

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25678 of 2013

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1. The Union of India through the General Manager, E.C. Railway, Hazipur.
 2. The A.D.E.N., E.C. Railway, Thana Bihpur.
 3. The Divisional Railway Manager, E.C. Railway, Sonapur.

.... Petitioners

Versus

Amrit, S/O Late Sarju G.P. Khalasi under ADEN, E.C. Railway, Thana Bihpur,
Resident of Village and Post Office Bihpur, District Bhagalpur.

.... Respondent

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Appearance :

For the Petitioners : Mr. Sunil Kumar Ravi, Advocate
For the Respondent : Mr. Satish Chandra Mishra, Advocate
Mr. Sudama Pandey, Advocate
Mr. Uma Kant Mishra, Advocate

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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: 16-02-2016

Railways are aggrieved by the judgment and
order dated 17.09.2009, passed by the Central Administrative
Tribunal, Patna Bench, Patna in O.A. No. 153 of 2008.

An objection has been taken by the contesting
respondent who has appeared and whose application had been
allowed by the Tribunal that the order of the Tribunal having
been passed on 17.09.2009 Railways took no steps to challenge
it. It is only when contempt proceedings were initiated and orders
were passed by the Tribunal in the year 2013 that they have filed

this writ petition belatedly.

Be that as it may, we have heard Sri Sunil Kumar Ravi for the Railways and Sri Sudama Pandey for the contesting respondent.

The dispute is with regard to entitlement of pension. The employee contends that he had been working as casual Gangman for the Railways. Up to 1990 he had already put in 1914 days of work as casual Gangman. In 1990 a seniority-list of casual employees was made for being made permanent in Group-D post. In due course of time i.e. on 27.07.1997 one Arjun a junior employee was absorbed in Group-D post. Amrit, the employee represented, and, ultimately, it was found that there was an administrative mistake and as such he was ultimately absorbed as G.P. Khalasi on 08.04.1999 and ultimately superannuated on 30.04.2006. He had obviously served less than 10 years in permanent position and, therefore, was not entitled to pension. However, he moved the Central Administrative Tribunal and pointed out firstly that he ought to have been appointed in the year 1997 itself when his junior was appointed. For the same panel he had been left out by mistake of the Railways. The Tribunal accepted this and rightly so. Then Railways now contend that even then he is 1 year 3 months short of 10 years

which is the qualifying period.

Learned counsel for the employee Amrit draws our attention to the decision of the Apex Court in the case of Union of India Vs. Sarju being S.L.A. (Civil) No. 20041 of 2008 which went from this Court and was decided on 30.09.2011 wherein the Apex Court has clearly held that in respect of any permanent employee of Railways the full period he has rendered as temporary status and half the period in casual status has to be taken into account for the limited purpose of calculating eligibility for pension. Thus, if we apply this law as laid down by the Apex Court then as per the Railways own saying the employee had worked 1914 days as casual labourer. That is a recorded fact, may be in broken space. This is as per the seniority- list that had been prepared at the time of interview in the year 1990 itself for the purpose of absorption in Group-D post. If we take half of this then the shortage of 1 year 3 months is made. Having considered, in our opinion, the Tribunal was not in error in so deciding. Firstly, the employee by mistake of Railways was left out of employment while his junior was taken in. Then the casual period for which he had worked is not being taken into account. If the two are taken into account then the 10 years minimum eligibility is met and if that is met then he would

be entitled to pension. Tribunal, thus, committed no error in allowing the application. We, therefore, dismiss the writ petition.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/AFR

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