

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2032 of 2017

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1. The Union of India, through the Secretary, Railway Board, Rail Bhawan, New Delhi.
 2. The Secretary, Establishment, Railway Board, Rail Bhawan, New Delhi.
 3. The Joint Secretary, Railway Board, Rail Bhawan, New Delhi. null null
 4. The Under Secretary, Railway Board, Rail Bhawan, New Delhi.
 5. The General Manager, East Central Railway, Hajipur.
 6. The General Manager (P), East Cental Railway, Hajipur.
 7. The Deputy Chief Personel Officer, Gaz., East Central Railway, Hajipur.
 8. The Chief Engineer, Construction, E.E. Railway, Mahendru Ghat, Patna.
 9. The Under Secretary E (Spl.), Railway Board, Rail Bhawan, New Delhi.

.... Petitioner/s

Versus

1. Girish Kumar, S/o Sri K.P. Sahu, presently is residing at Qtr. No. RE/95/IV/2D, Railway Colony, Khagaul, P.S. Khagaul, District- Patna, permanent resident of Kailash Niwas, Palmarganj, Lohardaga, Jharkhand.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr.D.K.Sinha, Sr. Advocate Mr. Kumar Manish, Advocate
For the Respondent/s :	Mr. M.P. Dixit, Advocate Mr. S.K.Dixit, Mr. Shailendra Kumar Mr. Sunil Kumar Mr. Sanjay Kumar Choubey, Advocates

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-04-2017

The railway authorities are before this Court challenging the decision dated 16th of May, 2013 passed in O.A. No. 534 of 2010 by the Central Administrative Tribunal, Patna Bench, Patna. The Tribunal has set aside the decision of the Railway Board by virtue of which the private respondent's



promotion to Junior Administrative Grade (JAG) with effect from 21.3.2009 was cancelled. Subsequently, that order was modified by the Railway Board and notional promotion was granted to the private respondent with effect from 21.3.2009.

The reason for such decision seems to have emerged from the fact that though the private respondent was granted the benefit of Junior Administrative Grade earlier in the year 2007, which was withdrawn, but again granted on 4.5.2009 with effect from 21.3.2009. It seems that some kind of departmental proceeding was initiated on 11.5.2009 which culminated into imposition of a minor punishment. The Railway authorities decided to withdraw the benefit of promotion on the basis of the departmental proceeding and the order of punishment imposed upon the private respondent and thereafter for some strange reason they withdrew that decision and granted notional promotion from the said date.

From the narration of dates and events, there was nothing adverse against the private respondent when the Railway authorities decided to grant him the benefit of promotion on a substantive post. May be in close proximity a departmental proceeding was initiated but that was after the order of promotion. If that departmental proceeding culminated into imposition of some minor punishment, the law is that such punishment would kick in



for future promotions, but it cannot relate back to a promotion already granted to an employee on the basis of a subsequent departmental proceeding. The effect of that departmental proceeding and punishment will be prospective in nature, coming in the way of the employee for future consideration and promotion but that cannot take away the benefit of promotion, already granted.

Learned senior counsel for the petitioner-railways submits that since the private respondent had not joined the post and the promotion will take effect from the date of such joining and before the joining departmental proceeding was initiated, therefore, the authorities have rightly decided to withdraw or annul the order of promotion.

There is fallacy in the submission made on behalf of the authorities of the Railways. The promotion order had already been issued, it may take effect from the date the employee joins the post and starts deriving benefit of such promotion as a consequence and fallout of the decision to grant promotion. Mere delay in joining the post on the basis of notification of promotion cannot in any manner dilute the effect of decision of promotion. Any departmental proceeding initiated before the joining cannot throw any shadow upon the order of promotion issued earlier.



It is in this background that the Tribunal decided to set aside the order granting notional promotion to the private respondent and a declaration was made that he would be treated to be regularly promoted with effect from 21.3.2009. The word ‘notional’ was a misnomer.

An effort was made to seek review of the order dated 16.5.2013 which also failed and rightly so because on reading of the order passed by the Central Administrative Tribunal, Patna Bench, Patna, no legal infirmity emerges.

The writ application lacks merit and it is dismissed.

The order of the Tribunal does not need any interference in any manner.

(Ajay Kumar Tripathi, J)

S.Pandey/-

(Nilu Agrawal, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.04.2017
Transmission Date	

