

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15680 of 2019

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 Postmaster General Northern Region, Muzaffarpur
4. The Assistant Director-II O/o the Post Master General Northern Region, Muzaffarpur
5. The Superintendent of Post Offices Siwan Division, Siwan
6. The Sub Divisional Inspector Postal, East Sub Division, Maharajganj, Siwan

... .. Petitioner/s

Versus

Ramesh Kumar S/o Sri Shyam Kishore Ram Vill.- Ghhitauli, P.o.- Mustafabad, Distt.- Siwan

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Raj Kamal, Advocate

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-08-2019

Heard learned counsel for the petitioner.

2. The supplementary affidavit as desired has been filed bringing on record the order dated 6th of February, 2012.

3. The matter relates to the cancellation of appointment of the respondent-petitioner which came to be challenged before the Tribunal and the learned Tribunal has allowed the claim of the respondent and has quashed the order of cancellation of the appointment .



4. Assailing the same, the present writ petition has been filed by the Union of India and its authorities contending that the mistake which has been committed by offering an appointment to the respondent had already been rectified and it was not a matter of disciplinary proceeding against the respondent.

5. Suffice it to say that earlier the respondent had come up before the Tribunal against the order of cancellation which had been put in abeyance with liberty to the Department to pass an appropriate order after giving an opportunity of hearing to the respondent. Pursuant thereto, the Post Master General, Northern Region, has passed the order dated 6th of February, 2012. Paragraph 7 of the said order, which is the finding recorded, is extracted hereinunder:

“7. The undersigned has gone through O.A as well as the orders of Hon’ble CAT, Patna Bench and relevant records in this matter. On perusal of records it is found that appointment, which has been done by the Supdt. of Post Offices, Siwan Division is against the laid down rules and instructions in GDS (Conduct & Employment) Rules 2001. It is not a case of removal on misconduct by the



official where he had asked for rules and documents in support of his claim of reinstatement. It is not a mistake of the of the applicant for which he has been made to suffer but it is the mistake of the appointing authority, which has to be rectified. The appointing authority has committed a serious mistake in appointing a person who is third in the merit ignoring the claims of other meritorious candidates.”

6. A perusal of the said finding indicates that there is a general observation about the appointment having been made contrary to the GDS (Conduct and Employment), Rules, 2001 with specific recital of the error that was sought to be rectified, namely, that the respondent had been placed at Serial No.3 in the merit and, therefore, his appointment ignoring the claim of other meritorious candidates led to the cancellation.

7. The said order came to be challenged before the Tribunal once again and the Tribunal has found that no challenge had been raised by any other candidate who were more meritorious than the respondent-petitioner, particularly those who were are Serial Nos.1 and 2 of the merit list. It is further evident from the pleadings on record that the appointing



authority for some reason or the other had proceeded to offer appointment to one Vijay Kumar Manjhi who was at Serial No.12 whereafter the respondent-petitioner staked his claim that his claim stands on a better footing than that of Vijay Kumar Manjhi. It is thereafter that the respondent came to be appointed and was continuing when his claim came to be cancelled.

8. Learned counsel contends that this irregularity vitiated the entire selection process, inasmuch as the appointing authority had inappropriately, in contravention of the merit list, offered appointment to those candidates who were lower in merit.

9. The aforesaid contention does appear to be correct in principle, but the fact remains that the candidates at Serial Nos.1 and 2 did not challenge the offer of appointment to the respondent-petitioner who was at Serial No.3. In the absence of any challenge raised by any of the selected candidates who were higher in merit than the respondent No.3, there did not appear any justification for the cancellation of the appointment when there was no other person to claim the said post from amongst the merit list prepared by the petitioner. Consequently, in view of the findings recorded by the Tribunal and the



background in which the cancellation order has been set aside,
we do not find this to be a fit case for interference in the
exercise of jurisdiction under Article 226 of the Constitution of
India.

10. The writ application stands rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.08.2019
Transmission Date	N/A

