

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8521 of 2018

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1. Kumod Kumar Singh, S/o Ramdev Prasad Singh, resident of Village- Kumar Shahi, P.O.- Shobhnathpur, Via- Kahalgaon, District- Bhagalpur.
 2. Uma Shankar Yadav, S/o Sri Ram, resident of Village- Chaktala, P.O.- Ramdhyal Jung, District- Jaunpur, Uttar Pradesh.
 3. Pappu Kumar, S/o Shivgulam Prasad Yadav, resident of Mathahi, P.O.- Mathahi, P.S.- Madhepura, District- Madhepura.
 4. Amrit Kumar, S/o Girja Nandan Singh, resident of Bhawbigaha, P.O.- Kanap, P.S.- Daudnagar, District- Aurangabad.
 5. Vijay Kumar Bhardwaj, S/o Arimardan Bhardwaj, resident of Plot No.- 196, Saheed Hemu Nagar Colony, Chakar Bhata, District- Bilaspur.
 6. Lenin Mandal, S/o Late Shyamal Mandal, resident of Naya Gapalgunj, P.O.- Bongaon, District- North 24 Paragonas, District- West Bengal.
 7. Man Singh Murmu, S/o Badal Murmu, resident of Balipal, P.O.- Jamdapal, Krushna Chandra Pur, District- Mayurbhanj, Odisha.
 8. Anil Kumar Singh, S/o Harish Chandra Singh, resident of Village- Kuchahara, P.O.- Bichhpura, Tehsil, Ghosi, District- Maupin, Uttar Pradesh.
 9. Budheshwar Kumar Tudu, S/o Late Sahdeo Tudu, resident of Bansgora (Janta Tola), P.O.- Siwandih, P.S.- Maraphari, District- Bokaro.

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Railways, New Delhi Cum Chairman, Railway Board, New Delhi.
2. The Chief Administrative Officer, Rail Wheel Plant, Bela, Saran.
3. The Dy. Chief Administrative Officer, Rail Wheel Plant, Bela, Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. J.K. Karan, Adv.

For the Respondent/s : Mr. Satyavrat Verma, 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: 22-06-2018

Heard counsel for the petitioners and counsel for the Railways.

Writ application has been filed against the order of the Central Administrative Tribunal, Patna Bench, Patna dated 20.07.2017 in O.A. 412 of 2017. The Central Administrative Tribunal, Patna Bench, Patna dismissed the O.A. by refusing to give any relief to these petitioners for treating them to be governed by the Old Pension Scheme which came into force w.e.f. 01.01.2004.

The short facts are that on the basis of an advertisement issued by the Railway Recruitment Board these petitioners applied, qualified in the written examination which was held on 22.08.2004 and thereafter came to be appointed sometime in the year 2005-06. They joined their post, worked all these years and then sometime in the month of June-July 2017, they raised an issue before the authorities that they be treated under the Old Pension Scheme because the process of selection was initiated prior to 01.01.2004. Emphasis was laid on the Hon'ble Supreme Court decision rendered in the case of **Union of India & Ors. Vs. N.R. Parmar & Ors.** reported in **(2012) 13 SCC 340**.

The Tribunal considered the submission of the learned counsel for the petitioners and had this to say for negating such



submissions:

“The N.R. Parmar judgment is clearly inapplicable because that was in the specific context of a situation when the vacancies in a cadre are filled from two streams in a given proportion-one from direct entry and the other from promotion. There was a specific DOPT Memorandum governing the inter-se seniority for these two streams. The Hon’ble Supreme Court took note of the government circulars and laid down the principles reiterating the Rules and quashing some clarifications which were not in consonance with the underlying Rules. The underlying idea was to remove the arbitrariness in delaying the action in one stream or the other which might give undue advantage to one category of entrants. N.R. Parmar judgment does not lay down a universal law that all employees coming through direct recruitment would be entitled to count their seniority from a date when they were not borne to the cadre. In fact the settled law is other way round that an employee coming from direct recruitment cannot count his seniority from a date when he was not even borne to the cadre. The judgments of the Tribunal’s Ernakulam Bench and Jabalpur Bench are not relevant because they relate to another department in a recruitment process which commenced in the year 2002. It is also



mentioned in the judgment that some employees from that recruitment were appointed earlier than 01.01.2004 whereas some others were appointed later than that date. Thus, in our opinion these judgments pertain to specific facts in those cases and do not amount to settling a law that a person joining as a direct recruit in 2005-06 can be deemed to have joined before 01.01.2004. by some fiction entitling him to the old Pension Scheme.

Lastly, we come to the issue of limitation. The applicants on joining were aware that they were being treated under the new Pension Scheme and they were not enrolled in GPF. Therefore, the cause of action arose right at that time. It is well settled in law that late knowledge of a similar claim being allowed by some court cannot cover limitation. Limitation is counted from the date of cause of action. If an employee has certain right according to Rules, he has to agitate it and not wait for 12 years looking for some judgment which has been passed in another context.”

The reasons assigned as above are all cogent and valid reasons. You cannot pull out principles out of context in different set of facts and plead that the case of these petitioners are squarely based on the said ratio of the Hon’ble Supreme Court which the Tribunal has rightly held that it is not so.



The writ application has no merit and it is dismissed
because there is no infirmity in the order of the Tribunal.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/Devendra

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.06.2018
Transmission Date	NA

