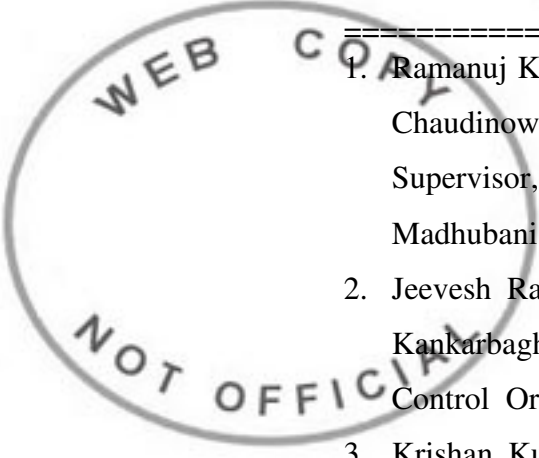


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2233 of 2015

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1. Ramanuj Kumar, Son of Late Ram Narayan Prasad Singh, resident of village-Chaudinown, P.O.and P.S. -Kashi Chak, District- Nalanda. At present posted as Supervisor, Saving Bank Control Organisation at Madhubani Head Office, Madhubani, Bihar.
 2. Jeevesh Ranjan Gupta, Son of late Raghubar Dayal, resident of R.F. 7a, Kankarbagh Colony, Patna presently posted as Supervisor, Saving Bank Control Organisation at Hazipur Head Office , Hazipur, Vaishali.
 3. Krishan Kumar Singh, Son of Late Gaya Prasad Singh, resident of village-Ekawana, P.O. and P.S. - Barahara, District- Bhojpur. Presently posted as Supervisor, Saving Bank Control Organisation at Muzaffarpur Head Office, Muzaffarpur.
 4. Arvind Kumar Ranjan, Son of Late Lalu Sikhari Singh, resident of Village-Budhu Chak, P.O. -Fatuha, District- Patna, Presently posted as P.A ,Saving Bank Control Organisation, Munger Head Office, Now Transferred to Siwan as Supervisor, Saving Bank Control Organisation, Siwan , Head office , Siwan.
 5. Satyendra Kumar Chaudhary, Son of Late Upendra Nath Chaudhary, resident of Village and P.O. - Molia, P.S, - Godda, District- Godda, Jharkhand, Presently posted as P.A. (I.C.O.) at I.C.O. (S.B), Circle Office, Patna.
 6. Chandra Bhushan Kumar Sinha, Son of late Bholu Prasad, resident of Mohalla-Rupganj Chapra, Saran, Presently posted as P.A. (Saving Bank Control Organisation), at Arrah Head Office, Arrah.
 7. Vijay Kumar Sinha Son of Late Rameshwar Mahto, resident of Village-Madhopur, P.O and P.S- Kashi Chak, Nawadah, presently posted as P.A. Saving Bank Control Organisation, at Sasaram Head Office, Sasaram.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Communication, Dak Bhawan , New Delhi.
2. The Director General of Post, New Delhi.
3. The Chief Post-master General, Bihar Circle, Patna.
4. The Director, Establishment Department of Post, Ministry of Communication, Government of India, New Delhi.
5. The Director of Postal Service (Head Quarter), Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birendra Nath Mishra, Advocate.

For the Respondent/s : Mr. Sanjay Kumar, ASG.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 19-05-2016

Heard learned counsel for the parties.

2. The petitioners are aggrieved by the order dated 19.11.2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the “Tribunal”) by which O.A.No. 73 of 2002 filed by them has been dismissed and a cost of Rs. 5000/- from each of the petitioners has been directed to be recovered from their salary.

3. The petitioners had moved the Tribunal for a direction to the respondents to consider their case for Time Bound One Promotion (hereinafter referred to as the “TBOP”) Scheme with effect from 01.08.1991 and to hold that the letter dated 17.05.2000 issued by the Government of India, Ministry of Communication, Department of Posts is not applicable in their case.

4. Initially, the Original Application was dismissed by the Tribunal by order dated 25.10.2007 on the ground that the



petitioners failed to establish that their seniority was adversely affected. The Tribunal had further observed that if their seniority is adversely affected, they would have a right to approach the legal forum notwithstanding the result of the Original Application. The petitioners, being aggrieved, moved this Court in CWJC No. 9711 of 2008, which was disposed off on 15.07.2010 by partly allowing the writ petition and remitting back the matter to the Tribunal for fresh consideration. The relevant portion of the order reads as under:

*“8. If the case of the petitioners has been adversely affected only on account of subsequent policy decision contained in Annexure-8 dated 17.05.2000 then definitely the judgment of the Apex Court in the case of **Union of India Vs. Leelamma Jacob** [supra] will be relevant for considering their case. Since the relevant facts as noted earlier are not clear and have not been discussed in proper perspective by the learned Tribunal, we find ourselves at a disadvantage in deciding the claim of the petitioners at this stage in the present proceeding. But in the interest of justice it appears necessary that the matter be remitted to the Tribunal for giving both the parties an opportunity to place the relevant facts properly and in detail so that if the law laid down by the Apex Court in the case of **Union of India Vs. Leelamma Jacob** [supra] is applicable to the petitioners, then they are not denied appropriate relief.*

9. With the aforesaid discussions and observations the writ petition is allowed in part, the order of the Tribunal is set aside and the matter is remitted for

fresh consideration in the light of observations made above.”

5. As the direction of this Court earlier, while was remitting the matter to the Tribunal, was for consideration in terms of the law laid down by the Hon'ble Supreme Court in the case of ***Union of India Vs. Leelamma Jacob*** reported as ***(2003)12 SCC 280***, it would be worthwhile to note the factual background of that case. Some of the employees of the Posts and Telegraph Department, Telecommunications Branch had approached the Bangalore Bench of the Tribunal being aggrieved by grant of financial upgradation to junior staff ignoring the case of the senior employees. Some persons, being successful in the departmental examination, were promoted from Grade-I to Grade-II in terms of the result of departmental examination held in 1981. Subsequently, the TBOP Scheme was introduced in 1983 for providing financial upgradation in respect of employees who had completed 16 years in the same grade, when it was specifically mentioned in the scheme that staff, who would get upgraded/promotion under the Scheme, would be junior to those who were promoted under 1979 Rules for promotion. In the year 1990, another Scheme, by the name of Biennial Cadre Review (BCR), was introduced providing that those, who had continued in regular service for 26 years in the basic grade and were in service on 01.01.1990,



would be entitled for promotion, although the Scheme provided for regular service in basic grade as a precondition for grant of benefit which was expressly applicable to those employees who had already been granted promotion to Grade-II with effect from 1983 under the TBOP Scheme. This resulted in some persons, who did not qualify in departmental promotion of 1981 and got promotion to Grade-II under the TBOP Scheme, being placed below those who got promotion to Grade-II after clearing the departmental examination as per 1979 Rules, getting fresh promotion/upgradation to Grade-III merely on the basis of completion of 26 years of service bypassing the seniority of those who got promotion through departmental examination. The operative portion of the order of the Tribunal in the Original Application, which has been quoted in the order of the Hon'ble Supreme Court, is reproduced hereinbelow for ready reference:

“9. The operative portion of the order of the Tribunal reads thus:

“In the light of the above, we allow this application with the following directions to Respondents 1 and 3.

[i] In implementing the BCR Scheme, the case of the applicants who are senior in Grade II by virtue of their promotion against 1/3rd merit quota, compared to the other officials like R-4 to r-73, promoted to Grade II under OTBP Scheme, should be considered for promotion to Grade III in scale of Rs. 1600-2660 in their turn as per their seniority whenever their erstwhile juniors in Grade II are

considered for promotion to Grade III by virtue of their having completed 26 years of service in the basic grade, without insisting on the applicants completing the minimum prescribed years of service in the basic grade. All other conditions of BCR Scheme except the length of service will, however, be applicable while considering their promotion to Grade III.

[ii] Consequently, in case the applicants are found suitable for such promotion, they shall be promoted to Grade III with effect from the date their erstwhile juniors were promoted from Grade II to Grade III with all consequential benefits including seniority and arrears of pay and allowances from such dates. They should also be put on supervisory duties depending on their seniority.

[iii) The BCR Scheme should be modified suitably to protect the interest of the officials like the applicants for their promotion from Grade II to Grade III.”

6. The Tribunal, before which the BCR Scheme was also under challenge, held that it was in violation of the 1979 Recruitment Rules as administrative instruction could not modify the provisions of Rules framed under Article 309 of the Constitution of India, but did not strike down the Scheme since large number of persons had already been granted the benefit who had continued for a longer period of time. However, the applicants were allowed the benefit at par with their juniors.

7. The Hon’ble Supreme Court upheld the decision of

the Tribunal and ruled that “clarification cannot take away, the rights of the contesting respondents for promotion on the basis of their seniority in Grade II as obtained in 1983, nor they can be denied any benefit to which any of their juniors may be entitled by virtue of that of the TBOP Scheme or BCR Scheme.”

8. Thus, the circular dated 17.05.2000, which ran contrary to the law laid down by the Hon’ble Supreme Court, as held by the Tribunal, was liable to be ignored as it runs contrary to what has been held by the Hon’ble Supreme Court. The Tribunal also distinguished the case of the petitioners on facts as they had neither cleared any departmental examination nor had made out any case that any junior who had failed in the departmental examination was getting higher pay due to TBOP/BCR Scheme and further that they had not impleaded any of the juniors who were getting higher pay than them.

9. Learned counsel for the petitioners submits that the Tribunal had not considered the facts of the case in proper perspective and that they had been prejudiced.

10. Having considered the submissions of learned counsel for the parties, we do not find any merit in the writ petition. The Tribunal has discussed in detail the facts with regard to each of the petitioners which goes to show that they have been given the

benefit of the decisions of the respondents as per the terms of the Scheme which may be applicable in their cases, which have not been controverted by any definite material and they have also not been able to produce any material either before the Tribunal or this Court with regard to any of their juniors getting higher pay than them, who have not passed the departmental examination. We find that the order impugned is well considered and does not warrant any interference. Accordingly, the writ petition stands dismissed.

11. However, the order of the Tribunal directing payment of cost @ Rs.5,000/- each from the salary of each of the petitioners does not appear to be warranted in the facts and circumstances of the present case, as pursuant to the order of the High Court, the matter had been remitted back to the Tribunal and, thus, the petitioners could not have been fastened with the liability of cost in pursuing the matter before the Tribunal. Thus, the award of cost passed by the Tribunal against the petitioners is set aside.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree.

(Hemant Gupta, J)

Sujit/-
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