

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No 050/00250/2017

Reserved on 14.01.2018

Pronounced on _ 21.03.2018

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

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1. Kapildeo Singh son of Late Sahdeo Singh, resident of Village Sirsa P.O.- Baijnathpur, P.S. Sitamarhi District- Nawada.

.....Applicants

By Advocate : Shri S.K. Bariar

VERSUS

1. The Union of India through Director General, Department of Post, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, G.P.O Complex, Patna-800001
3. The Director of Accounts (Postal) G.P.O. Campus, Patna -800001.
4. The Superintendent of Post Offices, Nawada Postal Division, Nawada-805110.
5. The Inspector of Post (West) Nawada Postal Division, Nawada -805110.

....Respondents

By Advocate : Shri Arvind Kumar Montu

ORDER

Per Jayesh V. Bhairavia, Member (J): In the present OA the applicant has sought reliefs as under :-

"[8.i] The applicant humbly prays that the respondents may be directed to grant the pension and its consequential benefits by treating the qualifying service for pension from 01.01.1999 i.e. date of vacancy of the Group 'D' post to 31.08.2009 i.e. date of retirement.

[8.ii] The applicant further prays that arrears of the pension and its benefits with 10@ interest may be granted.

[8.iii] The applicant further prays that nay short fall of 10 years qualifying service as per CCS, Pension Rules for pension and other benefits in Group 'D'/Postman be adjusted from the GDS service.

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

2. The applicant was initially appointed as EDDA on 01.07.1969, Baijnathpur a/c with Hasua SO under the then Gaya Postal Division and now after bifurcation, it comes under Nawada Postal Division, Nawada. It is submitted by the applicant that vide letter dated 28.08.1990, the literacy test for promotion to the post of group D from ED employee had been withdrawn and the promotion was to

be granted as per the seniority with satisfactory service only and it was also laid down that ED agent who was above the age of 50 years as on 1st July of the vacancy year will not be eligible for the promotion to the post of group 'D'.

3. The learned counsel for the applicant submitted that for the promotion of ED, the seniority list is combined for all EDAs posts. The Group 'D' vacancy occurring in the calendar year should be calculated in January each year and the select list will be drawn up strictly in order of seniority subject to satisfactory service and the EDS put on the select panel should be allotted immediately to the Sub Division/Recruiting Unit agreeably with the no. of Group 'D' vacancies calculated for the Sub-Division/Recruiting Unit. The guidelines and procedure laid down and according to it the DPC for promotion of ED agent to Group 'D' should be held as per the prescribed schedule, particularly keeping in those cases where some of the ED agents due for promotion are nearing the age of 50 years as prescribed in the recruitment rules. In this regard it is submitted that the respondents are under the obligation should be held in time as the maximum age prescribed for promotion of ED agents to Group 'D' is 50 years and the ED agents should not lose their chance to get promoted only because of delay in conveying the DPC, the specific guidelines and schedule had been issued which is binding on the respondents and required to follow it strictly. [Annexure A/1 (a & B) refers].

4. The learned counsel for applicant further submits that the date of birth of applicant is 20.08.1949 and he was eligible for appointment in Group 'D' cadre upto the vacancy year 1999. The crucial date for determining the age is 1st July, and according to it on 1st July 1999, the applicant was just below the prescribed age of 50 years i.e 49 years 11 months. It is further submitted that the promotion of the applicant was to be considered as per the existing vacancy of the year 1999 under O/C quota as on 01.07.1999 and the DPC ought to have been held in January 1999. Accordingly the select panel was ought to have been finalised, however, the DPC was held on 29.06.2001 after a lapse of 2 years for the consideration of promotion for the vacancy year 1999 thereafter in pursuance of the outcome of the DPC, the applicant was ordered to be promoted vide order dated 05.07.2001 with a direction that the allotment of the official will be made on completion of training (Annexure A/3 refers). In pursuance of promotion order dated 05.07.2001, the

applicant was sent for training vide letter dated 11.07.2001 and vide letter dated 14.07.2001 the applicant was relieved from the post of EDDA/MC. After successful completion of training the applicant and other four were allotted the unit to the postman cadre vide order dated 26.07.2001 and vide order dated 28.07.2001 the applicant was posted at Narhat sub post office, Nawada. (Annexure A/4, A/5 and A/6 refer).

5. The I/c for applicant further submitted that the applicant was promoted to the Group 'D' post on 28.07.2001 for the vacancy of the year 1999 and he retired from the service on 31.01.2010, after retirement the applicant was not given pension on the ground that he had not completed 10 years qualifying service for pension because the applicant had been promoted to the post of postman in Group 'D' on 28.07.2001 and rendered service 08 years 01 months and 02 days in postman cadre. The applicant had submitted his request to the respondents to provide the benefit of pension by reckoning his qualifying service for pension with effect from 01.07.1999 instead 28/29.07.2001. (Annexure A/7 & A/8 refer). However, the said representation of the applicant has not been considered therefore, the applicant had filed OA No. 62/2010, this Tribunal vide order dated 3rd February 2010, disposed of the said OA with a direction to respondent no.2 to decide the pending representation of the applicant within a period of three months. (Annexure A/9 refers).

In pursuance to order dated 03.02.2010 passed in OA 62 of 2010, the respondents i.e the Director of Accounts (Postal) vide letter dated 29.11.2012 informed the Superintendent of Post Offices, Nawada to submit the paper of the applicant for consideration and further action, however, no action was taken. Vide letter dated 05.03.2013, the Superintendent of Post offices Nawada directed the applicant to visit the office for the purpose of filling up the unfilled pension paper, the applicant visited the office of respondents and filled up the details of pension paper as suggested by the respondents. (Annexure A/11 refers). The applicant had visited the said office again and again and enquired about his grant of retiral dues. However, the respondents had said that the applicant had not completed the total qualifying 10 years of service in promotion cadre and hence he is not entitled for the pension.

6. The learned counsel for the applicant submitted that the applicant was promoted on 05.07.2001 for the vacancy of 1999 but the DPC could not convene in proper time scheduled and due to lapse on the part of administration, the applicant's legitimate right to be considered for promotion was jeopardised due to such delay and consequently, now the applicant is without pension.

The learned counsel for the applicant placed reliance on the judgement passed by the Hon'ble Apex Court in the case between P.N. Premchandran vs State of Kerala and others reported in 2004 (1) SCC 245 as well as the judgement dated 10.08.2009 passed in CWJC No. 3893/2009 and CWJC 12301 of 2009 dated 28.01.2010 by the Hon'ble High Court of Judicature at Patna and submitted that the delay in convening the DPC is due to administrative lapse, promote cannot be made to be suffered for the fault of authority. It is further submitted that the age of retirement of ED employee is 65 years but applicant chose to Group 'D' post for pension after leaving 5 years GDS service for the same benefit. If the applicant had not chosen the promotion then he would have retired at the age of 65 whereas he retired from the service from Group 'D' post at the age of 60 years and therefore he lost five years service and also salary and monetary benefit thus it is a double jeopardy.

It is further submitted by the I/c for applicant that had the DPC been held in time in year 1999 i.e the vacancy year and promoted to the post of Group 'D' prior to 01.07.1999, then the applicant would have completed 10 years of qualifying service under CCS (Pension) Rules, 1972.

7. It is submitted by the applicant that the applicant is an old person and is not getting any pension or any financial support due to arbitrary action on the part of respondents the applicant is being inflicted monetary loss, hence this O.A.

8. In response to the notice issued, the respondents have filed their w.s and denied the claim of applicant. The learned counsel for the respondents submitted that initially the applicant had joined the service as EDDA with respondent department. On the basis of seniority cum fitness under outsider quota against the vacancy year 1999 for which as per the recommendation of DPC He was selected for promotion to the cadre of postman (existing Group 'D') on

05.07.2001. The applicant was allotted the unit of SDI (P) East Sub Division, Gaya in Group 'D' post since 28.07.2001. On 30.01.2010 the applicant was retired on attaining the age of 60 years being his date of birth 20.08.1949 and accordingly the applicant has rendered only 08 years 01 months and 02 days service in the department in Group 'D' cadre. The applicant has not completed 10 years of qualifying service to become entitled to get pensionary benefits as per the provision of Central Civil Pension Rules 1972.

9. Heard the parties and perused the records and considered their submissions.

10. In the instant OA, it is admitted fact that applicant was appointed as EDDA on 01.08.1969 and was became eligible to be considered for promotion in the year 1999, though there was vacancy available but due to administrative reason the DPC was not convened in time scheduled as stipulated in guidelines issued by the Department of Post. (Annexure A/1 refers). The DPC was held only on 29.06.2001 for the vacancies meant for the year 1999 and on the recommendation of the DPC the applicant was ordered to be promoted vide order dated 05.07.2001. After completion of training, the applicant was allotted posting order and joined on promoted post on 28.07.2001/29.07.2001. As per the date of birth i.e 20.08.1949 of the applicant , he had completed 50 years of age on 19.08.1999, according to the circular of the postal department, the maximum age prescribed for promotion of EDDA to Group 'D' is 50 years therefore, it was directed under the said circular that the Departmental Promotion Committee should be held as per the schedule without any delay, particularly keeping in view those cases where some of the ED agents due for promotion are nearing the age of 50 years as prescribed in the recruitment rules. However, it reveals from the records for vacancy for the year 1999 the DPC was held in June 2001 and after recommendation for promotion to Group 'D' the applicant was promoted on 05.07.2001 and after completion of the training he joined the service on 28/29.07.2001. After rendering service of 08 years 01 months and 02 days on the post of promotion (Group 'D' cadre), the applicant has superannuated on 30.01.2010 i.e only before 01 year 11 months and 28 days for completion of 10 years of service. The respondents have denied

the pensionary benefit to the applicant only on the ground that applicant did not served for 10 years in Group 'D' posts.

11. The Hon'ble Apex Court, in the case of P.N. Premchandran Vs State of Kerala (supra), held that " the delay in convening the DPC is administrative lapse, promote cannot be held to suffer for no fault on their part". The Hon'ble High court, Patna in the case of i.e CWJC No. 3893 of 2009 (supra) observed as under :-

" in the present case the petitioners case for absorption/promotion to group 'D' posts should have been considered on or before 10th of July 1994 whereas it was actually considered later and the promotion order dated 21.02.21995 was issued after a delay of approximately 08 months from the due date. The benefit of such delay in the background of facts and the departmental policy decisions must go to the petitioner. By grant of such benefits, the petitioner would be entitled for pension which is the very purpose of the policy decision that group 'D' post should be given to those who are below 50 years of age.

In view of the aforesaid facts and discussion and particularly, in view of the judgements rendered by the Tribunal against the postal authority themselves, as contained in annexure -10 & 11, the writ petition is allowed. The respondents are directed to treat the petitioner as having completed minimum qualifying service period of 10 years and allow him pension on that basis as early as possible preferably within a period of two months from today. "

12. In the instant OA, the case of applicant herein is squarely covered by the aforesaid law laid down by the Hon'ble Apex Court (supra) as well as judgements passed Hon'ble High court of Patna as referred hereinabove (supra). It is noticed that the applicant was promoted only in the month of July 2001 for the vacancy of year 1999. Had the respondents maintained the time schedule for convening the DPC for consideration of the eligible candidates for the promotion to Group 'D' with regard to vacancy year 1999 as per the Circular/Guideline of the respondents, the applicant could

have been promoted in year 1999 itself and could have also rendered more than 10 years of service. However, the respondents failed to convene the DPC for the vacancy of year 1999 as per the schedule fixed by the respondents themselves, no reason whatsoever has been stated by the respondents for non-convening the DPC in time. The respondents had convened the DPC only on 29.06.2001 for vacancy of 1999 after a considerable delay. There is a tremendous lapse on the part of respondents in this regard. The said DPC had recommended the name of the applicant for promotion in Group 'D' subsequent to it, the promotion order was issued only on 05.07.2001. The said action of respondents caused immense life long hardship to the applicant and he is being now deprived of pension.

13. In view of the facts and circumstances as stated hereinabove and also in view settled principle of law as stated hereinabove, the respondents cannot be allowed to play with the right of livelihood of their retired employee. The very purpose for considering the applicant for promotion before the age of 50 was frustrated due to lapse on the part of respondents for which the applicant official was not at fault at all. Therefore, the O.A deserves to be allowed and accordingly O.A is allowed with a direction to the respondents to treat the qualifying service of the applicant for pension from 01.07.1999 i.e the date of vacancy of Group 'D' post to 31.01.2010 i.e date of retirement of the applicant and grant the pension with all the consequential benefits with statutory interest, within a period of three months from the date of receipt / communication of this order. No order as to costs.

[Jayesh V. Bhairavia]

Member(J)

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