

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5803 of 2017

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- 1. The Union of India through the General Manager, North East Frontier Railway, Maligaon, Guwahati.
 - 2. The Chief Personnel Officer, North East Frontier Railway, Maligaon, Guwahati.
 - 3. The Divisional Railway Manager, North East Frontier Railway, Katihar, Bihar.
 - 4. The Divisional Railway, Manager (Personnel), North East Frontier Railway, Katihar, Bihar.
 - 5. The Senior Divisional Engineer (Co-Ordination), North East Frontier Railway, Katihar, Bihar.
 - 6. The Senior Divisional Finance Manager, North East Frontier Railway, Katihar, Bihar.

.... Petitioner/s

Versus

Hirendra Thakur S/o Yoga Nand Thakur working as Sr. P. Way Supervisor, Engineering Control, North East Frontier Railways, Katihar, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar Sinha Sr. Advocate Mr. Siddhartha Prasad Advocate
For the Respondent/s	:	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: 27-07-2017

Heard learned senior counsel for the Railways and
learned counsel for the private-respondent.

Direction by the Central Administrative Tribunal, Patna



Bench, Patna to grant promotional benefit from 26.10.2004 to 15.07.2009, including the monetary benefit, has compelled the Railways Authorities to approach the High Court by filing a writ application under Article 226 of the Constitution of India. The impugned order is dated 24th of November, 2016, which has been passed in O.A. No. 892 of 2012.

The learned senior counsel for the Railways has taken a stand that keeping in mind the provision and the rule, where payment of salary is not required to be made for the period “no work” has not really been appreciated and applied to the case, and, therefore, the order of the Tribunal is fit to be set aside on that ground.

The other submission is that the private-respondent, who was the applicant before the Tribunal, has not worked during this period. Therefore, the principle of “no work no pay” will come into play and the Tribunal was not correct in granting the benefit, especially of the monetary kind to the private-respondent.

The above two propositions and the submissions could have merited consideration by us if the facts were not otherwise. However, the two submissions have to be tested in the bundle of facts, which were there before the Tribunal, which compelled the Tribunal to reach a conclusion that denial of promotional benefit, including the monetary benefit between 26.10.2004 to 15.07.2009, was warranted in the case.



The origin of the dispute lay when the private-respondent appeared in a departmental examination for promotion from a Class-IV to Class-III post, in which he was successful. But then the Railways did not grant him the benefit of such promotion, because he had degree, which went by the name of “Madhyma”.

Based on equivalence to matriculation, a claim was made on behalf of the private-respondent. The Tribunal accepted such contention and allowed the O.A. Challenge before the Division Bench on behalf of the Railways did not get the required order from the High Court. The Division Bench of the High Court dismissed the writ application which compelled the authorities to move the Hon'ble Apex Court. The Hon'ble Apex Court dismissed the SLP at the very threshold, in limine.

If the right of the private-respondent to get promotion on the basis of the degree, which he had, has been upheld right up till the Hon'ble Supreme Court, then the advantage has to flow from such orders of affirmance. It cannot be taken away by the interpretation, which is sought to be given by the Railway Authorities that the private-respondent had not worked.

The Court is not willing to accept such a line for the reason that the right of promotion of the private-respondent on the basis of the degree, which he had, was held to be valid. The issue stood affirmed right up till the Hon'ble Apex Court, therefore, all the decisions would merge into each other and, therefore, it will relate



back to the first order passed by the Tribunal, where right of the private-respondent to derive benefit of promotion was upheld.

If the Railways authorities have delayed the matter of implementation and enforcement of the judicial order passed by the Tribunal, which was never altered or interfered with right up till the Apex Court, the right of the private-respondent to demand and beget salary for the period he was prevented due to the path adopted by the Railways authorities, which delayed implementation, cannot be held out against the employee. The fault lies with the Railways in such matters.

In the above background, therefore, the Court does not find the order of the Tribunal, granting the benefit, is required to be interfered with.

Writ application has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	01.08.2017
Transmission Date	

