

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20058 of 2019

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Dr. Arvind Kumar S/o Late Muneshwar Ram Senior Divisional Medical
Officer, Super Specialty Central Hospital, East Central Railway, Patna-
800001, Bihar

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi-110001
2. The Secretary Railway Board, Rail Bhawan, New Delhi-110001
3. The Director General Railway Health Services, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi-110001
4. The Director (Estt) Ministry of Railway, Railway Board, Rail Bhawan, New Delhi-110001
5. The General Manager East Central Railway, Hajipur, P.o.- Digghi Kalan, P.s.- Hajipur (Sadar), Distt.- Vaishali, Pin-844101, Bihar
6. The General Manager (Personnel) East Central Railway, Hajipur, P.o.- Digghi Kalan, P.s.- Hajipur (Sadar), Distt.- Vaishali, Pin-844101, Bihar
7. The Chief Medical Director East Central Railway, Hajipur, P.o.- Digghi Kalan, P.s.- Hajipur (Sadar), Distt.- Vaishali, Pin-844101, Bihar
8. The Financial Advisor and Chief Accounts Officer East Central Railway, Hajipur, P.o.- Digghi Kalan, P.s.- Hajipur (Sadar), Distt.- Vaishali, Pin-844101, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit (M.P. Dixit), Adv. Mr. S.K. Dixit, Adv. Mr. Sanjay Kumar Choubey, Adv. Mrs. Swastika, Adv. Mr. Shailendra Kumar, Adv.
For the Respondent/s	:	Mr.Ramadhar Shekhar (Addl Standing Counsel)

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 26-09-2019

Heard learned counsel for the petitioner and the learned counsel for the Railways.

Learned counsel for the Railways prays for time to file a response in the matter. We are not inclined to adjourn the matter for the filing of a counter affidavit as the issue involved in this petition is apparent from a bare perusal of the impugned judgement from which we do not find any plausible reply from the Railways.

The petitioner had claimed upgradation and consequential benefits at par with the case of Dr. T.N. Wary where the Central Administrative Tribunal, Guwahati Bench in O.A. No.284 of 2010 had extended benefits to the applicant therein. The said judgement of the Tribunal, Guwahati Bench was subjected to a challenge before the High Court of Assam at Guwahati and the order passed by the Tribunal was upheld. Against the judgement of the High Court, Railways went up in Special Leave to Appeal No.3566 of 2017 that was dismissed on 20th February, 2017. Copy of the said orders are on record.

It is on the strength of the above that parity was



claimed. It was also alleged that the case of Dr. T.N. Wary was comparable and at par with that of the petitioner.

The Department instead of applying the same and considering the law laid down therein proceeded to take a stand before the Tribunal in the present case that the judgment in the case of T.N. Wary was not a judgement *in rem* and was a judgement *in personam*. This is evident from paragraph Nos. 9 and 10 of the written statement filed before the Tribunal.

We find from the impugned order that the Tribunal has noticed this aspect, yet while recording the findings in paragraph 4 to 6 of the impugned judgement has only referred to the office memo. Dated 24.8.2015 without referring to the impact of the judgement in the case of Dr. T.N. Wary. This, in our opinion, amounts to non-consideration of a relevant material which touches perversity.

Consequently, the impugned judgement of the Tribunal dated 6th of June, 2019 cannot be sustained. It is, accordingly, set aside. The matter is remitted back to the Tribunal to decide the matter afresh in the light of the observations made hereinabove, preferably within a period of three months from the date of presentation of a certified copy of this order.



The writ application accordingly stands allowed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.09.2019
Transmission Date	N/A

