

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3573 of 2015

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1. The Union of India through the Divisional Railway Manager, East Central Railway, Danapur.
 2. The Divisional Railway Manager, East Central Railway, Danapur Division, Patna.
 3. The Divisional Personnel Officer, East Central Railway, Danapur Division, Patna.

.... Petitioners

Versus

Ganesh Prasad Tanti, Son of Late Santo Tanti Resident of Village Pachrukhi Post Office - Itwa Via Dharhara P.S. Darhara, District - Munger.

.... Respondent

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Appearance :

For the Petitioners : Mr. Ashok Kumar Keshari, Sr. Advocate.

For the Respondent : Mrs. Sudha Ambastha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 03-05-2016

Heard learned counsel for the parties.

2. The order dated 12th of December, 2012 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) in O.A. No. 219 of 2009 is subject matter of challenge in the present writ application wherein, the petitioners have been directed to treat the petitioner, respondent herein, notionally on a supernumerary post carrying the pay scale he was drawing prior to medical de-categorisation till his retirement and to compute the difference in pay and allowances he would be entitled to as a result of

the order and sanction and disburse the amount as early as possible.

3. The respondent invoked the jurisdiction of the Tribunal for payment of pay and allowances for the period 14th of May 1997 to 31st of May, 1999 and also to pay arrears of salary and allowances for the period 1st of June, 1999 to 31st of January, 2002, the date of his superannuation with interest.

4. The respondent joined the Railway service as Gangman/Gateman against the reserved seat of ex-Army personnel. On 14th of May, 1997 when the respondent was serving as a Gangman, in a medical check-up his eye-sight was found weak and he was medically de-categorised. He was not entrusted with any work from 14th of May, 1997 to 31st of May, 1999 which was said to be in contravention of the provision of Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Act”). He was absorbed on 1st of June, 1999 against the post of Safaiwala in a lower pay scale which was after nearly two years of the medical de-categorisation. Such assignment was said to be in contravention of the Board circular dated 29th of April, 1999.

5. The learned Tribunal allowed the application to create supernumerary post carrying the pay scale he was drawing prior to medical de-categorisation till the date of retirement.

6. We have heard learned counsel for the parties and find no merit in the writ application.

Section 47 (1) of the Act reads as under:-

“47. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.”

6. To give effect to such statutory provision, the Railway Board issued a circular on 29th of April, 1999 contemplating the following as Rule 304:-

“304.(1) A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service and becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

(2) A Railway servant falling in Clause (1) above ceases to perform the duties of the post he is holding from the date he is declared medically unfit for the present post. If such a Railway servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit, pending location of suitable alternative employment for him with the same scale and service benefits; efforts to locate suitable alternative employment starting immediately.”

7. It is thereafter, the respondent was given duty of lower post of Safaiwala in a lower pay scale with effect from 1st of June, 1999 which has been found to be illegal by the Tribunal.

8. Section 47 (1) of the Act is clear and categorical that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. In spite of such a clear and categorical mandate, the respondent was reduced in rank of a Safaiwala in a lower pay scale that too after almost two years of the disability.

9. The first proviso to Section 47(1) of the Act provides that if the person with disability is not suitable for the post, he was holding, he could be shifted to some other post but with the same pay scale and service benefits. The second proviso contemplates that if there is no post against which he can be adjusted, a supernumerary post is required to be created till the age of superannuation. With such a clear mandate of the Statute and the instructions of the Railway Board, issued on 29th of April, 1999, still the petitioners chose not to assign duty to the respondent from 14th of May, 1997 to 31st of May, 1999 and absorbed him to a lower post of Safaiwala from 1st of June, 1999 to 31st of January, 2002. Such action has been rightly found by the Tribunal to be unjustified.

10. The circular issued by the Railway Board is in accordance with the Statute but the petitioners have chosen to challenge the said order. Thus, we dismiss the present writ application with cost, which is assessed to Rs. 5,000/-, to be paid to the respondent.

11. The cost and the arrears of pay will be paid within three month from today along with interest at the rate of 10 per cent *per annum* on the difference of pay and the arrears from the date of de-categorisation i.e. on 14th of May, 1997.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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