

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

[Patna, this Friday, the 4th Day of January, 2008]

C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

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Rajdeo Thakur, son of Late P.Thakur, resident of village – Chiraiya, PO – Chiraiya, District – Motihari. APPLICANT.

By Advocate :- Shri S.K.Bariar.
Shri R.K.Bariar.

Vs.

1. The Union of India through the Secretary, Ministry of Communication, Department of Post, New Delhi.
2. The Director General, Department of Post, Dak Bhavan, Sansad Marg, New Delhi.
3. The Chief Postmaster General, Bihar Circle, G.P.O. Complex, Patna.
4. The Director of Accounts [Postal], Patna.
5. Superintendent of Post Offices, Sitamarhi Division, Sitamarhi.

..... RESPONDENTS.

By Advocate :- Shri Amitav Pandey, ASC.

O R D E R

Justice P. K. Sinha, V.C.:- Having denied the benefit of pension on the ground that the applicant, on assuming charge in a Group 'D' post on 09.06.1995 and having retired on 31.07.2004, had not completed ten years of qualifying service before superannuating, the applicant has come to this Tribunal for treating his service to be w.e.f. 01.07.1994 and for directing the respondents to pay him the pension and consequential benefits, with interest.

2. The applicant claims that while working as ED Packer, Chiraiya

in account with Motihari Head Office, he was eligible to be considered to a Group 'D' post in accordance with his seniority when his turn came against vacancies in a particular year, in case he had not completed 50 years of age on the first day of July of the year concerned. The applicant's claim is that he was born on 10.07.1944 and was eligible for appointment in Group 'D' service for the vacancies occurring upto 01.07.1994 as he would be still short of 50 years of age, by nine days, as on 01.07.1994. DPC was to be held every year and the selections for the concerned year should have been finalised in the year 1994 itself but the DPC was delayed and was held in January, 2005, though treating the applicant to be eligible on age criteria. Thereafter select list was prepared for the vacancies of the years 1994-95 and vide Annexure-A/2, promotion was granted to the selected candidates vide order dated 21.02.1995. The concerned SDI issued letter of posting dated 20.03.1995 [Annexure-A/3] whereafter the applicant joined the service as stated above. The applicant made several representations for grant of pension after his superannuation w.e.f. 31.07.2004, but those did not bring any relief to him.

3. The argument of the learned counsel for the applicant is that for the vacancies of the year 1994 the DPC should have been held in January, 1994 and if that was done and if order of appointment was issued in time, the applicant should have joined before attaining the age of 50 years and would have qualified for pension by completing ten full years of service. The argument is that since the delay was caused by the authorities, the applicant could not be held responsible for that and for that reason his appointment should be treated retrospectively, w.e.f. 01.07.1994.

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4. Plain case of the respondents is that since the applicant had not completed ten years of qualifying service in terms of the provisions under Rule 49 of the CCS [Pension] Rules, 1972 [hereinafter referred to as 'The Pension Rules'] he was not entitled to pension though was entitled to other retiral benefits. While saying so, in the written statement the respondents have also taken a ground that the post could not be filled up because of delayed submission of requisite certificates in support of his service particulars as well for reason that he had not filed application for the same within time.

5. To prove that the applicant is entitled for promotion with effect from a retrospective date, the learned counsel for the applicant has relied upon following decisions :-

- [i] P.N.Premachandran Vs. State of Kerala & Ors.; 2004 SCC [L&S] 170.
- [ii] Bihar Statistical Service Association Vs. State of Bihar; 2005 [2] PLJR 642. This is a decision of Single Judge of the Patna High Court.
- [iii] N.K.Anand Vs. Union of India; [1991] 16 ATC 340. This is a decision of a Division of the CAT, New Delhi.

In so far as the decision in the case of Premachandran is concerned, a number of temporary promotions were granted to the respondent officers, in the Department of Agriculture [Soil Conservation Unit] in the State of Kerala, to the post of Assistant Director [Soil Survey], temporarily and as such, they continued to work on the promoted post from 1964 to 1980. One post was to be filled up by SC/ST Officer by promotion but since no such

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qualified person was available, in the year 1980 the rules were modified and since only the appellant fulfilled the qualification, he was appointed directly to the post of Assistant Director reserved for SC/ST on or about 19.08.1982. So far promoted respondent officers were concerned, no DPC was constituted till 1980 but when the DPC was constituted the promoted respondents were found fit for regular promotion and they were so promoted substantively with effect from the dates on which they were temporarily promoted, since 1964. That was challenged by the applicant and the matter reached the Apex Court. On consideration of the relevant rules, and keeping in view that those temporarily promoted officers had worked for long years on that posts who could not be blamed for not constituting the DPC in the meantime, and since such retrospective promotions also found support from the relevant Rules, their respective promotions were held to be proper and legal.

6. Obviously, this decision is not applicable to the facts of this case. In that case, the temporarily promoted officers were already in the regular Government service and it was a question of their promotion to the next higher post. They had been continuously working on that post and it was found by their Lordships of the Supreme Court that their retrospective promotions also had support from the relevant rules. In this case the applicant was an extra departmental employee which is not a regular or a substantive post which posts are not governed by the rules governing the regular employees but by a separate set of rules. Their promotion in fact amounted to first time recruitment to a regular Government post in Group 'D'.

Same would be the situation in the case of N.K.Anand [supra].

In that case the applicants were working as Analysts in the Staff Inspection Unit of Ministry of Defence. 50% of the posts of Senior Analysts were to be filled up by promotion from Junior Analysts with three years of regular service. In the year 1974, DPC considered filling up of two vacancies of 1974 and prepared a panel of five persons in which the two applicants occupied the third and fourth position. The top two candidates were so regularly promoted as Sr. Analysts whereas the applicants were given adhoc promotion against the short term/deputation vacancies continuously from 03.01.1975. No DPC was held in between 1974 and 1985. The applicants were, however, given regular promotion as Sr. Analysts vide orders dated 06.12.1975 and 25.02.1977, respectively with effect from 27.11.1975 and 01.06.1976. The authorities reconsidered their promotion and issued an order dated 08.04.1983 reverting them back to their adhoc status, withdrawing the order of regular promotion. Thus, on the basis of recommendations of the DPC which had met on 30.05.1985 the applicants were given regular promotion with effect from that date, against two vacancies which had arisen in the year 1978. The applicants challenged the order which was rejected whereafter they came to the Tribunal.

7. The case of the applicants was that they could not have been reverted from regular post to adhoc status after working in that regular post for about eight years. That also was done without giving them any notice. The Tribunal held that after working for many years after their regularization in the promoted post, they should have been given an opportunity to protect their interest. The ground taken by the respondents that the applicants were so



reverted on account of a representation filed by a SC candidate did not impress the Tribunal as that did not mean that the order could be passed without following the principles of natural justice. This Tribunal directed that the applicants were entitled to be regularized with retrospective effect from the year 1978, from the dates the first two vacancies of the year 1978 had materialised. They were allowed consequential benefits of seniority and arrears of pay, if any.

8. In that case also no question of pension was involved. That was a case in which 7 or 8 years after granting regular promotion to the applicants, the same was withdrawn without affording the applicants any opportunity to present their side against any such proposed order. The applicants were already working on that post, even prior to their regularization, on adhoc basis, getting the pay and emoluments of that post. The applicant in this case was neither working on any temporary or Group 'D' post just prior to his regularization or had any claim to the post unless he was selected for that in accordance with the rules and the law.

9. So far the case of Bihar Statistical Service Association [supra] is concerned, the Association had filed a writ petition for filling up of promotional posts which were lying vacant since long but the Government was sitting over those higher vacancies. Holding that since promotion would constitute a fundamental right, that could not have been denied to the officers who were eligible for such promotions. The State was directed to consider their promotion within a time limit, also observing as follows :-

“Needless to state that such consideration and consequential

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grant of promotion would have to be from the date that the respondents would find a candidate eligible for the same.”

In that case also the question of pension did not specifically arise. Moreover, that was a case relating to the employees of the State Government who were already working on regular lower posts. The question was not of their first induction into a regular post but was for promotion to the higher post.

In any view of the matter, in this case also the question of qualifying period for pension was not involved as the officers concerned who were members of the Association were already in the service and their total period of regular service was to be counted for the purposes of pension.

10. Pension of an employee in the Central Civil Services is regulated under the Pension Rules. Rule 13 of the Pension Rules runs as follows :-

“13. Commencement of qualifying service.- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post :

Provide further that -

[a] in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of

sixteen years shall not count for any purpose, and
[b] in the case of a Government servant not covered
by Clause [a], service rendered before attaining the age
of eighteen years shall not count, except for
compensation gratuity.”

Under this Rule the period of qualifying service for the
purposes of pension does not commence from the date of notification of
appointment but “from the date he takes charge of the post to which he is first
appointed”. Therefore, it is not the date of appointment but the date of taking
over charge of the regular post which is to be counted for the purposes of
pension.

11. So far first appointment to a regular post is concerned, there is
no rule which provides that such first appointment could be made with
retrospective effect and the services be counted, for the purpose of pension,
from a retrospective date.

12. In so far as prayer for adding the period of officiation as a
Postman is concerned, the official respondents have stated in para 13 of the
written statement the applicant had so officiated from 20.06.1994 to
21.07.1994, i.e., much before the applicant was substantively appointed to that
post; not that even adding that period would have served the cause of the
applicant any.

13. It may appear to be hard on an employee who could not be
promoted earlier though he might have been so promoted by hastening the
process of appointment. There could be a number of reasons for delayed
conclusion of process for first appointment to a regular post. Whatsoever

hardship such delay may result in, relief can only be granted on the basis of the extant rules and the laws. If law prohibits grant of pension unless the employee has qualifying ten years of service, the Courts/Tribunals cannot allow that substituting its order for the rules/laws. This cannot be done on a wave of sympathy or on humanitarian grounds. Though, so far the question of pension is concerned, the appropriate government should consider remedying this point if the appointment process has been delayed on account of inaction or slow action on the part of the authorities. In the case of Premachandran [supra] a portion of the decision of Supreme Court in the case of A.Janardhana Vs. Union of India; [1983] 3 SCC 601 has been quoted which is hereby reproduced :-


“But avoiding any humanitarian approach to the problem, we shall strictly go by the relevant Rules and precedents and the impact of the Rules on the members of the service and determine whether the impugned seniority list is valid or not. But, having done that we do propose to examine and expose an extremely undesirable, unjust and inequitable situation emerging in service jurisprudence from the precedents, namely that a person already rendering service as a promotee has to go down below a person who comes into service decades after the promotee enters the service and who may be a schoolian, if not in embryo, when the promotee on being promoted on account of the exigencies of service as required by the Government started rendering service. A time has come to recast service jurisprudence on a more just and equitable foundation by examining all precedents on the subject to retrieve this situation”.

This observation may also be applied to the question of

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computation of the period of pension in such delayed cases. But in so far as the Rules stand, I find myself unable to allow this application.

14. This application, therefore, is dismissed. No costs.



[P.K.Sinha]/VC

skj.