

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5401 of 2017

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1. The Union of India through the General Manager, Eastern Central Railway, Hajipur, District - Vaishali (Bihar).
 2. The Chief Administrative Officer (Con/South), East Central Railway, Patna.
 3. The Deputy Chief Personnel Officer (Con.), East Central Railway, Kulharia Complex, Patna - 4.
 4. The FA & CAO (Con.), East Central Railway, Kulharia Complex, Patna - 4.

.... Petitioners

Versus

S. S. Choubey, Son of Late S.B. Choubey, Assistant Estimator under Chief Administrative Officer (Con.), East Central Railway, Mahendru Ghat, Patna (Bihar).

.... Respondent

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Appearance :

For the Petitioners	:	Mr. Bindhyachal Singh, Advocate Mr. Manish Prakash, Advocate
For the Respondent	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate Mr. Shailendra Kumar, Advocate Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 22-08-2017

Heard learned counsel for the petitioners and



learned counsel for the private respondent.

2. Original Application (in short the "OA") No. 165/2013 has been allowed by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna vide its order dated 20th July, 2016.

3. OA was filed by the private respondent for the following reliefs:

"8.1 That your Lordships may graciously be pleased to declare the impugned action of respondents concerning the reduction of Grade Pay from Rs. 2400/- to Rs. 2000/- and Basic Pay from 12930/- to Rs. 8500/- as illegal, unjust, discriminatory, unconstitutional and arbitrary and if there is any adverse order on such reduction of pay, the same may be quashed and set aside.

8.2 That your Lordships may further be pleased to direct/command the respondents to restore the Grade pay of Rs. 2400/- and Basic pay of Rs. 12930/- henceforth and further they may be directed to grant/extend the same and similar benefit of grade Pay of Rs. 2800/- under MACP at par with said similarly placed co-employees namely, Sri Mewa Lal Yadav with all consequential benefits including arrears at par with statutory interest thereon.

8.3 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant."



4. No doubt, the private respondent was appointed as a Casual Khalasi on 24.03.1973 in Construction Organization and earned temporary status with effect from 01.01.1981 and became Record Keeper with a particular pay scale. While performing his responsibility as a Record Keeper, he along with yet another person namely, Mewa Lal Yadav were granted *Ad hoc* promotion to the post of Assistant Estimator and Tracer vide order dated 11.08.1985 w.e.f. 16.08.1985 and a pay scale of Rs. 4000 – 6000/- on revision was extended. He continued on the said post in the *Ad hoc* arrangement from 1985 till the date of superannuation on 30.06.2013.

5. Just before his superannuation, the Grade Pay and the Pay Scale of the private respondent was sought to be reduced without reverting him from the post of Assistant Estimator on the ground that such promotion was granted in complete violation of the process, procedure or the rules.

6. The argument made on behalf of the parties as well as the Railway was taken into consideration by the CAT Bench, it took note also of a Railway Board Circular



No. 85/2011, and finally a conclusion was reached that a person, who has continued to hold the post of Assistant Estimator uninterruptedly from 1985 till his superannuation, cannot be made to suffer a reduced Pay Scale or Grade Pay unilaterally in violation of the principles of natural justice and ironically without reverting the private respondent from the post of Assistant Estimator.

7. This submission of learned counsel for the Railway does not impress this court in any manner to interfere with the order of the Tribunal, because the Railway cannot be allowed to take a plea that such promotion on *Ad hoc* basis is required to be made for a period of three months alone and no proper procedure was followed before granting such benefit of *Ad hoc* arrangement and no authority ever discovered this so-called aberration right from 1985 till the year 2012.

8. Either it is a reflection in the manner decisions are taken by the Railway or there is complete failure on the part of the superior authorities to exercise effective control and review situations. Twenty Seven Years is a long-long time for any breach of rules to be discovered



and since the benefit cannot accrue to the authorities who themselves want to be rewarded for their omission, the Tribunal rightly quashed the impugned order, restored the Grade Pay and directed payment of his salary if not post retiral dues as a consequence thereof.

9. If the Railway do not want such incident to happen again they need to have proper review mechanism in place if not mechanism for fixing responsibility within reasonable time frame instead of trying to redeem the situation by testing such cases with no benefit to the system.

10. This writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2017
Transmission Date	NA

