

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00531/2016

Date of CAV : 13.11.2019

Date of order : 15th Nov., 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

Pinki Kumari, W/o late Ajeet Kumar, resident of Village – Badhauna, PO – Tej Bigha, PS – Kako, District – Jehanabad.

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Applicant.

By advocate : Shri J.K.Karn

Vs.

1. The Union of India, through D.G. Cum Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services [HQ], O/o Chief Postmaster General, Bihar Circle, Patna.
4. The Assistant Director [Staff & Recruitment] Chief Postmaster General, Bihar Circle, Patna.
5. The Superintendent, RMS 'C' Division. Gaya.

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Respondents.

By advocate : Shri Bindhyachal Rai

O R D E R

Per Jayesh V. Bhairavia , Member [J] : In the instant OA, the applicants have prayed for the following reliefs :-

“8[A] The respondent authorities may be directed to issue necessary orders in favour of applicant regarding his period of Termination, regularizing the same with all consequential benefits pursuant to Paragraph – 12 of order of the Hon'ble Tribunal passed in the case of the applicant in OA/050/00870/2014 as contained at Annexure-A/5.

8[B] The benefits of increment denied to applicant, may be directed to be granted with monetary benefits so that his salary become at par with his batchmates.

8[C] Any other relief/reliefs as the applicant is entitled and your Lordships may deem fit and proper in the ends of justice.”

2. The Tribunal, vide its order dated 06.05.2015 passed in OA 870/2014 along with other OAs, allowed with the following observations :-

"11. In the result, this OA and other OAs of similarly placed candidates are allowed. Since this batch of OAs the present status of applicants varies, the respondents will comply with this order in the following manner :-

[i] Those candidates who have been terminated on this ground alone, their termination order stands quashed and they will be allowed to join.

[ii] Those candidates whose joining has been kept in abeyance on this ground, they will be allowed to join.

[iii] Those candidates against whom show cause notice has been issued on this ground but no further action taken, the show cause notices will stand quashed.

[iv] In cases where action for termination has not been initiated, no such action can be taken on this ground.

12. We also clarify that, in case of those applicants who were terminated, the period from the date of termination till the joining in terms of the above order, will be counted for the purpose of continuity in service and all consequential benefits. Accordingly, this batch OAs are allowed subject to the observations made above. No order as to costs."

3. The applicant submitted that her husband was selected against the post of Sorting Assistant in RMS 'C' Division, Gaya and after imparting necessary Induction Training from 30.06.2014 to 23.08.2014 at Bela Palacde, PTC Darghanga and practical training at Gaya, vide Annexure-A/2, joined the post in August, 2014.

4. The applicant's husband was issued a letter dated 28.11.2014 [Annexure-A/3] whereby the Superintendent RMS 'C' Division Gaya, whereby he was proposed to terminate his appointment in pursuance of letter dated 22.09.2014 on the ground that alternative English taken by him in Intermediate Examination could not be treated as English Subject of language

and literature. Thereafter, the Superintendent RMS 'C' Division, Gaya issued order of termination vide letter dated 09.12.2014 [Annexure-A/4]. The applicant challenged the order of termination in OA No. 870/2014, which was allowed vide order dated 06.05.2015 [Annexure-A/5], which was upheld by the Hon'ble High Court of Patna. Thereafter, the respondents complied with the aforesaid order passed by this Tribunal.

5. The applicant submitted that her husband was required to be reinstated to his post with all consequential benefits pursuant to para 12 of the order of this Tribunal but he has been treated as new entrant in the Department since December, 2015 instead of his initial joining w.e.f. August, 2014 and accordingly denied benefits of increment and loss of seniority besides back wages for the intervening period. The applicant submitted that batchmates of her husband have been allowed the benefits of annual increment but on denial of same, her husband was getting lesser salary than his batch-mates and his seniority has also been disrupted.

6. In the meantime, the husband of the applicant, Ajeet Kumar died in a road accident near Jehanabad, vide Annexure-I to the MA. 511/2018, therefore, his wife, namely Pinki Kumar, being legal heir is allowed to contest the OA.

7. The respondents filed their written statement and denied the contentions of the applicant. They submitted that Ajeet Kumar was selected provisionally for the post of Sorting Assistant, vide memo dated 04.12.2013 and his name was shown at Sl. No. 08 in the list published by CO against UR category. During the course of verification of documents, he submitted his mark-sheet and certificates of Class 10th i.e. matriculation examination of 2006 and 10+2 [Intermediate] examination of 2010 issued by Bihar School Examination Board, Patna and Bihar School Examination Board [SS], Patna respectively. After receipt of above documents, testimonials from Ajeet Kumar, the pre-appointment formalities were initiated.

8. The respondents submitted that Shri Ajeet Kumar vide memo dated 27.06.2014 was directed to undergo induction training from 30.06.2014 to 23.08.2014 at Bela Place PTC Darbhanga and after completion of induction training, he was directed for practical training from 25.08.2014 to 31.08.2014 at SMO Gaya. Thereafter, he was provisionally appointed as Sorting Assistant in RMC 'C' Dn., Gaya vide memo dated 22.08.2014 with the terms and conditions and finally he joined the post of SA on 01.09.2014.

After his joining to the post of SA on 01.09.2014 a clarification regarding compulsory subject in the mark-sheet of Intermediate examination was issued by the Secretary Bihar School Examination Board [SS] Budh Marg, Patna vide letter dated 09.09.2014 received in the office on 22.09.2014 through Assistant Director [Recruitment], O/o the CPMG, Bihar Circle, Patna vide letter dated 22.09.2014 wherein it is clarified that the educational qualification of all selected candidates were re-scrutinized and it was observed that Shri Ajeet Kumar have studied R.B. Non Hindi and alternative English of 50 Marks each under heading compulsory subject with another subject Hindi of 100 marks. And on the basis of clarification from the Secretary, Bihar School Examination Board, Shri Ajeet Kumar was asked to submit his written reply as to why his provisional appointment should not be terminated on the ground of non fulfilment of educational criteria of English as a compulsory subject in Intermediate Examination.

Thereafter, after following the procedure, his services were terminated. Shri Ajeet Kumar Challenged that order of termination which was quashed by the Central Administrative Tribunal in OA No.870/2014, vide order dated 06.04.2015 and the same has been complied with by the respondents.

9. The respondents submitted that Shri Ajeet Kumar was reinstated to his post vide office memo dated 08.12.2015 and finally joined on 09.12.2015 as per order passed by the Central

Administrative Tribunal, Patna Bench, Patna vide order dated 06.05.2015, other benefits like wages from the period of termination to reinstated to the post, increment, leave etc only be allowed, if the applicant could have performed his duty. The respondents further contended that 2.5 days of earned leave has to be credited on his account, if an official performs one month duty continuously and increment will draw if he performs at least six months of duty and since the applicant has not performed his duty from the period of termination to reinstatement to the post, benefits like credit of leave, drawal of increment could not be allowed to the official.

10. The applicant relied upon an order passed by this Tribunal in OA/050/00807/2017 dated 19.02.2019 wherein it is held that – “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.”

11. Heard the learned counsel for the parties and gone through the records.

12. On perusal of the order passed by this Tribunal in OA 870/2014 dated 06.05.2015 it is evidently clear that in case of those applicants who were terminated, the period from the date of termination till the joining in terms of the above order, could have been counted for the purpose of continuity in service and all consequential benefits would have been given. This Tribunal in OA/050/00807/2017 dated 19.02.2019 has also held that 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 was, therefore, allowed.

13. Under the circumstances, it will be wrong to assume that the Tribunal's direction was not intended to include grant of notional increment from the dates when it became due to their batchmates. The word "notional" itself implies that no such back wages will be paid.

14. Since this Tribunal in earlier OA, i.e. OA/050/00870/2014 held that the applicants, who were terminated, the period from the date of termination till the joining in terms of the above order [para 11] will be counted for the purpose of continuity in service and all consequential benefits, therefore, the pay fixation of the applicant's husband needs to be done notionally. The respondents are accordingly directed to fix the pay of Shri Ajeet Kumar on notional basis as fixed to his batchmates.

15. The OA is disposed of accordingly. No costs.

Sd/-
[Dinesh Sharma]M[A]

Sd/-
[Jayesh V. Bhairavia]M[J]

mps.