

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14590 of 2017

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Dr. Mritunjay Kumar, son of Shri Baijnath Prasad Sah, presently posted as Divisional Medical Officer, under Eastern Railways, at Jamalpur, permanent resident of At & P.O.-Makwa, P.S.-Asarganj, District-Munger.

.... Petitioner/s

Versus

1. The Union of India through the Registrar, Central Administrative Tribunal, Patna Bench, situated at Income Tax Golembur, Bailey Road, P.S.-Kotwali, Patna-800001.
2. The Railway Board through its Secretary (Establishment), Rail Bhawan, New Delhi.
3. The General Manager (Personnel), North Eastern Railway, Gorakhpur, office of G.M., Gorakhpur-273012, U.P.
4. The General Manager (Personnel), East Central Railway, Hajipur, Bihar.
5. The Director (Medical), North Eastern Railway, Gorakhpur, office of G.M., Gorakhpur-273012, U.P.
6. The Director (Medical), East Central Railway, Hajipur, Bihar.
7. Assistant Personnel Officer/Gazetted, N.E. Railways, office of G.M., Gorakhpur-273012, U.P.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Prakash, Adv.

For the Railways : Mr. Kumar Manish, Adv.

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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: 20-11-2017

O.A. 765 of 2012 preferred by the petitioner before the Central Administrative Tribunal, Patna Bench, Patna was dismissed on 08.05.2017. His prayer for grant of benefit of senior scale by shifting the date from 26.05.2010 to 01.07.2007 was rejected. Writ petition has been preferred against the said order.

Petitioner was selected by the U.P.S.C. in All India Medical Service and was allowed to join on 17.10.2002. He was



posted as Assistant Divisional Medical Officer. After completion of one year probation, he was confirmed on the said post. Soon after such confirmation, applicant got admission in Kolkata Medical College for a two years course in P.G. Diploma in Ophthalmology. Petitioner prayed and was granted two years extra-ordinary leave between 18.08.2004 to 17.08.2006. The course was not completed within the time frame as the examination was not held. Therefore, petitioner overstayed till 30th April, 2007.

Petitioner joined on 01.05.2007 as Assistant Divisional Medical Officer, Gonda. A Departmental Promotion Committee met on 25.05.2010 to consider grant of promotion to eligible persons from Assistant Divisional Medical Officer to Divisional Medical Officer. All those who had completed four years of regular service were considered for promotion by the D.P.C. and benefit of promotion was granted on the basis of available ACR for four years, with effect from 26.05.2010.

Petitioner is not happy because it seems that during his prolonged period of absence, may be for higher studies, on grant of extra-ordinary leave, certain persons who are said to be the juniors earned their promotion.

His contention is that since the petitioner was on extra-ordinary leave duly granted by the respondent authorities, therefore,



he was in service during the relevant time and the said period cannot be ignored for the purposes of consideration in matter of promotion.

But the stand of the respondents is that since the petitioner was not serving the Railway authorities during the period of leave, the departmental authorities did not record his ACR. This could not be done because no fair evaluation of his service could be made while he was availing extra-ordinary leave for higher studies. Further merely because he was on leave, promotion of all those persons, who had completed four years of regular service, could not be held in abeyance. Only after the petitioner returned and joined service and completed four years of regular service that his case was taken up and he has been granted benefit of promotion.

It is not possible to record ACR of any employee who has not been in active service even though he could be on the rolls of an organization and had been allowed extra-ordinary leave. In absence of the performance appraisal or ACR there cannot be an occasion for an employee to demand or beget promotion without actual performance of duty during the period in question. A notional kind of ACR could not be recorded specially when no provision has been brought to the notice of the Court that in such a situation what kind of performance appraisal could be made by any authority.

The Tribunal, therefore, after considering the



provisions and the submissions, did not find any merit in shifting the date of promotion to bring him at par with the provisions because it is not a case that the juniors too were on extra-ordinary leave for a permissible period and they had missing ACR and that in any way made them ineligible for grant of such promotion.

Petitioner cannot be expected to have benefits both of higher education on leave as well as benefit of promotion in service simultaneously.

It was a conscious choice and decision of the petitioner to go on long leave may be for higher studies which was permissible, but grant of benefit of promotion as a matter of right during the period of that absence cannot be read into any provision or rule.

Writ has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.11.2017
Transmission Date	

