

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4554 of 2014

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1. The Union Of India Represented Through The Secretary, Railway Board, Rail Bhawan, New Delhi
 2. The Member Mechanical, Railwar Board, Rail Bhawan, New Delhi
 3. The General Manager, Eastern Railway, Kolkata
 4. The Chief Personnel Officer, Eastern Railway, Kolkata
 5. The Chief Mechanical Engineer, Head Quarter, Eastern Railway , Kolkata
 6. The Divisional Railway Manager, Eastern Railway, Asansol
 7. The Senior Divisional Mechanical Engineer, Eastern Railway, Asansol
 8. The Deputy Chief Mechanical Engineer, Eastern Railway, Jamalpur
 9. The Chief Works Manager, Jamalpur

.... Petitioner/s

Versus

Ashok Kumar Choudhary Son Of Late Sonelal Pasi Resident Of Quarter No 22, Stadium Road, East Colony, Jamalpur, District - Munger (Bihar)

.... Respondent

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Appearance :

For the Petitioners : Mr. Anil Singh, Advocate

For the Respondent/s : Mr. Gautam Bose, Sr. Advocate
Mr. Ajay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 26-02-2016

The challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna, on 22nd March, 2013, in an Original Application (O.A.No.113/2009) under Section 19 of the Administrative Tribunal Act, 1985 filed by the sole Respondent herein. The challenge in the Original Application was to the orders dated 07.02.2006, 27.03.2006 and 03.12.2010 whereby the sole Respondent was reverted to the post of Senior Section Engineer.

2. It is asserted by the Respondent that on the basis of selection held on 10.02.2004 for formation of Group 'B' panel of Assistant Mechanical



Engineer/Asstt. Works Manager in Mechanical Department of the Eastern Railway, the Respondent was promoted- vide order dated 17th of January, 2005. A copy of the said promotion order has been appended by the Respondent in the counter affidavit as Annexure-B. It was on 07th of February, 2006, the Respondent was reverted without any inquiry or show cause to the post of Senior Section Engineer for the reason that his work performance is not satisfactory. Subsequent appeal and representation did not find favour which led the Respondent to invoke the jurisdiction of the Central Administrative Tribunal, Patna Bench, Patna which has since been allowed by the impugned order, which is subject matter of challenge in the present writ petition.

3. The argument raised by the learned counsel for the petitioners is based upon the Master Circular On Penalties and Disciplinary Authorities issued by Ministry of Railway (Railway Board). The relevant extract reads as under:

“7. Provisions regarding reversion.

(i) Though reversion to a lower post for unsatisfactory work is not a penalty, a Railway Servant who has officiated in a higher grade/post for 18 months or more, should not be reverted for unsatisfactory work without following the procedure prescribed in the RS(D&A) Rules.

Railway Board’s letter No. E(D&A) 65 RG 6-24 Dt. 09.06.65.”

4. The promotion of the Respondent was not subject to any condition. He was not on probation either. Once the Respondent was promoted substantially, the unsatisfactory work performance could not be made the basis of reversion, except after regular inquiry as contemplated under Clause (2) of Article 311 of the Constitution of India which reads as under:

“ 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.- (1) No person who is a member of civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

5. In view of the provision of the Constitution, we find that the condition in the Master Circular On Penalties and Disciplinary Authorities with regard to reversion to lower post for unsatisfactory work is a penalty, which cannot be imposed, except after conduct of an enquiry in terms of Clause(2) of Article 311 of the Constitution. Thus, the penalty of reduction in rank is wholly illegal and is counter to the constitutional mandate. Reversion of an employee to a lower post is reduction in rank. Such penalty could not be imposed except after conducting a regular departmental inquiry.

6. In view of the above, we find no merit in the writ petition. The same is dismissed.

(Hemant Gupta, J)

B.K.Roy/-
AFR

(Navaniti Prasad Singh, J)

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