

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17636 of 2017

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1. The Union of India through the General Manager, East Central Railway, Hajipur, (Vaishali).
 2. The Divisional Railway Manager, East Central Railway, Danapur, Khagaul.
 3. The Senior Divisional Personnel Officer, Danapur Division, East Central Railway, Danapur, Khagaul.
 4. The Senior Divisional Financial Manager, East Central Railway, Danapur, Khagaul.

... .. Petitioner/s

Versus

Smt. Rekha Devi, W/o- Late- Birendra Nath Singh, Ex.- Chief Office Superintendent (Personnel), E.C. Railway, Danapur Resident of P.O.- Pipra, Mahrajgang, District- Siwan (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kalyan Shankar Adv.
For the Respondent/s	:	Mr. M.P. Dixit, Adv.
		Mr. S.K. Dixit, Adv.
		Mr. Sanjay Kumar Chaubey, Adv.
		Ms Swastika, Adv.
		Mr. Shailendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date : 04-10-2018

Heard Mr. Kalyan Shankar, learned counsel appearing for the petitioner-Union of India through Railways and Mr. M. P. Dixit appearing on behalf of the respondent who was the applicant before the Central Administrative Tribunal.

2. Petitioners have challenged the order dated 09.09.2016 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 257 of 2012 by which the Tribunal held that the order of compulsory retirement could



not be construed as an order of reversion to the post of O.S. Grade-I and has thus directed the petitioners to fix the pensionary benefit of the employee on the basis of his last pay drawn at the time of his compulsory retirement and pay the arrear within a period of four months from the date of receipt of the copy of the order.

3. The facts of the case is that the respondent was initially appointed in the Railways on 17.08.1974 on the post of O.S. Grade-II. Subsequently, he was granted promotion on the post of O.S. Grade-I in the pay scale of Rs. 6,500-10,500/- with effect from 15.01.2002. The respondent was again given promotion to the post of COS in the pay scale of Rs. 7450-11500/- in pursuance to restructuring of cadre with effect from 01.11.2003 vide order dated 19.04.2004. A show cause notice dated 13.12.2005 as contained in Annexure- P/2 having been issued for his reversion, the respondent preferred OA No. 314 of 2006 before the Central Administrative Tribunal, Patna wherein an order of status quo was passed on 16.05.2006, however, the OA was subsequently withdrawn. On similar charges for which the respondent was served a show cause notice for reversion, a major penalty charge-sheet was issued on 20.12.2006 which is Annexure-P/4. A detailed reply was



filed but finding the show cause reply not satisfactory, the respondent was imposed punishment of compulsory retirement on 13.01.2011 with effect from 14.01.2011 which is Annexure-P/5. To his utter surprise after order of compulsory retirement the pension of the respondent was fixed not on the post of COS in the pay scale of Rs. 7450-11,500/- but on the reverted earlier post of O.S. Grade-I in the pay scale of Rs. 6500-10,500/-. Accordingly, by letter dated 14.11.2011 vide Annexure-P/6 the monthly pension of the respondent was fixed on the lower pay scale and not on the basis of his last pay drawn, which came to be a subject matter of challenge before the Tribunal out of which the present writ application arises. The Tribunal by its order dated 09.09.2016 directed the petitioners to fix the pensionary benefits of the applicant-respondent on the basis of his last pay drawn at the time of compulsory retirement and also to pay the arrear amount.

4. The said order of the Tribunal has been challenged by the petitioners-Railways stating therein that the order dated 13.01.2011 is an order of major punishment by which it was found that the respondent as a COS(Personnel), Danapur did not prepare the roster register as per the reservation policy, as a result large number of reserved candidates could not be



granted promotion and being a beneficiary he himself was granted promotion to the post of COS. The Disciplinary Authority found that the respondent for his self benefit did not follow the reservation policy in the roster register and failed in his diligent duty. As such, the respondent was compulsory retired by way of punishment with effect from 14.01.2011. Thus, since the respondent was found to have wrongly been given the pay scale to the post of COS, his pension has rightly been fixed in the pay scale of O.S. Grade-I vide order dated 14.11.2011.

5. Mr. M.P. Dixit, learned counsel for the respondent submitted that the major punishment of compulsory retirement was passed wherein the respondent was shown to be COS and the reduction of monthly pension passed subsequent to the major penalty issued on 13.01.2011 fixing a lower monthly pension which is Annexure-P/6 dated 14.11.2011 also referred the respondent as Ex-COS(P)/ECR/DNR, hence, the respondent claimed that his basic pay of Rs. 18,280 in the pay band of Rs. 9300-34,800/- at the time of his compulsory retirement ought to have been fixed. The respondent was to superannuate from service on 31.01.2011 but just 17 days before the major penalty of compulsory retirement was passed



which was not an order postulating reversion, hence, his pension ought to have been fixed on the basic pay drawn at the time of compulsory retirement but not on the lower basic pay scale i.e. Rs. 10,985/-.

6. Heard the parties. From perusal of records it is evident that a major penalty proceedings against the respondent was drawn and after the reply having not been found satisfactory, a major penalty order was passed against the respondent on 13.01.2011 compulsorily retiring him with effect from 14.01.2011 on the post of COS (Personnel). From the order of major penalty dated 13.01.2011 a glaring fact is that an enquiry had been conducted against the respondent on the charges so framed. The Enquiry Officer had neither found the charges proved against the respondent nor found the respondent responsible for not preparing the reservation roster as per the Board's guidelines on the ground that there was no distribution of employees at divisional level. The Disciplinary Authority having not agreed to the said findings of the Enquiry Officer, but no disagreement note and consequent show cause notice for disagreement was served on the respondent which is *de hors* the mandatory obligation underlying the disciplinary rules. Nonetheless, the Disciplinary Authority has proceeded to



impose the major penalty of compulsory retirement which did not cause any prejudice to the respondent for the reason that the respondent was to retire within 17 days of the order of compulsory retirement on the post of COS.

7. The Disciplinary Authority having imposed a penalty of compulsory retirement on the respondent with no stipulation for reversion, the act complained goes beyond the punishment order.

8. The illegality in the impugned action is manifest from the fact that even the order of compulsory retirement dated 13.01.2011 has referred to the respondent as COS(P) and the letter dated 14.11.2011 has also referred to the respondent as Ex-COS(P). It is bearing these relevant aspects in mind that lowering of the pay scale by letter dated 14.11.2011 and monthly pension not being fixed on the last pay drawn by the respondent, has been interfered with by the Tribunal who have rightly found the respondent entitled to pension on the basis of his last pay drawn at the time of his compulsory retirement which was the post of COS(P).

9. We find no reason to interfere with the order dated 09.09.2016, passed by the Central Administrative Tribunal, Patna Bench, Patna in OA No. 257 of 2012.



10. Writ Application is, accordingly, dismissed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Rajesh/Pragya

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.10.2018
Transmission Date	NA

