

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12445 of 2016

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1. The Union of India through the Director General, Department of Posts, New Delhi.
 2. The Chief Postmaster General, Bihar Circle, G.P.O. Complex, Patna.
 3. The Postmaster General, Northern Region, Muzaffarpur.
 4. The Superintendent of Post Offices, Sitamarhi Postal Division, Sitamarhi.
 5. The Inspector of Post, East Sub-Division, Sitamarhi Postal Division, Sitamarhi.

.... Petitioners

Versus

Namo Nath Gupta, son of Laxman Sah, resident of Village- Rain Shankar, P.O. Rain Shankar, P.S. Rain Saidpur, District- Sitamarhi.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sharan, ASG

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 17-08-2017

Heard learned counsel for the Union of India.

The impugned order is dated 26.09.2013 passed in Original Application (in short the "O.A.") No. 590 of 2010 by Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna. The relief was granted to the private respondent by the Tribunal in relation to a direction of posting against a Group-D post



and granting consequential benefit to him from 01.06.2004.

From the narration of facts, it is evident that the petitioners seem to have the privilege of adopting two yardsticks and being selective in extending the benefit as per their whims. A court of law however cannot be expected to have two different yardsticks and reach two different conclusions on identical facts.

The private respondent along with one Radha Kant Singh and Narendra Mishra were initially sent to Army Postal Service. On their discharge from the said service, they were looking forward to accommodation under the Civil Postal Service on a Group-‘D’ post, since they had worked on Group-‘D’ posts in the Army Postal Service. They did not get the breakthrough as they were made to believe that their turn had not come and requisite vacancies were not available. However, the hollowness of such stand stood exposed when Radha Kant Singh moved the Tribunal in O.A. No. 498/2010, which came to be decided on 12.03.2013.

The accepted position is that the private respondent was senior to Radha Kant Singh in the Gradation List. He had also been relieved from the Army



Postal Service earlier and the names of the private respondent Radha Kant Singh and Narendra Mishra were all recommended together in terms of Annexure-A/2 dated 03.06.1988.

If a junior has come to be accommodated on the basis of the order of the Tribunal which was never assailed or challenged but has been implemented, then, the direction of the Tribunal, in the interest of consistency and fair-play, if not to ensure compliance of Article 14 and 16 of the Constitution of India, cannot be said to be erroneous in law.

The Tribunal, therefore, has very correctly discussed the facts in following terms which emerges from paragraph 7 of the impugned order:

“7. It is admitted fact that the applicant was sent to APS alongwith Shri Radha Kant Singh and Narendra Mishra. Both of them were released from the APS on medical ground and they were working against the Group ‘D’ post in APS after being selected by civil authorities. It is also noted that the Department vide letter dated 07.05.1997 issued certain instructions to make regular appointment order of Group ‘D’ post of 561 EDs wherein the name of the applicant along with Radha Kant Singh was also appearing. Since he was not regularized against Group ‘D’ post he made representation. Vide Annexure R/3 it was intimated



that since the Department at that point of time was engaging the persons of earlier batches he could not be appointed. I find that this is not the case of the respondents that subsequently that order was revoked on or before 2007. According to the respondents, Shri Radha Kant Singh was adjusted against the circular dated 13.06.2007 and since the applicant has retired before 2007, i.e. in 2004, he is not similarly circumstanced with Shri Radha Kant Singh. It is not the case of the respondents that the circular of 1997 was ever withdrawn before the issuance of circular dated 13.06.2007, rather vide letter dated 13.06.2007 another 847 GDSs, who were on deputation at that point of time, were proposed to be regularized from the date of entry in APS/from the date of GRS conferred technical promotion as Gr. 'D' and since juniors to the applicant along with others were eligible for regularization as Group-'D' from the date of entry in APS/Technical promotion. Thus, there was sufficient vacancy or scope for regularization of subsequent 847 GDSs. In the above background, the Department has to implement their earlier circular dated 11.06.1997 whereby 561 GDSs were directed to be regularized in Group 'D' post, but the applicant was denied the same though his name was reflecting in the said list of 561 persons against sl. No. 23 on the ground that earlier batches of GDSs were being engaged which means the Department was regularizing the GDSs on the basis of seniority. In that event, the applicant being senior to Shri Radha Kant Singh was due to be considered earlier than Shri Radha Kant Singh and since from the circular of 13.06.2007, it is clear that another 847 GDSs were proposed to be regularized, the plea of non availability of vacancy or otherwise is not acceptable



and the applicant being similarly circumstanced with Shri Radha Kant Singh is entitled for regularization against Group ‘D’ post.”

In the above background and facts, the petitioners have no case. The writ application is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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