
(2009) 08 PAT CK 0077
In the Patna High Court
Case No : CWJC No. 3893 of 2009

Rajdeo Thakur

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Citation : (2010) 2 PLJR 777

Hon'ble Judges : Shiva Kirti Singh, Acting C.J.; Anjana Prakash, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the petitioner and learned Counsel for the respondents.

2. The petitioner is aggrieved by the order dated 4th January, 2008 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 122 of 2006 as contained in Annexure-1. By that order the petitioner's application was dismissed after holding that the respondents are justified in refusing pension to the petitioner because he assumed charge in group "D" post on 9.6.1995 and retired on 31.7.2004 and, therefore, had not completed ten years of qualifying service of a pensionable post.

3. The facts necessary for deciding this writ application are not in dispute. The petitioner was working as an Extra Departmental Mail Packer, Chiraiya connected to Motihari Head Office. His date of birth is 10.07.1944. He was appointed as Extra Departmental Mail Packer in the postal department on 24.01.1964. The matter of promotion to the next higher promotional post in group "D" is governed by the policy decisions under which seniority and vacancy are relevant. The policy decision further requires that for being considered for group "D" post, the concerned extra departmental employee must not have completed 50 years of age on the 1st day of July of the year concerned. On the basis of the said rules, the petitioner's claim was required to be considered on or before 10.7.1994. However, he was considered belatedly by the Departmental Promotion Committee and the promotion order was issued on 21.02.1995. The

posting order was issued on 21st March, 1995. The petitioner could join only on 9th June, 1995 and superannuated on 31st July, 2004.

4. On behalf of the petitioner it has been submitted that the policy decision laying down the maximum age for promotion to group "D" post as 50 years is to ensure that such entrants to group "D" post can complete ten years of qualifying service and may not suffer loss of pension at the end of their service career.

5. Learned Counsel for the petitioner drew our attention to G.I., Department of Posts, Letter No. 45-3/91-SPB-1 dated 6.5.1991 as well as to another letter dated 25.08.1993 as available in Swamy's Compilation of Service Rules for Postal Gramin Dak Sevak to highlight that in view of the maximum age requirement of 50 years and in view of un-warranted legal injury to several extra departmental employees on account of delay in holding the Departmental Promotion Committee meeting, a direction was issued through letter dated 25.8.1993 that the D.P.Cs. for promotion of E.D. Agents to group "D" should be held as per the prescribed schedule, particularly, keeping in view those cases where some of the E.D. Agents due for promotion are nearing the age of 50 years as prescribed in the recruitment rules.

6. From the appointment letter dated 21.02.1995 contained in Annexure- 3 it has been shown that the departmental promotion committee for the vacancy for the year 1994 as well as for the vacancy for the year 1995 met at one point of time and by the same order eight vacancies were filled up for the year 1994 in which the petitioner was at serial No. 4 and four vacancies were filled up for the year 1995.

7. Clearly, the age requirement of maximum of 50 years for recruitment / promotion to group "D" post was relaxed because the authorities were at fault in holding D.P.C. belatedly and appointing in one transaction against the vacancies for the years 1994 as well as 1995.

8. Learned Counsel for the petitioner has rightly submitted, by placing reliance on the judgments of the Central Administrative Tribunal, Patna Bench dated 15.1.2009 and 8.8.2008, contained in Annexures 10 and 11 to the writ petition, that on account of similar delay in holding D.P.C. meeting, the Tribunal directed the authorities, in one case, vide Annexure-10 to grant notional fixation of pay with effect from the relevant date and reckoning of qualifying service from that date. In the other order contained in annexure-11, the O.A. was allowed and the respondents were directed to grant pension to the applicant by treating his service as minimum qualifying service although in that case the applicant had completed only nine years and ten months on group "D" post. In that case it was noticed that the D.P.C. should have met before the applicant had completed 50 years of age but the same was conducted after a delay of two months. The benefit of such delay, for the purpose of pension, was given to the concerned employee.

9. In the present case the petitioner's case for absorption/promotion to group

"D" post should have been considered on or before 10th July, 1994 whereas it was actually considered much later and the promotion order dated 21.2.1995 was issued after a delay of approximately eight 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 only to those who are below 50 years of age.

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