

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PATNA BENCH : PATNA

Registration No. OA-734 of 1995

Date of Order:- 11.9.1997

Jagdish Prasad, Son of Late Ganauri Sao, resident
of village Bahadurpur, Post Office Bahadurpur,
P.S. Rajauli, District Nawada

.... Applicant

Versus

1. Union of India through the D.G. (Post),
Government of India, New Delhi-110001.
2. Chief Postmaster General, Bihar Circle,
Patna-800001.
3. Sr. Superintendent of Post Offices, Gaya Division,
Gaya.
4. The Sub-Divisional Inspector of Post Offices,
South Sub-Division, Gaya

.... Respondents

Counsel for the applicant	.. 1. Shri N.P.Sinha
	2. Shri I.D.Prasad
Counsel for the Respondents	.. Shri J.N.Pandey, Senior Standing Counsel

Coram:- Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman
Hon'ble Mr. R.K.Ahooja, Member (Administrative)

O R D E R

Hon'ble Mr. R.K.Ahooja, Member (Administrative):-

1. The facts of the case in brief are that the applicant was working as EDBPM, Bahadurpur and was retired on 11.1.1994 on the basis ~~that~~ that his date of birth was 12.1.1929. This date of birth was exhibited

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in one of the gradation list, of ED Staff of Gaya Postal Service prepared by Respondent No.3. The applicant claimed that his actual date of birth as based on the School Leaving Certificate was 6.4.1943 and this date had also been entered correctly in his service record. The representation of the applicant was considered and after verification of his duplicate School Leaving Certificate produced by him his plea was accepted and he was reinstated in his service with effect from 7.11.1994. However, the period spent by the applicant out of employment from 11.1.1994 to 7.11.1994 was ordered to be without wages by the respondents (Annexure-A-7). He is aggrieved by this order and the applicant has come before this Tribunal seeking a direction that the respondents should give the wages for the said period.

2. In their Counter-Affidavit the respondents gave a history as to how the representation for reinstatement of the applicant was dealt with and how he came to be reinstated. They submitted that the petitioner's case for payment of wages was duly considered and the Superintendent of Post Offices was pleased to condone the period of absence from duty and the period was also to count for promotion and grant of ex-gratia, gratuity, etc.

3. Having heard the learned counsel for either side and having gone through the pleadings on record we find that ^{as there is} no justification, whatsoever, for withholding the wages of the applicant for the period he was out of employment. The respondents have admitted that the correct date of birth of the

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applicant was 6.4.1943. Thus, the applicant was made to retire on 11.1.1994 on the basis of a wrong date of birth, namely, 12.1.1929 entered in the graduation list. We are not impressed by the arguments of the learned counsel for the respondents that the applicant was not entitled to the wages for the period between 11.1.1994 to 7.11.1994 since he had not worked during this period and that on the principle of "No work no pay" he was not entitled to receive any remuneration. It is not the case of the respondents that the applicant was not willing to work in this period. Obviously he did not work because he was kept out of his job by the respondents. The Hon'ble Supreme Court in ~~the~~ case of Union of India Versus K.V. Jankiraman, etc. (AIR 1991 Supreme Court 2010) when dealing with the question of payment of salary on promotional post where such promotion is delayed on account of pending disciplinary proceedings, but the charged officer is ultimately exonerated, have observed as follows:-

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "No work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

4. In the present case though there were no disciplinary proceedings, all the same the applicant was kept out of work for no fault of his. Clearly therefore, he was entitled to the wages for the period from 11.1.94 to 7.11.1994 and the principle of "No work

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no pay" was not applicable.

5. In the light of the above discussion, we have no hesitation in allowing this application. The respondents are directed to pay the wages for the period 11.1.94 to 7.11.94 to the applicant within three months of the receipt of ~~the~~ copy of this order. There shall be no order as to costs.

SKS

~~R.K. Abooja~~
(R.K. Abooja)
Member (A)

V.N. Mehrotra
(V.N. Mehrotra)
Vice-Chairman

11-9-97