

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1671 of 2015

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Dwarika Prasad, son of late Ramayan Ram, resident of Village & P.O.- Nawada Ben, P.S. - Udwant Nagar, District- Bhojpur (Bihar).

.... Petitioner

Versus

1. The Union of India through the Secretary-cum-D.G., Department of Posts, Dak Bhawan, Delhi.
2. The Chief postmaster General, Bihar Circle, Patna.
3. The Director Accounts (Postal), G.P.O. Complex, Patna.
4. The Superintendent of Post Offices, Bhojpur Division, Ara.

.... Respondents

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For the Petitioner : Mr. Amar Nath Jha, Advocate

For the Respondents : Mr. Sanjay Kumar (ASG)

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-05-2016

The applicant before the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') is the writ petitioner before this Court challenging the order passed by the Tribunal on 6th August, 2014 whereby the claim of the petitioner for payment of pension after calculating the length of service rendered as *Gramin Dak Sevak* (for short, 'the GDS') remained unsuccessful.

2. As per the facts on record, the petitioner was appointed as GDS on 01.08.1965. A Departmental Promotion Committee (For short, 'the DPC') recommended the petitioner for promotion as Group 'D' (Postman) against the vacancies of 1993-94 in its meeting held on 13th

April, 1993, but he could not be promoted as number of vacancies were reduced due to cancellation of result of promotion of some Group 'D' officials. The recommendation of the DPC was cancelled on 1st February, 1994.

3. The petitioner was again considered for promotion by the next DPC held on 2nd August, 1996 against the vacancies of 1996. He was appointed to the cadre of Group 'D'. He, thus, rendered 7 years 2 months and 4 days of services as regular government servant till the date of his superannuation. The claim of the petitioner for pension has been declined for the reason that the petitioner has not completed 10 years of regular service.

4. The argument of learned counsel for the petitioner is that his period of service rendered as GDS should be counted to make him eligible for pension so as to complete 10 years of qualifying service. It is alternatively argued that he should be deemed to be promoted when DPC first recommended him for promotion on 13th April, 1993, and, therefore, he would complete almost 10 years of regular service from that date till the date of his superannuation. He relies upon a decision of the Hon'ble Supreme Court reported as P.N. Premachandran Versus State of Kerala and others, (2004) 1 SCC 245 and two judgments of the Division Bench of this Court in CWJC No.13481 of 2013 (The Union of India & Ors. Versus Md. Umarruddin) decided on 23.02.2015; and CWJC No.18525 of 2013 (The Union of India & Ors. Vs. Ishwari Prasad Sharma) decided

on 15.05.2015.

5. We have heard learned counsel for the parties and find no merit in the present petition. The petitioner as GDS is governed by then applicable “the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as “the Rules”), later replaced by GDS (Conduct & Employment) Rules, 2001. At present GDS (Conduct & Engagement) Rules, 2011 are applicable. But since the Petitioner was promoted in the year 1996, therefore, the Rules alone are applicable. It may be stated that the nomenclature of Extra Departmental Agents was changed to Gramin Dak Sewak somewhere in the year 1971-72.

6. In terms of the scheme framed from time to time, GDS has been considered for absorption for recruitment to Group ‘D’. The name of the petitioner was recommended by the DPC in its meeting held on 13th April, 1993 for the vacancies of the year 1993-94, but subsequently it was found that there is no vacancy available for the petitioner and, thus, he was not appointed. The petitioner was appointed only in the year 1996 when vacancy for the category of the petitioner became available. By that time, the petitioner had completed more than 50 years of service and in terms of the scheme he should not have been appointed as Group ‘D’ employee. The fact remains that from the date of appointment till the date of superannuation, the petitioner has not completed minimum 10 years of qualifying service. Thus, he is not eligible for pensionary

benefits. Hon'ble Supreme Court in Union of India and others versus Kameshwar Prasad, (1997) 11 SCC 650, considered the scope of the Rules and held as under:-

“2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: *Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department* p. 1.]

3. The Extra Departmental Agents are government servants holding a civil post and are entitled to the protection of Article 311(2) of the Constitution (See: *Supdt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94: 1977 SCC (L&S) 374: AIR 1977 SC 1677*). They are governed by separate set of rules, viz., the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as “the Rules”). The Central Civil Services (Classification, Control and Appeal) Rules are not applicable to this category of employees in view of the notification dated 28.02.1957 issued by the Government of India under Rule 3(3) of the said Rules.

4. In Rule 4 of the Rules it is provided that the employees shall not be entitled to any pension. Rule 5 relates to leave. Rule 6 deals with the termination of services. Rule 7 prescribes nature of penalties that can be imposed. Rule 8 prescribes the procedure for imposing a penalty. Rule 8-A specifies the cases in which the provisions of Rule 8 would not be applicable. Rule 9

7. The argument that period as GDS should be counted for completing the qualifying service is untenable. Such services cannot be counted for the purposes of pensionary benefits in terms of Rule 4 of the Rules framed as such service is not pensionable.

8. Still further, the petitioner cannot claim any benefit of the recommendation of the DPC dated 13th April, 1993 since no vacancy was available, therefore, the petitioner was not promoted. Mere fact that DPC has recommended the name of the petitioner will not confer any right in the petitioner. The petitioner has been appointed against the vacancies available in the year 1996. Therefore, the petitioner cannot claim the period from the date of first DPC towards his qualifying service period.

9. In P.N.Premchandran case (supra), the officers were promoted on the promotion post though on temporary basis. DPC regularized their promotion from the retrospective date. Therefore, the said judgment is of no assistance as the officers were actually working on the promotion post and the DPC only regularized an irregularity.

10. It is well settled principles of law that there cannot be any retrospective promotion. Promotion is effective from the date it is so granted. There cannot be any retrospectivity to the date of appointment or/ promotion.

11. Though the writ applications bearing CWJC No.13481 of 2013 and CWJC No.18525 of 2013, filed by the Union of India and

others, referred above, have been dismissed by the Division Bench of this Court, but the said judgments do not deal with the issue raised in the present case. It may be stated that the Hon'ble Supreme Court in Civil Appeal Nos.13675-13676 of 2015(Union of India & Ors. *Versus* The Registrar & Anr.) decided on 24th November, 2015, declared the claim of pension of an Extra Departmental Agents to a requisite period of qualifying service. It was held therein that Circular of Department of Personnel and Training referred to by the Tribunal and the High Court pertains to full term casual employees and not the employees like the Extra Departmental Agents. In view of the aforesaid judgment, the orders passed by the Division Bench of this Court in the aforesaid cases (CWJC No.13481 of 2013 and CWJC No.18525 of 2013), ceases to be binding precedent as well.

12. In view of the above, we do not find any merit in the writ application. The same is dismissed.

(Hemant Gupta, J.)

Ahsanuddin Amanullah, J. I agree.

(Ahsanuddin Amanullah, J.)

Sunil/

AFR/NAFR	
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