

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17255 of 2016

1. Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi
2. Director Establishment, Railway Board, Rail Bhawan, New Delhi.
3. Joint Director Establishment (G), Railway Board, Rail Bhawan, New Delhi.
4. General Manager North East Frontier Railway, Maligaon Guwahati, Assam.
5. General Manager (Personnel) North East Frontier Railway, Maligaon Guwahati, Assam.
6. Chief Medical Director, North East Frontier Railway, Maligaon Guwahati, Assam.
7. Deputy Chief Personnel Officer (Gazetted), North East Frontier Railway, Maligaon Guwahati, Assam. null null
8. Divisional Railway Manager, Katihar Division, North East Frontier Railway, Katihar.
9. Assistant Personnel Officer Gazetted, North East Frontier Railway, Maligaon Guwahati, Assam.
10. Chief Medical Superintendent, North East Frontier Railway, New Jalpaiguri, West Bengal.
11. Financial Adviser and Chief Accounts Officer, North East Frontier Railway, Maligaon Guwahati, Assam

... Respondents ... Petitioner/s

Versus

Dr. Harbansh Singh Son of Late Keshi Singh Resident of Mohalla- Bellmore,
Near State Bank of India, P.O. and P.S.- Obra, District- Aurangabad 824124.

... Applicant ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D. K. Sinha, Sr. Advocate Mr. Bijoy Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Gautam Saha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 03-09-2020

Heard the parties.



Petitioner has prayed for following relief:-

“The instant writ petition is directed against the order dated 24.11.2015 passed in OA No.332/2011 by the Hon’ble Central Administrative Tribunal, Patna Bench, at Patna whereby and whereunder the learned Tribunal without taking into consideration the facts as well as the law arisen in the case, has erroneously directed to the respondents/petitioners to complete the re-fixation of promotion of the applicant (in OA) within a period of four months.”

Briefly stated the facts of the case is that respondent was appointed on the post of Assistant Medical Officer on 29.1.1979 and was posted at New Jalpaiguri, North East Frontier Railway Hospital and subsequently as Assistant Divisional Medical Officer on 24.9.1987.

A departmental proceeding was initiated against the respondent vide charge-sheet dated 26.01.1994 but he was exonerated from the charges by order dated 18.05.2006 passed by the disciplinary authority.

Respondent was considered for promotion by the Departmental Promotion Committee on 23.8.1994, however, his case was kept in sealed cover due to major penalty charge-sheet and only on 18.5.2006 when he was exonerated from the charges, respondent was granted promotion to Senior Scale as



Divisional Medical Officer on regular basis w.e.f. 30.8.1994 from the date DPC found him fit for promotion and again respondent was granted promotion to Junior Administrative Grade w.e.f. 17.3.1999 by office order dated 6.3.2007.

Case of respondent for promotion to selection grade was considered alongwith others from approved panel in the meeting of DPC held on 25.6.2002, 7.3.2003, 29.4.2004, 29.9.2005, 8.8.2006 and 18.7.2007 but he was found unfit by the DPC as his performance was found below the benchmark.

The representation of the respondent was rejected by the railway board by its order dated 4.9.2009 which was placed on record and was self-explanatory. In the supplementary affidavit, filed on behalf of Union of India, minutes of the DPC has been enclosed which shows reasons for respondent being found not fit for promotion in selection grade by the DPC in its meeting held from 2003 to 2007.

It is submitted on behalf of counsel for the Union of India that all these facts were placed on record by filing written statement, however, learned tribunal has directed to give notional promotion in selection grade w.e.f. 25.6.2002 and senior administrative grade w.e.f. 25.6.2009 overlooking the fact that respondent was not denied promotion due to pendency



of any departmental proceeding but on the ground that DPC did not found him fit for promotion due to performance being below the benchmark.

The relevant paragraph of order passed by the tribunal is reproduced below:-

“After going through the entire record and pleadings, since the respondents have not disclosed any material other than a very cursory averment that the applicant was not selected by the DPC held in 2003, 2004, 2005, 2006 & 2007, we are inclined to believe that the denial of Selection Grade was on account of pendency of departmental proceeding. Since the departmental proceeding finally ended in exoneration of the applicant and dropping of the charges, the balance of convenience lies in favour of the applicant that his third promotion should also have been likewise ante-dated as it was done in the case of first two promotions. Since the applicant has already retired, it is not worthwhile to ask for his representation on the old adverse ACRs, nor is it worthwhile to hold review DPCs. It would meet the ends of justice if the applicant is given notional promotion to Selection Grade w.e.f. 25.06.2002, and SA grade w.e.f. 25.06.2009, i.e. the dates on which his juniors were given these promotions and his pension is re-fixed. Respondents are directed accordingly to complete the re-fixation of pension within a period of four months. The OA is accordingly disposed of. Accordingly, MA/00187/2015 and MA/050/00215/2015



are disposed of. No order as to arrears, interest and costs.”

After hearing counsel for the Railways as well as counsel for the respondent, the order dated 24.11.2015 passed in OA No.332/2011 by the Central Administrative Tribunal, Patna Bench, at Patna is neither sustainable in law nor on fact and is accordingly, set aside and the case is remanded to the Tribunal to consider the matter afresh and pass an order in accordance with law after hearing both the parties.

The writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2020
Transmission Date	NA

