

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13054 of 2014

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Ajit Kumar Mishra, S/o Sri T.N. Mishra, Ex Divisional Financial Manager, East Central Railway, Dhanbad, now Sr. A.F.A. (C), East Central Railway, Mahendrughat, Patna

.... Petitioner/s

Versus

1. The Union of India through General Manager, East Central Railway, Hajipur.
2. The F.A. & C.A.O., East Central Railway, Hajipur.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. M.P. Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
For the Respondents : Mr. Arvind Ujjwal, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date:14-01-2016

The present writ application has been preferred against the order, dated 5.7.2011, passed by the Central Administrative Tribunal, Patna Bench, in Original Application No.333 of 2007, whereby the Tribunal has dismissed the prayer of the original applicant-petitioner herein for grant of promotion in the Senior Scale *ad hoc* with effect from 1.10.2002 instead of 28.10.2004. Thus, the limited prayer of the petitioner was for shifting back the date of promotion in the Senior Scale *ad hoc*, which had been granted to him with effect from 28.10.2004, to 1.10.2002 as the petitioner claimed that juniors to him had been granted such

benefit, whereas the present petitioner had been denied the same despite vacancies being available in the Senior Scale *ad hoc*, as per Railway Board's order, contained in the letter, dated 20.12.2002 (Annexure 1).

2. The factual matrix of the case, as detailed by the writ petitioner, is as follows:

(i) While the petitioner was working in Group 'C' post under the Railways, he was promoted to the post of Accounts Officer Group 'B' (Gazetted) with effect from 30.12.1997.

(ii) The East Central Railway, Hajipur, came into permanent existence with effect from 1.10.2002 and the employees, working either in Eastern Railway or North Eastern Railway, were asked to submit their willingness for their absorption in East Central Railway and pursuant thereto, the petitioner and 16 others submitted their option for their absorption in East Central Railway.

(iii) The Railway Board accepted the option given by the petitioner along with 16 other Officers and vide order, dated 20.12.2002, they were absorbed permanently in East Central Railway in order of seniority. In the said seniority list, the petitioner's name figured at Serial No.14.



(iv) By order, dated 20.12.2002, the Railway Board also earmarked 15 posts in Senior Scale for promotion to Group 'B' Officers, provided they had completed three years' service in the feeder grade. Since the petitioner was fulfilling the said criteria prior to 1.10.2002, he was eligible for the said promotion in the Senior Scale, with effect from 1.10.2002, against the said available 15 posts. It may be reiterated here that the petitioner was promoted to the post of Accounts Officer Group 'B' (Gazetted) with effect from 30.12.1997.

(v) It was contended by the petitioner in the O.A. that the promotion, in the Senior Scale, is a non-selection post, which was to be granted on the basis of seniority and, out of 17 persons shown in Annexure 1, the persons, whose names appeared at Serial Nos.1 to 7 of the letter, dated 20.12.2002 (Annexure 1), had already got promotion in the Senior Scale prior to 1.10.2002, when the East Central Railway was created and, therefore, only ten persons, out of the said list, remained for consideration against the 15 posts available as on the said date and the petitioner, being placed at 6th position, was very much entitled to get the said promotion with effect from 1.10.2002.

(vi) Being eligible for the said promotion, the original applicant-writ petitioner filed a representation before respondent



No.1 and vide Annexure 2, dated 10.11.2003, he was informed that his matter is under consideration. However, the petitioner was granted promotion in Senior Scale with effect from 28.10.2004 instead of 1.10.2002. Consequently, he represented once again to respondent No.1, vide his representation, dated 26.4.2006, but the same was arbitrarily rejected on 5.5.2006 by respondent No.2 in a most illogical manner. Left with no option, the petitioner reiterated his plea by filing a representation, dated 12.12.2006, but the same received no attention. This necessitated the petitioner to move the Central Administrative Tribunal, Patna Bench, by filing Original Application No.333 of 2007.

3. The respondent-East Central Railway filed their written statement in the aforementioned O.A., whereby they sought to justify their impugned decision on three grounds, as mentioned at paragraphs 4, 6 and 7; thus: (i) A charge sheet, dated 26.11.2002, was issued against the petitioner; (ii) The petitioner joined the East Central Railway on 21.7.2003 and (iii) Vacancy, in the Senior Scale, was 12 and the position of the petitioner was at Serial No.14.

4. The original applicant-writ petitioner filed his rejoinder to the aforementioned contentions of the respondent by stating that the aforementioned charge sheet, dated 26.11.2002,



was challenged by the petitioner in another O.A., bearing No.1098 of 2002, before the learned Central Administrative Tribunal, Patna Bench, which was allowed on 3.2.2004 and the charge sheet was quashed. Hence, denial of the said promotion on such a ground is wholly irrelevant and mischievous as the respondents were fully aware that said charge sheet had already been quashed by the Tribunal prior to the filing of the subsequent O.A.

5. As regards the other allegation against the petitioner that he joined the East Central Railway on 21.7.2003, which was the basis of denial of promotion to him in the Senior Scale *ad hoc* with effect from 1.10.2002, the petitioner submitted that the order of the Railway Board, as contained in Annexure 1, clearly indicates that the petitioner, including the 16 others, had been transferred to the newly created East Central Railway with effect from 1.10.2002; but since the petitioner did not receive from the respondents any order relieving him, he filed two original applications, vide O.A. No.160 of 2003 and O.A. No.274 of 2003, before the learned Central Administrative Tribunal, Patna Bench, Patna, for a direction upon the respondents to spare the petitioner so as to enable his joining in the newly created East Central Railway, which was allowed by the Tribunal, vide order,

dated 21.4.2003, directing the respondents to spare the petitioner immediately and, thereafter, he was spared and joined on 21.7.2003. As such, the petitioner was not to be blamed for having joined on 21.7.2003 and cannot be victimized and allowed to suffer in any manner for the fault of the respondents.

6. The last ground, taken by the respondents for denying the promotion of the petitioner, is that there are 12 unreserved vacancies and the position of the petitioner is at Serial No.14. However, the same was controverted by the petitioner by stating that the petitioner was not placed at Serial No.14; rather, out of 17 Group 'B' posts shown in Annexure 1, 7 (seven) had already been promoted prior to 1.2.2002 and one had superannuated leaving, thus, the petitioner placed at Serial No.6 and, hence, the stand of the respondents was clearly evasive and cannot be sustained and allowed to stand in the way of the petitioner's retrospective promotion.

7. The petitioner, now, submits that even though such contentions, as indicated above, were raised by him before the Central Administrative Tribunal, the learned Tribunal, on 5.7.2011, dismissed his application on wholly erroneous consideration without applying its judicial mind towards the points raised by the petitioner and though the petitioner, in this



regard, preferred a review application, bearing Review Application No.21 of 2011, the said review application was dismissed, on 5.11.2013, without considering the case of the petitioner in its correct perspective. Constrained once again by the said order of dismissal, the petitioner preferred Miscellaneous Application No.530 of 2013 for recalling the order, dated 5.11.2013, passed in the said review application, but that too was dismissed stating that there was no provision for recalling the order, which was also contrary to the law and rules.

8. Being aggrieved by the aforementioned orders, dated 5.7.2011, 5.11.2013 and 17.7.2014, the petitioner has preferred the present writ application for shifting back his date of promotion from 28.10.2004 to 1.10.2002.

9. We have heard learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent-East Central Railway.

10. The petitioner's case for promotion was, admittedly, denied on account of the fact that a *charge sheet* was pending against him. The said *charge sheet*, dated 26.11.2002, was subsequently quashed by the Tribunal in O.A. No.1098 of 2002, vide order dated 3.2.2004. Thus, on the date on which the petitioner was granted promotion in the Senior Scale with effect



from 28.10.2004, the *charge sheet*, in question, already stood quashed on 3.2.2004. Moreover, the principle of sealed cover is also applicable in such matters, when the *charge sheet* is pending against an employee, which has also been circulated by the Railway Board, vide RBE No.13 of 1993; but, in the instant case, the petitioner's case for promotion was not kept in sealed cover either. Hence, it is not open to the respondents to deny to the petitioner the benefit of promotion, on account of their own laches, from retrospective date in the Senior Scale, i.e., with effect from 1.10.2002. Moreover, on perusal of Annexure A/1 filed by the respondents, it appears that the Railway Board, with the approval of the President, accepted the permanent absorption/transfer in the East Central Railway with effect from 1.10.2002, vide its order dated 20.12.2002.

11. Thus, when vacancies were available and the original applicant was eligible in all respects to be granted the benefit of Senior Scale with effect from 1.10.2002, i.e., from the date of the order of the Railway Board, there was no valid reason to deny him his due promotion. On the said date, the petitioner, having been functioning in Group 'B' post, as an Accounts Officer (Gazetted), with effect from 30.12.1997, had already performed his duties in the said Group 'B' post for more than

three years. This was the criterion fixed and followed in the case of similarly situated employees, who had been absorbed in the East Central Railway.

12. The further contention of the petitioner that he could not have been deprived of his promotion for not having been spared from his place of posting as he was forced to knock the doors of the Tribunal once again in O.A. No.274 of 2003, vide order, dated 21.4.2003, for obtaining an order of release, also appears to this Court as a good and sustainable ground. Admittedly, he cannot be punished for the lapse on the part of the administration and his delayed joining cannot be used as a foil by the Railway to deprive his just and valid right to the promotion, especially, in view of the recitals in Annexure A/1.

13. The respondents, in the present case, have also sought to explain their action by stating that the petitioner was not eligible for promotion to the next higher grade of time-scale as he was comparatively junior. This is also not tenable inasmuch as Annexure A/1 shows, there were 15 sanctioned posts and the name of the petitioner did figure at Serial no.14 and, therefore, there was a clear vacancy available making the petitioner eligible for being considered for promotion. Further-more, it has been contended by the petitioner that one person, at Serial No.11, had



already superannuated at the time the matter of promotion was under consideration and, therefore, the petitioner's name came to figure, for all practical purposes, at Serial No.13. Thus, the present ground also does not find force and cannot be sustained and/or accepted by us.

14. It has been further contended by the petitioner that the post of Senior Scale is non-selection post and has to be given on the basis of seniority. It was urged by the petitioner that seven persons had already been granted Senior Scale prior to the date Annexure A/1 was issued and, therefore, the true position was that the petitioner's name was 6th as against the 15 sanctioned posts and he was well within the zone of consideration. In this context, we also find that though there is an averment by the respondents, in the O.A., that the petitioner did not fall within the zone of consideration, no document has been produced by them in support of their contention. Their attempt to categorize the position does not stand testified by any document and the stand of the petitioner that he was, in fact, at Serial No.6, has not been controverted by the respondents at any stage.

15. After going through all the facts and circumstances of the present case and on consideration of the materials on record, we do not find that the action of the respondents can be

sustained and, therefore, the writ petitioner (original applicant) ought to have been granted the Senior time-scale with effect from 1.10.2002, i.e., the date from which date other similarly situated persons have been granted their said promotion.

16. In the result, this writ application succeeds. The order, dated 5.7.2011, passed, in Original Application No.333 of 2007, is hereby set aside. The orders passed by the learned Tribunal subsequently also have no legs to stand on and are, therefore, accordingly set aside and quashed. The respondents are directed to shift back the date of promotion of the petitioner, in the Senior Scale *ad hoc*, with effect from 1.10.2002 and grant all consequential benefits adhering thereto. However, there shall be no order to costs.

(Anjana Mishra, J)

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

(I. A. Ansari, ACJ)

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