

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23778 of 2019

1. The Union of India Through the General Manager, East Central Railway, Hajipur, District- Vaishali, Bihar.
2. The Divisional Railway Manager East Central Railway, Mugalsarai.
3. The Senior Divisional Commercial Manager East Central Railway, Mugalsarai.
4. The Senior Divisional Personnel Officer East Central Railway, Mugalsarai.
5. The Senior Divisional Financial Manager East Central Railway, Mugalsarai

... .. Petitioners

Versus

Sallauddin Son of Late Ali Hussain Ex Travelling Ticket Inspector, East Central Railway Gaya, resident of Old Karimganj, Road no. 2, near Madarsa Shamsul Ollon District- Gaya.

... .. Respondents

Appearance :

For the Petitioners : Mr.Din Bandhu Singh
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 02-12-2019

With the consent of the petitioner, the application has been taken up on merits ignoring the defects pointed out by the Stamp Reporter.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 30.01.2019 passed by the Central Administrative



Tribunal, Patna Bench (for short “the Tribunal”) in O.A. No. 050/00243/2015 whereby the Tribunal has disposed of the petition filed by the respondent directing the petitioners to treat the proforma promotion given to the respondent from 27.12.2012 as actual promotion and all consequential benefits shall follow.

3. The respondent, an Ex-TTE, Gaya had filed the original application before the Tribunal seeking the following reliefs :

“(A) To hold and declare the reasons shown by the respondents in their letter dated 16.05.2014 in denying the benefits of promotion to the post of CIT in favour of applicant at par with juniors as contained in Annexure-A/8 as ab-initio wrong, illegal, unjust, unconstitutional and discriminatory.

(B) To direct the respondents to grant of the benefits of promotion against the post of CIT in P.B. Rs.9300-34800+ G.P. Rs.4600/- in favour of the applicant also at par with his juniors including namely Sri S.K.P. Singh Yadav and N.K. Singh whose name has been shown in Annexure-A/2 and A/3 before CAT.”

4. The petitioners appeared before the Tribunal and filed their written statement. They admitted that on account of clerical error the respondent was denied benefit of promotion to



the post of CIT with effect from 27.12.2012, the date on which his juniors, namely, Sri N.K. Singh and others were given promotion. They contended that since Sri N.K.Singh, who was junior in cadre, was promoted as CIT with effect from 27.12.2012 and he took up the charge of the post of CIT since then, the respondent has also been given promotion with effect from 27.12.2012 at par with his juniors.

5. Thus, the only grievance, which remained to be decided by the Tribunal was as to whether the respondent was entitled to receive the salary of higher post between 27.12.2012 and 01.11.2013. Since the promotion of the respondent was given on proforma basis, he was was not paid the salary of the promotional post between the aforesaid period of 27.12.2012 and 01.11.2013.

6. After hearing the parties, the Tribunal held that there was no prima facie sustainable reason for granting only proforma promotion to the respondent and not giving him any consequential salary benefit from the date on which he rightfully deserved to be promoted.

7. The Tribunal vide impugned order dated 30.01.2019 disposed of the original application directing the petitioners to



treat the promotion given to the respondent from 27.12.2012 as actual promotion and not on proforma basis.

8. Assailing the impugned order, a contention has been advanced on behalf of the petitioners that in view of Para 228 of the Indian Railway Establishment Manual (for short 'IREM'), in case of erroneous promotion, an employee, who has lost promotion on account of administrative error would be entitled to be promoted with correct seniority from the date the juniors were already promoted irrespective of the date of promotion. However, pay in the higher grade on promotion may be fixed on proforma basis and the enhanced pay may be allowed from the date of actual promotion.

9. Para 228 of IREM reads as follows :

“228. Erroneous Promotions.—(I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :—

(i) Where a person has not been promoted at all because of administrative error, and



(ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts.

(II) In pursuance of Rule 1326-R.II, 1987 Edition the following provisions shall govern the pay and increments of the Railway servant whose promotions or appointments in a substantive or officiating capacity to a post is later found to be erroneous on the basis of facts—

(a) The orders of notification of promotion or appointment of a railway servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the railway servant concerned, should, immediately on such cancellation, be brought to the position which he would have held but for the incorrect orders of promotion or appointment.



In the case, however, of a railway servant, who has been erroneously promoted and appointed to a post in a substantive capacity, procedure prescribed in Board's letter No. E5O/RCI/16/3 dt. 23-7-1954 for rescinding the irregular confirmation of a railway servant should be followed/and only thereafter the railway servant concerned should be brought down to the position which he would have held but for the erroneous promotion/ appointment by the issue of orders as mentioned above. Service rendered by the Railway servant concerned in the post to which he was wrongly promoted/appointed, as a result of the error should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/ appointment.

(b) Any consequential promotion or appointments of other railway servants made on the basis of the incorrect promotion or appointment of a particular railway servant will also be regarded as erroneous and such cases also will be regulated on the lines indicated in the preceding paragraph.

(c) Except where the appointing authority is the Railway Board or the President, the question whether promotion/appointment of a particular railway servant to a post was erroneous or not should be decided by an authority next higher than the appointing authority in accordance with the



established principles governing promotions/appointments. Where the appointing authority is the Railway Board or the President, the decision should rest with the President and shall be final.

(d) Cases of erroneous promotion/appointment in a substantive or officiating capacity should be viewed with serious concern, and suitable disciplinary action should be taken against the officers and staff responsible for such erroneous promotion or appointment. The orders re-fixing the pay should be issued expressly under Rule 2027A-R.II.

10. It would be evident from perusal of aforesaid para 228 of IREM that where a person has been promoted but not on the date from which he would have been promoted due to the administrative error and later, on consideration, if he is assigned correct seniority vis-a-vis his juniors already promoted, the enhanced pay may be allowed from the date of actual promotion. In such case, the arrears on account of proforma promotion shall not be payable.

11. However, in the instant case, a plea has been advanced that due to clerical error the respondent was not given promotion from the due date i.e. 27.12.2012 and, thus, he would not be entitled to the pay of higher post from 27.12.2012 to 01.11.2013.



12. In our opinion, clerical error and administrative error are not synonym. A clerical error is an error on the part of an office worker/clerk/secretary/assistant. It may be a typographical error or the unintentional addition or omission of a word, phrase or figure. Such an error can readily be corrected whereas an administrative error means an error attributable to the department. Such error can be caused due to erroneous administrative decisions. Such errors may be broad range including those associated with records and process errors.

13. Para 228 of IREM would have no application in case of loss of promotion on account of clerical error. Since the petitioners have admitted their fault that due to clerical error the promotion could not be given to the respondent with effect from 27.12.2012 and the same has subsequently been given on proforma basis and the arrears of salary for the period between 27.12.2012 and 01.11.2013 has been denied. The Tribunal has rightly directed the petitioners to treat the proforma promotion given to the respondent from 27.12.2012 as actual promotion.

14. In that view of the matter, in our opinion, no interference is warranted with the impugned order passed by the Tribunal.



15. The writ petition lacks merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.12.2019
Transmission Date	

