

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5729 of 2016

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Raj Kumar Sharma, S/o Late Nokhelal Sharma, R/o Village - Lagunia Suraj Kant
(Korbadha) P.O. Lagunia Suraj Kant, P.S. Samastipur, Distt. - Samastipur (Bihar)
PIN- 84810

.... Petitioner

Versus

1. The Union of India through the Secretary Railway Board, Rail Bhawan, New Delhi
2. General Manager, East Central Railways, Hazipur
3. The Chief Personnel Officer, North Eastern Railways Gorakhpur, UP
4. The Chief Personnel Officer, Eastern Railways Hajipur, Bihar
5. The Chief Works Manager, Railway Workshop, E.C. Railways, Samastipur, Bihar
6. The Divisional Railway Manager, E.C. Railways, Samastipur
7. The Divisional Personnel Officer, Workshop, Samastipur
8. The General Manager, North Eastern Railways, Gorakhpur
9. The Chief Factory Manager, Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Ravi Shankar Ganguli, Advocate.

For the Respondents : Mr. Anil Kumar Sinha, Advocate.

Mr. Abhimanyu Deo, 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: 16-05-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as “the Tribunal”) on 3rd of February, 2016, whereby O.A. No. 050/00876/2014 filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 was dismissed.

3. The petitioner has claimed Master Craftsman Grade of Rs. 1400-2300/- and consequently up gradation in accordance with the recommendation of 6th Central Pay Commission.

4. As per the petitioner, he joined the services of Indian Railways on 9th of January, 1967 on the post of *Khalasi*. The petitioner was promoted to the post of H.S. Fitter (Mill Wright/Gd-I) in the pay-scale of Rs. 380-560/-. The petitioner claims that a circular was issued on 24th of September, 1986, wherein pay-scale of certain categories was said to be revised but the benefit of pay revision was not given to him since he was working in the workshop at Samastipur. The employees who were drawing a pay-scale of Rs. 380-560/- were supposed to receive a revised pay-scale of Rs. 1400-2300/- effective from 01.01.1986. The grievance of the petitioner is that he continued to be in the pay-scale of Rs. 1320-2040/- which was a pay-scale meant for general category.

5. Learned Tribunal dismissed the Original Application, *inter alia* on the ground that the petitioner has raised

stale claim. Therefore, the Tribunal did not find any reason to entertain an application after long lapse of time.

6. The Tribunal has given a table of the timeline in respect of promotion of the petitioner from time to time. It is as per the said table, the petitioner attained the age of superannuation on 28th of February, 2003. He was first promoted on 9th of September, 1978, second promotion was given to him on 1st of January, 1984 and third promotion was given to him on 26th of June, 1985. Perusal of Annexure-2 shows that the petitioner was promoted as Fitter on 15th of April, 1981.

7. Perusal of the record shows that vide Annexure-3, it was conveyed that the petitioner has been granted pro-forma promotion to the post of Plant Attendant with effect from 9th of September, 1978 and that he has to qualify Trade Test. However, the stand of the petitioner is that the Trade Test was not a condition for revision of pay-scale but was a condition for promotion, and that petitioner has in fact qualified the Trade Test. The petitioner was informed vide communication dated 10th of December, 2013 that the promotions granted to the petitioner are legal and in accordance with rules and that it does not require reconsideration. It is the said order which was impugned before the Tribunal.

8. The Learned Tribunal found that the petitioner has

in fact been given pay-scale of Rs. 1400-2300/- which has been revised as Rs. 5000-8000/- as per the 6th Pay Commission. It is also found that the petitioner is raising his grievance in respect of revised pay-scale with effect from 1986 in the year 2014; whereas he attained the age of superannuation in the year 2003.

9. Learned counsel for the petitioner vehemently argued that the petitioner has submitted representation against the wrong fixation of salary in the year 1998. Therefore, he has disputed the denial of claim in the year 1998 itself. Therefore, the petition cannot be treated as barred by limitation. He has relied upon three judgments-High Court of Judicature at Patna Vs. Madan Mohan Prasad & Ors., 2012(1) PLJR (SC) 86, The Municipal Commissioner, Patna Municipal Corporation, Patna, Bihar Vs. A 2 Z Infrastructure Ltd. through its Legal Executive, Mr. Ankur Gupta & Ors., 2014 (2) PLJR 737 and Raj Kumari Devi wife of Shri Amarnath Singh & Anr. Vs. Murali Singh & Ors., 2012(1) PLJR 463 to contend that the claim cannot be said to be barred by limitation.

10. In terms of Section 21 of the Administrative Tribunals Act, a petition before the Tribunal has to be filed within one year when the claim of an applicant is denied by way of an order. Secondly, if a representation is submitted then a period of six months had expired thereafter the jurisdiction can be invoked within one year



from the date of expiry of the said period of six months. The cause of action arose to the petitioner in the year 1998 in respect of claim of revised pay-scale. He has admittedly submitted representation but not invoked the jurisdiction of the Tribunal within the time prescribed under Section 21 of the Administrative Tribunals Act. He woke up from deep slumber in the year 2014. Thus, the petition was hopelessly barred by limitation and has been rightly dismissed.

11. The judgment referred to by the petitioner in A 2 Z Infrastructure Ltd. (supra) is a judgment relating to condonation of delay in filing the appeal, thus, has no applicability in respect of filing of an Original Application before the Tribunal. The Raj Kumari Devi's case again is in respect of condonation of delay while considering an application under Section 5 of the Limitation Act. Such application also lies on a different footing, such as invocation of the jurisdiction in the first instance. Madan Mohan Prasad's case is a matter appertaining to delay in filing of the writ petition under Article 226 of the Constitution of India. Delay and laches is a ground on the basis of which a writ petition can be dismissed. But, in view of the Statutory provisions of Section 21 of the Administrative Tribunals Act, it was incumbent upon the petitioner to invoke the jurisdiction of the Tribunal within one year from the date the cause of action arose to him. As per the record, the cause of action arose in the year 1998 but

petitioner invoked the jurisdiction of the Tribunal in the year 2014. Therefore, the Tribunal has rightly found the petition as hopelessly barred by limitation. We do not find any error in the order passed by the Tribunal.

12. The writ application is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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