

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13856 of 2017

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1. The Union of India through the Chairman, Railway Board, New Delhi.
 2. The General Manager, East Central Railways, Hajipur.
 3. The General Manager (Personnel), East Central Railways, Hajipur.

.... Petitioners

Versus

Rajesh Kumar , Son of Late Ram Chandra Sahu, resident of Mohalla- East Lohanipur, P.O. and P.S. Kadam Kuan, District- Patna.

.... Respondent

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Appearance:

For the Petitioners (Railways): Mr. Amaresh Kumar Singh, Advocate.

For the Respondent: Mr. Jayant Kumar Karn, 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: 06-11-2017

Heard learned counsel for the Railways as well as the private respondent.

2. The order dated 30.06.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. 777 of 2013 is under challenge.

3. The O.A. was filed for the following reliefs:-

“8A. Letter dated 27.05.2013 issued under the signature of for G.M. Personnel, ECR, Hajipur rejecting the prayer of applicant for his empanelment against the posts of Assistant Personnel Officer, Group-B against 70% quota, as contained in Annexure A/13 may be quashed and set aside.

B. Letter dated 02.08.2013 issued under the signature of for G.M. Personnel, ECR Hajipur as contained in



Annexure A/15 rejecting the prayer of applicant for his empanelment against the post of Assistant Personnel Officer, Group-B against 70% quota may be quashed and set aside.

C. Non empanelment of applicant against the post of Assistant Personnel Officer Group- B against 70% quota in the final result dated 06.02.2009 as contained in Annexure A/9 may be declared erroneous and bad in law.

D. the respondent authorities may be directed to issue necessary orders regarding empanelment of applicant against the post of Assistant Personnel Officer, Group – B against 70% quota by taking into consideration his correct seniority position with all consequential benefits.

E. the monetary benefits of applicant may be directed to be allowed to him w.e.f. the date of his juniors.”

4. The private respondent, who was the applicant before the Central Administrative Tribunal, entered service as an Assistant in the Railway Board Secretariat and over a period of time earned his promotions. The Railways invited applications for the post of Assistant Personnel Officer (Group-B) in the pay scale of Rs. 6500-10,500/- with effect from 10.08.2004. Under normal vacancy in the Administration Department one Pankaj Kumar, was promoted on the said post w.e.f. 01.11.2003. Since the private respondent was senior to Pankaj Kumar he made a grievance against his non-inclusion which was considered and rejected by the railway authority and, therefore, the O.A.

5. The matter was considered by the Tribunal and the



Tribunal passed the following orders and reached to the conclusion, and the rationale provided therein emerges from paragraph 14 to 16 which are reproduced here-in-below.

“14. It is observed from the result of APO Group B that the mark obtained by the applicant 120 is not only equal to that by Pankaj Kumar, it also happens to be the highest marks in the list. Only one more person obtained this much marks. Therefore, equity lies in favour of the applicant. In view of this, the delay in agitating this matter is ignored.

15. We are not convinced by the argument of the Railways that the seniority has to be determined on the basis of date of joining. The Railway Board has already determined the final seniority list of the Assistants placed on record at Annexure A/19 in which the applicant is senior to Pankaj Kumar. Both the applicant and Pankaj Kumar came to the E.C. Railway by the same order dated 13.03.2003 in which the applicant's name is at serial no. 1 and Pankaj Kumar's name is serial no. 2. This is consistent with the seniority list. Pankaj Kumar has been shown promoted as OS-I from 01.11.2003 and the applicant has been shown promoted on 10.08.2004. Since by a subsequent order, it was given effect from 01.11.2003, this has to be the relevant date for seniority for the applicant too. Performa fixation from this date only relates to actual payment of salary and cannot have the effect of overturning the inter-se-seniority.

16. It is clear that at some stage, the E.C. Railway has committed mistake for which the applicant cannot be penalized. His non-inclusion in the final list of APO-Group B dated 06.02.2009 [Annexure A/9] is erroneous. Accordingly, it is directed that he would be deemed to be included in that list with effect from that date and entitled to all consequential benefits, but without any back wages. It is also directed that no person already promoted will be disturbed as a consequence of this order. If necessary, the applicant shall be deemed to be promoted against any equivalent post or supernumerary



post. Accordingly, the rejection order dated 27.05.2013 and 02.08.2013 is quashed and set aside and the OA is allowed in terms of the above observations.”

6. Keeping in mind that the private respondent was senior to Pankaj Kumar and Pankaj Kumar had earned yet another promotion, the Tribunal opined that from records Pankaj Kumar was shown to have been promoted w.e.f. 01.11.2003 whereas the present petitioner was shown to have been promoted from 10.08.2004, therefore, it has not altered his basic seniority. The Performa fixation of the date only related to actual payment of salary and the same cannot have the effect of overturning the inter-se-seniority. It was in this background that the inclusion of the private respondent was ordered but without payment of any back wages. The Tribunal also clarified that no person already promoted will be disturbed as a consequence of this order. The Tribunal further directed that the private respondent would be deemed to be promoted against any equivalent post of supernumerary post if the need arises.

7. By passing such an order, the Tribunal has only restored the seniority of the private respondent which, because of the circumstances indicated in the earlier part of the order, gets altered for no fault of the private respondent. There was adequate reason for the OA to be allowed.

8. The Court is not convinced that the Tribunal has



committed an error by passing such an order.

9. The Writ Application of the Railways, therefore, stands dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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