

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3858 of 2018

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1. Subhashini Devi, Wife of Late Shiva Kumar Choudhary,
 2. Manoj Kumar Choudhary.
 3. Neeraj Kumar Chodhary.
 4. Prashant Kumar Choudhary, All Sons of Late Shiv Kumar Choudhary, and all
resident of Village- Sarath, P.S.- Jagdishpur, District- Bhagalpur.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway, Government of
India, New Delhi.
2. The Director (P&W), Department of Pension and Welfare, Public Grievance &
Pension, Ministry of Personnel, Government of India, New Delhi.
3. The General Manager, East Central Railway, Vaishali.
4. The Divisional Manager (Finance), East Central Railway, Hajipur, Bihar.
5. The Chief Mining Advisor, Government of India, Ministry of Railways,
Railway Board, Dhanbad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Choudhary, Adv.
Mr. Nagendra Kumar, Adv.
Mr. Kulanand Jha, Adv.
For the Respondent/s : Mr. Mithilesh Kumar Rai, Adv.

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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: 08-03-2018

Legal heirs of late employee, namely, Shiva Kumar
Choudhary of Damodar Valley Corporation (hereinafter referred
to as the DVC) decided to file O.A. No. 27 of 2015 for a direction
upon the respondents, especially the Department of Railways,
Government of India to pay pro-rata pension for the period of



work rendered by him between 01.07.1963 to 06.06.1978.

2. The Central Administrative Tribunal, Patna Bench, Patna dismissed the OA on 24.08.2017 refusing to give any kind of indulgence with regard to the reliefs for the reasons indicated in the impugned order. This is the reason for preferring the present writ application before this Court seeking quashing of the order and to grant them reliefs which they were expecting from the CAT Bench Patna.

3. The short facts are that the erstwhile employee Shiva Kumar Choudhary retired from the service of DVC on 31.12.2000. He was a permanent employee of DVC. Prior to his appointment or absorption in DVC, the employee in question worked in a temporary capacity between 01.07.1963 to 06.06.1978 under the Railway Authorities. He was sent on deputation to DVC on 07.06.1978 with a lien of two years and this lien was terminated on 05.06.1980 and vide order dated 09.04.1981 issued by the DVC he was permanently absorbed in the organization from where he superannuated.

4. On the termination of the lien, Railway Authorities vide letter dated 14.09.1981 gave a notice to the erstwhile employee to indicate whether he will accept final settlement of dues in cash or by cheque. It was also made known to him that



since he was not a confirmed employee, he will only be entitled to provident fund money. Subsequently, he was again informed on 05.07.1982 that since he was not confirmed as a Loading Supervisor, he is not entitled to pension and gratuity. However, arrangements were made to pay his provident fund money. The employee accepted the provident fund money way back in the year 1981-82 and kept quiet about it. After more than 33 years the employee wrote to the Railway Authorities to be precise in June, 2014 asking for pro-rata pension on the basis of a decision rendered by Hon'ble Delhi High Court in a writ application of C.K. Jha Vs. Union of India & Ors.

Petitioners' contention before the Railway Authorities as well as the Tribunal was that since he was identically placed as C.K. Jha and they were both Loading Supervisor in the Railways, therefore, he should be entitled to the same benefit which the Delhi High Court had granted to Mr. C.K. Jha. The only discrimination is that Mr. C.K. Jha, subsequently, got absorbed in B.C.C.L. whereas the original claimant i.e. the employee got adjusted or absorbed in DVC.

5. Submission of learned counsel representing the petitioners is that their case is squarely covered by the decision of the Delhi High Court. The Railways went in appeal before the



Hon'ble Apex Court but subsequently withdrew the SLP, therefore, this judgment has become final and binding.

6. The other limb of argument is that since grant of pension is a continuing right, therefore, dismissal of OA by the Tribunal on the ground that it is an extraordinarily delayed kind of application, and, therefore, was not entertainable, is an error of law committed by the Tribunal, which is required to be rectified.

7. The next corollary from the said line of argument is that the decisions, which have been relied upon by the Tribunal to fortify the justification of dismissal of OA on the issue of limitation or the claim being stale, do not apply to the facts of the present case.

8. The Court has noted in the earlier part of the order that the employee in question retired from DVC on 31.12.2000. The immediate provocation for the erstwhile employee to write to the Railways and thereafter approach the Tribunal was in the knowledge which he has gained from the decision of the Delhi High Court probably supplied to him by his so called friend Mr. C.K. Jha who also had fought his legal battle through the Central Administrative Tribunal, Principal Bench, New Delhi seeking pro-rata pension but much earlier in time.

9. The Court has been taken through the Division



Bench decision of Delhi High Court, which is Annexure-7 to the writ application. This decision dated 23.08.2007 by the Delhi High Court has been forcefully relied upon by the counsel for the petitioners because it is Mr. C.K. Jha's decision which compelled the erstwhile employee to move the authorities after more than three decades, looking for some kind of parity.

10. We have gone through the order of the Delhi High Court. We find two basic flaws in the rational and reasoning provided in the said decision. First, that merely because an employee, who was temporary in nature for some consideration, was sent on deputation with a lien of two years, it does not mean that his status as a temporary employee gets automatically altered as a permanent employee. For example, it is to say that if the lien expired and merely because by oversight or omission deputation was allowed and after completion of deputation period if the employee had to revert back to the Railways, he will be reverted back as permanent employee under the Railways. The two years of deputation cannot alter the status of the employee. They will revert back to the same position which they were at the time of deputation. Therefore, merely because the Division Bench of Delhi High Court took note of the provisions of Indian Railway Establishment Manual Vol.I, especially paragraph-1404 which related to permanent employees



then there cannot be a supposition that deputation will confer status of permanency. There seems to be a flaw in the rational and reasoning provided in the judgment of Delhi High Court.

11. The other aspect of the matter is that Delhi High Court has relied upon a Government of India OM dated 28.10.1984 which has been reproduced in paragraph-8 of the said decision and this Court is tempted to also reproduce the same since the wordings of the said OM has significance:

“8. We may also note the GOI, DOP & AR, OM No. 28.10.1984 Pension Unit dated the 29th August 1984 paras 3 (a) (i), 6 and 7 of which are relevant and read as follows:

“(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an Autonomous Body, the service rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous Body (emphasis ours) irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the Autonomous Body, he will get terminal benefits as are normally available to temporary employees under the Government.”

“6. These orders will be applicable only where the transfer of the employee from one organization to another was/is with the consent of the organization under which he was serving earlier, including cases where the individuals had secured employees



directly on his own volition, provided he had applied through proper channel/with proper permission of the administrative authority concerned.”

“7. [These order will take effect from the date of issue, viz., 29th August 1984. the benefits under these orders should also be extended to all those who had retired prior to the issue of these orders and who are otherwise eligible for the benefit of counting of service thereunder. The arrears of pension, if any, which become due to the concerned pensioners, would be disbursed to them with effect from 29.08.1984 only and that they would not be entitled to get any relief in respect of the period prior to 29.08.1984.]”.

12. A reading of the above OM would show that the benefit of service rendered by an employee of Central Government, who is allowed to join an autonomous body, can derive benefit of pension under the autonomous body and the period of work will be counted for the purposes of pension. In other words, because the employee in question had worked under a Central Government authority and with consent of the Central Government authority the employee got adjusted or absorbed on a permanent basis in another autonomous body, the past service was required to be counted for the purposes of grant of pension in the autonomous body.

13. The admitted position is that the DVC does not have any provision for regular pension but is covered by a special



statute. Service of the erstwhile employees to the category the employee belonged is not pensionable, and, therefore, the occasion for counting past service rendered under the Railways for counting towards pension is not available or is of any avail to the employee in question.

14. In any case, the relief, which the present petitioners who are legal heirs of the erstwhile employee, is not directed against the DVC but against the Railways for grant of pro-rata pension. This Court has difficulty to accept the decision of the Division Bench of Delhi High Court in the given facts of the case of the present petitioners. The Court cannot be unmindful of the fact that way back in the year 1981-82 itself the employee was told in no uncertain terms that by virtue of his temporary status he is not entitled to any pension or gratuity and at the most he should be paid provident fund which was paid and accepted by the employee. Since 1981-82 there has been no murmur or whisper on the issue of pro-rata pension or any pension from the Railways. Merely because in a case decided by a Court in some corner of the country granted relief in favour of the claimant or the employee, which was not a judgment in rem but in personem, the same cannot be used as a decision to reopen a case by such claimant after almost 37 years.



15. We therefore, agree with the decision of the Tribunal that in the given facts it is not a fit case where any relief or indulgence could be granted by entertaining the OA and issuing any direction, more so, on the basis of the decision rendered in the case of C.K. Jha.

16. Writ has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Devendra/Rajesh

AFR	AFR
CAV DATE	NA
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