

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25608 of 2019

1. The Union of India through the Director General, Department of Posts, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, G.P.O Complex, Patna-800001.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Senior Superintendent of Post Offices, Postal Division, Purnea-854301.

... .. Petitioner/s

Versus

Umesh Prasad Yadav, Son of Late Bodh Narayan Yadav, Resident of Village-Rampur North, P.O.-Rampur, P.S.-Foresganj, District-Arariya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Singh, ASG Mr. Sujeet Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Kumar Ravish, Advocate Mr. Ramesh Kumar Singh, Advocate Ms. Siddhi Aashana, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-08-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner-department has questioned the validity of the order dated 02.02.2018 passed in O.A. No. 050/350/2017 of the Central Administrative Tribunal, Patna Bench.

3. Respondent-employee filed Original Application No. 350 of 2017 in which he has sought for the following reliefs:-

“[8.i] The applicant humbly



prays that the respondents may be directed to grant the pension and its consequential benefits by treating the qualifying service for pension from 01.01.2002 i.e. date of vacancy of the Group 'D' post to 28.02.2014 i.e. date of retirement under CCS (Pension) Rule 1972.

[8.ii] The applicant further prays that arrears of the pension and its benefits with 10@ interest may be granted.

[8.iii] Any relief/reliefs may be granted to the applicant for ends of the justice.”

4. The Original Application was allowed while directing the petitioner herein to treat the qualifying service of the respondent-employee for the purpose of pension from 01.01.2002, i.e. the date of vacancy of Group-D post which was filled up in the year 2004 while appointing the respondent-employee and further to count service from 01.01.2002 to 28.02.2014, the date on which respondent-employee attained age of superannuation and retired from service.

5. Feeling aggrieved and dissatisfied with the order of the Central Administrative Tribunal, the present petition is filed.

6. The respondent-employee was appointed as EDBPM and it has been re-designated as GDSBPM, Rampur BO-a/c with Forbesganj SO Under Purnia Postal Division. The petitioner- department issued a Rule called “Department of



Posts (Group 'D' posts) Recruitment Rules, 30.01.2002. Respondent-employee name was considered with reference to the post of Mail Peon (Part-II -post of Sub-ordinate officers) Rules, 2002 under 75% vacancies (quota). Mail Peon was stated to have been vacant in the year 2002. However, the same has not been filled up due to Administrative delay. In the result, among others petitioner was appointed to the post of Mail Peon in the year 2004. The petitioner attained age of superannuation and retired from service on 28.02.2014 and he has been denied retiral benefits including pension for the reasons that he did not fulfill the criteria of ten years of service in terms of Rule 49 of Central Civil Services (Pension) Rules, 1972 (for short "CCS Rules, 1972") whereby compelling him to approach C.A.T.

7. Learned counsel for the petitioner-department submitted that there is no infirmity in not extending retiral benefits and fixation of pension as respondent-employee failed to fulfill the criteria laid down under Rule 49 of Rules, 1972. It is further submitted that respondent-employee is not entitled to count any service rendered against the then EDBPM and now GDSBPM towards retiral benefits and fixation of pension.

8. In support of the aforesaid contention, petitioner-department relied on Apex Court's decision rendered



in the case of *Union of India and Others Vs. Gandiba Behera* reported in *2019 SCC online SC 1444*. Therefore, CAT has committed error in not noticing eligibility criteria, when respondent-employee failed to fulfill the necessary criteria for the purpose of extending retiral benefits and pension. Even though, the Central Administrative Tribunal has directed to count the service from 01.01.2002 whereas respondent-employee was appointed on 09.06.2004.

9. Per contra, learned counsel for respondent-employee resisted the contention of the petitioner and supported the order of the Tribunal. Further, it is submitted that for no fault of the respondent-employee he has been belatedly appointed to the post of Mail Peon in the year 2004 instead as and when vacancy accrued. Due to administrative delay on the part of the petitioner-department, respondent-employee cannot be denied service benefits from 01.01.2002 to 09.06.2004. Therefore, there is no infirmity in the order of the Central Administrative Tribunal.

10. Heard learned counsels for the parties.

11. Respondent-employee was appointed to the post of EDBPM in the year, 1974. Petitioner-department issued a Rule called “Department of Posts (Group ‘D’ Post)



Recruitment Rules, 2002 and it was notified on 30.01.2002.

Various kind of Group-D posts like, Peons and equivalent posts have been identified as a bunch of posts in which Mail Peon is included. Method of recruitment to the bunch of Group-D posts reads as under:-

1.	2	3	4	5	6	7	8
1. Peons/ Letter Box Peons/ Mail Peons/ Packer/Porter/ Runner/Van Peon/Orderly/ Gatemen/ Attendant- cum- Khansama/ Cleaner in Mail Motor Service/ Pumpmen	33018 (2002) Subject to variation dependent on workload.	General Central Service Group 'D' Non- Gazetted	Rs. 2550-55- 2660-60- 3200/-	Not applicable	18-25 Years Note:1. The crucial date for determining the age limit shall in each case be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu & Kashmir State, Lahaul and Spiti District and Pangi Subdivision of Chamba District of Himachal Pradesh, Andaman & Nikobar Islands and Lakshadweep) 2. In the case of recruitment made through the Employment Exchange, the crucial date for determining the age limit shall be last date up to	Not applicable	<u>Essential qualification</u> s: Middle School Standard Pass <u>Desirable:</u> 1) Knowledge of cooking for attendant- cum- Khansama 2. Knowledge of cycling 3. Knowledge of tailoring, painting, carpentry (for posts in stock or store Depots)



					which Employment Exchange is asked to submit the names.		
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12. The respondent-employee is entitled to be appointed to any of the post mentioned above under 75% of the vacancies. The respondent-employee due to administrative difficulties given effect to the 2002 Rules on 09.06.2004 while appointing the petitioner to the post of Mail Peon for the vacancy occurred in the year 2002.

13. In this backdrop, from 09.06.2004 to till the date of retirement in the year, 2014, the respondent-employee could not fulfill the eligibility criteria under Rule 49 of Rules, 1972, namely ten years of service.

14. It is learnt that he has rendered 9 years 7 months and 26 days. There is short of about less than three months for the purpose of extending retiral benefits and pension. The cited decision on behalf of the petitioner is in respect of non-counting of service rendered in EDBPM. Whereas in the present case, pre-ponement to the date of appointment to the post of Mail Peon from 09.06.2004 to 01.01.2002 in order to meet the eligibility criteria for the purpose of retiral benefits and fixation of pension, the petitioners have not disputed that there is administrative delay in issuing order of appointment to the



petitioner on 09.06.2004 with reference to vacancies occurred as on 01.01.2002. In fact, appointment order dated 09.06.2004 in the preamble portion it is crystal clear the post are being filled up with reference to vacancy occurred as on 01.01.2002. In view of the material information it is crystal clear that for no fault of the respondent-employee he has been denied appointment timely as on 01.01.2002. In the result, he has been made ineligible to claim retiral benefits and pension. Accordingly, the cited decision do not assist the petitioner-department.

Apex Court recently in the case of *Amarendra Kumar Pandey Vs. Union of India & Ors.* reported in **2022 LiveLaw (SC) 600** in para 28 to 37 it is held as under:-

“**28.** Where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority concerned, by some such expression as ‘is satisfied’ or ‘is of the opinion’ or ‘if it has reason to believe’ or ‘if it considered necessary’, the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted *bona fide*, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed.

29. The action based on the



subjective opinion or satisfaction, in our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.

30. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. [See *Director of Public Prosecutions v. Head*, (1959) AC 83 (Lord Denning).]

31. When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion. The distinction between insufficiency or inadequacy of evidence and no evidence must of course be borne in mind. A finding based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. [See *Reg. v. Governor of Brixton Prison, Armah, Ex*



Parte, (1996) 3 WLR 282 at p. 841].

32. It is in such a case that it is said that the authority would be deemed to have not applied its mind or it did not honestly form its opinion. The same conclusion is drawn when opinion is based on irrelevant matter. [See *Rasbihari v. State of Orrisa*, AIR 1969 SC 1081].

33. In the case of *Rohtas Industries Ltd. v. S.D. Agrawal and another*, AIR 1969 SC 707, it was held that the existence of circumstances is a condition precedent to form an opinion by the Government. The same view was earlier expressed in the case of *Barium Chemicals Ltd. and another v. Company Law Board and others*, AIR 1967 SC 295.

34. Secondly, the court can inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In other words, if an inference from facts does not logically accord with and flow from them, the Courts can interfere treating them as an error of law. [See *Bean v. Doncaster Amalgamated Collieries*, (1944) 2 All ER 279 at p. 284]. Thus, this Court can see whether on the basis of the facts and circumstances found, any reasonable man can say that an opinion as is formed can be formed by a reasonable man. That would be a question of law to be determined by the Court. [See *Farmer v. Cotton's Trustees*, 1915 AC 922]. Their Lordships observed:

“.....in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provision properly construed of some statutory enactment, the question is one of law only.”

[See also *Muthu Gounder v. Government of Madras*, (1969) 82 Mad LW



1].

35. Thirdly, this Court can interfere if the constitutional or statutory term essential for the exercise of the power has either been misapplied or misinterpreted. The Courts have always equated the jurisdictional review with the review for error of law and have shown their readiness to quash an order if the meaning of constitutional or statutory term has been misconstrued or misapplied. [See *Iveagh (Earl of) v. Minister of Housing and Local Govt.*, (1962) 2 QB 147; *Iveagh (Earl of) v. Minister of Housing and Local Govt.* (1964) 1 AB 395].

36. Fourthly, it is permissible to interfere in a case where the power is exercised for improper purpose. If a power granted for one purpose is exercised for a different purpose, then it will be deemed that the power has not been validly exercised. If the power in this case is found to have not been exercised genuinely for the purpose of taking immediately action but has been used only to avoid embarrassment or wreck personal vengeance, then the power will be deemed to have been exercised improperly. [See *Natesa Asari v. State of Madras*, AIR 1954 Mad 481].

37. Fifthly, the grounds which are relevant for the purpose for which the power can be exercised have not been considered or grounds which are not relevant and yet are considered and an order is based on such grounds, then the order can be attacked as invalid and illegal. In this connection reference may be made to *Ram Manohar v. State of Bihar*, AIR 1966 SC 740; *Dwarka Das v. State of J. and K.*, AIR 1957 SC 164 at p. 168 and *Motilall v. State of Bihar*, AIR 1968 SC 1509. On the same principle, the administrative action will be invalidated if it can be established that the authority was satisfied on the wrong



question: [See (1967) 1 AC 13].”

15. While examining the decisions on administrative side by a department and such a decision was not supported by reasons and interfered and extended shortcoming of service for the purpose of extending pension. The aforesaid decision deals with the judicial review. The aforesaid decision aptly applicable to the respondent-employee for the reasons that for not fault of the respondent-employee he has been denied appointment to the post of Mail Peon timely, i.e. from 01.01.2002 and he has been appointed on 09.06.2004.

16. In the light of these facts and circumstances, petitioners have not made out a *prima facie* case so as to interfere with the order of the Central Administrative Tribunal dated 02.02.2018. Accordingly, writ petition stands dismissed.

17. The concerned appointing authority/competent authority is hereby directed to compute respondent-employee's service from 01.01.2002 till the date of retirement for the purpose of determining eligibility criteria under Rule 49 of the Rules, 1972 and pass speaking order relating to entitlement of retiral benefits and pension, after due calculation. The respondent-employee shall be extended all monetary benefits. If petitioner-department fails to settle the respondent-



employee’s due after reconciling the amount with reference to payment of certain amount under New Pension Scheme within a period of four months in that event respondent-employee is entitled to interest @ 6% per annum.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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CAV DATE	
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