

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6291 of 2016

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Ram Ashray Singh Son of Late Dashrath Singh, Resident of Mohalla-Chhotaki
Delha, Paraiya, Road, P.S.-Delha, District-Gaya (Bihar)

.... Petitioner/s

Versus

1. The Union of India through General Manager, E.C. Railway, Hajipur (Vaishali).
2. The Divisional Railway Manager, E.C. Railway, Mughalsarai.
3. The Divisional Railway Manager (Optg), E.C. Railway, Mughalsarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Mishra, Advocate
Mr. Uma Kant Mishra, Advocate
For the Respondent/s : Mr. Abbas Haider, Advocate

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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: 28-01-2017

Heard counsel for the petitioner and the counsel for
the respondents.

2. The petitioner moved the Central Administrative
Tribunal, Patna Bench, Patna in O.A. No. 348 of 2014 for a direction
upon the respondent-railway authorities to grant him pension after his
superannuation. A prayer was also made for re-fixation of pay as per
6th Pay Committee Recommendation effective 01.01.2006.

3. Petitioner was engaged as a Manager in Central
Cooperative Society (C.C.S.) Canteen, Eastern Railway at Gaya on
27.06.1967. He worked on that responsibility till the year 1998. On



vacancies being available on Group 'D' post, he was absorbed as Waterman on 02.06.1998 and then came to be promoted as Senior Porter. He superannuated on 30.09.2006. The claim for pension was looked into, the relevant rules were discussed by the Tribunal and since the petitioner's length of service did not add up to 10 years of qualifying service, he was denied pension by a speaking order passed by the DRM. So, the O.A. application was filed.

4. The primary contention on behalf of the petitioner before the Tribunal was that the period of service from 27.06.1967 to 18.06.1998 should be treated as service under the Railways and he should be granted benefit accordingly. The said contention of the petitioner was negated and rejected by the Tribunal, basically on the ground that the engagement of the petitioner as Manager in the C.C.S. Canteen was not under the Railways and that the substantive appointment under the Railways was when the petitioner came to be appointed on the post of Waterman on 02.06.1998.

5. Learned counsel for the petitioner relies on the decision of the Hon'ble Supreme Court in the case of **M.M.R. Khan & Ors. etc. Vrs. Union of India and others etc.** reported in **AIR 1990 S.C. 937** to show that even in a case of departmental canteen, the persons working in the said canteen were also required to be given the status of railways' employees. Some other similarly situated have



been given the benefit.

6. From a reading of the order passed by the Tribunal, the Court finds that issue of past service was considered and negated in absence of any circular or directive. The insistence of the petitioner for payment of pension on the basis of his appointment as Manager in C.C.S. canteen in the year 1967 has been well considered and negated in following terms:

“5. Even in the speaking order, the DRM has categorically reflected that the claim of the applicant that the period of service rendered in quasi administrative body for the purpose of pension is not sustainable by any Railway Rules and the claim of the applicant that 1/4th of the length of service should have been added to his qualifying service has also no substance. The DRM has further noted that the Rule quoted in para 4.8 of the OA does not exist. So, once the applicant falls short of qualifying service, no order can be passed for grant of pension. Had the applicant shown appointment in substantive post in the Railway, certainly his service could have been counted towards his length of service. His work in quasi administrative body might have a role to play in giving him appointment in 1998 but the period served by the applicant in canteen cannot be treated as a Railway service



and cannot be added to his length of service without any statutory Rules. In terms of Railway Board's letter dated 19.11.1990 rendered in Annexure-A/4, pensionary benefits have been extended to the employees of statutory and non statutory canteens having been treated as Railway servants w.e.f. 22.10.1980 and 01.04.1990 respectively pursuant to Supreme Court Judgement dated 27.02.1990. Even the said circular discloses that as per para 3 [iii] of the Board's letter referred above, service rendered by the employees of statutory and non statutory canteens prior to 22.10.1980 to 01.04.1990 respectively is to be taken into account to the extent it qualifies for pensionary benefits subject to the usual condition of refund of employer's contribution to the Provident Fund.

6. In the instant case, the applicant has annexed the original appointment letter dated 02.06.1998 [Annexure-A/2], wherein the applicant has been appointed as a Group – 'D' in Traffic Department. There is absolutely no mention in the said appointment letter that he was working prior to such absorption in any statutory or non statutory canteens of the Railway to extend any future benefit. Even the service certificate Annexure-A/3,



discloses the service period in Railway from 19.06.1998 to 30th September, 2006 as Sr. Porter. So, in such backdrop, the claim of the applicant is not legally sustainable and no fault can be found in the action of the respondents in not granting pension to the applicant for falling short of less than ten years in Railway service.

7. Before parting with this judgment, I would like to keep it on record that pension to a Railway servant is given within the parameters of Railway Servants [Pension] Rules. There is no provision under the Rules to count the period of service rendered by a Railway employee the period of service in statutory and in non statutory canteens before absorption in Railway service. Had such the fact been mentioned in the service book of the employee about his past service in canteen, the matter could have been appreciated in a different perspective. Even there is no document of the applicant to show that prior to 1998, he was working in a Canteen controlled by Railway. Even there is no appointment or relieving order. Hence ordered.”

7. The period of work done in non-statutory canteen, therefore, was negated and since the petitioner’s work in substantive



capacity under the respondent-railways was counted from the year 1998 till his superannuation in the year 2006, did not add up to qualifying service of 10 years, the Tribunal has committed no wrong. No interference is warranted.

8. The writ application is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.01.2017
Transmission Date	NA

