

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A.No. 86 of 1996.

DATE OF DECISION: MARCH 16th, 2004.

1. Uma Shankar Sharma, S/o Shri Saligram Singh, deceased
2. Ramawatar Chaudhary, S/o Shri Ayodhya Chaudhary, deceased.
3. Raj Kumar Singh, Thakur, S/o Gopalji Thakur, deceased.
4. Vijay Kumar Sinha No. II, S/o Late Bishambhar Pd.

All the applicants are working as Junior Accounts Officer in the Department of Postal Accounts, Bihar Circle, Patna.

.... Applicants.

By Advocate : Shri S.K. Sinha.

Vs.

1. The Union of India through the Director General, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Bihar, Patna.
3. Director of the Accounts (Postal), Jaidaka Bhawan, Exhibition Road, Patna.
4. Pravin Kumar
5. Kishore Kumar Sahay
6. Raj Ballav Prasad
7. Kailash Prasad Sharma
8. Vijay Kumar Sinha No. I
9. Vijay Kumar
10. Sheonandan Thakur.

Respondents No. 4 to 10 are working as Junior Accounts Officer, Postal Accounts, Bihar Circle, Patna.

11. Om Prakash Sahu, Junior Accounts Officer, presently on deputation in the office of Director General, Deptt. of Posts, Dak Bhawan, Sansad Marg, New Delhi.

... Respondents.

By Advocate : Shri H.P. Singh.

C O R A M

Hon'ble Smt. Shyama Dogra, Member (J)

Hon'ble Shri Mantreshwar Jha, Member (A)

O R D E R

By Shyama Dogra, M(J):- The applicants (4 in number)

have filed an application with the prayer to allow them

to pursue the matter jointly as the reliefs sought for

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by them are common, and the issue involved in the matter is also one and the same. The prayer is granted accordingly.

2. Earlier the applicants have prayed for quashing of panel containing the names of the private respondents vide letter dated 15.1.1996 (Annexure A/1) for promotion to the post of Assistant Accounts Officer (AAO in short), with further directions to the respondents to consider the case of the applicant for their promotion to the post of AAO with effect from 1.1.1995 with all consequential benefits. However, later on in view of the subsequent development, since the applicants have been promoted to the post of AAO on 19.1.1998, while filing rejoinder, they have confined their prayer to give directions to the respondents to grant promotion to the applicants as AAO (Postal) with effect from 2.2.1996 along with consequential benefits from the date their juniors (private respondents) were promoted.

3. The main ground for seeking the aforesaid reliefs, as set out by the applicants, are that as per Annexure A/4, the applicants were admittedly senior to the private respondents, as they appear at serial No. 8 to 11 in the office order issued on 27.11.1992, whereas some of the private respondents have been shown at serial No. 12, 13 and 14. This letter has been issued on the basis of these candidates being qualified

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in the junior accounts officers part II examination held in November, 1988.

4. Moreover, the said posts of Assistant Accounts Officers is a non-selection posts, which is evident from Annexure -5, which is a copy of the recruitment rules, 1991, pertaining to Assistant Accounts Officers. Therefore, for the said promotion, the applicants' seniority has to be taken into consideration from the due date when their juniors were promoted as such in the year 1996, whereas the applicants have now been promoted to the said post on 19.1.1998 without assigning any reason, though they have already been placed above these respondents in the seniority list.

5. In support of their contentions, the applicants have also placed reliance on one letter dated 25.8.1995 (Annexure A/7) along with statement showing particulars of junior accounts officers promoted to the cadre on regular basis upto 30.9.1995, and the applicants' names have been shown at serial no. 8 to 11 above one private respondent, namely, Om Prakash Sahu, and their date of regular appointment as junior accounts officers has been shown as 4.9.1991.

6. It is submitted by the learned counsel for the applicant that in view of these documents, the applicants were entitled to be considered for

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promotion to the post of Assistant Accounts Officers from the date when their juniors/private respondents were promoted and more over when the applicants have been given promotion from 1998, the respondents have not shown any cogent reason/grounds in their written statement as to why the applicants have not been promoted from 2.2.1996 when the private respondents were promoted , inspite of the fact that the applicants were admittedly senior to some of these respondents.

7. The respondents have filed written statement and submitted that the applicants were declared successful in the examination held for the post of JAO Part I and Part II examination held in the year 1988. However, the result of the said examination was announced on 11.5.1989 in which only one candidate, namely, Om Prakash Sahu , respondent No. 11 was declared successful, and he was promoted to JAO cadre with effect from 21.7.1989 on regular basis. So far as announcement of other remaining 13 candidates including the applicants is concerned, the same was declared later on on 4.10.1990 and the applicants were also declared successful, and they were promoted to the grade of JAO with effect from 24.10.1990. The reasons for late declaration of the result of these candidates was due to use of unfair means used by these candidates. However, later on, they

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were acquitted of the charges at the relevant point of time in the disciplinary proceedings, and three candidates including applicant No 2 was exonerated and the remaining 9 candidates including applicants No. 1, 3 and 4 were awarded with punishment of "censure".

8. On declaration of the said result, the applicants were promoted to JAO cadre on purely temporary and ad hoc basis with effect from 4.9.1991 against the reserved vacancies of SC and ST to accommodate them, as there were no successful candidates belonging to reserved categories. The final seniority list of successful candidates of 1988 batch was prepared while placing the applicants at serial no. 9 to 12, and respondents no. 10 and 11 were placed at serial no. 13 and 14.

9. With regard to promotion of the applicants to the post of AAO, it is submitted in the written statement that after the meeting of DPC held in Jan, 1996, the details furnished on approved panel was consisted of 8 junior accounts officers who were recommended for promotion to AAO for the panel year 1988. However, the names of the applicants were not found in the said panel. Later on vide letter dated 15.1.1996, the approved panel included some 14 names of JAO including the names of the applicant for consideration for promotion to the said post of AAO,

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and it is obvious from the said letter dated 15.1.1996 that the list of JAO furnished under office letter dated 25.8.1995 (A/7) has not been taken into consideration while making recommendation. Therefore, on receipt of approved panel of 8 recommended candidates, they have been promoted to the grade of AAO on 2.2.1996.

10. It is further submitted by the respondents that since all the four applicants were working as JAO in ad hoc capacity and not in substantive capacity and since on publication of the result of 1988 examination and subsequently as they were facing departmental proceedings, therefore, they are not entitled for reliefs whatsoever, as sought for ~~th~~ by them and they were simply allowed to perform their duties in JAO cadre on temporary and ad hoc basis. So far as promotion to the grade of AAO is concerned, the same is purely on seniority-cum-fitness basis as per rules, and ~~xx~~ only those JAO who have completed three years of regular service are eligible for consideration in the DPC.

11. It is further submitted that even the applicants have not prayed for regularisation of their service for the said ad hoc period, therefore, they cannot be promoted from the date when their juniors were promoted.

12. The applicants have filed rejoinder and reiterated their claims with further submission that the applicants' names were sent for consideration by the DPC vide Annexure -7 dated 25.8.1995 for promotion to the post of AAO, but subsequently by the impugned list of Annexure A/1 dated 15.1.1996, their names were omitted without assigning any reasons and the names of their juniors were sent for consideration for promotion to the said post.

13. In reply to the submissions of the respondents that the applicants were working on ad hoc basis on the post of JAO, the same has been specifically denied in view of the fact that the applicants were promoted as JAO on 4.9.1991 on regular basis, which is evident from Annexure A annexed with Annexure A/7. Admittedly, they had completed three years of regular service at the relevant point of time when their case was being recommended for consideration for promotion as AAO.

14. In support of their contentions, the learned counsel for the applicants has placed reliance on the decision of the Supreme Court cited in AIR 1997 SC 250, titled Pilla Sita Ram Patrudu and ors vs. U.O.I. & Ors and (1987) 2 ATC 454 (Cuttack Bench), titled M.B. Patnaik and another vs. U.O.I. & Ors.

15. We have heard the learned counsel for the parties and carefully gone through the record. The present case involves a very narrow point to be decided,

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as the applicants have been promoted to the post of AAO on 19.1.1998. The only question left to be decided is as to why they have not been given promotion from the date when their juniors were promoted with effect from 2.2.1996, particularly in view of the fact that their names were sent for consideration by the DPC vide Annexure A/7 dated 28.7.1995, and admittedly, they were senior to these persons^{respondents} which is evident from Annexure A/4, as all these candidates including the applicants as well as respondents have qualified the test of JAO being held in the year 1988, and the applicants were exonerated from all charges later on, while imposing on them the punishment of censure, which is not a punishment in the legal terms or under the provisions of penalty prescribed under the rules to disentitle them for consideration of their names for promotion. 16. The applicants were also entitled to be considered for promotion to the post of AAO at par with their juniors. Annexure A attached with Annexure -7 also shows that the applicants have been appointed to the post of JAO on regular basis with effect from 4.9.1991. Therefore, it also appears that they were fully qualified to be considered for promotion to the next higher post of AAO, as they have admittedly completed three years of regular service as per rules. 17. Moreover, the respondents have not come out

with any cogent reason to explain as to why the names of the applicants were omitted in the subsequent approved panel of candidates (A/1 dated 15.1.1996) in spite of the fact that their names were recommended to be considered for promotion by the DPC vide Annexure - A/7. Therefore, in view of these reasons, the plea of the respondents that the applicants were not qualified to be considered for the said post at the relevant point of time as they were working on ad hoc basis is not tenable.

18. After perusal of Annexure -3, though it is found that their promotions were made on ad hoc basis subject to the condition that they would have to face reversion immediately after the qualified candidates of reserved categories are available, but it appears from Annexure A/7, which is issued on 25.8.1995 on the basis of A/6 dt.13.7.95 that the applicants have not been reverted to the post of JAO as no candidates from the reserved categories was perhaps available with the respondents till that date.

19. More-over, it is not the case of the respondents that the said letter dated 25.8.1995 (A/7) has been issued on wrong notion. Therefore, we are satisfied with the contentions of the applicants that omission of their names in the subsequent approved panel issued vide Annexure A/1 dated 15.1.1996 has been done on extraneous grounds.

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20. As has been held by the Hon'ble Apex Court in catena of judgements, it is settled principle of law that though the government servants cannot claim promotion as a matter of right, but there is obligation on the part of the authority to consider the case of the employees for promotion, and they should not be denied such benefits if the employees are found fit for the said purpose.

21. In the case of Pilla Sita Ram Patrudu (Supra), it has been held that once the person is found to be eligible according to rules, then his seniority is required to be determined as per procedures prescribed in the rules in vogue for the purpose of promotion. In the present case also, the seniority list of the applicants and the respondents for the post of JAOs has been issued vide Annexure -4 dated 27.11.1992, wherein the applicants have been shown senior to the private respondents, particularly respondents no. 10 and 11, therefore, they were entitled to be considered for promotion from the date when their juniors were promoted i.e. from 2.2.1996 as all these incumbents including the applicants have qualified the test for the post of JAOs in the year 1988 itself.

22. Above all, the respondents have not placed on record letter dated 29.4.1994 (on the basis of which A/1 has been passed) wherein the applicants have been allegedly shown working as JAOs on ad hoc basis whereas on the contrary the letter dated 13.7.95 (A/7) clearly shows

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applicants having been working on regular basis from 4.9.1991. And the respondents have not given any particular reply to A/7, while having submissions in par 26 of the written statement in this regard. Therefore, we find force in the contentions of the applicants that they are to be treated at par with the private respondents for consideration of their names for promotion to the post of AAO.

23. In view of the over-all analysis of the matter and for the foregoing reasons, we are of the considered opinion that the applicants have succeeded in their submissions for their consideration to be promoted at par with their juniors with effect from 2.2.1996 in the light of Annexure A/4 dated 27.11.1992 and Annexure A/7 dated 25.8.1995.

24. Having said so, the concerned respondents are hereby directed to consider the case of the applicants for their promotion to the grade of AAO from 2.2.1996 at par with their juniors in accordance with law and rules on the subject and pass appropriate reasoned and speaking order within a period of four months from the date of receipt/production of copy of this order.

25. In terms of these directions and observations as above, this O.A. stands disposed of, with no order as to costs.

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(MANTRESHWAR JHA) M(A)

(SHYAMA DOGRA) M(J)