

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21842 of 2014

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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 Chief Operating Manager, East Central Railway, Hajipur, District - Vaishali (Bihar).

.... Petitioners

Versus

1. Om Prakash Mishra Son of Late Parshuram Mishra, Head Clerk, Office of Chief Operating Manager, East Central Railway, Hajipur, District - Vaishali (Bihar).
2. Sri T. Usman, Office Superintendent Grade-II, Office of Chief Operating Manager, East Central Railway, Hajipur, District - Vaishali (Bihar).

.... Respondents

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Appearance :

For the Petitioners : Mr. Anil Singh, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 26-04-2016

Heard learned counsel for the petitioners.

The challenge in the present writ application is to the order dated 7th April, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') in O.A. No. 349 of 2010.

The respondent no. 1 had filed the Original Application seeking a direction upon the petitioners to correct his seniority position as per the seniority list published on 02.04.2007 from the date the respondent no. 2 had been promoted and for grant of all consequential benefits including arrear pay. The Tribunal after considering the matter ultimately directed that though the seniority of respondent no. 1 stood restored with effect from 08.10.2004 but only on proforma basis as per order dated 26.08.2010, but since there were lapses on his part in approaching the Tribunal in time, a direction was given to the petitioners to grant the financial benefit of the promotional post from the date of filing of the Original Application, i.e., starting May, 2010. The petitioners being aggrieved by the said order have approached the Court in the present writ application.

Learned counsel for the petitioners submits that such direction was against paragraph no. 228 of the I.R.E.M. Vol.-I, which clearly stipulates that though the seniority of the persons shall be restored with retrospective effect on account of administrative error, they shall be assigned the correct seniority *vis-a-vis* their junior



already promoted but payment of the higher grade of promotion may be fixed proforma and the enhanced pay may be allowed from the date of actual promotion and further no arrear on this account shall be payable as the person had not actually discharged the duties and responsibilities of the higher post. It is further submitted that the respondent no. 1 has already been granted actual benefits with effect from 26.08.2010.

Having considered the contentions of learned counsel for the petitioners, we are not impressed by the same. It is not in dispute that the applicant before the Tribunal had not been given his due not because of any lapse on his part but on account of the petitioners themselves not discharging their duties diligently and with due care. Once realizing their own error, when they had restored the correct seniority of the respondent no. 1 retrospectively from the due date, and that too not because of any order from any Court, clearly indicates that the onus and responsibility of such error leading to injustice to the respondent no. 1 was wholly attributable to the petitioners. Thus, to that extent, the claim of the respondent no. 1 for consequential benefits cannot be said to be untenable as a matter of principle. However, the Tribunal has tried to balance the issues between the parties to the extent that, as the applicant had not been diligent in pursuing the matter and had approached the Tribunal only

in May, 2010, the order to make payment for grant of financial benefits with effect from the date of filing of the Original Application, i.e., starting from May, 2010 is based on sound logic and reasoning to which the petitioners cannot have any valid objection.

Accordingly, we find no merit in the present writ application and the same stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	N/A
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