

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15046 of 2014

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1. The Union of India through the Secretary Cum I.G. Department of Posts, Dak Bhawan, New Delhi
 2. The Chief Post Master General, Bihar Circle, Patna
 3. The Director Accounts (Postal) G.P.O. Complex, Patna
 4. The Superintendent of Post Offices, Vaishali Dn, Hazipur

.... Petitioner/s

Versus

Rajendra Tiwary s/o Late Vishwanath Tiwary Village & PO- Ismailpur, Via- Anjanpur SO, Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. D. Sanjay, Additional Solicitor General
Mrs. Kanak Verma, CGC

For the Respondent s : Mr. Sudhir Kumar Tiwary, Advocate

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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: 10-01-2017

The Union of India through the Postal Department is seeking quashing of the order dated 03.01.2013, which has been passed by the Central Administrative Tribunal, Patna Bench in O.A. No. 719 of 2011. By virtue of this order, the Tribunal has given a direction upon the petitioners to pay pension to the private respondent No.1 even though he had not completed a minimum 10 years of service under the Postal Department. It is clarified that 10 years of minimum service is the qualifying service for any employee to become eligible for pension.



2. From the narration of facts culled out from the order impugned, it is evident that the private respondent was initially appointed as EDMS (Extra Departmental Mail Servant) on 20.05.1971 and performed such responsibility till 15.03.1997. It is for record that the position as above is not an employment under the respondent-Postal Department, but only an engagement on some kind of commission basis.

3. There are provisions in the rules as well as circular issued by the Postal Department for giving an opening on the post of a Postman to such persons if they participate and qualify in the departmental examination. This post is a Group D post under the petitioners and by virtue of the selection and appointment on such post, the master servant relationship is established. Any service rendered earlier does not create that status or confer that status on such EDMS.

4. The private respondent was successful and he came to be appointed on 15.03.1997 on the post of Postman. He retired from the said post on 31.07.2006. Since the private respondent fell short of 10 years of qualifying service, he was denied pensionary benefits. The stand taken by the private respondent before the Central Administrative Tribunal is that he had served the department for about 35 years and the department is



not following its own letters and instructions.

5. The submission of learned Additional Solicitor General representing the Union of India is that the Central Administrative Tribunal has either confused the issue, if not rewritten the service jurisprudence. The engagement of the private respondent earlier as EDMS has nothing to do with regard to the length of service under the Union of India. Any right or claim of the private respondent for pension and other benefits would start only from the date he was appointed in Group D post, which is 15.03.1997. The date of superannuation being 31.07.2006 does not add up to 10 years, this is not a matter of debate. The issue is whether the Tribunal committed a serious error by mixing up the principle of right of consideration for promotion with actual promotion. The Tribunal in the concluding paragraph of the order, especially in paragraph 7 has concluded as under:-

“In this case, neither the applicant nor the respondents have indicated when the vacancy had arisen and when the DPC was held. This information is crucial to knowing whether there was undue delay after the vacancy had arisen in holding the DPC and appointment of the applicant as Postman (Group ‘D’). If only the appointment had taken place 8 months earlier, the applicant



would have qualified for grant of pension. If there was delay in initiating the selection process notwithstanding the existence of vacancies in the cadre of Postman for appointment from EDDA and if after adding the period from the date of vacancy, the qualifying services comes to 10 years or more, then the Department will have to grant pension to the applicant with reference to the decisions cited (paras 2 and 6 of this order). The respondents concerned are directed to examine and decide the case of the applicant on the above basis preferably within a period of four months from the date of receipt/ production of this order. The OA is disposed off accordingly. No order as to costs.”

6. A reading of the above finding or direction of the Tribunal clearly indicates that the learned Member (Administration) of the Central Administrative Tribunal, Patna Bench committed an error as if it was a case of promotion of the private respondent from the post of EDMS to the post of a Postman.

7. The details of the procedure are available on record. There is an opening provided in terms of the rules and the regulation and right for such appointment accrues only when a departmental examination is conducted and a candidate passes that



examination. By virtue of passing of the examination he is appointed on the post of Postman in a substantive basis. It is not a case of an employee being promoted from a junior post to a senior post. If this is so, then the Tribunal's opinion that if the DPC was conducted in time and the case of promotion of the private respondent was considered within time, he would have got 10 years of service and, therefore, he is entitled to payment of pension seems to be flawed.

8. The rationale and reasoning reproduced in the earlier part of the order does not support the direction, which has been issued for grant of benefit of pension, which is contrary to the settled principles of service jurisprudence. The private respondent at the most would have prayed upon the petitioners for some kind of sympathetic consideration if he was short of 10 years by asking the authorities for some indulgence, but interpreting the law in the given facts making the private respondent eligible by keeping referable point for promotion as if the failure of the DPC was the reason for non-grant of promotion is a serious omission committed in law. The impugned order, therefore, suffers from the vice of the irrationality as well as the principles which emerge from the given facts that the substantive appointment of the private respondent on the post of Postman was only after he became eligible by passing a



departmental examination and not when the vacancies occurred.

9. The writ application is allowed. The impugned order contained in Annexure-2 dated 03.01.2013 passed in O.A. No. 719 of 2011 is quashed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/ S. Kumar

AFR/NAFR	NAFR
CAV DATE	NA
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