

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6276 of 2014

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1. The Union of India through the Chief Postmaster General, Bihar Circle, Patna
 2. The Director of Postal Services, Northern Region, Muzaffarpur
 3. The Superintendent of Post Offices, East Champaran Division, Motihari

.... Petitioners

Versus

Pramod Sah, presently posted as Time Scale Postal Assistant in Champara Division,
Motihari S/O Sri Sita Ram Sah R/O Village - Kodaria Abhi, P.O. - Madhurpur, Via
- Gulwara Madhuban, P.S. - Phenhara, District - East Champaran

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, ASG
For the Respondent/s : Mr. Sanjiv Krishna Bariar, Advocate
Mr. Rajiv Krishna Bariar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 21-11-2016

Heard learned counsel for the petitioner-Union of India
and learned counsel for the sole respondent.

The writ application has been filed for quashing the order
dated 29.04.2011 passed by the Central Administrative Tribunal (in
short CAT), Patna Bench, Patna, in Original Application (OA)
No.730 of 2003, which was allowed by quashing and setting aside
the order passed vide Memo No.Vig/Misc-22/2003 dated 21.05.2003
issued to the respondent, and the petitioners were further directed to
restore Memo No.B2-14/RT)/Dig dated 30.04.2003 by which the



service of the respondent was regularized with effect from 02.01.1984 and also directed to give consequential benefits admissible as per rule to the respondent.

The short facts of the case are that against the vacancy advertised on 11.03.1983 for five posts, four O.C. category and one ST category candidates, for the post of Postal Assistant/R.M.S. Sorters for West Champaran Postal Division, Bettiah, the applicant-respondent stood at No. 6 in the merit list which was prepared and, accordingly, he was selected as Reserved Trained Pool (in short RTP) candidate in O.C. category. A circular was issued on 30.10.1980 by the Department of Posts and Telegraphs with regard to recruitment of Time Scale Postal Assistant and Sorting Assistant in the post offices and RMS by which the department was required to prepare a specific additional reserve list of candidates equal in number to 50% of the number of candidates in the main list. The candidates in reserve list were also to be imparted training like the candidates in the main list and after training they would constitute a standing pool of trained reserve. They were to be absorbed in regular vacancies in their turn, after the candidates in the main list were absorbed. Till then they were to be used as short/Staff against vacancies due to absentees and other reason, besides for handling rush hour traffic as it was proposed to use them as short duty staff to



minimize staff shortage.

The petitioner was called and given training along with other candidates above him. However, a selected candidate at serial No. 2 of the merit list, namely, Shri Shakil Ahmad, did not turn up to join or to attend the training. Despite the same the respondent was not immediately brought into the main list on account of such non-joining when the said candidate's name was struck off and the respondent's name was to be shifted automatically to the main list of selected candidates from the reserve list in accordance with the instruction of the department. On 02.01.1984 he was allowed to join as temporary employee and given various types of work as per the said scheme until he was regularized on 09.06.1988. Thereafter, by Memo dated 30.04.2003 the service of the respondent was regularized with effect from 02.01.1984. However, the same was not approved by the superior authority by the impugned order dated 21.05.2003.

Aggrieved by the same the respondent challenged the order dated 21.05.2003 before the CAT, Patna Bench, Patna, in O.A. No.730 of 2003, which was allowed by order dated 29.04.2011 with the aforesaid results. The said order is under challenge before us by the petitioner-Union of India.

Learned Additional Solicitor General appearing on behalf



of the petitioners submits that the respondent having not been appointed as RTP in Time Scale Postal Assistant on 02.01.1984 and having not worked on that position, and because of ban on recruitment for a short period of time he continued to work as per his substantive appointment, it is not open to the respondent to raise any such dispute after so many years.

Learned counsel for the respondent on the other hand seeks to support the impugned judgment and order of CAT by relying not only upon the scheme under the Circular dated 30.10.1980 issued by the Office of Director General, Posts and Telegraphs but also the subsequent Circular dated 14.10.1981 issued by the same authority, in which it was further provided that as mentioned in para-2(v) of the letter dated 30.10.1980, candidates on the reserve list will be taken if there are drop-outs from the main list and equal number of candidates from the reserve list will be taken to the main list and by doing so the reserve list will be depleted or possibly even completely wiped out, it has been proposed that in all such cases where candidates are taken on to the main list from the reserve list due to drop-outs from the main list the strength of the reserve list should also be brought on to the original strength announced at the time of recruitment by taking enough number of candidates from the 'B' list. It was further emphasized that the



proposal is approved further in cases where candidates in the reserve list itself do not turn up for training, etc. candidates from the 'B' list can be taken to a corresponding extent for inclusion in the reserve list.

It is, thus, submitted by learned counsel that in view of the aforesaid two Circulars the respondent could not have been treated as a temporary employee because one of the candidates in the permanent list had dropped out of the main list by not joining and therefore the respondent ought to have been immediately brought to the main list. It is submitted that what had been done by the Memo dated 30.04.2003 was wrongly disapproved by the order dated 21.05.2003 impugned before the Tribunal.

We have considered the submissions of learned counsels for the parties and the impugned judgment and order of the Tribunal.

Para 11 of the impugned order is reproduced as under:

“We note that there is no dispute about the fact that the applicant initially got selected as reserve. The fact that Shri Shakil Ahmad who was one of the selected candidate in O/C category against the five vacancies notified for the first half of the year 1983, did not join has also not been denied by the respondents. Hence, there was definitely a clear vacancy against 1983 recruitment in Bettiah recruitment unit arising out of non-joining of Shri Shakil Ahmad. On perusal of the



department's instructions contained in letter dated 30.10.1980 and 14.10.1981 (Annexure A/1 and A/5). We note that at the time of recruitment by a recruiting unit, after the main list is drawn-up, a specific additional reserve list of candidates equal in number to 50% of the number of candidates in the main list is to be drawn-up. They are also imparted training as the candidates in main list. If there are any drop outs, the candidates from the reserve list are to be shifted the main list and remaining reserve candidates constituted trained reserve pool. We also note that such surplus reserve candidates get priority in absorption in subsequent recruitment, meaning thereby that against subsequent vacancies, first the reserve candidates of previous recruitment are adjusted and then only balance number are recruited. It is, therefore, clear that the applicant being no.1 in the reserve list, he should have been shifted to the main list when one of the selected candidate namely, Shri Shakil Ahmad, did not join. In the light of these facts, the argument of non-availability of vacancy for cancellation of the order dated 30.04.2003 whereby the services of the applicant were regularized with effect from 02.01.2004 (Annexure-1/8) is not considered tenable. There was a clear vacancy in the recruitment unit where the applicant was selected, due to dropping out of Shri Shakil Ahmad and the applicant being no.1 in the reserve list was clearly entitled to be shifted to the main list posted against the said vacancy as per instructions. We are in agreement with the learned counsel for the applicant that



it is not a case of regularization of RTP Period per se but it is clearly a case of his appointment/regularization against a vacant post due to dropping out of a selected candidate as per instructions, which should have been done by the respondents at the time of appointments after recruitment against the vacancies of first half of 1983 in Bettiah Division.”

It is evident from the provisions of the two circulars dated 30.10.1980 and 14.10.1981 that the Tribunal has correctly interpreted the relevant circulars in the matter by holding that it was not a case of regularization of RTP but clearly a case of appointment/regularization of the selected candidate against the vacant post as per instruction at the time of appointment itself. We are in complete agreement with the findings of the Tribunal in this regard. From the aforesaid two Circulars, it is evident that the respondent being a candidate in the reserve trained pool (RTP) was immediately entitled to appointment upon the non-joining of Shri Shakil Ahmad and he ought to have been taken into the main list on 02.01.2004, which was not done.

We may refer to the reliance placed by the learned counsel for the petitioners on a decision dated 01.08.1997 of the Supreme Court in **Civil Appeal No.80-123 of 1996, Union of India and another V. K.N. Sivadas and others** we find that the reliance



placed by learned counsel is wholly out of context as in the said decision no such issue as the present was involved; rather the case related to the claim made by the reserve pool employees on the basis of the regularization scheme of the daily wages employees trained in the year 1997, which was negated by the Supreme Court.

The writ application, being devoid of merit, is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.01.2017
Transmission Date	

