

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.509 of 1996

(M.A. No.441 of 2000)

Date of order 22-3-2001

Suman Kumar Rampuri, son of Sri Nitya Nand Rampuri,  
village Rampurwa, P.S. Govindganj, district East Champaran.

.. Applicant

-versus-

1. Union of India through the Chief Postmaster General, Bihar, Patna.
2. Superintendent, Post Offices, Champaran Division at Motihari.
3. Bishwanath Prasad, son of Late Nandeeplal, village Purandarpur, PS Malahi, P.O. Sirni Bazar, District East Champaran.
4. The Director of postal Services, Northern Region, Muzaffarpur-2.

.. Respondents

Counsel for the applicant ..Mr. J.P.Shukla.  
Mr. S.N.Tiwary.

Counsel for the official respondents ..Mr. G.K.Agarwal.

Counsel for private respondent..Mr. N.P.Sinha

C O R A M : Hon'ble Mr. Justice S. Narayan, Vice-Chairman  
Hon'ble Mr. L.R.K. Prasad, Member (A)

O R D E R

L.R.K. Prasad, Member (A) :-

This O.A. has been filed seeking following reliefs:-

- Handwritten signature*
- (a) The order contained in Memo No. Staff/ED-117/94 dated 13.9.1996 issued by Director of postal Services, Northern Region, Muzaffarpur, and the order of termination of services of the applicant and reinstatement of Sri Vishwanath Prasad (respondent no.3), Ex-EDBPM as EDBPM of Rampurwa Bazar contained in Memo No. A-318 dated

2.9.1998 (Annexure-A/8) be quashed.

(b) The respondents be directed to reinstate the applicant on the post of EDBPM, Rampurwa Bazar EDBO and allow him to join duty.

(c) The order dated 2.1.1995 (Annexure-A/6) by which the applicant was appointed to the post in question be confirmed.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The background of the case is that the post of EDBPM, Rampurwa Bazar, fell vacant due to superannuation of one Shri Bishwanath Prasad, whose date of birth was recorded as 8th January 1930. The Employment Exchange, Motihari, was requested to sponsor the names of suitable candidates for the post before 23.11.1994. Accordingly, names of 8 candidates, including applicant, were sponsored by the Employment Exchange. Two more names were sponsored on 24.11.1994 which was not considered as they were received after cut off date. After due processing of the case, the applicant was selected for appointment to the post in question. Accordingly, an appointment letter was issued in his favour on 2.1.1995 (Annexure-A/6) thereby he was appointed provisionally as EDBPM, Rampurwa Bazar. It was made clear in the said appointment letter that his appointment would be in the nature of contract, liable to be terminated by him or by the respondents by notifying the order in writing. His conduct and services shall be governed by the P&T EDA's (Conduct and Services) Rules, 1964, amended from time to time. After accepting the terms and conditions of appointment, the applicant

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joined the post on 16.1.1995. In the meantime, Shri Bishwanath Prasad (respondent no.3) represented against his superannuation. He asserted that his date of birth is 12th January 1936 and not 8.1.1930. In support of his claim, he filed necessary certificates regarding his date of birth. Therefore, he alleged that he has been wrongly made to retire about six years before actual date of retirement. As there was no positive response to his representation, respondent no.3 filed O.A.123/95 in which the applicant was also made party. The said O.A. was disposed of on 8.3.1995 (Annexure-R-3 attached with W.S. of respondent no.3) with the following directions:-

"In the conspectus of facts and circumstances, we think that this application can be disposed of by giving a suitable direction to the Chief Postmaster General, Bihar, Patna, to dispose of the representation of the applicant as contained in Annexure-A-10 dated 1.12.1994 and the regd.letter sent by the Lawyer addressed to Shri R.P.Lal, Superintendent of post offices, Champaran Division, Motihari on 4.1.1995 as contained in Annexure-A-11 within a period of two months from the receipt of this order and we, accordingly, direct that these representations be disposed of by the competent authorities, as the case may be, within a period of two months from the receipt of this order and with this observation, this application is disposed of."

4. In pursuance to the direction of this Tribunal passed in O.A.123/95, the matter was considered by the concerned respondents and a detailed self-contained order was passed by him which is at Annexure-R-4 attached

with W.S. of respondent no.3. He declared that superannuation of respondent no.3 on 13.12.1994 was defective on the following grounds:-

- (i) gradation list which is prepared on 10.9.91 and not based on any documentary evidence.
- (ii) It has not been signed by the applicant.
- (iii) The entries in the gradation list as far as the date of joining is concerned is not correct.
- (iv) Other documentary evidence related to the date of birth like original application form, fidelity bond, the gradation list maintained by the S.D.I., who was the then appointing authority, description particulars on attestation form at H.O. could/have not been examined.
- (v) Six months notice which was required to be given before superannuation was not done.
- (vi) The notice of Shri N.P.Sinha dt.4.1.95 was not properly examined touching on all aspects by the S.P.S, Motihari, as he chose to give a vague reply."It is to intimate that your representation was examined and not found tenable".

As the superannuation order relating to respondent no.3 was defective, it was observed that his date of birth seems to be closer to 12.1.1936, rather 8.1.1930. However, it is difficult to arrive at this position and it may be subject to further documentary evidence which may be brought into the knowledge at any future time. In view of above, it was ordered by the concerned respondent that Shri Bishwanath

Prasad be reinstated at the post of EDBPM, Rampurwa Bazar by quashing the appointment of respondent no.7, Shri Suma Kumar Rampuri (the applicant of present O.A.) after issuance of proper show cause notice and other necessary formalities as required under ED Conduct Rules. In view of the aforesaid order, a termination notice under Rule 6(a) and (b) of the P&T EDAS (Conduct and Services) Rules, 1964, was issued vide Office Memo No.A-318 dated 23.9.1996 to the applicant. As an interim stay was granted by this Tribunal on 24.10.1996 (which was extended from time to time), no further action was taken regarding termination of the applicant from the post. The interim stay was finally vacated on 22.5.1998 as per following directions:-


"Considering the above facts we do not find that there is any sufficient ground for granting or continuing interim order as it will amount to keeping out respondent no.3 from the post even after the matter has been considered and decided by the Director, Postal Services, in favour of the respondent. Further, in case the applicant ultimately succeeds in this O.A. he can be given relief to compensate him in case it is found that any loss has been caused to him. With these observations the prayer by the applicant for grant of interim relief is refused and the interim relief granted on 24.10.1996 is vacated."

5. In his communication dated 13.9.1996 (Annexure-A/7), the Director of Postal Services, Northern Region, Muzaffarpur, has heavily commented on the manner in which the gradation list was prepared in 1991. According to him, the gradation list should have been prepared on

the basis of descriptive particulars of attestation form. Nothing of this kind was done by the Superintendent of Post Offices, Motihari. The documents of his office also got burnt in a fire in 1990. He has also made some other observations which are mentioned therein.

6. It appears that vide Memo No.A-318 dated 2nd September 1998, the services of the applicant were terminated and he was directed to hand over the charge of the post in question to Shri Bishwanath Prasad, Ex-EDBPM of Rampurwa Bazar B.O.

7. The applicant has stated that he was duly selected to the post in question through selection process. According to him, the respondent no.3 was made to retire earlier on valid grounds, as his date of birth is 8.1.1930 and not 12.1.1936, as has been claimed by respondent no.3. While citing various judicial pronouncements, the applicant has stated that no correction in the date of birth can be made after a long time. As per rule, an employee must file his representation for correction of date of birth/age within five years from the date of joining service. No such representation was made by respondent no.3 for correction of his age within the prescribed period. Therefore, he cannot claim the benefit later on by declaring that his date of birth is 12.1.1936 and not 8.1.1930. So far as this aspect of the matter is concerned, it may be stated that regarding correct age, respondent no.3 had filed O.A.123/95 before this Bench in which the applicant was also made party. After careful consideration of the entire matter, the said O.A. was disposed of on 8.3.1995 with the directions,



as quoted above. The concerned respondent was directed to consider the issue and pass appropriate order.

In pursuant to the aforesaid directions, the Director of Postal Services, Northern Region, Muzaffarpur, has already passed necessary reasoned order, which is at Annexure-A/7. In fact, after terminating the services of the applicant, the respondent no.3 was reinstated to the post of EDBPM, Rampurwa Bazar. During the hearing, we got an impression that he has also retired from service in January 2000. In view of the aforesaid position, the issue relating to the age of respondent no.3 becomes infructuous and, as such, no further adjudication in this regard is required.

8. While relying on certain judicial pronouncements, as stated in the O.A. and referred to during the course of argument, the learned counsel of the applicant stated that the services of the applicant were terminated in violation of principle of natural justice and the prescribed rules. There was no allegation of any misconduct against the applicant. He has been working since 1994 and his work was satisfactory. In normal circumstances, the aforesaid argument advanced by the learned counsel of the applicant might have tilted in favour of the applicant. However, the case of the applicant in the instant O.A. has to be considered in the light of order passed by this Tribunal in O.A. 123/95 on 8.3.1995 and the consequential reasoned order passed by Director of Postal Services, Northern Region, Muzaffarpur, which is at Annexure-A/7.

9. The basic fact remains that the respondent no.3 was made to retire on the basis of his date of birth

being 8.1.1930, whereas, the respondent no.3 had claimed his date of birth as 12.1.1936. The respondent no.3 had raised the dispute with regard to date of birth and had made representation before the concerned authority accordingly. Without resolving the issue, the respondents asked the Employment Exchange to sponsor names for the post of EDBPM, Rampurwa Bazar B.O. In the selection process, the applicant was selected and <sup>he</sup> joined the said post on 16.1.1995. It is only after appropriate direction was issued in O.A.123/95 (supra) that the Department examined and considered the entire matter, whereafter, a reasoned order was passed by the Director of Postal Services, Northern Region, Muzaffarpur, which is at Annexure-A/7. It may be pointed out that on 24.10.1996 an interim order had been granted to the applicant but the same was vacated vide order dated 22.5.1998 on the grounds as stated therein in the order. While passing order on 22.5.1998, this Tribunal had observed that as the applicant had not worked for more than 3 years as EDBPM, his services could be terminated by giving one month's notice under Rule 6(a) and (b) of P&T EDAS (Conduct and Services) Rules, 1964. Such a notice had actually been served on the applicant.

10. As already pointed out above, the order passed by the concerned authority in pursuance to the direction of the Tribunal passed in O.A.123/95 is self-contained. The said order gives specific reasons in favour of respondent no.3, who was ultimately reinstated to the post. During the hearing, it was brought to our notice that the respondent no.3 will be retiring from service in January 2001 taking into account his date of birth as 12th January 1936. In view of the above facts, the





points raised by the applicant with regard to the age of respondent no.3 become infructuous.

11. During the course of hearing, it was pleaded on behalf of the applicant that as respondent no.3 is likely to retire in January 2001, the case of the applicant should be considered for appointment to the post in question after retirement of respondent no.3.


12. From the above pleadings, one thing is clear that when respondent no.3 was reinstated, there was no alternative for the respondents but to terminate the services of the applicant which was actually done. As the applicant had been selected with reference to a particular advertisement, which goes away with the reinstatement of respondent no.3, there is no scope for giving direction to re-appoint the applicant to the post in question after the retirement of respondent no.3. In all fairness, there should be a fresh process of selection which can be availed of by the applicant as well. It appears from M.A.441/2000 filed by the applicant that for filling up the vacancy of EDBPM, Rampurwa Bazar B.O. in account with Manguraha S.O., the Employment Exchange, Motihari, has already been requested to sponsor names of suitable candidates for the post in question, as is clear from Annexure-A/1 attached with M.A.441/2000. In the said M.A., the prayer of the applicant was to stay the aforesaid notification (Annexure-A/1 of M.A. 441/2000) till the disposal of the main O.A.

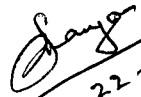
13. We have considered the entire matter in the light of submissions made by the parties and materials on record. In the ultimate analysis of the case, we have

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reached conclusion that this O.A. has no merit and the same is, accordingly, dismissed. In the light of aforesaid position, M.A.441/2000 also stands disposed of.

14. There shall be no order as to the costs.

  
22.3.01  
(L.R.K. Prasad)  
Member (A)

  
22-3-01  
(S. Narayan)  
Vice-Chairman