

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16541 of 2011

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1. S.N.P. Bhawsinka S/O Late G.L. Bhawsinka R/O Mohalla- Marwari Mohalla, P.O. + P.S.- Gopalganj, District- Gopalganj, Presently Working As J.E. II (W), On Adhoc under Dy. Chief Engineer (Construction), E.C. Railway, Danapur, Now Con. Under Dy. Chief Engineer (Construction) Works-I, E.C. Railway, Mahendrughat, Patna (Bihar)

.... Petitioner/s

Versus

1. The Union Of India Through G.M., N.E. Railway, Gorakhpur
2. The C.A.O. (Con.), N.E. Railway, Gorakhpur
3. The D.R.M., N.E. Railway, Lucknow
4. The C.A.O. (Con.), E.C. Railway, Mahendrughat, Patna
5. The Dy. C.E. (Con.)-I, E.C. Railway, Danapur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MUNNA PRASAD DIXIT (M.P.DIXIT)
Mr. S.K.CHOUBEY & Mr.SHAILENDRA KUMAR

For the Respondent/s : Mr.BINDHYACHAL SINGH & Mr.KUMAR UDAY PRATAP

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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: 31-08-2015

The petitioner was originally employed as Work Mistry(later designated as Work Supervisor) in the year 1974. He was under the control of North Eastern Railway, Lucknow. He was then deputed to Eastern Railway(now Central Railway). Here, in 1984 he received an ad-hoc promotion as J.E.II. In 1999 the Railways framed the Assured Career Progression Scheme. This Scheme, inter alia, provided that a person, who had not got any financial up-gradation by



virtue of any promotion or otherwise for the first 12 years of service, he would then get, as is what is known as First A.C.P. It was a mere financial up-gradation, and not promotion. Similarly, if in the next 12 years, he did not get any financial up-gradation or promotion, he will be entitled to Second A.C.P. Accordingly, the petitioner having been employed in the year 1974, would be entitled to First A.C.P. with effect from 1986, though payable from 1999, when the Scheme came into being, but as he had already received ad-hoc promotion as J.E.II in the year 1984, the petitioner also never claimed First A.C.P. All his representations were in regard to claim of Second A.C.P. alone. The first promotion having been received in 1984, the Second A.C.P. would be due in 1996 though the amount payable would be with effect from 1999, when the Scheme came into being. When this was not given, he moved the Central Administrative Tribunal, Patna Bench, which noted the contention and examined the A.C.P. Scheme. It noted Annexure-1 to the Scheme, where conditions under which the A.C.P. would be granted, and the conditions were contained in Clause 4 and Clause 6 of Annexure-1 to the Scheme, which clearly stipulated that if any promotional examination was required to be cleared, then unless it is so done, the A.C.P. would not be granted. In other words, the person had to be found fit for promotion to earn the First or the Second A.C.P. The Tribunal also noted that the General Manager had



called the petitioner for examination and viva voce for promotion to J.E.I, but the petitioner had not responded nor turned up and accordingly was deprived of his promotion. That being so, he suffered from disability, and he could not earn his Second A.C.P. The Tribunal dismissed the application of the petitioner. Hence, the present writ petition.

2. While this writ petition was pending, initially the Railway was given an opportunity to consider the matter afresh and pass orders. The Railway again reiterated its earlier order depriving the petitioner of the Second A.C.P. This was considered by the Division Bench earlier, holding that 12 years having expired since its ad-hoc promotion, and there being no further financial up-gradation, the petitioner was entitled to Second A.C.P. and the writ petition was, accordingly, allowed by judgment and order dated 13-9-2013. The Railway, finding that the Court had not referred to the important restrictions, as provided in the A.C.P. Scheme itself, filed Civil Review No. 121 of 2014, which, after hearing, was allowed on 10-7-2015, and the order and judgment dated 13-9-2013 passed in this writ petition was recalled, and the matter was remanded for re-hearing.

3. We have gone through the order of the Tribunal and the Scheme. We are of the view that the petitioner having received ad-hoc promotion as J.E.II within first 12 years of his service, he is not



entitled to First A.C.P. When it comes to Second A.C.P., which would have been due in 1996, the Tribunal having noted, the petitioner not having shown it to be wrong, that the petitioner was called for departmental examination and viva voce to consider him for promotion to J.E.I, but the petitioner did not respond. He was, thus, declared unfit for promotion to J.E.I. That being so, he disentitled himself to Second A.C.P. We, thus, find no error in the order of the Tribunal, which requires our interference.

4. Mr. Dixit, learned counsel for the petitioner then submits that now A.C.P. Scheme has been replaced by M.A.C.P. Scheme within effect from 1-9-2010, and he would be entitled to financial benefits thereunder. We cannot entertain this in this writ proceeding at the first instance. It would be for the petitioner to move the authority or the Tribunal at the first instance, and if he so moves, the said authority/Tribunal would consider his claim in accordance with the M.A.C.P. Scheme to the extent it may be applicable. Keeping in view the fact that this writ petition has been pending in this Court since 2011, it would be appropriate for the authority/Tribunal, if so moved, to consider the claim of the petitioner on merits, rather than disentitle him on the ground of delay or such technicality. We have not adjudicated on the merits of the claim of the petitioner in respect of entitlement under M.A.C.P. Scheme, which the authority/Tribunal

will decide.

5. The writ petition is, accordingly, disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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