

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1560 of 2012

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1. Hari Lal Yadav Son Of Late Mathura Yadav Office Supdt. Grade-II (Now Retired) Under Chief Medical Director, East Central Railway, Hajipur, District - Vaishali (Bihar)

.... Petitioner/s

Versus

1. The Union Of India Through General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar)
2. The Chief Medical Director, East Central Railway, Hajipur, District - Vaishali (Bihar)
3. The General Manager Personnel, East Central Railway, Hajipur, District - Vaishali (Bihar)
4. The Divisional Railway Manager, East Central Railway, Mughalsarai
5. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, District - Patna(Bihar)
6. The Chief Medical Supdt., East Central Railway, Mughalsarai
7. The Chief Medical Supdt., East Central Railway, Danapur, P.O. - Khagaul, District - Patna (Bihar)
8. Satyendra Narayan Singh Chief Officer Supdt. Through C. M. D., East Central Railway, Hajipur, District -Vaishali (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S. MUNNA PRASAD DIXIT (M.P.DIXIT),
SANJAY KUMAR CHOUBEY & SAILENDRA
KUMAR

For the Respondent/s : M/S. MADHU PRASHUN, PRATYUSH KUMAR &
(RAILWAYS) SUNIL KUMAR

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 11-09-2015

The petitioner was a Railway employee of Mughalsarai Division. He was working as Senior Clerk in the Mughalsarai Division when by the Railway he was transferred to Jamalpur Hospital, which was under control of Mughalsarai Division. From Mughalsarai Division he got promotion and was made a Clerk in 1977. It seems thereafter Jamalpur Hospital went to the charge of Maldah Division. Now, when he was not being considered for



promotion in the year 1999, he moved the Central Administrative Tribunal. The Tribunal allowed his application, and directed the Railway authorities to consider his case for promotion. This time when the matter went back to the Railway authorities of Mugalsarai Division, according to them, as the petitioner was now under Maldah Division, Mugalsarai Division could not grant him promotion, as he was not under their control, and further he had not sat in the Departmental Examination. In the meantime, those, who were junior to him in the Mugalsarai Division, where he was originally posted, all got promotions. He, accordingly, moved the Tribunal again. Notwithstanding the earlier order of the Tribunal, this time the Tribunal rejected his prayer on the ground that he had remained at Jamalpur Division on his own volition, and he could claim promotion in respect of employees under the Maldah Division. This is what has brought the petitioner to this Court.

2. The Railway, this time, once again asserted that once a person joins a Division, then his seniority has to be worked in that Division. It is, accordingly, submitted that as the petitioner had stayed at Jamalpur on his own request, which Hospital fell under the control of Maldah Division, he cannot claim seniority or parity of seniority with the employees of Mugalsarai Division. In our view, this is wrong.

3. Firstly, it must be noted that the petitioner was transferred from Mugalsarai to Jamalpur Hospital by the Railway authorities, and not on the volition or request of the petitioner. At that time Jamalpur Railway Hospital was under the control of Mugalsarai Division. The Railways due to some internal policy decision, transferred the control of Jamalpur Hospital to Maldah Railway Hospital. The petitioner was, accordingly, required to go back to



Mugalsarai Division, his parent cadre. At this stage, the Superintendent of Jamalpur Railway Hospital requested the D.R.M., Mugalsarai, to permit the petitioner to continue at Jamalpur, not because of the request of the petitioner but because of the work exigency. The letter, which is on record, clearly states that there was no Head Clerk at Jamalpur Railway Hospital, and the work would be seriously hampered. The D.R.M. , Mugalsari acceded to the said request. That is how the petitioner continued at Jamalpur. Now, because of this, the petitioner is being deprived of his promotion. It is said that as he was no more under Mugalsarai control , his seniority would be determined at Maldah Division. In our view, can there be anything more arbitrary? Whether the control of Railway Establishment is with one Division or the other, is an administrative decision of the Railway . The petitioner has nothing to do with it. If the control of the Establishment is changed, the petitioner cannot object. But, merely because the control changes, an employee cannot lose his seniority. It is wrong to say or suggest that the petitioner on his own volition stayed at Jamalpur, for he had the communication or the order of the Superintendent of Jamalpur Railway Hospital and D.R.M., Mugalsarai in this respect. Thus, the petitioner has been put in CATCH-22 situation. Being under Maldah control, he could not take examination at Mugalsarai. Having not taken examination at Mugalsarai, he cannot be promoted. In our view, this is all wrong. The petitioner has done nothing wrong to disentitle him of his legitimate promotion. Had he remained in Mugalsarai Division, he would have been in his original position above his juniors. By the act of Railway, he is made to lose his seniority. That cannot be done.

4. We, therefore, set aside the order of the Tribunal dated 25-5-2010 passed in O.A.No. 596 of 2005, and allow the writ

petition with a direction to the Railway authorities to reconsider the matter, and restore the seniority of the petitioner above that of his immediate junior, who is private respondent no.8 Satyendra Narayan Singh, as the petitioner is not at fault. The petitioner would also be entitled to all consequential benefits.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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