

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 36/Jodhpur/2011.

Date of decision: 04.09.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Onkar Lal Suthar S/o Shri Nana Ram aged 39 years, Postal Assistant, Post Office LSG, Pratapgarh, resident of Village Jamalpura, District Pratapgarh.

..... Applicant

[By Mr. Vijay Mehta, Advocate]

Versus

1. Union of India through the Secretary, Ministry of Communication (Department of Post), Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan, Jaipur.
3. Post Master General, Southern Region, Rajasthan, Ajmer.
4. Superintendent of Post Offices, Chittorgarh.

..... Respondents

[By Mr. Vinit Mathur alongwith Mr. Ankur Mathur, Advocates]

ORDER (ORAL)

[PER HON'BLE MR. G. GEORGE PARACKEN]

The applicant in this case was a candidate for the post of Postal Assistant for which the respondent No. 4 has invited applications vide the Notification dated 07.11.2001. As he was denied appointment, he had earlier approached this Tribunal vide OA No. 172/2002 and this Tribunal vide Annex.A/2 order dated 17.07.2003 disposed of the same with the direction to the respondents to re-consider his candidature for appointment as Postal Assistant. The respondents challenged the aforesaid order unsuccessfully before the Hon'ble High Court of Rajasthan in Writ Petition No. 719/2004 and then before the Hon'ble Apex Court in

✓

the Special Leave Petition. Both the Writ petitioner and the SLP were dismissed on 24.02.2004 and on 06.04.2010 respectively. Therefore, they have appointed the applicant as Postal Assistant vide the impugned Annex.A/1 order dated 20.08.2010.

2. The contention of the applicant is that in the above facts and circumstances of the case, he should have been appointed from the date, similarly placed candidate, Shri Ratan Lal Meena was appointed w.e.f. 15.01.2003. His further contention is that if the respondents had given him appointment in time along his batchmates who were appointed in terms of the aforesaid Notification dated 07.11.2011, he also would have been covered by the CCS (Pension) Rules, 1972 and not under the new Pension Rules came into effect from 1.1.2004. He has, therefore, made a representation to the respondents on 21.10.2010, requesting them to prepone the effective date of his appointment as Postal Assistant, accordingly and also to include his name under the CCS (Pension) Rules, 1972. Since the respondents have not considered the said representation and passed no orders on it, he has approached this Tribunal by filing the present O.A. seeking the following reliefs :-

"The applicant prays that the respondents be directed to give the same benefits like salary, bonus, seniority and pension according to the Pension Rules of 1972 at par with Shri Ratan Lal and consequently para 9 of ANN. A-1 may kindly be ordered to be deleted. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."

3. The respondents in their reply have submitted that though applicant was given appointment w.e.f. 25.08.2010 pursuant to the Notification dated 18.10.2001, ^{e ✓} yet he cannot be treated at par

2

with Shri Ratan Lal Meena as he could not be selected earlier because he did not secure the required percentage of marks. However, after the matter was finally decided by the Hon'ble Apex Court on 06.04.2010 he was given a fresh appointment vide order dated 14.06.2010 and pursuant to the same, he joined on 25.08.2010. They have also stated that since the applicant has joined only on 25.08.2010, he cannot be brought under the CCS (Pension) Rules, 1972.

4. We have heard the learned counsel for the applicant Mr. Vijay Mehta and the learned counsel Mr. Vinit Mathur, appearing for the respondents. It is not necessary for us to go into the back-ground of the case denying appointment to the applicant to the post of Postal Assistant in terms of the respondents' Notification dated 07.11.2001. It will suffice to say that this Tribunal vide its order dated 17.07.2003 in OA No. 172/2012 (supra) held that the applicant has been denied selection wrongly. The relevant part of the said order is reproduced as under :-

"The Respondents have not made available the detailed of candidates selected either in this year or in the preceding selection of Postal Assistants for the Chittorgarh Division. However, some details have been made available as per Annexure - R-2 relating to R.O., Ajmer. A perusal of the same also indicates that the applicant secured more marks than any candidate belonging to S.C. category in part 'B' of the Recruitment for the year 1994. Part 'A' of Annexure - R-4 indicates that one Shri Suresh Kumar Bunkar had secured 69.60% marks. This candidate was from outside quota. If a comparison with his performance is made and 10% reduction of marks of 69.90% is allowed, even then the applicant is eligible for being appointed, as he had secured 64.85% of marks. It is stated that the post notified for the candidates belonging to OBC category is still not filled up. If it is so, the Respondents are directed to consider the appointment of the applicant against that vacancy if the applicant is otherwise found suitable for the appointment."

✓

5. In view of the reasons give in the preceding paragraphs, this O.A. is allowed, without any orders as to costs."

5. However, the respondents have chosen to challenge the aforesaid order of this Tribunal before the Hon'ble High Court of Rajasthan at Jodhpur and on its rejection, before the Hon'ble Apex Court, again without any success. Finally, they have issued the impugned Annex.A/1 order dated 20.08.2010 stating that the applicant was selected and appointed as Postal Assistant on his satisfactory completion of the prescribed course of training against the unfilled vacancy of LGO examination held on 11.02.2001 and he joined duty on 25.08.2010. When this Tribunal vide its order dated 17.7.2009 has held that the denial of appointment to the applicant as Postal Assistant on the basis of the LGO examination held on 11.02.2001, was unjustified, the natural conclusion is that he was entitled to be appointed to the said post along with his batch mates. But the respondents did not comply with the aforesaid order but challenged it before the High Court and the Supreme Court unsuccessfully. Therefore, the respondents have to bear the consequences of delay of over 9 years in appointing him as Postal Assistant. As held by the Apex Court in **Kalabharati Advertising vs. Hemant Vimalnath Narichania** (2010) 9 SCC 437, no litigant can derive benefit from the mere pendency of a case in a Court of Law. The relevant part of the said judgment is as under :-

"15" No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case found,

✓

ultimately devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court."

Again, as held by the Apex Court in **Food Corporation of India Vs. S.N. Nagenkar** 2002 (2) SCC 475, as the applicant was denied the appointment for no of his fault, he is also entitled for the arrears of pay and allowances. The relevant part of the said judgment is as under :-

"19. Having regard to the facts and circumstances of the case, the Court was satisfied that the respondent was not only to be considered for promotion to the promotional posts, but was also entitled to arrears of pay and allowances since he had been deprived of those benefits not on account of any fault of his but on account of the fault of the authorities concerned. It is well settled that in exercise of writ jurisdiction, the court may mould the relief having regard to the facts of the case and interest of justice.

20. In this appeal, we are not called upon to pass a judgment on the correctness of the order passed by the learned Judge in Civil Writ Petition No. 4983 of 1993 dated 6.5.1994. The only question that arises for consideration is whether under the said judgment and order, the respondent is entitled to the arrears of pay and allowances from the dates of promotion. In our view the learned Single Judge as well as the Division Bench in letters patent appeal have correctly held that the respondent (petitioner in the writ petition) is entitled, in terms of the order dated 6.5.1994, to arrears of pay and allowances with effect from the dates he was granted the two promotions, and not from the date he joined the promotional posts. No interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India is called for. This appeal is, therefore, dismissed with costs which is quantified at Rs. 2500."

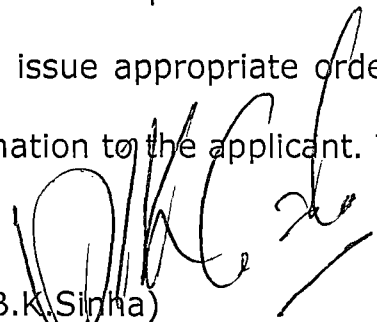
6. Here, we also hold that it is not relevant whether Shri Ratan Lal Meena has been given appointment from a particular date. What

/S

is important is the date from which person next to the applicant in the merit has been given the appointment as Postal Assistant.

7. In the above facts and circumstances of the case, we allow this OA and direct the respondents to appoint the applicant as Postal Assistant from the date the next candidate in the merit list prepared by the respondents pursuant to the notification dated 7.11.2001 and the examination held on 11.02.2001 had been appointed as Postal Assistant. His seniority shall also be fixed on the basis of his merit position in the said examination. The respondents shall also grant all consequential benefits including arrears of pay and allowances after deducting the pay and allowances which he has already received as a GDS BPM during the relevant period, continuity of service, fixation of his pay etc. Again, as the delay in his appointment as Postal Assistant is not attributable to him, he shall be governed by the provisions of the CCS (Pension) Rules, 1972 as in the cases of his batch-mates.

8. In compliance of the aforesaid directions, the respondents shall issue appropriate orders within a period of two months under intimation to the applicant. There shall be no order as to costs.


(B.K. Sinha)
Administrative Member


(G. George Parackal)
Judicial Member

jrm

[Handwritten signature]

Handwritten notes:
28/9/12