

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7080 of 2019

1. The Union of India, through the General Manager, East Central Railway, Hazipur, P.O.-Dighi Kala, District-Vaishali (Bihar)
2. The General Manager, East Central Railway, Hazipur, P.O.-Dighi Kala, District-Vaishali (Bihar).
3. The Chief Mechanical Engineer, East Central Railway, Hazipur, P.O.-Dighi Kala, District-Vaishali (Bihar)
4. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar)
5. The Senior Divisional Mechanical Engineer, East Central Railway, Samastipur (Bihar).
6. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar)
7. The Senior Divisional Commercial Manager, East Central Railway, Samastipur (Bihar)
8. The Senior Divisional Financial Manager, East Central Railway, Samastipur Bihar

... .. Petitioner/s

Versus

1. Protim Dutta Son of Late B.N. Dutta, Senior Typist (Diesel Shed), Senior Divisional Mechanical Engineer, East Central Railway, Samastipur (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-04-2019

Heard learned counsel for the petitioner and learned counsel for the Union of India.

2. The sole respondent was admittedly a Senior Typist who had been given a grade pay of Rs. 2400/- and on grant of 2nd



M.A.C.P., he was given a grade pay of Rs. 2800/-. The employee was continuing on the said post and, according to the petitioners, the post was declared 'surplus' in 2006 whereafter the respondent came to be absorbed as a Commercial Clerk vide order dated 23/24th January, 2014. On such absorption, the respondent petitioner was placed, even though in the same pay-band, but his grade pay was reduced to Rs. 2000/-. This, the petitioners contend, was on account of the declaration of the post held by the respondent to be surplus and his consequential absorption which was not challenged.

3. The respondent came up with a plea that a representation was moved after he received the order dated 6th of July, 2016 whereafter he was placed in the grade-pay of Rs. 2000/- as a Commercial Clerk. The same was challenged and the Tribunal, after having considered the facts, came to the conclusion that this was unjustified, more so when even after absorption the respondent, who was made to continue in the Commercial Department had been, in effect, not placed in any disadvantageous position as he had not been relieved from the previously held department. It is, therefore, evident from the facts that even though the petitioners had resorted to such an adjustment, the same had not been given effect to and the respondent continued in the Diesel



Shed (Mechanical) where he was working as a Senior Typist with the grade pay of Rs. 2800/-.

4. However, with the reduction of the grade pay and upon service of the communication dated 6th of July, 2016, a representation was filed and, having failed to get any response, the said communication was challenged before the Tribunal giving rise to the present writ petition. The Tribunal came to the conclusion that this reduction was unjustified and was also violative of Article 14 of the Constitution of India for which aid was taken of two other similarly situate employees, namely, Smt. Chaitali Awasthi and Ranjit Gopal Pandey who had been continued as Senior Typist in the grade pay of Rs. 2400/-. In the instant case also, the grade pay of the respondent was also Rs. 2400/- which was raised to Rs. 2800/- on account of grant of 2nd M.A.C.P.

5. The Tribunal, therefore, came to the conclusion that the Railways could not have discriminated the respondent and, even otherwise, it relied on Railway Board Order of the year 1989.

6. Learned counsel for the petitioners contends that such reliance placed by the Tribunal was inappropriate inasmuch as the same is meant only for stop-gap arrangements.

7. We have considered the submissions raised and we find that there is no justification for reducing the grade pay of the



respondent inasmuch as the decision taken by the Railways to declare a particular post surplus cannot, in any way, affect the emoluments that were being received by the employee once he has been adjusted by the Railways themselves, but against a post which carries a lesser grade pay. This adjustment also does not appear to be justified in a lower grade pay in view of the finding recorded by the Tribunal that there was requirement in the Mechanical Diesel Shed Department where the respondent had been allowed to continue on account of requirement in the said Department.

8. Apart from this, the re-adjustment could not have been made overlooking the fact that similarly situate other employees had been allowed to continue to work as Senior Typists in the grade-pay to which they were entitled.

9. Learned counsel for the petitioners urged that the authority had the power to fix a different pay scale and protect the pay of the respondent petitioner once the post had been abolished in view of the Circular dated 23rd September, 1992.

10. We have considered the said Circular as well and we find that in the instant case, on facts, the respondent had been continued by the Railways themselves on account of the requirement of the Diesel Shed Department. Thus, there was no



factual background in which this re-adjustment could be given effect to in a manner so as to put the respondent in an disadvantageous position of receiving a lesser grade pay than what was available to him by virtue of being a Senior Typist in the Department.

11. Even if the Railways had taken a decision to place him in the Commercial Department, they could not have reduced the grade pay of the respondent and, therefore, we entirely agree with the reasonings given by the Tribunal in allowing the claim of the respondent-applicant.

12. We therefore do not find any merit in the writ petition. The same is accordingly dismissed.

13. As already observed by the Tribunal, it is open to the Railways to re-deploy the respondent without disturbing the grade pay to which he is entitled.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

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