

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24909 of 2013

- =====
1. The Union of India through The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar)
 2. The General Manager, (Personnel) East Central Railway, Hajipur, District- Vaishali, (Bihar)
 3. The Deputy Chief Personnel Officer, (Gazetted) East Central Railway, Hajipur.
 4. The Principal Chief Engineer, East Central Railway, Hajipur, District- Vaishali, (Bihar)
 5. The Senior Divisional Engineer (Co-ordination) East Central Railway, Danapur, District- Patna (Bihar)

.... Petitioner/s

Versus

Jyoti Prakash S/O Dr. Surendra Mohan Singh working as Senior Section Engineer (Works), East Central Railway, Patna (Bihar).

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 21185 of 2014

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Jyoti Prakash, Son of Dr. Surendra Mohan Singh, Senior Section Engineer (Works), East Central Railway, Patna (Bihar).

.... Petitioner/s

Versus

1. The Union of India through General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District - Vaishali (Bihar).
3. The Deputy Chief Personnel Officer (Gazetted), East Central Railway, Hajipur, District - Vaishali (Bihar).
4. The Principal Chief Engineer, East Central Railway, Hajipur District - Vaishali (Bihar).
5. The Senior Divisional Engineer (Co-ordination), East Central Railway, Danapur, P.O- - Khagaul, District - Patna(Bihar).

.... Respondent/s

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Appearance :

(In CWJC No. 24909 of 2013)

For the Petitioner/s : Mr. Parsuram Singh

For the Respondent/s : Mr. M.P. Dixit,

(In CWJC No. 21185 of 2014)

For the Petitioner/s : Mr. Munna Pd Dixit (M.P. Dixit)

For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

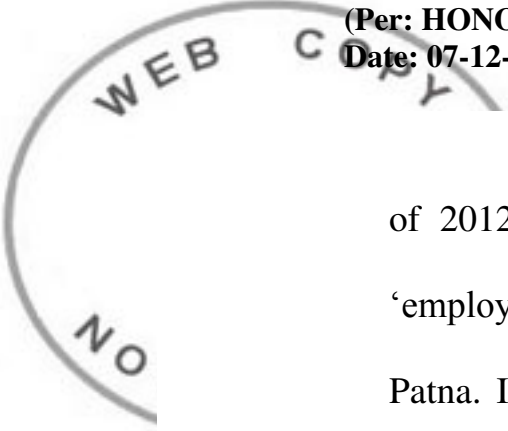
and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**)

Date: 07-12-2015



These two writ petitions are connected with O.A. No. 145 of 2012, as filed by Jyoti Prakash (hereinafter referred to as the 'employee') before the Central Administrative Tribunal, Patna Bench, Patna. In the original application, as filed by the employee, he had claimed that he be permitted to take the limited combined examination for promotion. The Railways were denying this on the ground that he originally, being an employee of the South Eastern Railway, on his own request was transferred to East Central Railway and then posted in Danapur Division thereof, he would lose his seniority and be at the bottom of the seniority list of the Danapur Division. The Tribunal, referring to para 203.5 of Chapter II Section 'A' of IREM 1989 Vol. I, held that seniority for the purposes of promotion would be determined from the time he was appointed in that particular grade from which promotion is sought. The Railways have challenged the correctness of this view of the Tribunal. The writ petition by the employee is for the relief that when the Railways failed to comply with the order, he had filed a contempt application, and ultimately the contempt application was discharged by the Tribunal. The employee is thus agreed by this discharge.

2. We have heard the parties and with their consent are disposing of the writ petitions at this stage itself.

3. We may first notice the administrative set up of Railways. Indian Railway is divided into different Zones, like South Eastern, Eastern, East Central etc. Within the Zones, there are divisions. The post with which we are concerned i.e., Sectional Engineer is Group-B post, and the cadre of Sectional Engineer is the Divisional Cadre and it has a Divisional Seniority List. It is also not in dispute that if an employee seeks his transfer from one Zone to another or from one Division to another, the transfer being at his request, he loses his seniority and in the new Division and in the new Zone, he will be put at the bottom of the Seniority on the day he joins his transferred post.

4. When the employee was earlier in South Eastern Railway posted at Chakardharpur, he sought transfer to Danapur Division. The transfer being at his request from one Zonal Railway to another Zonal Railway; when he joined Danapur Division w.e.f. 29.12.2003, he was to be placed at the bottom of the seniority list of Sectional Engineers. Accordingly when the question of promotion to Group- B arose, the problem started. The employee was not selected for the promotional examination and this is what brought him to the Tribunal. The stand of the Railway was that upon inter- Zonal transfer



upon his request he lost his seniority and was placed at the bottom of the seniority of Danapur Division as a Sectional Engineer as of 29.12.2003. Thus, his service for the purposes of the determining seniority in the Danapur Division for the purposes of promotion would be calculated from the said date. On the other hand, the employee contended that in terms of paragraph 203.5, the inter se seniority for the purposes of promotion, has to be calculated upon length of service in the same grade excluding contentious promotions, This is consistent with the normal rule of seniority which is length of service in the cadre. The employee thus submitted that the service rendered in South Eastern Railways cannot be forfeited and has to be taken into account, the Tribunal aggrieved with the above.

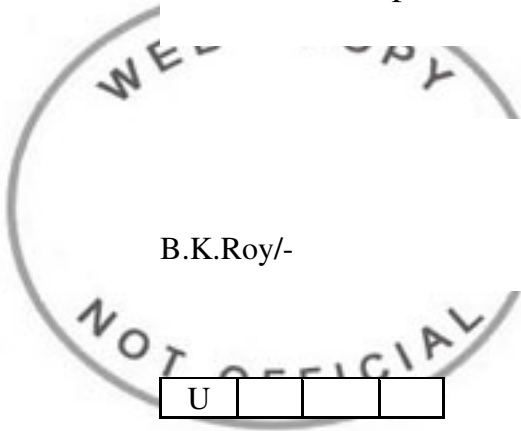
5. Having considered the matter, in our view, the Tribunal failed inherently in so deciding. Paragraph 203.5 clearly predicates the normal situation, a general situation of comparing seniority based on length of service. But, so far as the employee in the present case is concerned, as noted above, he is not in normal case, for he has himself sought inter-Zonal transfer, forfeiting his seniority. He becomes the junior most in the Danapur Division where he comes on his own request. This would become meaningless if we were to apply general rule as contained in Para 203.5. That can never be the intention. Once we have the special rule in case of transfer on request which reduces



or changes the seniority, then we have the general rule in shape of para 302.5 which determines the seniority. In our view, due credence has to be given to the special rule over the general rule. The seniority of the employee in the present case would be determined from the date of his entry into the cadre at the Danapur Division and not from the date of joining in the Railway Service at South Eastern Railway. This is limited to determining the inter se seniority, limited to Danapur Division and only for that purpose. Taking any other view would lead to anomalous results. For example, if upon his own request a person comes from another Zone, he becomes junior most in the cadre in the Division but if we were to apply only para 203.5 then though his seniority in the Divisional Cadre may not be permitted to take promotional examination, he being junior would qualify for promotional examination, even though he is the junior most in the cadre. This is the result which we cannot permit.

6. Therefore, we hold that the special rule of depriving the seniority would prevail over the general rule for determining seniority. We, thus, find that the order of the Tribunal cannot be sustained and it is, accordingly, set aside. Consequently, the promotion granted to the employee who appeared in the promotional examination at the time it was granted, was not correct and the consequences are not either. They are all set aside. Consequently the

writ petition filed by the employee being aggrieved by the order passed in C.C.P.A. becomes infructuous.



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(Navaniti Prasad Singh, J)

(Anjana Mishra, J)