

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.385 of 2012**

**IN**

**Civil Writ Jurisdiction Case No. 18848 of 2011**

- =====
1. The Union of India through Chairman, Railway Board, Rail Bhawan, New Delhi.
  2. General Manager, East Central Railway, Hajipur.
  3. C.P.O. East Central Railway, Hajipur.
  4. Divisional Railway Manager, East Central Railway, Dhanbad
  5. Sr. D.P.O. East Central Railway Dhanbad.
  6. Sr. D.E.E./ T.R.S. East Central Railway, Gomoh

.... .... Petitioners

Versus

D.K.Sharma S/O Shri Ram Das Sharma, Tech, Group- I, Under Sr. S.E./T.R.S. East Central Railway, Gomoh, Resident of Village- Madan Bigha, P.O- Meera Bigha, P.S- Chandauti, District- Gaya (Bihar)

.... .... Respondent

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**Appearance:**

For the Petitioners : Mr. Anil Kumar Sinha, Advocate  
For the Respondent : Mr. M.P.Dixit, Advocate  
Mr.Sanjay Kumar Choudhary, Advocate  
Mr. Shailendra Kumar, Advocate

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE VIKASH JAIN**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)**

**Date: 08-10-2015**

Heard Mr. Anil Kumar Sinha, learned counsel,  
appearing on behalf of the petitioners, and Mr. M.P.  
Dixit, learned Counsel, appearing on behalf of the  
respondent.

2. This application has been filed for review of the  
order, dated 07.05.2012, passed, in CWJC No. 18848



of 2011, by a Division Bench of this Court, *inter alia*, allowing the writ petition of the respondent herein to the extent that the impugned order, dated 27.07.2010, of the Central Administrative Tribunal, Patna Bench, Patna, affirming the decision of the Railway authorities that the period of extraordinary leave shall not be counted as service for purposes of pension, was set aside.

3. It is submitted, on behalf of the petitioner-railways, that the extraordinary leave for the period from 15.06.1994 to 27.03.2000 was not eligible to be counted as qualifying service for pensionary benefits in view of Rule 36 of the Railway Services (Pension) Rules, 1993 and such plea had duly been taken in paragraph 14 of the counter affidavit filed in the writ proceedings. It is submitted that a copy of the said rule could not, however, be produced nor explained before the Writ Court and as such, the order passed by this Court is fit to be reviewed.

4. Learned counsel for the respondent-writ petitioner, on the other hand, submits that the order, under review, does not suffer from any error, this Court having taken due note of the undisputed fact that a disciplinary proceeding, for imposition of penalty



upon the petitioner for unauthorized long leave, had been initiated by issuance of a charge memo, but the same had been dropped and, in absence of any proceeding against the petitioner, punishment could not have been awarded. It was, therefore, held "that once extraordinary leave has been granted without any salary, there is a presumption that the service of the employee continued uninterrupted unless there be a rule to the contrary"; but no such Rule had been pointed out by the review-petitioner.

5. The scope of interference in review is well known, being much more restricted in its application and cannot be treated as an appeal in disguise. The petitioner has not been able to show any error apparent on the face of the record nor has he discovered any new or important matter of evidence nor raised an issue capable of decision without a long-drawn process of reasoning on points, where there may conceivably be two opinions. It has been held, in *Haridas Das vs. Usha Rani Benika* [(2006) 4 SCC 78], that the power of review does not "postulate a rehearing of the dispute, because a party had not highlighted all the aspects of the case or could, perhaps have argued them more forcefully and/or

cited binding precedents to the court and thereby enjoyed a favourable verdict.”

6. In the instant case, the review-petitioner has itself taken the stand that a copy of the relevant rule was not produced and the same could not be explained during writ proceedings. Even otherwise, the mere existence of Rule 36 of the Pension Rules, without its applicability having been decided in an appropriate proceeding, cannot form a valid basis for review; more so, when the disciplinary proceeding was consciously dropped against the writ-petitioner and the decision not to impose any penalty on the writ-petitioner was taken.

7. This Court, therefore, holds that no case for review has been made out. For the foregoing reasons, the review petition is dismissed.

**(Vikash Jain, J.)**

**I. A. Ansari, ACJ.:** I agree

**(I. A. Ansari, ACJ.)**

Chandran

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