

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2938 of 2017

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Saheb Prasad, S/o Sri Daroga Prasad, Resident of Village & P.O.-
Harpurjan, Via- Rajapatti, District- Chapra.

.... Petitioner

Versus

1. The Union of India through the Secretary cum D.G.,
Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle Patna.
3. The Post Master General, Northern Region Muzaffarpur.
4. The Superintendent of Post Offices, Siwan Division, Siwan.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Hemant Kumar Karan, Advocate Mr. Jayant Kumar Karan, Advocate Mr. Sujeet Kumar, Advocate
For the Respondents	:	Mr. S.D Sanjay, Additional Solicitor General Ms. Renuka Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 24-04-2017

Heard Sri Hemant Kumar Karan, learned
counsel for the petitioner and Sri S.D. Sanjay, learned
Additional Solicitor General, representing the Union of
India.

2. Four O.A. applications were clubbed together
and heard together, which came to be disposed of by a
common order of Central Administrative Tribunal
(hereinafter referred to as the "Tribunal") dated
13.08.2010, where the decision of the authorities of the



Postal Department to remove the applicants from the post of Gramin Dak Sevak was held to be bad, because no opportunity of hearing was given to them, even though, it may have been case of appointment made by the competent authority without following the due process of law. The requirement for such opportunity emerges from the Rule relating to *Gramin Dak Sevak* (Conduct and Employment) Rules, which was inserted on 9th May, 2003 and reads as under:

"4(3). *Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears –*

- (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or*
- (b) to have failed to exercise a jurisdiction so vested; or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit."*



3. In terms of previous direction of the Tribunal, an opportunity of hearing was given and the Post Master General, Northern Region, Muzaffarpur passed a speaking order dated 5th/10th April, 2013, which is Annexure P/8 to the writ application. This decision became subject matter of challenge in a second round of litigation, which was registered as O.A. No. 240/2013.

4. The Tribunal, vide order dated 03.02.2017, dismissed the O.A. application on the following conclusion:

"6. This show cause has now been given and the applicant had also been heard in person. It has also been stated in the written statement by the respondents that out of 38 applications received for the post, even before the verification report could be received, the applicant who was in 27th position was given appointment. In case of such palpable irregularity no right could accrue to the beneficiaries, even though the irregularities were committed by the respondent authorities. If such irregularities come to the notice of superior authority, he cannot turn a blind eye to it, and he is obliged to issue direction to take corrective steps. Here the substance is more important than technicalities. Even the technicality of



giving show cause notice in compliance of the Tribunal's order has been completed and they have taken a decision. The Tribunal ought not to come in the way of correcting such irregularities. Hence, the OA is dismissed and interim order is vacated."

5. The limb of argument of learned counsel for the petitioner is that no proper opportunity was given. The documents which were demanded were not supplied, or, formality of hearing was held. No pointed question on the appointment was put to him, but generality of observation and question formed the basis for passing of the order by the Post Master General, Northern Region, Muzaffarpur.

6. Such a submission has been answered in the order of the Post Master General, Northern Region, Muzaffarpur in paragraph-8 of the speaking order, which was challenged before the Tribunal. The said paragraph has relevance, so is produced hereunder:

"8. The undersigned has gone through the OA as well as the orders of Hon'ble CAT, Patna bench and relevant records in this matter and submissions made by the applicant. I find that the appointment done by the SPOs, Siwan is against the laid down instructions in GDS (Conduct & Employment) Rules, 2001. I find that it is not a case of removal on misconduct by the applicant for which the applicant has



asked for rules and documents. It is not case of mistake done by the applicant rather it is a mistake on the part of the appointing authority which has to be rectified. The appointing authority has committed a serious mistake on appointing a person who is less in merit ignoring the claims of other meritorious candidates." **(Emphasis supplied)**

7. The appointment of the petitioner on the post was not a substantive appointment which was subject to confirmation and the period of probation was for a period of three years before the confirmation of service could be done. Large scale irregularities were highlighted and brought to the notice of the superior authorities, and, the superior authorities, after verifying the records and looking into the exercise so done for such selection and appointment, reached the conclusion that no due process was followed. The selection was on pick and choose. Even in the present case, the Tribunal had observed that the serial position of the petitioner was 27, why 26 persons, above the petitioner, could not be selected or appointed, was not evident from the record placed before the superior authorities.

8. The nature of the appointment being such and the position of the petitioner was that of a temporary employee, therefore, a full fledged enquiry, which the



petitioner was looking for with the object of buying time since his removal, was set aside on technicality, earlier was the reason, why the Tribunal refused to accept the line of argument and dismissed O.A. application.

9. Such dismissal, in the given facts and previous direction and the exercise so done by the superior authorities, cannot be said to be faulty, which requires to be undone through the writ.

10. Thus, we find no merit in the writ application, it is, accordingly, dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.04.2017
Transmission Date	NA

