

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2868 of 2017

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1. The Union of India, through the Secretary, Railway Board, Ministry of Railway, Rail Bhavan, New Delhi.
 2. The General Manager, East Central Railway, Hajipur.
 3. The Chief Personnel Officer, East Central Railway, Hajipur.

.... Petitioners

Versus

Harendra Prasad Gupta, S/o Sri Lal Mohan Prasad, resident of Powerganj Godhana Road, Arrah, District- Bhojpur, Bihar working as Senior Law Officer, East Central Railway, Hajipur at Patna.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate
Mr. Abhinay Raj, Advocate
For the Respondent/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Ved Prakash Srivastava, 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: 20-04-2017

Being aggrieved and dissatisfied with the order of the Central Administrative Tribunal, Patna Bench, Patna dated 23.05.2016, passed in OA 749/2015 this writ application has been preferred by the Railways. They want this order to be set aside because they are of the opinion that the decision of the Tribunal suffers from certain illegalities in not considering the facts as well as the circulars issued by the Ministry of Personnel, Public Grievances and Pension under the Department of Personnel and



Training in the right perspective.

2. The sole private respondent was the applicant before the Central Administrative Tribunal. He prayed for the following reliefs :

“(i) In the facts and circumstances of the case this Hon’ble Court may be pleased to direct the respondent authorities to modify the order/ notification bearing no. E(GP)2012/3/13(Law) dated 23.05.2015 issued by the Railway Board by giving effect to the promotion of the applicant as law officer in Group A/Senior Scale with effect from 2013 in place of 23.02.2015 and thereafter to promote and post him as Deputy Chief Law Officer/ Deputy General Manager (Law) in JAG Grade.

(ii) For quashing the order contained in letter bearing no. ECR/AHRD/Gaz./2010/S.S/Law Officer dated 06.08.2015 issued by the office of respondent no. 3 whereby it has been communicated to the applicant that he has not completed three years service in Group A/Senior Scale as such in the light of the Railway Board letter dated 18.09.2013 he does not complete the conditions for adhoc promotion in JAG (Junior Administrative Grade).

(iii) The applicant further prays for quashing the decision contained in Railway Board



Letters No. E(O)III-2009/P1/12 New Delhi, dated 18.09.2013 as the same is arbitrary, unconstitutional and discriminatory.

(iv) For other relief/s for which the applicant is entitled.”

3. The Tribunal considered the submissions made on behalf of the contesting parties. The promotion of the private respondent i.e. the applicant was in relation to the vacancies available for the year 2012-13, but since the DPC was not convened by the UPSC for the said year, but was delayed and a recommendation was made by the UPSC only on 23.02.2015, the private respondent had reason for a grievance. Delay in consideration for grant of promotion against the vacancies for the quota for the year of vacancy, had implications for future promotion. The Tribunal, therefore, observed as under :

“6. The respondents’ counsel could not give a satisfactory reply as to what is the significance of giving a panel year if the promotion has to take effect from the date of UPSC’s approval. If it is made subject to date of receipt of UPSC recommendation, this will be subject to uncertainties which would cause disadvantage to the officers because of procedural delays. The law is already settled in such situations that this cannot be left subject to such vagaries



and uncertainties in respect of promotion. The prospective date is relevant only for actual payment of salary. Even this is not material in this case because it appears that the applicant was already getting the higher pay scale for many years in ad-hoc capacity.

7. In our opinion, the applicant is entitled to have the seniority counted with respect to his panel year 2012-13. The applicant's prayer is to give him benefit from the year 2013. However, this has to be done in terms of relevant rules treating him as being promoted in the panel year of 2012-13. The respondents are directed to issue reasoned and speaking order in this regard within three months of receipt of this order. The OA is disposed of in terms of these observations. No order as to costs."

4. The direction was issued to the Railway authorities keeping the above observations in mind to take a decision with regard to the year of promotion to which the applicant/ private respondent was entitled to. The Railways are aggrieved because of such a direction and finding.

5. Only to put the facts in right perspective, the Court would also like to record that in furtherance to the order dated 23.05.2016 of the Tribunal a speaking order dated 20th June, 2016



was passed under the signature of Director Establishment (GP), Railway Board again rejecting the claim of the private respondent. Since the Tribunal did not view such posturing or position having been taken by the Railway authorities and totally ignoring the observations made in the earlier order dated 23.05.2016, it resulted into initiation of a proceeding for contempt. The private respondent on the safer side also decided to challenge the speaking order by filing OA No. 476/2016 in which an order in favour of the applicant i.e. the private respondent came to be passed on 24.11.2016, which is the subject matter of challenge in C.W.J.C. No. 2784 of 2017. This writ application has been filed as an afterthought by the Railways because the foundation for the direction was laid down in the said OA of the private respondent i.e. the present OA 749/2015.

6. Learned Senior Counsel representing the petitioners i.e. the Railways places reliance on office Memorandum dated 10th of April, 1989 issued by the Department of Personnel and Training. These are guidelines to the Departmental Promotion Committee. This notification is part of the writ application as Annexure-P/1. It was pointed out by the learned counsel for the private respondent, however, that a truncated part of the office memorandum has been annexed by the



Railways, and, therefore, they were compelled to bring the entire O.M., as part of the rejoinder application filed by him in the writ application as Annexure-A, to give a complete picture as to the intent of the office memorandum.

7. Learned Senior Counsel for the writ petitioners has relied on paragraph 17.11 of the memorandum, as according to him, if the said guidelines is read in correct perspective, the promotion, which has been granted to the private respondent, would be in conformity with the speaking order and it has been granted after the recommendation made by the UPSC and from the date of such communication by the UPSC. If this was so, the Tribunal ought not to have shifted the date for such promotion to the year 2012-13.

8. This position is seriously contested by the learned Senior Counsel representing the private respondent, whose stand and submission is that the earlier part of the OM cannot be ignored. There is an obligation created upon the DPC to convene and hold meetings regularly for every year of vacancy and this position is certified from paragraph 3.1 of the said OM. Paragraph 3.1 of the OM reads as under :

“3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making



promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates, seniority list etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date e.g., 1st April or May. The Ministries/ Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/ amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since Amendments to recruitment rules normally have only prospective application, the existing vacancies should be filled as per the recruitment rules in force.”



9. It is also the submission of learned Senior Counsel for the private respondent that there is some kind of mandate now given to such a provision by Hon'ble Apex Court in a decision rendered in the case of ***Union of India and others Vs. N.R. Banarjee and others*** reported in (1997) 9 SCC 287. The relevant paragraph, which is paragraph 6, is reproduced hereinbelow since it has significance to the issue and the dispute :

“6. DPCs should be convened every year, if necessary, on a fixed date, i.e. 1st of April or May. In the middle of the para, by way of amendment brought on 13-5-1995, it postulates that very often action for holding DPC meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of DPC should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for



confirmation during the year in question. It would, thus, be seen that DPCs are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the DPCs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.”

10. The issue for consideration now is that if there is a judicial seal given to paragraph 3.1 of the OM dated 10th of April, 1989 making it mandatory for the DPC to hold meetings every year for the year of vacancy and only under extraordinary circumstance can the same be given a go-by, which would be evident from reading of paragraph 3.2 of the OM. For the failure of the DPC to convene meeting, the consequences thereof, cannot be shifted upon the employee who has a legitimate expectation for consideration of promotion at an appropriate time and in conformity with the guidelines or OM issued by a competent



authority.

11. It was in this background that the Tribunal while disposing off the OA observed that the law is already settled in such a situation that such decisions cannot be left to the vagaries and uncertainties in respect of promotion and that was the background under which the Tribunal gave a direction upon the petitioners, to keep in mind above position, while passing a speaking order as to when the order of promotion will relate back to.

12. The Tribunal, therefore, keeping in view the office memorandum, the decision of the Hon'ble Apex Court, which has ordained and mandated holding of DPCs every year for the year of vacancy and the factual background of absence of explanation for the delay in convening the DPC, gave a direction for reconsideration, but since the Railway Board again dismissed such a claim by passing a speaking order without reference to any of these backgrounds and facts and the law. The Railway authorities had to answer as to why they would not.

13. Devoid of other issues relating to non-compliance, coming to the aspect whether the decision of the Tribunal is required to be interfered with or not, the Court is of the opinion that the Tribunal has not committed any error of law



muchless the fact which is required to be rectified in this writ application by interfering with the same. Writ application, therefore, is required to be dismissed and is dismissed since the Tribunal was compelled to pass the order or direction in favour of the private respondent to grant promotion from the year of the vacancy.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.04.2017
Transmission Date	NA

