

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7078 of 2014

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1. The Union of India through the Secretary - cum - Department of Post, Dak Bhawan New Delhi
 2. The Chief Post Master General, Bihar Circle, Patna
 3. The Director of Postal Services (HQ) O/o the Chief Postmaster General, Bihar Circle, Patna
 4. The Asstt. Director (Staff and Recruitment), O/o the Chief Postmaster General, Bihar Circle, Patna

.... Petitioner/s

Versus

Ram Lal Singh S/o Late Muni Lal Singh resident of village - Shankarpur, P.O. Sarjamda, Parsudih, Via - Tata Nagar, District - East Singhbhum, (Jamshedpur)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Addl. S.G., Advocate
Mr. Rajesh Kumar Verma, Advocate, CGC

For the Respondent/s : None.

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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: 10-03-2016

Union of India in the Department of Post has filed this writ petition being aggrieved by the judgment and order dated 11th November, 2013, passed in O.A. No. 530/2013 by the Central Administrative Tribunal, Patna Bench, Patna, whereby the Tribunal has cancelled the order of the Department recalling the promotion granted to the sole contesting respondent. It may be noted here that notices have been issued to the sole contesting respondent who was the applicant before the Tribunal which have been duly served but there is no appearance by the said respondent. Earlier by issuing

notice to the respondent this Court had already stayed the operation of the order of the Tribunal.

We have heard Sri S.D. Sanjay, learned Additional Solicitor General for the Union of India. From the order of the Tribunal itself, the facts do not appear to be in dispute. The sole respondent who was the applicant before the Tribunal was granted ad-hoc promotion on 26.08.2010 which promotion was confirmed on 21.06.2013. It is this promotion order of 21.06.2013 along with the ad-hoc promotion granted, that is being recalled and was subject matter of challenge before the Tribunal. The reason for withdrawal of this ad-hoc promotion and the final promotion order dated 21.06.2013 was that consequent to the ad hoc promotion granted to the respondent, a departmental proceeding was initiated against him for certain dereliction of duties in matters of appointment in Gramin Dak Sewa. He was found guilty and minor punishment of stoppage of one increment with non-cumulative effect was passed on 26.09.2012. It is not in dispute that this punishment order remains effective for a period of one year i.e. up to 25.09.2013. It is, accordingly submitted on behalf of the Union of India that this being the position, during currency of a punishment the respondent could not have been granted any promotion and, thus, the promotion granted on 21.06.2013 during currency of the punishment was a mistaken grant that had to be

recalled. If no promotion could be granted by virtue of punishment order then, the ad-hoc promotion would also stand withdrawn.

Having considered the matter, we agree with the submissions made. It appears that the Tribunal has proceeded on wrong presumption holding that the regular promotion order was passed on 21.06.2013 and the currency of punishment would be from 01.07.2013 to 30.06.2014 i.e. one year after the increment was due, which had been stopped. In our view, the order of punishment would remain effective for a period of one year from when it was so pronounced i.e. 26.09.2012 onwards, and if that be so, then the date of grant of promotion is well within that punishment period. The Tribunal misconstrued the effective punishment accordingly and wrongly shifted the one year currency of punishment order from 26.09.2012 to 01.07.2013. Accordingly, the Postal Department did not err in recalling the order of promotion dated 21.06.2013 and cancelling the ad hoc promotion granted.

Let it be noted that an ad hoc promotee has no right to continue on the promoted post i.e. that ad hoc promotion is subject to good conduct. In the disciplinary proceeding the respondent has been found guilty, which order has attained finality, there being no appeal to it. The withdrawal of the promotion order and the ad hoc promotion cannot be termed as an illegal act on behalf of the

Department. Consequently, this writ petition is allowed. The order of the Tribunal is set aside and the Original Application filed before the Tribunal is dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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