is entitled to be appointed, the appointment was given. This delayed the matter. However, even the Department of Posts while giving the appointment, granted notional continuity of service from the date of initial appointment of his batch in respect of increment and all other benefits; but when it came to grant of pensionary service, they took a different view of the matter. This brought the applicant again before the Tribunal. This time again, the Tribunal has ruled in favour of the applicant, holding that he cannot be discriminated from his other batch mates, as all other batch mates were deemed to be in pensionable service, and as such the applicant, who became entitled to, and was entitled to appointment, much prior

to the cut-off date, which was delayed because of the Department, and not because of any fault on the part of the applicant, could not be denied the benefit of pensionable service.

5. We have considered the matter. We have no reason to disagree with the findings of the Tribunal. The facts are eloquent enough. The contesting respondent was entitled to be appointed on a date, much prior to the cut-off date. His right had crystallised then, but for some reason, the Department could not decide the matter. The dispute had to be taken to the Tribunal. Pursuant to the orders of the Tribunal, the applicant was then appointed. By this time, the cut-off date had come into operation. The Department clearly accepted the position that the contesting respondent was entitled to be appointed from a date much earlier, and much before the cut-off date. They do not dispute that they have given notional continuity of service in respect of increment and seniority from the date, earlier than the cut-off date. If that be so, then for all purposes it would be deemed that the applicant/contesting respondent was appointed along with his other batch mates, much prior to the cut-off date. It is no gainsaying that, as he was not paid any salary/remuneration for that period, he cannot claim any employment benefit. The reason for non-payment was simple: No work, no payment. But, that does not deter from the fact that he would be deemed to have been employed prior to the cut-

off date along with his batch mates. Thus, on the facts aforesaid, we do not find any infirmity in the order of the Tribunal.

6. This writ petition is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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