

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16290 of 2013

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Nand Kishore Prasad Thakur, S/O Late Harday Thaur, resident of Village- Urain,
P.O-Urain, P.S- Kajra, Distt- Lakhisarai. Petitioner.

Versus

1. The Union of India through the D.G. Cum- Secretary, Department of Post Officer, Dak Bhawan, New Delhi.
 2. The Chief Postmaster General, Bihar Circle, Patna.
 3. The Director of Postal Services (Hq) O/O The Chief Postmaster General Bihar Circle, Patna.
 4. The Superintendent of Post Office, Munger Division, Munger.
- Respondents.
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Appearance :

For the Petitioner : M/s Rajendra Prasad Singh, Sr. Adv., Rajeev Kumar Singh, and Mukesh Kumar Singh, Advocates.

For the Respondents : Mr. Sanjay Kumar, A.S.G.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 14-05-2015

By this writ petition, the petitioner challenges the order of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter in short the 'Tribunal') dated 25th May, 2005 passed in O.A. No.316 of 2005 by which the original application of the petitioner was dismissed.

We have heard learned counsel for the petitioner and learned counsel for the respondents and with their consent, this writ petition is being disposed of at this stage itself.

The facts are not in dispute. It appears that for the Urain, Kajra in the district of Munger there was a vacancy for appointment of Gramin Dak Seva Branch Postmaster (GDSBPM).

- 2 -

One Md. Salauddin and the petitioner had applied. Md. Salauddin was empanelled as no.1 and petitioner was empanelled as no.2 but on some allegation Md. Salauddin was not appointed instead petitioner was appointed. Md. Salauddin then moved the Tribunal by filing O.A. No.367 of 1997. In this original application the petitioner was respondent no.7. After notice and after hearing the parties, the Tribunal held that exclusion of Md. Salauddin was wrong. He was most meritorious candidate and as such he should have been appointed in place of the petitioner. Accordingly, a direction was issued. This direction was followed by the following direction:-

“15. However, considering the fact that the private respondent no.7, namely, Shri Nand Kishore Thakur has worked with the department from 1996 onwards and having obtained the second highest marks, the respondents are directed to consider his case for appointment to another vacancy in and around the place of his present posting, since he seems to have put in around eight years of service. Putting more than three years of service, he also qualifies for being kept in the waiting list for preferential treatment for appointment to

- 3 -

vacancies which would be available....”

Being aggrieved by the said order of the Tribunal inasmuch as the consequence would have been removal of petitioner with only in expectation of reemployment somewhere, he filed a writ petition before this Court challenging the order of the Tribunal being C.W.J.C. No.15311 of 2011, which, after some argument, was dismissed as withdrawn by order dated 22.04.2009. The petitioner then filed an original application before the Tribunal for implementation of the order passed by the Tribunal as a consequence of his removal but the Tribunal did not interfere in the matter. Pursuant to order of the Tribunal, as quoted above, Md. Salauddin was then appointed as such and the petitioner was dismissed. It is this dismissal that the petitioner challenged before the Tribunal by O.A. No.316 of 2005.

Petitioner contended that the Tribunal had not directed his dismissal. The Tribunal noted that there was nothing wrong in its order but it was helpless in the matter and dismissed the original application. Hence, the present writ application.

We have considered the matter and in our view, the matter is squarely covered by the decision of the Apex Court in the case of **Suman Verma Vs. Union of India** since reported in

(2004) 12 Supreme Court Cases 58. In that case also facts were similar including the direction of the Tribunal. The matter travelled up to the Apex Court and the Apex Court justified both the parts of the order of the Tribunal i.e. first reinstatement and second to find some place and appoint the removed candidate. It may be noted that the order of the Tribunal was not to appoint but if there is a vacancy nearby to consider petitioner's appointment but nowhere restrained the department from dismissing the petitioner. In fact, he should have been removed and not dismissed because that is the natural consequence of appointment of Md. Salauddin available position being only one.

Thus, all we can say is that in view of the recommendation of the Tribunal, as contained in the order as quoted above, the best the petitioner can get is a chance if there is a vacancy nearby.

In fairness to the learned counsel for the petitioner, we may note that he submits that Md. Salauddin had got his employment by fraudulent means. To us, it is clear that this matter is not sub judice. This matter was agitated before the Tribunal in the first round in presence of the petitioner, who was respondent no.7 and that order having gone in favour of Md. Salauddin, petitioner had attempted to challenge the same but

withdraw the writ petition as noted above, as such the matter had attained finality and cannot be reopened in a collateral proceeding.

Accordingly, this writ petition merits no consideration and is dismissed.

(Navaniti Prasad Singh, J.)

(Rajendra Kumar Mishra, J.)

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