

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 050/00695/2014

Date of order 18.07.2018

CORAM
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)
HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)

Gautam Kumar, S/o Ram Chandra Ram, R/o village-Murli Telbigha,
P.O.-Gaya R.S, P.S.-Kotwali, District-Gaya.

..... Applicant.

By advocate: Sri S.K. Bariar.

Verses

1. The Union of India through, Director General, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, Bihar Circle, G.P.O. Complex, Patna.
3. The Post Master General, Patna.
4. The Director of Postal Service (HQ), Patna.
5. Superintendent of Post Offices, RMS, C-Division, Gaya.
6. The Inspector, II, RMS, C-Division, Gaya.
7. The Head Record Office, RMS, Gaya.

..... Respondents.

By advocate: Sri M.D. Dwivedi.

ORDER (ORAL)

Per Mr. K.N. Shrivastava /M (A):- The applicant was appointed as part time casual labour at RMS, Gaya in the year 1996. The applicant approached the Tribunal in OA 91/2006, praying for a direction to the respondents to consider his case as per the provisions of Recruitment Rules 2002, for appointing him to a Group-“D” post. The said OA was disposed of vide order dated 08.08.2008 with the following directions to the respondents:-

“5. As in the OA referred to above, the respondents are directed to consider the case of the

applicant as per provisions of 2002 Recruitment Rules for posting on a Group 'D' post as and when his turn comes."

2. No action was taken by the respondents apparently on the ground that the eventuality of appointing the applicant to the post of Group-"D", on his turn, never came.

3. The applicant came across Annexure-A/4, documents of the postal department, wherein vacancies in Group-D category in various divisions of the department were intimated to the Directorate of Postal Services. According to it, 2 vacancies in Group-D became available in Gaya Division. The applicant approached this Tribunal in OA No. 76/2010 in which he prayed for the following reliefs:-

"8[i] The applicant humbly prays that the respondents may be directed to make regular appointment against the vacant group 'D' post in the Postal Division, Gaya, as per Recruitment Rule 2002 to him.

[ii] The applicant humbly prays he may not disturbed from working to the post of the part Time Sweeper.

[iii] Any relief/reliefs may be granted to the applicant for ends of the justice."

4. The said OA was disposed of vide order dated 30.04.2014 with the following directions:-

"12. In the light of foregoing discussion, we dispose of this OA with following observations/directions:-

[i] If the appointment of the applicant as part time casual labourer was in violation of the instructions or rules, the respondents shall be at liberty to take appropriate action against the officer who violated the rules as also the applicant after following due procedure and giving opportunity to the applicant to represent his case.

[ii] This liberty can be exercised by the respondent authorities within a period of six

months from the date of receipt/production of a copy of this order.

[iii] In case no action is taken in pursuance of liberty so given in para 12 within stipulated time, then the case of the applicant will have to be considered as per 2002 Rules in the light of decision taken in the earlier OA as well as OA 521 of 2000, of course, subject to availability of vacancies in appropriate category and in turn of the applicant. As to the question of appointment against vacancy in casual labours category quota, the matter be placed before the competent authority/Screening Committee to take a view in the light of observations made that if the vacancies are being released, then why the same are not being distributed proportionately amongst different categories as prescribed under rules. The Committee shall take decision in the matter as per rules and instruction within six months from the date of receipt/production of a copy of this order.

[iv] If the liberty to take action is not exercised within stipulated time and if some vacancies are released by the Committee after consideration in terms of para 12 [iii] above then the case of the applicant be considered in his turn."

5. The respondents, in compliance of direction contained in the Tribunal's order dated 30.04.2014, passed Annexure-A/6 order dated 07.08.2014. The relevant portion of this order is extracted herein below:-

"4. I have gone through ins and out of the case, the rules/instructions of the Department and order of the Hon'ble CAT Patna Bench dated 30.04.2014 and I am of the opinion that a charge be framed against the then IRM, C-2nd Sub Dn, Gaya for violating the rules and instructions of the department while appointing a casual labourer wherein due cognizance has not been taken of even though a numerous letters have been issued related to appointment of a causal labourer in the department of post time to time. Since, the then IRM,C-2nd Sub Dn, Gaya has already been proceeded on permanent retirement from Circle Office, Bihar Circle, Patna, necessary steps for violation of rules and instructions for

appointing Shri Gautam Kumar as a casual labourer may kindly be initiated against him by CO itself.

5. *Further, as Shri Gautam Kumar's appointment was illegal, unjustified, existence less without any proper authority and approval, his termination from service w.e.f. 01.12.2010 be considered genuine."*

6. The applicant has in the instant OA has challenged the order dated 07.08.2014 and has prayed for the following reliefs:-

"8. (i) The applicant humbly prays that the respondents may be directed to make regular appointment/confirmation/absorption against the group "D" post in the Postal Division, Gaya in the light of Order of the Hon'ble Supreme Court passed in ma Devi case or otherwise.

(ii) The applicant further prays that the Memo dated 07.08.2014 (Annexure-A/6) may be treated illegal and be quashed and set aside."

7. Pursuant thereto, notice issued and respondents entered appearance and filed their WS to which a rejoinder has been filed by the applicant. After the completion of the pleadings, the case was taken up today for hearing. Arguments of the learned counsels for the parties were heard.

8. Learned counsel for the applicant, Shri S.K. Bariar submitted that the applicant has been recruited as casual labour through a proper selection process and that his name was sponsored by the Employment Exchange. He further stated that no action has been taken by the respondents department against the officer who appointed the applicant to the post of casual labour as directed by the Tribunal vide its order dated 30.04.2014 passed in OA 76/2010. He, thus argued that in terms of the direction in para-12 (iii) of the *ibid* order of the Tribunal, applicant is entitled for the reliefs claimed.

9. Learned counsel for the respondents, Shri M.D. Dwivedi, on the other hand, submitted that the applicant was never appointed through any regular selection process and that he was engaged on part time basis for cleaning the premises. He further stated that the applicant has since been disengaged.

10. Shri Bariar, learned counsel for the applicant controverting the arguments of Shri Dwivedi submitted that the applicant has never been disengaged and he continues to perform his duties.

11. We have considered the arguments of learned counsel for the parties and have also perused the records.

12. There is a judicial finding of the Tribunal's that the appointment of the applicant as a casual labour, has been done in an irregular manner. Accordingly, the Tribunal has directed to the respondent, Postal Department to take disciplinary action against the officer who was responsible for the appointment. The Postal Department, however, in their Annexure-A/6 order dated 07.08.2014 passed in compliance to the Tribunal's order, have stated that the officer who had appointed the applicant, has since retired from service. Needless to say that disciplinary action can be taken even against the retired government servant for a misconduct committed as per **Rule 9 (2) of CCS (Pension) Rules-1972**. However, the fact of the matter is that the department has chosen not to take any action against the officer, who had appointed the applicant. Hence, in terms of the directions of the Tribunal in para-12 (iii), of the order dated

30.04.2014, the respondents are required to take further action for considering the claim of the applicant. We, therefore, direct the respondents to act accordingly. In the meanwhile, as informed by the learned counsel for the applicant that the applicant has been continuing to do the work of cleaning as a casual labour, he shall not be disengaged.

13. With these observations, this OA is disposed of.

[Jayesh V. Bhairavia]M(J)

[K.N. Shrivastava]/M(A)

BP/