

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00807/2017

Reserved on : 07.02.2019
Date of Order : 19.02.2019

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Abhay Kumar, S/o Sri Ajit Prasad, Village-Larhrawan, PO-Pachauri, PS-deep Nagar, District-Nalanda.

..... Applicant.

- By Advocate: Shri J. K. Karn.

-Versus-

1. The Union of India through the DG cum Secretary, Department of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna-800001.
3. The Postmaster General, Northern Region, Muzaffarpur-842002.
4. Director of Postal services, O/o The Postmaster General, Northern Region, Muzaffarpur-842002.
5. The Superintendent of Post Offices, Saran Division, Chapra-841301.

..... Respondents.

By Advocate :- By Advocate :- Shri G.K. Agarwal

O R D E R

Per Mr. Dinesh Sharma, A.M.:- The case of the applicant in brief is that though he has been treated at par with his other batchmates following orders of this Hon'ble Tribunal which were upheld by Hon'ble Patna High Court he has still not been given the benefit of one increment that was given to his batchmates. The earlier decisions of this Tribunal and the High Court had made him eligible for all the benefits of selection and joining with

his batchmates though without back wages. This entitles him to get the benefit of seniority and the notional increment also.

2. The respondents have denied the claim though they have accepted that the applicant was given the benefit of selection and other consequential benefits such as consideration for old pension scheme instead of the new pension scheme. However, he was not entitled to back wages taking into account the peculiar facts and circumstances. The respondents have alleged that because of this the question of notional seniority and increment does not arise and he cannot be equated with batchmates.

3. The respondents have also filed another supplementary WS in which an error in mentioning the correct roll number of the applicant in para-4 of the WS was sought to be corrected.

4. I have gone through the pleadings. There is no doubt that the earlier decisions of this Tribunal and the Hon'ble High Court (Anenxure A/3, A/4, A/5, Annexure/8 series) have put the applicant on the same pedestal as his batchmates (Postal Assistant/Sorting Assistant selected following notification issued by Postal Department, Bihar Circle, Patna in October, 2012). This fact has been admitted by the respondents in the written statement and only reason this they have given for not granting increment is that there is no specific mention of such relief in the order of Hon'ble High Court (CWJC No. 12098/2015) (Annexure A/8 series). The exact words used in that decision of the Hon'ble High Court are as follows:-

“ The Department clearly accepted the position that the contesting respondent was entitled to be appointed from a date much earlier, and much before the cut-off date. They do not dispute that they have given notional continuity of service in respect of increment and seniority from the date, earlier than the cut-off date. If that be so, then for all purposes it would be deemed that the applicant/contesting respondent was appointed along with his other batch mates, much prior to the cut off date. It is no gainsaying that, as he was not paid any salary/remuneration for that period, he cannot claim any employment benefit. The reason for non-payment was simple: No work, no payment. But, that does not deter from the fact that he would be deemed to have been employed prior to the cut-off date along with his batch mates.”

5. In the light of such clear dictum from the Hon’ble High Court, it will be wrong to assume that this direction was not intended to include grant of notional increment from the dates when it became due to their batchmates. The order of the Hon’ble High Court only prevented payment of back wages. The word “notional” itself implies that no such back wages will be paid. The relief prayed by the applicant is therefore in line with the judicial pronouncements made earlier in this matter and is, therefore, allowed. The OA is allowed. The respondent are directed to issue orders fixing the notional seniority of the applicant along with his batchmates and the notional grant of increment from the date it became due to his batchmates. No back wages however need to be given on this account. No order as to costs.

[Dinesh Sharma]
[Administrative Member]

Srk.