IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18545 of 2017

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1. The Union Of India through the General Manager, East Central Railway, Hajipur, District- Vaishali, Bihar.
2. The General Manager, East Central Railway, Hajipur, District- Vaishali, Bihar.
3. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur, District- Vaishali, Bihar.
4. The Financial Advisor & Chief Accounts Officer (Constructions), East Central Railway, Mahendrughat, Patna, Bihar.
5. The Financial Advisor & Chief Accounts Officer, DLF/MEW, East Central Railway at Patna. .... Petitioner/s

Versus

Anil Kumar Sinha, Son of Late B.B.P. Sinha, Ex Senior Section Officer (A), Office of Financial Advisor & the Chief Accounts Officer, DLF/MEW, East Central Railway, at Patna, Resident of C/o Avisek Rishi, Flat No.- S-901, Amarpali Zodiac, Sector- 120, Noida (UP).

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Anil Singh, Adv.
For the Respondent/s : Mr. Kumar Manavendra, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 02-11-2018

Heard Mr. Anil Singh, learned counsel for the petitioners and Mr. Kumar Manavendra, learned counsel for the respondent.

The Railways through the Union of India are before this Court in this writ petition while questioning the judgment and order dated 09.08.2016 of the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 050/00261 of 2014 whereby the original application filed by the respondent-applicant has been allowed.

The facts accompanying the present writ petition lies in a very narrow compass and for the purpose, we would briefly discuss the issue which fell for consideration before the Tribunal. The applicant was holding the post of Senior Section Officer when he superannuated on 31.03.2013 from the DSL Loco Factory, Marhaura in the district of Saran under the Financial Advisor & Chief Accounts Officer (Constructions), East Central Railway, Mahendrughat, Patna. At the time of retirement, the petitioner was drawing a pay of Rs. 30750/- which included three advance increments allowed to him under the circular dated 27.04.2007 of the Railway Board as an incentive for all the Railway staff posted at Workshop Project Organization under the Chief Accounts Officer, East Central Railway, Mahendrughat, Patna.

It is not in dispute that the DSL Loco Factory, Marhaura where the respondent-applicant was posted and had superannuated, was a Workshop Project within the nomenclature discussed in the circular. It is also not in dispute that the respondent-applicant was allowed three increments and that is how he was drawing a salary of Rs. 30750/- at the time of superannuation. The dispute is whether the three advance increments allowed to the respondent-applicant until his superannuation while posted at the Workshop, would be counted for the purpose of calculation of his superannuation benefits or would be calculated on the basis of emoluments as defined under Rule 49 of the Railway Service Pension Rule, 1993. The circular dated 27.04.2007 is self eloquent and stands discussed in the judgment and order of the Tribunal put to question before this Court and allows three advanced increments only for the period an employee/staff is posted under the Workshop Project Organization and would stand withdrawn on his return to the parent cadre. As we have noted above, it is not in dispute that it is while the petitioner was posted at the project, he superannuated on 31.03.2003.

According to Mr. Anil Singh, learned counsel appearing for the petitioner-Union of India, the three increments given to a staff posted at the Workshop Project is in a nature of incentive and would stand withdrawn on his return to the parent cadre and in the case of superannuating staff, even if he would superannuate from the project, the superannuation would mean his returning to the parent cadre and thus retiral benefits would have to be calculated in terms of Rule 49 of the Rules, in terms of the circular dated 27.04.2007. The position is contested by Mr. Kumar in reference to the Railway Board circular discussed in a Deputy Director, Railway Board circular dated

15.04.1988, a copy of which was enclosed as Annexure-A/10 to the Original Application filed before the Tribunal, to submit that once the Board has taken a decision to treat this incentive as part and parcel of pay for the purpose of settlement of dues of a retired/retiring staff in an identical matter relating to the Railway Coach Factory, Kapurthala, they cannot take a different stand to disallow the claim of the respondent-applicant which would be apparently, discriminatory and violative of Article 14 of the Constitution of India.

We have heard learned counsel for the parties and we have perused the records and we are in complete agreement with the submission of Mr. Anil Singh on the circular dated 27.04.2007 which allows an incentive to the Railway staff in special circumstances, which incentive would merge on his promotion or would stand withdrawn on his return to his parent cadre. There is no dispute on the import of the circular which continues the benefit in case the staff so posted gets promoted in the meantime otherwise would be withdrawn if the staff is made to return his parent cadre before superannuation.

The situation herein however, is different because insofar as the respondent-applicant is concerned, it is undisputed that he superannuated from the Workshop while drawing the salary which included the three incentives as well. Now such an eventuality of a staff superannuating from a Workshop/Project while drawing incentive is answered by the Board's circular dated 15.04.1988 which is point specific as regard determination of retiral benefits of those who have superannuated while posted at a Workshop. In our opinion, while the circular dated 27.04.2007 provides for the manner in which salary is to be drawn by the staff posted in a Workshop, how the retiral benefits of such a staff, who superannuates from a Workshop, is to be determined, stands guided by the Advisory issued by the Railway Board dated 15.04.1988, the relevant extract of which, runs under:

> *" It is clarified with reference to your letter dated 4.2.1966 that the incentive in the form of Advance Increments, so long as this is admissible will be treated as part and parcel of pay and, therefore, should count for settlement dues of retired/retiring staff."*

In our opinion the two circulars in reference operate in different spheres as explained above and in such view of the matter and in view of the decision of the Board itself, to treat the advance increments allowed to a staff posted at a Workshop project, as part and parcel of the pay for the purpose of settlement of retiral dues, the Railways cannot take a turn around to deny this very benefit to the respondent-applicant where it is undisputed that he superannuated from the Workshop Project.

For the discussions above, we are not persuaded to interfere with the judgment and order passed by the Tribunal which is in tune with the Advisory issued by the Board itself.

The writ petition is dismissed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Devendra/Priyanka

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