

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16328 of 2017

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1. The Union of India through the Secretary cum D.G., Government of India, Ministry of Communication & IT, Department of Posts, Dak Bhawan, New Delhi.
 2. The Assistant Director General (GDS), Government of India, Ministry of Communications & IT, Department of Posts (GDS Section), Dak Bhawan, New Delhi.
 3. The Chief Post Master General, Bihar Circle, Patna.
 4. The Assistant Director (Recruitment) O/o Chief Postmaster General, Bihar Circle, Patna.
 5. The Postmaster General, Northern Region, Muzaaffarpur.
 6. The Superintendent of Post Offices, Samastipur Division, Samastipur.

.... Petitioner/s

Versus

Rakesh Kumar Choudhary, Son of Late Nawal Kishor Choudhary, resident of Village & P.O.- Soyra, P.S.- Dalsingsarai, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sharan, A.S.G.

For the Respondent/s : Mr. Jayant Kumar Karn, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 19-12-2018

It is feeling aggrieved by the judgment and order dated 26.07.2017 passed in O.A. No.630 of 2015 (Rakesh Kumar Choudhary vs. The Union of India) by the Central Administrative Tribuna, Patna Bench, Patna (hereinafter referred to as the 'Tribunal'), whereby the original application filed by the respondent-applicant has been allowed with a direction to the petitioners herein to reconsider his case in terms of the circular dated 30.05.2017 that the Union in its Ministry of Communication and I.T., Department of Posts together with its officials are before this Court.

The facts of the case lie in a very narrow compass. The



respondent-applicant applied for compassionate appointment on the death of his father in harness on 12.11.2011 while serving the respondent department as a Gramin Dak Sevak, BMP, at Soyra (Samastipur). The application filed by the respondent-applicant was considered and rejected by the Circle Relaxation Committee (hereinafter referred to as the 'CRC') in its meeting held on 24.01.2014, inter alia, on grounds that the respondent-applicant was a married son. He approached the Tribunal in O.A. No.408 of 2014 which was allowed. The order rejecting the claim for compassionate appointment was quashed and the petitioner-respondents were directed to consider the case of the respondent-applicant on merits.

The petitioner-respondents again rejected the case of the respondent-applicant vide order passed on 07.08.2015 on grounds that old cases cannot be reopened. However, since similar rejection by the department had been quashed by the 'Tribunal' that wisdom dawned and vide order passed on 11.01.2016 the case of the respondent-applicant was again considered but this time rejected on grounds that he secured only 27 merit points as against the minimum cut-off marks of 50 under the circulars regulating such appointment. It is feeling aggrieved by the order dated 11.01.2016 rejecting the claim of the respondent-applicant on merits that the respondent-applicant again moved the 'Tribunal' in OA No.630 of 2015 and which has since been allowed by the judgment and order dated 26.07.2017 in the manner aforesaid that the Union of India along with its officials in the



department are before this Court.

Mr. Anjani Kumar Sharan, learned Assistant Solicitor General has appeared for the Union of India to submit that the order of remand passed by the 'Tribunal' is not founded on any reasons nor the 'Tribunal' has explained why on remand, the case of the respondent-applicant needs to be considered under the circular dated 30.05.2017 which came into existence much after the decision was taken to reject the claim of the respondent applicant. It is also the argument of Mr. Sharan that since there is no adverse opinion recorded on the calculation of marks by the 'CRC', there was no occasion for the 'Tribunal' to remit the matter.

Mr. Jayant Kumar Karn has appeared for the respondent-applicant to submit with reference to the circular dated 30.05.2017 that the circular has been issued upon review of the earlier circulars which stipulated for award of points against different heads and since the system was found defective, it got reviewed and replaced by the circular dated 30.05.2017 which did away with the system of award of points. According to Mr. Karn there was no infirmity in the order of the 'Tribunal' whereby the department has simply been directed to consider the claim afresh in the light of the circular which is in force as of today.

In reference to paragraph 2 of the circular dated 30.05.2017 Mr. Karn submits that the Directorate taking note of the flaws present in the earlier circulars have decided to introduce the revised scheme



after review and removing those lacunas. He submits that since the system of evaluation suffered infirmity that it was removed from the scheme. It is submitted that the respondent-applicant had specifically pleaded in the original application that the evaluation of marks was not correct and since the matter is remitted for consideration afresh, it would sail into the category of a 'pending case' and thus covered by the circular dated 30.05.2017.

We have heard learned counsel for the parties and we have perused the records.

While it is the argument of Mr. Sharan, learned Assistant Solicitor General that the judgment and order of remand passed by the 'Tribunal' is not supported with reasons, it is the argument of Mr. Karn, learned counsel appearing for the respondent-applicant that since the evaluation was not correct hence a remand was the only option. The issue which falls for consideration is why on remand of the matter, the case of the respondent-applicant needs to be considered against a circular dated 30.05.2017 which came into force much after the claim of the respondent-applicant for compassionate appointment was considered and rejected by the Department.

In my opinion, the issue whether on remand of the matter, the claim could be treated as a 'pending case' in view of the stipulation present in the circular dated 30.05.2017 which, according to Mr. Karn, is on review of the faulty system present in the earlier circular for introduction of a revised scheme, we would keep the issue open for



discussion in an appropriate proceeding but for the present we are satisfied to record that the order of remand passed by the Tribunal is not resting on any supporting reasons rather the disposal is mechanical and does not assign reasons which crossed the mind of the learned Administrative Member to order for remand.

In normal course we would have remitted this matter to the 'Tribunal' for consideration of the matter afresh and its disposal in accordance with law but taking note of the issues arising in the contest coupled with the fact that the respondent-applicant has completely failed to demonstrate as to how the award of marks under the scheme in force which allotted 27 merit points to him, suffered any infirmity. In fact, we find no discussion in the original application filed by the respondent-applicant on this issue nor any deficiency in exercise is pointed out in the counter affidavit filed in the present writ petition, which simply at paragraph 6 holds the evaluation erroneous but does not explain the criticism nor demonstrates the correct position.

The copy of the scheme which was in force when the case of the respondent-applicant was being considered has been enclosed at Annexure R/4 to the counter affidavit of the respondent-applicant and item no.(7) thereof gives the details as to how the evaluation has to be carried out. We do note that neither before the 'Tribunal' nor before this Court the respondent-applicant has demonstrated as to how the allotment of 27 merit points by the 'CRC' suffered any infirmity.

In such view of the matter, where the respondent-applicant



has failed to demonstrate any illegality in the allotment of marks, there lay no occasion for the ‘Tribunal’ to remand the matter to the department for fresh consideration.

For the discussions above, the judgment and order dated 26.07.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No.630 of 2015 (Rakesh Kumar Choudhary vs. The Union of India) cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed but without any order as to costs.

Let the records of the proceedings be returned to Mr. Anjani Kumar Sharan, learned Assistant Solicitor General.

(Jyoti Saran, J)

I agree
Nilu Agrawal, J.

SKPathak/-

(Nilu Agrawal, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22-12-2018
Transmission Date	NA

