

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11187 of 2014

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Rabindra Nath Dey, S/o Late Hriday Ranjan Dey, resident of Mohalla House No. 24, Panchanatala, Rabindra Pally, P.O- More Pukur, District- Hooghly (W.B) at present working as Senior Commercial Manager, (Claims), E.C. Railway, Patna.

.... Petitioner

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, Govt. of India, New Delhi.
2. The Secretary, Govt. of India, Ministry of Railways, Railway Board, New Delhi.
3. The Under Secretary (Establishment) Spl., Govt. of India (Bharat Sarkar), Ministry of Railways, Railway Board, New Delhi.
4. The General Manager, East Central Railway, Hajipur.
5. The Chief Personnel Officer/ Gazetted, East Central Railway, Hajipur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dayan Shanker Prasad, Advocate

For the Respondents : Mr. Naresh Dikshit, 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: 04-03-2016

The challenge in the present writ petition is to an order dated 4th August, 2011 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') in O.A. No.251 of 2009, whereby the claim of the petitioner for regularization of the period from 14.01.2005 to 28.04.2005 remained unsuccessful.

The petitioner was working as Assistant Statistical Officer, Eastern Central Railway, Hajipur in the year 2004 when he applied for his transfer to Eastern Railway, Kolkata on 13.09.2004



on the ground of ill health of his old father and mother as well as on his own health. The prayer was accepted and he was transferred to Eastern Railway, Kolkata with stipulation that his lien and seniority shall be maintained in East Central Railway vide wireless message dated 14.10.2004. He was relieved vide order dated 03.01.2005. He reported for duty on 10th of January, 2005 and posted as AOM (T) Howrah. Since the posting was not according to the choice of the petitioner, he did not join and instead submitted a representation for his posting at Headquarters at Eastern Railway, Kolkata or if the same was not possible, then to transfer him back to East Central Railway vide letter dated 21st March, 2005. The petitioner was thereafter transferred back to Eastern Central Railway vide order dated 27.04.2005.

The petitioner claimed regularization of the period from 14.01.2005 to 28.04.2005, but it was conveyed that the said period cannot be regularized as 'waiting for posting order' or 'duty'. He was advised to apply for appropriate leave for the period in question.

The Tribunal has dismissed the Original Application filed by the petitioner. His subsequent Review Application has also been dismissed on 3rd of May, 2013. Still aggrieved, the petitioner is before this Court.

The petitioner had sought transfer to Eastern Railway,

Kolkatta. His request was accepted. He was posted to Eastern Railway, Kolkatta. Though he reported for duty, he did not join and on change of mind, he wanted to come back to Eastern Central Railway, Hajipur. Therefore, the period from 14.01.2005 to 28.04.2005, during which the petitioner has not worked, cannot be regularized. That period can be regularized only if he submits an application for leave of the kind due. The petitioner cannot dictate his transfer firstly to Eastern Railway, Kolkatta and then back to Eastern Central Railway, Hajipur and also take benefit of the intervening period.

In view of the above, we do not find any error in the order of the Tribunal which may warrant interference in this writ petition. The writ petition thus stands dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

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