

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9471 of 2014

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Pavitri Devi, W/o Late Ram Bharos, R/o Flat No. 402, East Block, Sumit
Chandram Griham, Ramnagri, P.S. Rajiv Nagar, P.O. Ashiyana Nagar, District –
Patna.

.... Petitioner/s

Versus

1. The Union of India, through the General Manager, Eastern Railway, Hazipur (Vaishali) Bihar.
2. The Chief Personnel Officer, East Central Railway, Hazipur.
3. The General Manager, North Eastern Railway, Gorakhpur, U.P.
4. The Chief Personnel Officer, North Eastern Railway, Gorakhpur, U.P.
5. The Chief Work Manager, Railway Work Shop, E.C. Railway, Samastipur, Bihar.
6. The Senior Personnel Officer, Railway Workshop, E.C. Railway, Samastipur, Bihar.
7. The Divisional Railway Manager, E.C. Railway, Samastipur.
8. The Senior Divisional Officer, E.C. Railway, Samastipur, Bihar.
9. Sri Radheshyam Jha, Sr. Clerk, S.W.M., Officer Railway Workshop. E.C. Railway, Samastipur, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Ganguli.

For the Respondent/s : Mr. Naresh Kikshit.

Mr. Vivek Anand Amritesh.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
AND

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-04-2015

Heard learned counsel for the petitioner and

learned counsel for the Railways in respect of I.A. No. 2655 of

2015 for substituting the original writ petitioner Pavitri Devi as

consequence of her death by her elder son Baidnath Sharma.

Hearing the counsels, interlocutory application is

allowed. Baidnath Sharma, elder son of the original petitioner

Pavitri Devi is substituted.

We have heard the learned counsel for the petitioner and learned counsel for the Railways and with their consent, this application is being disposed of at this stage itself.

The petitioner being aggrieved by order dated 4th December, 2013 passed in M.A. No. 474 of 2013, which was an application for condonation of delay filed in O.A. No. 652 of 2013 by the Miscellaneous Application, has been dismissed by the Central Administrative Tribunal, Patna Bench, Patna holding that the original application is grossly barred by limitation.

The Tribunal has held that eventually what the petitioner was challenging in the original application, which was filed in the year 2013, was allegedly the wrong pay scale granted to her husband in the year 1986, which was not even challenged by her husband in his life time. His husband was the Railway employee who superannuated in 1986 and subsequently, died in the year 2012. In these circumstances, the Tribunal held that the O.A. was hopelessly barred by limitation and there was no cause of condonation of delay.

In our view, the Tribunal did not commit any error of law. However, as the learned counsel for the petitioner has vehemently and passionately argued the matter, being cause of an



old widow, we would discuss the matter on merits to show that even otherwise the cause does not justify any interference. The employee claimed that he was entitled to the pay scale of Rs. 1380-560 and if that be so, then in view of Railway Board order No. 170 of 1986, upon revision of pay scale, he would originally get the revised pay scale of Rs. 1320-2040, but as his colleagues, juniors were given the replacement pay scale of Rs. 1400–2300 i.e. the replacement pay scale, we should approve.

The first thing to be noted is that this is a claim, which gave cause of action for the first time in 1986 itself. What is not stated either before the Tribunal or before the Court was that during the life time of the employee, he had himself filed an Original Application, being O.A. No. 568 of 1996, which was ultimately dismissed upon being barred by limitation and not being pursued by order dated 04.10.2001.

Regrettably, this fact was not even brought to the notice of the Tribunal nor to this Court by pleading. It has been pointed out by learned counsel for the Railways and is not disputed by the learned counsel for the writ petitioner. However, it is argued by the petitioner that, in fact, the employee had been agitating this matter and when lump sum payments were made in the higher pay scale, he did not pursue the matter before the Tribunal at the first



instance. It is only partly corrected. Again the learned counsel for the Railways pointed out that there was a lump sum payment made and the pay scale was revised. That was done in the year 1988, which is not disputed by the learned counsel for the petitioner. If all that had been done in 1988 then surely the application filed in the year 1996 was barred. The employee died in 2012 without making any further protest. Thus, when the widow filed an application virtually for the same relief in the year 2013, it was grossly barred. To us, the proper question would have been to the Railways as to whether the employee was entitled to the higher pay scale and if he was why it was not paid but we are not sanguine that the right pay scale is not paid. What we perceived after the lengthy argument that the dispute is now as to whether the replacement pay scale, as paid by the Railways at Rs. 1320-2040 is correct or the replacement pay scale of Rs.1400-2300, but this pre-supposes payment of the replacement pay scale. Our doubts stand clarified, when we look to the counter affidavit filed by the Railways, they have annexed the service book of the employee, which clearly shows that from 1988 onwards itself, the pay scale was fixed at Rs. 1320-2040. Thus, no further change is required at this belated stage. The counter affidavit further states that the employee was not entitled to the higher pay scale, which is a pay scale for Mistri, as he was never

promoted to that right. To this learned counsel for the petitioner vehemently argued that his juniors received the higher pay scale, he then conceded that they did not retire before him but they retired much later and it is in that tenure, they got the promotion. The case, thus, cannot compare.

Thus, we find no merit in this application. Accordingly, this writ application is dismissed. However, it would be for the Railways to examine the matter and if the pay scale of Rs. 1320-2040 and the pension commensurate to that is not being paid or has not been paid, it shall be the duty of the Divisional Railway Manager, E.C., Samastipur to ensure that within a period of four months and the same along with arrears be paid to the petitioner.

(Navaniti Prasad Singh, J.)

(Rajendra Kumar Mishra, J.)

Shailendra/-

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