

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13985 of 2017

1. The Union Of India
2. Chief Medical Director, East Central Railway, Hajipur, Vaishali.
3. Divisional Railway Manager, Danapur Division, East Central railway,
Danapur, Khagaul.
4. The Senior Divisional Personnel Officer, Danapur, Division, East Central
Railway, Danapur, Khagaul.
5. Senior Divisional Finance Manager, Danapur, Division, East Central
Railway, Danapur, Khagaul.
6. Chief Medical Superintendent, Divisional Railway Hospital, East Central
Railway, Danapur, Khagaul.
7. Senior Divisional Medical Officer, East Central Railway Hospital Danapur,
Khagaul.
8. Assistant Personnel Officer, Danapur Division, East Central Railway,
Danapur, Khagaul.
9. Divisional Engineer , Danapur Division, East Central Railway, Danapur,
Khagaul.
10. The Assistant Divisional Engineer, Line, East Central Railway, Patna
Junction, Patna.
11. Senior Section Engineer P.Way, East Central Railway, Patna Junction, Patna.
12. Senior Section Engineer P.Way, East Central Railway, Patna Junction, Patna.

... .. Petitioner/s

Versus

Aditya Nandan Prasad @ Bala Prasad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bijoy Kumar Sinha, Adv
For the Respondent/s : Mr. Gautam Saha, Adv

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR



ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-08-2020

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

Petitioner has prayed for following reliefs:-

“For issuance of an appropriate writ/writs, order/orders, direction/directions for quashing the order dated 30.10.2015 passed in O.A. No. 397/2013 by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter to be referred as Tribunal) by which the petitioner herein have been directed to take the applicant’s qualifying service as 16.01.1987 to 31.01.2012 i.e. 25 years 00 months and 15 days without deducting half of the casual period from it, to re-calculate the number of days the applicant was entitled for leave encashment and further to recalculate the DCRG on that basis without making any recovery from the DCRG on account of any error or breakage in service prior to 16.01.1987 and were further directed to comply the aforesaid directions within a period of four months from receipt of the order. The petitioners further seek grant of any other relief or reliefs they are entitled for in the eyes of law.”

Briefly stated, the facts of the case as stated by sole respondent is that he was appointed on 29.09.1971 as Casual Labour and was granted temporary status on 26.04.1974 and continuously worked at Patna Junction where he met with a serious paralytic attack on 06.08.2009 and remain under treatment and ultimately was medically de-categorized on



26.10.2011, however, he was not given any posting till his retirement on 31.01.2012. Total length of service was shown to be 25 years and 15 days which was subsequently reduced to 22 years 7 months and 23 days.

It was further submitted by the sole respondent that his leave encashment was calculated as 133 days instead of 300 days and Rs. 65,931/- was paid instead of Rs. 76,911/- after deducting Rs. 10,980/-.

DCRG of Rs. 1,95,170/- was calculated, however, from said amount Rs. 98,282/- was deducted on account of over payment of salary.

Petitioners in their W.S. filed before the Tribunal stated that as per service record of sole respondent date of regular appointment is 16.01.1987 and date of retirement is 31.01.2012 and total length of service was 25 years 15 days out of which qualifying service has been found to be 22 years 7 months and 23 days after deducting half of his CPC period between 16.01.1987 to 31.10.1991 i.e. 2 years 5 months 14 days as qualifying service. Sole respondent was reappointed as Casual Labour on 20.05.1983 treating the period between 05.03.1977 to 17.05.1983 as break in service and was granted temporary status on 16.01.1987 and absorbed in regular service on 31.10.1991.



It has been further stated that leave encashment has been paid to the respondent for the leave which was in his credit at the time of his retirement i.e. 133 days with a deduction of basic pay of last month i.e. Rs. 10,980/- for medical services under RELHS Scheme which he had opted for. The Tribunal has not found any fault in deduction of Rs. 10,980/- which is as per rule.

A further deduction of Rs. 98,282/- has been made from DCRG due to excess payment on account of re-fixation of his pay. After medical de-categorization he was getting regular salary against Supernumerary Post till his retirement on 31.01.2012.

The tribunal has held that the authorities have calculated the average of last 10 months pay which comes to Rs. 10,884/- but since his last pay of Rs. 10,980/- was higher than his average pay they have granted 50% of said as pension which comes to Rs. 5490/- and same has rightly been fixed in terms of RBE112/2008. In order to get full pension earlier employee had to serve for 33 years which has been reduced as 20 years and as authorities themselves have calculated his length of service for more than 20 years, his pension has been rightly fixed.

The tribunal has set aside the deduction of 2 years 4



months and 22 days from the total service calculating 100% of CPC and according to petitioners it is in teeth of judgment and order of Apex Court passed in **Union of India Vs. Rakesh Kumar and Ors.** since reported in **2017(3) PLJR 83** in which it has been held that for calculating qualifying service half of the CPC is to be added, as such, said direction of tribunal is set aside and the decision of the Railways authorities is restored.

As far as leave encashment of 133 days is concerned. Tribunal has not found any fault in such calculation, however, since tribunal has directed to re-calculate the leave encashment and DCRG treating the CPC as full period and not half as done by authority. However, said direction is in teeth of judgment as referred above, accordingly, said direction is set aside.

The tribunal has approved the decision of the Railways to treat period from 05.03.1977 to 17.03.1983 as break in service of sole respondent and his regular service started from 16.01.1987.

As far as deduction of Rs. 98,282/- from DCRG is concerned , although same has been made on account of over payment as a result of re-fixation of pay but since respondent is a retired employee, the tribunal has directed not to make any deduction from DCRG which requires no interference by this



Court.

Subject to aforesaid modification, the writ petition is
dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2020
Transmission Date	NA

