

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 112 OF 2006[Patna, this *Monday*, the 25th Day of January, 2010]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [J]

Jagdish Thakur, son of Late Chalitra Thakur, resident of village – Banaul,
P.S.: Banaul, via – Raipur, Distt. :- Sitamarhi.APPLICANT.

By Advocate :- Shri S.K.Bariar.

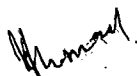
Vs.

1. Union of India through the Secretary, Ministry of Communication,
Department of Posts, New Delhi.
2. The Director General, Department of Posts, 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 B.K.Prasad, ASC.O R D E R

Justice Anwar Ahmad, M[J]:- This OA has been filed by Jagdish Thakur for treating his services in group 'D' post from 26.02.1992, the date on which his juniors were promoted, to the date of his retirement on 28.02.2002 as qualifying service for pension and for grant of pension.

2. Learned counsel for the applicant submits that the applicant was initially appointed as EDDA-cum-MC, Banaul EDBO in account with Raipur Sub-office in Sitamarhi Postal Division in the year 1961 where he joined on 19.05.1961. He submits that Postal Directorate had issued a letter no. 44-31/87-SPB-I dated 28.08.1990 wherein it was laid down that for the



vacancy in Group 'D' cadre on or after 01.01.1991 there would be removal of test for absorption of ED Agents in Group 'D' cadre. It was also laid down therein that ED Agents who were above the age of 50 years [55 years in case of ST/SC community] as on 1st July of the year of recruitment will not be eligible for appointment as Group 'D'. The selection and appointment in Group 'D' cadre from ED Agents was ordered to be made on the basis of seniority subject to satisfactory services [Annexure-A/1[a]]. Learned counsel further submits that the date of birth of the applicant is 03.02.1942, and hence he was eligible for appointment in Group 'D' cadre upto the vacancies of the year 1991. He submits that there was vacancy in the recruitment year 1991 and hence his case was to be considered for selection and absorption in Group 'D' cadre. He submits that the DPC was held on 25.02.1992 for the vacancy of the year 1991 in which promotion of the employees in Group 'D' cadre was considered and many juniors to the applicant, including Md. Ali Sher, was promoted to the post of Group 'D' vide letter dated 26.02.1992 leaving the name of the applicant. The applicant made a representation to the higher authority on 02.09.1992. Thereupon, the SPO, Sitamarhi wrote a letter dated 16/17.02.1993 to the Postmaster General, Northern Region, Muzaffarpur stating therein the fact. The Postmaster General found illegality done by the then SPO, Sitamarhi, and hence he ordered for considering the case of the applicant against the vacancy of the year 1991. On the direction of the Postmaster General the applicant was promoted to Group 'D' post against the vacancy of the year 1991 vide letter dated 22/24.06.1993 [Annexure-A/2[a]]. After the delay of about a month the applicant was allotted the unit of Sub-



Divisional Inspector of Post Offices, East Sub-Division, Sitamarhi by memo dated 20.07.1993, and hence he joined the post of Group 'D' Cadre on 23.07.1993. The learned counsel, therefore, submits that the service of the applicant in Group 'D' cadre be treated from the date 26.02.1992, the date on which his juniors were promoted, towards the qualifying service for pension. He submits that the department has counted the service of the applicant from the date of his joining, and hence refused pension on the ground that ten years qualifying service have not been rendered. He submits that the plea taken by the respondents is that the date of birth of the applicant was not available, and hence his case for grant of promotion in Group 'D' cadre against the vacancy of the year 1991 was not taken into consideration. He submits that this is not a good explanation as the date of birth of the applicant was available in the service book itself. Apart from this, he submits that the applicant has been granted promotion for the vacancy of the year 1991. So he submits that his service in Group 'D' cadre be counted from the date 26.02.1992, the date on which his juniors were promoted.

3. Learned counsel for the applicant further submits that even for the sake of argument if it is accepted that the service of the applicant in Group 'D' cadre be counted from the date of his promotion, then on that date he was above 50 years and as per the provision an employee who is above 50 years of age is not eligible and entitled for promotion to Group 'D' cadre. He submits that this also goes to substantiate the case of the applicant that his service in Group 'D' cadre is to be counted from the date 26.02.1992, on which date his juniors were promoted. Learned counsel in support of his contention refers to

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several decisions. He refers to a decision of this Bench passed on 15.01.2009 in OA 310 of 2005 and also a decision dated 08.08.2008 in OA 16 of 2007. He further refers to a decision of the Hon'ble Patna High Court passed on 10.08.2009 in CWJC No. 3893 of 2009 [Annexure-A/7]. The learned counsel, therefore, submits that the OA be allowed.

4. Learned counsel for the respondents submits that the meeting of the DPC was held on 25.02.1992 to consider the promotion of the eligible EDAs to group 'D' cadre against the vacancy of the year 1991. He submits that the case of the applicant was not considered since his date of birth was not available in the gradation list. He submits that it was the duty of the applicant also to produce the certificate in support of his date of birth. In the circumstance, the case of the applicant was not considered. He submits that on the direction of the Postmaster General the case of the applicant for his promotion against the vacancy of the year 1991 was reviewed by the DPC held on 22.06.1993 and his case was considered for promotion to the Group 'D' cadre against the vacancy of the year 1991 and, accordingly, he was allowed promotion and he joined in Group 'D' cadre on 23.07.1993. He submits that at the time of the meeting of the DPC on 22.06.1993 the applicant had already crossed the age of 50 years, and hence he was not eligible for the promotion but to meet the natural justice his case was considered and he was promoted. He submits that services of the applicant in Group 'D' cadre is to be counted from the date of joining, i.e., 23.07.1993. He submits that counting his service in Group 'D' cadre from the date of joining, he did not complete ten years service, and hence his pension has rightly been refused.

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5. Considering the facts and circumstances of the case, rival submissions made and decisions referred by the learned counsel for the applicant, I am of the view that there is merit in the OA.

In the result, this OA is allowed and the respondents are directed to count his service from the date 26.02.1992, on which date the juniors were granted promotion, towards qualifying service for pension and, accordingly, pass fresh order in respect of pension of the applicant within a period of three months from the date of receipt/production of a copy of this order. In the facts and circumstances of the case, interest is not allowed.

There shall be no order as to costs.


[Anwar Ahmad]/M[J]

skj