

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No 050/00350/2017

Reserved on 15.01.2018

Pronounced on _ 02.02.2018

CORAM :

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

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1. Umesh Prasad Yadav son of late Bodh Narayan Yadav, resident of village-Rampur North, P.O.- Rampur, PS. Foresganj, District- Araria.

.....**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 Postmaster General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, Postal Division, Purnea-854301..

.....**Respondents**

By Advocate : Shri Radhika Raman

O R D E R

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 01.01.2002 i.e. date of vacancy of the Group 'D' post to 28.02.2014 i.e. date of retirement under CCS (Pesnion) Rule 1972.

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

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

2. The applicant was initially appointed as EDBPM (now GDSBPM) Rampur BO-a/c with forbesganj SO under the Purnea Postal Division on 06.08.1974. 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that vide letter dated 28.08.1990, the literacy test for promotion to the post of group D from ED employee had been withdrawn and the promotion was to be granted as per the seniority with satisfactory service only and it was also provided that ED agent who was above the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 in January each year. 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 loss 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 refers).

4. The learned counsel for applicant further submits that the date of birth of applicant is 03.02.1954 and he was eligible for appointment in Group 'D' cadre upto the vacancy year 2003. The crucial date for determining the age is 1st July, and according to it on 1st July 2003, the applicant was just below the prescribed age of 50 years i.e 49 years 04 months and 28 days. It is further submitted that the promotion of the applicant was to be considered as per the existing vacancy of the year 2002 under OBC quota as on 01.07.2002 and the DPC ought to have been held in January 2002. Accordingly the select panel was ought to have been finalised in year 2002 itself. However, the DPC was held on 27 May 2004 after a lapse of 2 and half years for the consideration of promotion for the vacancy year 2002 and the applicant was ordered to be promoted vide letter dated 15.06.2004 as per the DPC recommended for promotion for the vacancy of the year 2002. (Annexure A/2 & A/3 refer).

It is further submitted that vide letter dated 16.06.2004, the applicant was directed to hand over the charge of GDSBPM, Rampur with a view to join to Group 'D' post and after relieving him from the said post, the applicant had joined the promoted post on 02.07.2004 (annexure A/4 refers).

5. The I/c for applicant further submitted that the applicant was promoted to the Group 'D' post on 09.06.2004 for the vacancy of the year 2002 and he retired from the service on 28.02.2014, 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 09.06.2004 and therefore, the 10 years of qualifying service in Group 'D' is not completed. 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 01.01.2002 instead 09.06.2004. (Annexure A/6 & A/7 refer). However, the said representation of the applicant has not been considered till date.

6. The learned counsel for the applicant submitted that the applicant was promoted for the vacancy of 2002 but the DPC could not convened in proper time scheduled and due to lapse on the part of administration, the applicant's legitimate right to be considered for promotion was jeopardise 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 (Annexure A/8 refers). The judgement dated 10.08.2009 passed by the Hon'ble High Court of Judicature at Patna in CWJC No. 3893/2009 and CWJC 12301 of 2009 dated 28.01.2010 (Annexure A/9 & A/10 refer). It is submitted by the I/c for applicant that had the DPC been held in time in year 2002 i.e the vacancy year and promoted to the post of Group 'D' prior to 01.07.2002, then the applicant would have completed 10 years of qualifying service under CCS (Pension) Rules, 1972. 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 had 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.

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

7. 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 the applicant was working as GDSBPM with respondent department since 06.08.1974. He was selected for promotion to the cadre of MTS (existing Group 'D') on the basis of seniority cum fitness under outsider quota against the vacancy year 2002 for which the DPC was held on 27.05.2004. The vacancy was approved by C.O., Patna vide order dated 17.11.2003. The break up of approved vacancy was total 02. For OC i.e general quota post and 01 for OBC. For SC and ST there was no post reserved under the said quota. The I/c for respondents also relied upon the minutes of DPC held on 27.05.2004 for consideration of the cases of promotion of EDAs to Group 'D' cadre on the basis of seniority cum fitness for the vacancy meant for the year 2002. (Annexure R/1 refers). The applicant was allotted the unit of SDI (P) in Group 'D' post since 02.07.2004. the applicant was retired on attaining the age of 60 years being his date of birth 03.02.1954 and accordingly the applicant has rendered only 09 years 07 months and 26 days service in the department. The applicant has not completed 10 years of qualifying service to become entitled to get pensionary benefits.

It is further submitted that vide letter dated 11.05.2017, the respondents has informed the applicant that the payment of accumulated amount under NPS has been settled and same has been transferred directly on 21st July 2016 by NCDL into the applicant's Bank Account. The applicant had joined the MTS post on 06.04.2004 i.e after 01.04.2004 therefore under the new pension scheme the applicant is not entitled for any pension under CCS (Pension) Rule 1972.

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

9. In the instant OA, it is admitted fact that applicant was appointed as EDA on 06.08.1974 and was became eligible to be considered for promotion in the year 2002, 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/4 refers). The DPC was held only held on 27.05.2004 for the vacancies meant for the year 2002 and on the recommendation of the DPC the applicant was ordered to be promoted vide order dated 09.06.2004. After completion of other departmental formalities, the applicant joined on promoted post on 02.07.2004. As per the date of birth i.e 03.02.1954, the applicant had completed 50 years of age on 03.02.2004, according to the circular of the postal department, the maximum age prescribed for promotion of EDA 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 2002 the DPC was held in the year 2004 and after recommendation for promotion to Group 'D' the applicant was promoted on 09.06.2004 and joined on 02.07.2004. After rendering service of 09 years 07 months and 26 days on the post of promotion the applicant has superannuated on 28.02.2014 only before 04 months and 04 days for completion of 10 years of service to become eligible for pensionary benefit. 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.

10. 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. "

11. The present case of applicant is squarely covered by the aforesaid law laid down by the Hon'ble Apex Court (supra) as well as judgements of Hon'ble High court of Patna as referred hereinabove (supra). The applicant was promoted only in the month of June 2004 for vacancy of year 2002. 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 2002, the applicant could have been promoted in year 2002 itself and could have also rendered more than 10 years of service. However, the respondents failed to convene the DPC for promoting the applicant in 2002 and convened the same after a considerable delay. There is a tremendous lapse on the part of respondents in this regard and they have convened the DPC only on 27.05.2004, thereby causing immense life long hardship to the applicant. He is being now deprived of pension for being just short of few days of qualifying period.

In view of settled principle of law as stated hereinabove and considering the facts and circumstances of the present case, 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 01.01.2002

i.e the date of vacancy of Group 'D' post to 28.02.2014 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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