

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 21 of 2006**

Patna, dated the 22nd January, 2007

CORAM: The Hon'ble Mr Justice P.K.Sinha, VC
The Hon'ble Mr S.N.P.N.Sinha, M[A]

1. Sanjay Kumar Shrivastava, s/o Sri Subhash Chandra, Village Registry Bazar, Sonepur, District Saran.
2. Satendra Kumar, s/o Late Ram Jatan Rai, Village Kharika, PS Sonepur. District Saran.
3. Santosh Kumar Ram, s/o Sri Sarveshwar Ram, Village Kharika, P.S.Sonepur. District Saran.
4. Sohan Prasad Sah, s/o Sri Raghunath Prasad Sah, Village Dharhara, District Vaishali.
5. Dilip Kumar, s/o Sri Shiv Nath Bhakta, Village Kashmad, PS Sonepur. District Saran.
6. Mukesh Kumar, s/o Late Ram Bhajan Rai, Village Sonepur Adam, PO & PS Sonepur. District Saran.
7. Indrajeet Kumar, s/o Sri Nand Kishore Singh, Village Husepur, PS Sakra, District Muzaffarpur.
8. Vikash Kumar Choudhary, s/o Sri Vishwanath Choudhary, Village Kharauana, PS Kudhanni, District Muzaffarpur.

Applicants

By Advocate: Mr J.K.Karn

versus

1. The Union of India through the Secretary-cum-Director General, Department of Posts, Dak Bhawan, New Delhi.
2. The Postmaster General Northern Region, Muzaffarpur.
3. The Superintendent, RMS, 'U' Division, Muzaffarpur.
4. The IRMU-2nd Sub Division, RMS, Sonepur.
5. Sri Upendra Narayan Sah, through Superintendent, RMS 'U' Division, Muzaffarpur.
6. Sri Dinesh Mahto through Superintendent, RMS 'U' Division, Muzaffarpur.

Respondents

By Advocate: Mr M.K.Mishra

ORDER

S.N.P.N.Sinha, M[A]:

The present application has been filed for direction to

treat the date of entries of the applicants [eight in number] in the Department as on their respective dates of appointment in January 1997, to determine their seniority accordingly, to pay the salary and other allowances for the intervening period [1.2.97 to 16.5.2000] they were kept out of job, with interest, to declare the recommendations of the Departmental Promotion Committee made at its meeting held on 30.12.2005 as null and void and to consider promotion of the applicants to Group 'D' cadre by holding a review DPC. The applicants are working on the post of Gram Dak Sewak Mailman having been appointed in January 1997. They were all terminated by order dated 31.1.97. They challenged the orders of termination through three applications filed before this Tribunal-OA No.97, 98 and 420 of 1997 which were finally allowed on 15.3.2001. The applicants were thereafter reinstated on their posts on 17.5.2001 but were treated as new entrants. A gradation list was published by the Department dated 11.6.99 wherein the applicants' names were missing. They represented for fixation of their seniority and payment of back wages, but no action was taken by the respondents. They were instead served show cause notices dated 30.9.2002 ~~proposing~~ ^{purposing} their termination. The applicants submitted their replies. The proposed action of termination was dropped by order dated 8.11.2002. The Department, suddenly, ordered termination of the applicants' services by orders dated 7.4.2004 and 19.4.2002. This was challenged before this Tribunal in OA No.312 and 313 of 2004. The orders of termination were stayed. The respondents filed CWJC No.14755 of 2004 wherein the Tribunal was directed to decide the case on merit expeditiously. Finally, by order dated 18.3.05 this Tribunal allowed the two applications. The respondents challenged the orders in CWJC No. 8242 and 8341 of 2005, both of which were dismissed on 3.8.2005. The applicants were reinstated on 5.9.2005. It was further submitted that persons of the cadre of GDSMM having completed 5 years of service were

considered for promotion to Group 'D' posts, the applicants' names were not considered as they were treated as new entrants in the Department. They represented their claim before the respondent. In the meanwhile DPC met on 30.12.2005 and respondents no.5 and 6 have been recommended for promotion, they being junior to the applicants.

2. It was submitted on the respondents' behalf that the applicants were disengaged from service twice that is from 1.2.97 to 9.5.2001 and from 21.4.2004 to 2.9.2005. On the basis of 'no work, no pay', they are not entitled for salary and other allowances for these periods. They were not considered for promotion since they had not completed even 3 years of physical service as on 30.6.2005. After having worked for about two weeks in January 1997, they rejoined after a long gap of more than 4 years on 17.5.2001. Since their applications were decided by this Tribunal on 15.3.2001, their names were not included in the gradation list prepared and corrected up to 1.6.99. In the orders in subsequent cases [OA No. 312 and 313 of 2004] there was no direction on fixation of the applicants' seniority or their back wages.

3. The basic facts in this case are evident from the materials on record and the arguments of the two sides, these being the initial appointment of the applicants in January 1997 [22, 23 and 24 January 1997], the order of termination dated 31st January 1997, order of this Tribunal [in OA No.97/97 with respect to Indrajeet Kumar, in OA No.98/97, with respect to Sanjay Kumar Shrivastava, Shyam Nandan Shrivastava, Sohan Prasad Sah, Santosh Kumar Ram, Satendra Kumar and Dilip Kumar and in OA No.42/97 with respect to Vikash Kumar Choudhary] dated 15.3.2001 holding the direction of the respondents to disengage the applicants without cancelling their appointment and without giving them any show cause notice was wrong and, therefore, set aside with the direction to the respondents to allow the applicants to perform their duties as they did before their disengagement, the

reinstatement of the applicants on 17.5.2001, subsequent termination of the applicants' services by orders dated 7.4.2004 and 19.4.2004, followed by order of this Tribunal in OA No.312/04 [with respect to Indrajeet Kumar and Sohan Prasad] and in OA No.313/04[with respect to Sanjay Kumar Shrivastava, Shyam Nandan Shrivastava Satendra Kumar, Santosh Kumar Ram, Dilip Kumar,Mukesh Kumar and Vikash Kumar Choudhary] holding the termination to be arbitrary and unjustified, quashing and setting it aside with direction to the respondents to restore all the applicants to their respective posts, and finally the order of the Hon'ble High Court Patna dated 3.8.05[in CWJC No.8242 and 8341 of 2005] finding the conclusion of the Tribunal to be quite justified, and the subsequent reinstatement of the applicants on 5.9.2005. In view of the aforesaid, the termination of the services of the applicants on both the occasions has been held to be unjustified and they were ordered to be restored to their respective posts which was subsequently done. This will obviously result in rendering their seniority to be effective from 1997, the year of their initial appointment and their proper placement in the gradation list consequently. As for back wages claimed for the periods they were not physically on work, they are not justifiably entitled to the same. The respondents will consider their cases in view of their resultant seniority for promotion to Group 'D' posts keeping in view the dates from which employees junior to them were so promoted.

4. The application is, in the result, disposed of with aforesaid observations. No order as to costs.


[S.N.P.N.sinha]
Member[A]


[P.K. Sinha]
Vice-Chairman

cm