

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 050/00189/2020**

Date of Order: 18th March, 2021

C O R A M

**HON'BLE MR M.C. VERMA, MEMBER [J]
HON'BLE MR. S.K. SINHA, MEMBER [A]**

Manish Kumar Tiwari, S/o Sri Ram Nath Tiwari, resident of Village & P.O.- Kosul, P.S.- Dhanarua, District – Patna.

..... Applicant.

By Advocate :- Shri Jayant Kr. Karn.

-Versus-

1. The Union of India through the Secretary Cum D.G., Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Postmaster General, Bihar Circle, Patna – 800001.
3. The Assitt. Director (Recruitment), O/o the Chief Postmaster General, Bihar Circle, Patna – 800001.
4. The Sr. Superintendent of Post Offices, Patna Division, Patna – 800004.
5. Sri Rajeev Ranjan, Postal Assistant, at Manner Sub Post Office, District – Patna, PIN 801108.

..... Respondents.

By Advocate :- Shri H.P. Singh, Sr. S.C. for Official Respondents.
Shri S.K. Tiwary, counsel for respondent No.5.

**O R D E R (O R A L)
M.C. Verma, M [J]**

1. Being aggrieved by order, communicated vide letter dated 12.02.2020 whereby, after declaring the LDCE result held for the post of Postal Assistant/ Sorting Assistant, applicant instead of Patna Division has been posted against surplus vacancy at Siwan whereas respondent No.5, who being junior to him in the cadre of postman and thus had to be posted against surplus vacancy, was posted at Patna Division against regular vacancy instant OA has been preferred by the applicant.



2. Facts as has been set out by the applicant in his OA are that while holding the post of Postman applicant & respondent No.5 Rajeev Ranjan both did appear in Limited Departmental Competitive Examination (LDCE), held on 15.09.2019, for the cadre of Postal Assistant/Sorting Assistant in Patna Division. That result of the examination was declared on 28.01.2020 and both, applicant & respondent No.5, did find place in the list of selected candidates but they were on same footing in respect of marks obtained and therefore their merit had to be ascertained from their seniority in the lower cadre i.e. cadre of postman and preference in allotting division & post had to depend thereon. That respondent Department did commit mistake fixing the merit of applicant vis-à-vis respondent No.5 and treated respondent No.5 at higher position in merit and posted him at Patna Division and posted the applicant against surplus vacancy at Siwan.



3. To stress that he was senior in postman cadre applicant's contention is that previously he and respondent No. 5, both were GDS, applicant appeared in the examination for the post of Postman in Patna Division in year 2013, was declared successful but appointments were kept in abeyance in Patna Division only on the pretext that some candidates have impersonated. That applicant did file O.A. No. 287/2013 and the Hon'ble Tribunal while deciding said OA, vide Order dated 04.04.2014 did direct the respondents to give promotion to the applicant and to fix his seniority from the date his juniors have been permitted to join on the promotional post. The

applicant then was appointed vide Order dated 27.01.2015 and his seniority was fixed as per Order of the Tribunal and has been reckoned from his juniors selected through examination of year 2013. That the respondent No.5, who was also a GDS did appear for the post of Postman in year 2014, was selected and was appointed as Postman in year 2014. That applicant had to be posted at Patna Division and respondent No.5 had to be posted against surplus vacancy but that was not done and, therefore, applicant did prefer representation on 18.02.2020 but no decision on his representation has yet been taken.



4. Notice was issued and official respondents filed the written statement. They have not disputed the factual position that both applicant and respondent No.5 started their career as GDS and after promotion to the post of Postman appeared in LDCE for the post of Postal Assistant/Sorting Assistant and were declared qualified. It has been particularly been stated by official respondents that both applicant and respondent No.5 secured equal marks 65 and that respondent No.5 was allotted Patna Division as he was found senior then the applicant. That respondent No.5 joined cadre of postman on 04.10.2014 as per his application whereas applicant, as per his application joined cadre of postman on 11.03.2015.

5. Needless to say that respondent No.5 did not appear after issuance of notice and ultimately ex-parte proceeding was directed against him on 11.12.2020. The ex-parte proceeding has not been set aside yet however now at this stage of final hearing Shri S.K. Tiwary Advocate has appeared as his counsel and has been allowed to

participate in the proceeding by arguing the matter on behalf of respondent No.5.

6. Heard. Learned counsel Shri Jayant Kr. Karn, appearing for applicant submitted that applicant and respondent No.5 both secured equal marks and were on the same footing in the examination and therefore it was the seniority in the cadre of postman which has to be taken note of while deciding about the preference of allotting the Division. He submits that in written statement respondents have taken the plea that applicant himself in his application for LDCE (Annexure – R/3) has mentioned date of his appointment as postman as of year 2015 and that respondent No.5, in his application has filled the date of appointment as of year 2014 and taking note of that they treated respondent No.5 as senior and appointed him at Patna Division as per his order of preference. Referring the written statement and the applications, learned counsel submits that in application, date of appointment was mentioned because applicant was given promotion in the year 2015 but his seniority was from year 2013. That the applicant was a departmental candidate, respondent Department was well aware about as to how the applicant comes in the cadre of Postman so had the respondents would correctly have analyzed their respective seniority in cadre of Postman taking note of judgment passed in O.A.287/2013, the applicant would have been given Patna Division. He referred the judgment .



7. Learned counsel Shri H.P. Singh, appearing for official respondents do submit that both, applicant and respondent No.5 did

secure same marks in the LDCE and taking note of information given by them in their respective applications about their entry in postman cadre, the preference was given and respondent No.5 was given posting at Patna Division. He fairly did admit that had the correct position would be before the respondent Department, the decision could have been taken accordingly. He submits that applicant has preferred representation but because of pendency of this O.A. no decision could be taken by the respondent Department on said decision. He urged that in interest of justice and fair play the O.A. may be disposed of giving liberty to the respondents to take decision on representation of the applicant and assured that respondent after examining the pros and cons of the matter would take appropriate decision. He also inform that result of next LDCE has also come meanwhile.



8. Learned counsel Shri S.K. Tiwary submits that the length of actual service in postman cadre was taken note of and respondent No. 5 was given preference rightly, however, he is having no objection if opportunity is given to the respondents to take decision on representation, Annexure – A/2 of the applicant. Learned counsel for applicant also, at this stage gave his endorsement to dispose of the O.A. giving direction to the respondents to take decision on the representation of the applicant and requests that time frame may be fixed for taking decision on the representation.

9. We have considered the submissions and have perused the records. It is not disputed that applicant and respondent No.5 both

secured equal marks in LDCE for postal assistant, held in 2019 and therefore it was the seniority/length in service in the cadre of postman which has to be taken note of while deciding about the preference of allotting the Division. Applicant has appeared in the examination for the post of Postman in Patna Division in year 2013, was declared successful but appointment was kept in abeyance in Patna Division and upon filing O.A. No. 287/2013 by the applicant, the Hon'ble Tribunal on 04.04.2014 did direct the respondents to give promotion to the applicant and to fix his seniority from the date his juniors have been permitted to join on the promotional post. After judgment passed in OA no. 273/2013 applicant was appointed vide Order dated 27.01.2015 and his seniority thus has to be as per Order of the Tribunal. Operative portion of Judgment passed in O.A.287/2013 reads as under:-



“The respondents are directed to give promotion to the applicants in pursuance to the result published on 28.01.2013 and their seniority may be fixed from the dates their juniors have been permitted to join on the promotional post. The actual benefit of pay and allowances shall, however, be allowed from the date of joining in the post of Postman/Mail Guard. It is further clarified that the respondents are at liberty to deny promotion to a candidate if they find any material of unfair-means adopted by the said employee. But before taking any action, they are to serve with a show cause notice containing the imputations and have to pass a reasoned order giving opportunity to show cause. Without resorting to such procedure, the

respondents cannot in a blanket way, cancel the entire departmental examination of Patna Division only as by that genuine selected candidates shall suffer for the action of some unscrupulous employees resorting to malpractice by way of impersonation.”

The respondent No.5 did appear for the post of Postman in year 2014 was selected and was appointed as Postman in year 2014.



10. Taking note of submission and surrounding circumstances, this O.A. is disposed of with direction to the respondents to take decision on the representation dated on 18.02.2020 of the applicant within a period of ten weeks from the date of receipt of copy of this order. No costs. Pending M.A., if any, also stands disposed of.

Sd/-
[Sunil Kumar Sinha]
Member [A]

sks/-

Sd/-
[M.C. Verma]
Member [J]