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**(2010) 4 LLJ 689**

**Jharkhand High Court**

**Case No:** None

| | |
|---|---|
| Meghan Yadav | APPELLANT |
| Vs | |
| Union of India (UOI), The Superintendent of Post Office and The Post Master | RESPONDENT |

**Date of Decision:** March 29, 2010

**Citation:** (2010) 4 LLJ 689

**Hon'ble Judges:** Pradeep Kumar, J; M.Y. Eqbal, J

**Bench:** Division Bench

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
By this application the petitioner has prayed for quashing the order dated 9.9.2008 passed by Central Administrative Tribunal, Patna Bench (Circuit Court at Ranchi) in O.A. No. 49/09 whereby the Tribunal disallowed the prayer of the petitioner for payment of arrears as well as current pension.

2. The facts of the case lie in a narrow compass:

In the year 1986, the petitioner was appointed as EDA in the Branch Post Office in the district of Giridih. According to the petitioner he became entitled and eligible for promotion to Group D cadre mail peon in the year 1990, but the promotion matter was kept pending by the respondents and did not conduct D.P.C. However, petitioner was promoted to Group D cadre by the D.P.C. held on 28.6.96. Petitionerï¿½s case is that the promotion matter was kept in abeyance by the respondents as a result several persons who were junior to the petitioner were considered for promotion much earlier than the petitioner. Petitioner ultimately superannuated after completing 9 years 8 months as mail peon. Had

the petitioner been promoted with effect from 1990, he would have completed more than 15 years of service in the cadre of mail peon. After superannuation, when the petitioner was not paid pension he moved before the Central Administrative Tribunal for proper relief. The Tribunal dismissed the application without assigning any reasons by the impugned order.

3. From perusal of the order, it appears that the Tribunal has not discussed the relevant policy of government and without fully appreciating the facts of the case dismissed the application. For better appreciation the order dated 9.9.2009 passed by the Tribunal is quoted herein below :

Heard learned Counsel for both the parties.

The present OA has been filed by the applicant seeking reliefs (i) payment of arrears of pension since March, 2006 and {ii} payment of current pension.

The learned Counsel for the applicant submitted that the applicant was appointed as EDA in the Branch Post Office, Barmashia, District-Giridih in the year 1986. Thereafter, he was discharged from his duty. His further case is that the applicant was eligible for promotion to Group ï¿½Dï¿½ cadre mail peon in the year 1990 itself, but he was given the said promotion with effect from 28.6.96, instead of the year 1990. The polity of the government was to compensate the loss suffered by the applicant for the reason that his promotion to which he was entitled in the year 1990 was kept in abeyance. This was done only to defeat his claim for pension as on account of the delayed promotion to Group ï¿½Dï¿½ his service fell short of 8 months for promotion. Hence, the OA has been filed.

No written statement has been filed though ample opportunity was given to the respondents to file the same. The contention of the learned Counsel for the respondents, however, is that the applicant was appointed as EDAï¿½s only and there is no provision of pension for EDAs.

In view of the submission made on behalf of the learned Counsel for the parties, we do not find any merit in the case of the applicant to allow the reliefs as sought for. Accordingly, this OA is dismissed being devoid of any merit.

4. As noticed above, no written statement was filed by the respondents before the Tribunal. However, a counter affidavit has been filed in this case stating inter alia that the petitioner joined as Extra Departmental Staff Mail Peon on 31.3.1968. Subsequently, after completing his service in the Extra Departmental Cadre upto 50 years of age, he was promoted to Group ï¿½Dï¿½ Cadre on the basis of seniority vide Office Memo dated 12.9.96. Petitioner joined to the post of mail peon on 01.11.96 and retired from service after completing 9 years 3 months and 27 days and as the petitioner did not complete requisite qualifying service i.e. 10 years, he was not entitled for pensionary benefit.

5. We have heard learned Counsel appearing for the parties. Admittedly, the petitioner served the postal department in different capacity from 1986 to 2006 i.e. for about 20 years continuous service. In the year 1990, the petitioner became eligible for promotion to Group-D cadre Mail Peon but his case for promotion was kept in abeyance. However, in the year 1996, the petitioner was given promotion to Grade-D Cadre where he worked for more than nine years. According to the service conditions, a person working as EDA shall not be given pensionary benefit, but they will be entitled to five more years of service. In other words, the age of superannuation of EDAs is 65 years with the object to make loss the employees would suffer on account of non-payment of pension.

6. In the instant case, because of the delay in giving promotion, the petitioner could not complete 10 years in Category-D and only few months left in completing 10 years in that cadre, although the petitioner served for about 20 years in the Department. Nothing has been said in the counter affidavit as to why petitioner was not given promotion in the year 1990 when other persons junior to him were promoted in 1992. In these circumstances, it would be travesty of justice if the petitioner is denied pensionary benefit on the ground that he has not completed 10 years of service. The petitioner having served the department for more than 20 years, it would be unfair to treat him as temporary/quasi-permanent employee as held by the Supreme Court in the case of Yashwant Hari Katakkar Vs. Union of India (UOI) and Others, .

7. Learned Counsel appearing for the petitioner in course of argument produced before us the judgment passed by the Patna High Court in C.W.J.C. No. 3893 of 2009. The Patna High Court in the same facts and circumstances of the case held that the employee is entitled to pensionary benefits and further directed the respondents to treat his as having completed minimum qualifying service of 10 years and allowed his pension on that basis.

8. After having given our anxious consideration in the matter, we are of the definite opinion that the Tribunal failed to consider all these aspects of the matter and has erroneously dismissed the application.

9. For the reasons aforesaid, this application is allowed and the impugned order passed by the Tribunal is set aside. The respondents are directed to treat the petitioner as having completed minimum qualifying service of 10 years and allow him pension as early as possible and preferably within a period of two months from the date of receipt of a copy of this order.