

(2005) 02 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3126 of 2002

Purushottam Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 JCR 100a

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Rajiv Ranjan, Abhay Kumar Mishra and Shashi Kant, for the Appellant; Md. Mokhtar Khan, for the Respondent

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order dated 9.8.2001 passed by the Central Administrative Tribunal, Patna in O.A. No. 533 of 2000 and for declaration that the order passed by the Postal Directorate, communicated by the Senior Superintendent of Post. Offices, Singhbhum Division, Jamshedpur (respondent No. 5) is non-speaking, passed without any application of mind. Petitioner has further prayed for a direction to the respondents to shift the date of his regular appointment from 14.5.1987 to 7.4.1984 with due fixation of seniority and fixation of pay.

2. The case of the petitioner is that, by a notification issued by the respondent No. 3 dated 11.3.1983, a number of vacancies for the post of Postal Assistants and Sorting Assistants were advertised and was published in a local daily "UDITVANI" in its edition dated 11.3.1983. In response thereto the petitioner filed his application for consideration of his appointment. After the due process, the petitioner was provisionally selected on merit basis and appointed as Time Scale Postal Assistant in Singhbhum Postal Division by letter No. B-2-32/Rectt/83 dated 20.9.1983 (Annexure-2). The petitioner was then sent for theoretical training to Local Training Centre, Patna City from 21.11.1983 to 3.2.1984 and thereafter for practical training for a period of 15 days. After completion of

training, by memo No. B-2-24/Rectt/Apptt dated 5.4.1984, the petitioner was posted as Sort Duty Clerk on hourly basis. The petitioner joined as Postal Assistant and worked for full 8 hours per day without a break from 7.4.1984 to 12.5.1987. Thereafter he made several representations praying for regular appointment. The respondent No. 5 also forwarded the petitioner's representation for consideration and decision along with other similarly situated persons by his letter dated 28.2.1985 (Annexure-4). By memo No. B-2-23/Rectt/Ch-1 dated 12.5.1987, respondent No. 5 directed the petitioner, according to the order of P.M.G. Bihar Circle, Patna issued by letter dated 29.4.1987, to join as temporary Postal Assistant at Ranchi Headquarters. The petitioner, accordingly, joined and worked as such from 14.5.1987 to 22.11.1987. His duty was of full eight hours. The petitioner was transferred from Ranchi Headquarters to join as Postal Assistant at Jamshedpur H.O. on 23.11.1987, where he joined and has been working since then. The petitioner made several representations to the respondents requesting for regularization of his services from the date of his initial joining on the post of Postal Assistant, i.e. from 7.4.1984, but to no effect. The petitioner, thereafter, directly represented to the Director General, Department of Posts, New Delhi (respondent No. 2). The petitioner received a letter dated 25.8.1993 whereby he was informed that his case for regularization, as Reserved Trained Pool Postal Assistant, from 7.4.1984 to 12.5.1987 was considered by the Postal Directorate, but his request was not acceded to. The petitioner made a representation dated 18.7.1994 requesting reconsideration for regularization of his services from the date of his initial appointment. But the same was not heeded upon. The petitioner, thereafter, "preferred the said O.A. No. 533 of 2000 before the Central Administrative Tribunal, Patna Bench, praying for the quashing of Postal Directorate's letter rejecting his representation for regularization by a non-speaking order and also for directing the respondents to correct the date of his regular appointment as Postal Assistant from 14.5.1987 to 7.4.1984, with seniority and fixation of pay.

3. The Central Administrative Tribunal, Patna Bench by the impugned order dated 9.8.2001 dismissed the petitioner's case, mainly, on the ground that the petition was barred by limitation and there was no sufficient ground to condone the delay. The learned Tribunal also held that the appointment of the petitioner was on the post of Sort Duty Clerk, which was purely temporary, on adhoc basis and the same was not for the full working hours. There was break in engagement, on non-working days, such as Sundays and holidays and such engagement cannot confer upon him any right for regular appointment and that he was given a regular appointment as temporary Postal Assistant by order dated 12.5.1987. The Tribunal held that in view of the above, the petitioner's claim for shifting the date of regularization of his services from 14.5.1987 to 7.4.1984 has no justification for the purpose of either seniority or fixation of pay.

4. The respondents have filed their counter affidavit stating, inter alia, that the petitioner was selected against the first half vacancies of 1983. He completed theoretical training on 3.2.1984 and practical training on 18.2.1984. By that

time, there was a departmental ban on creation of new posts and 33 Reserved Trained Pools (R.T.Ps.) were waiting for absorption. The senior Reserved Trained Pools (R.T.Ps.) were to be absorbed first against the vacancies. The petitioner, in that situation, could not be posted as Postal Assistant, on regular basis and as such he was given chance to work on the post of Reserved Trained Pool with effect from 7.4.1984. When clear vacancy became available in Ranchi Division, he was appointed as Postal Assistant, with effect from 14.5.1987. It has been further stated that the said decision was accepted by the petitioner. He worked as R.T.P. on remuneration at the rate which was payable at that time. The said period of his working as R.T.P. cannot be taken into consideration for notional fixation of pay as he was not working against the vacant post of Postal Assistant from the period 7.4.1984 to 12.5.1987. During that period he was working as Sort Duty Clerk. Subsequently, the petitioner was absorbed as Postal Assistant when the clear vacancy became available. The petitioner's services, thus, cannot be held to be regular on the post of Postal Assistant from 7.4.1984 to 12.5.1987. It has been further stated that in view of the aforesaid facts the order of the Postal Directorate is fully justified and proper and the Tribunal has rightly upheld the same and dismissed the petitioner's claim on merit as well as being barred by limitation.

5. Mr. Rajiv Ranjan, learned counsel appearing on behalf of the petitioner submitted that the grievance of the petitioner regarding improper fixation of pay and seniority is continuing cause and thus, the claim of the petitioner is not barred by limitation, as has been wrongly held by the Tribunal. Learned counsel urged that there was no willful delay in approaching the Tribunal and his case should not have been dismissed on that ground. He further submitted that the learned Tribunal has also failed to consider the petitioner's case on merit as he overlooked the vital documents and other material on record including the appointment letter/certificate of training. He urged that the petitioner's claim is for notional fixation of his pay and seniority and he has himself not claimed the arrears of pay and allowances.

6. Mr. Mokhtar Khan, appearing on behalf of the respondents submitted that the petitioner's claim has been considered even on merit and the learned Tribunal, on the consideration, has dismissed his claim. The case of the petitioner was also barred by limitation and there was no sufficient reason for condoning the delay in filing the O.A. Learned counsel submitted that the petitioner's case has been rightly dismissed on proper consideration of all the aspects and there is no illegality or infirmity in the order of the learned Tribunal.

7. After hearing the parties and perusing the records, we find that by letter No. B-2-32/Rectt/83 dated 20th January, 1983, the petitioner was provisionally selected and appointed as Postal Assistant. The letter of appointment is Annexure-2 to the writ petition. From perusal of the said letter it is evident that the selection of the petitioner on that post was on merit basis. From another letter dated 3.2.1984 it appears that the petitioner along with others were sent

for training of Postal Assistant from 21.11.1983 to 3.2.1984 and was declared passed in the test. Subsequently, by memo No. B-2-23/Rectt/Ch-01 dated 12.5.1987, the petitioner, along with others, was directed to join as Ty. P.A., Ranchi H.O. This letter is Annexure 5 to the writ petition.

8. The petitioner was, thus, appointed as the Postal Assistant, by letter dated 20.1.1983. Thereafter he was sent for training which he had successfully completed. There is nothing on record, showing any break in his service. It has been contended by the respondents that inspite of his said appointment by letter dated 20.1.1983, he was not treated as regularly appointed Postal Assistant till 14.5.1987. The ground taken by the respondents is that during the said period the petitioner was engaged as R.T.P., in absence of any clear vacancy in Ranchi Division and that he was appointed as Postal Assistant, Ranchi Division with effect from 14.5.1987 against clear vacancy. The respondents, however, failed to explain as to how the appointment of the petitioner as Postal Assistant, was kept in abeyance till 12.5.1987, when he was appointed on that post by letter dated 20.1.1983 and once appointed as Postal Assistant, as to how his post can be changed as R.T.P. to the disadvantage of the petitioner. The explanation given by the respondents does not stand to the test of reasonableness and fair play and the same does not conform to the rule of law. The respondents can not be allowed to deny the petitioner's appointment as Postal Assistant by letter dated 20.1.1983 in view of the clear terms of the appointment letter (Annexure-2) and the training certificate (Annexure-3). The said genuine claim of the petitioner cannot be legally denied by the Department and that too by a cryptic order observing that his request could not be acceded to by the Directorate. No cogent reason had been assigned for not accepting the petitioner's claim. The learned Tribunal failed to take into consideration the said aspects and materials on record. The letter of appointment, training certificate and other documents have also not been properly considered. The Tribunal erroneously viewed the entire case of the petitioner and also held the petition barred by limitation without giving due consideration of the explanation and facts and circumstances of the case. The impugned order of the Tribunal is without sound basis.

9. To sum up, we hold that the petitioner had been recruited as Postal Assistant and his posting as such cannot be kept in abeyance for years together and his post cannot be altered as R.T.P. during the intervening period from 7.4.1984 to 14.5.1987. But, the fact remains that the said grievance of the regularization of the period as Postal Assistant and shifting of the date of his posting from 14.5.1987 to 7.4.1984 for the purpose of the past seniority and fixation of pay has been raised after a number of years. If the petitioner's service on that post is regularized from 7.4.1984 to 14.5.1987 with retrospective effect, it may cause dislocation of gradation and seniority of several persons and anomalous situation may be created. The persons who are likely to be affected are also not the parties in this petition. We, therefore, do not think it just and proper to allow such prayers of the petitioner which may have an adverse effect on the persons who are not before us. However, in view of the fact that the petitioner has been

duly appointed as Postal Assistant through due process of appointment, we hold that his post cannot be changed to his disadvantage and that he will be deemed to have joined on the post of Postal Assistant for all other purposes. His services as Postal Assistant shall be counted for the purpose of future promotion, for retiral benefits and other consequential benefits, but the petitioner will not be entitled to any difference of pay for the period from 7.4.1984 to 14.5.1987 or any other benefit affecting the past seniority of other persons. Save and except the same, the petitioner's length of service as Postal Assistant shall be counted from the date of his first appointment and joining the services, i.e. with effect from 7.4.1984 for all other purposes.

10. This writ application is disposed of with the aforesaid observations. Order passed in O.A. No. 533 of 2000 stands modified in the manner and to the extent indicated in this order. Parties shall bear their own costs.