

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3116 of 2022

1. The Union of India through the General Manager, East Central Railway, Hajipur, PO- Digghikalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar)
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghikalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
3. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hajipur, P.O.- Digghikalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101.
4. The Chief Administrative Officer (Con), East Central Railway, Mahendrughat, Patna- 800004 (Bihar).
5. The Financial Advisor and Chief Accounts Officer (Con), East Central Railway, Mahendrughat, Patna- 800004 (Bihar).
6. The Deputy Chief Personnel Officer (Con), East Central Railway, Mahendrughat, Patna- 800004 (Bihar).
7. The Divisional Railway Manager, East Central Railway, Samastipur- 848101 (Bihar).
8. The Senior Divisional Personnel Officer, East Central Railway, Samastipur- 848101 (Bihar).
9. The Deputy Chief Engineer (Con)- IV, East Central Railway, Samastipur- 848101 (Bihar).
10. The Senior Divisional Financial Manager, East Central Railway, Samastipur- 848101 (Bihar).

... .. Petitioners

Versus

Chandra Bhan Upadhyay son of Late Ram Brichha Upadhyay Ex- Senior Store Issuer, Office of the Deputy Engineer (Con)- IV, East Central Railway, Samastipur, Resident of Village- Naduwa, Post- Barhaj, P.S. Barhaj, District- Deoria- 274601 (UP).

... .. Respondent

Appearance :

For the Petitioners	:	Mr. Ratnesh Kumar, CGC Mr. Kautiliya Kumar, Advocate
For the Respondent	:	Mr. Munna Pd Dixit (M.P. Dixit) Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate Ms. Swastika, Advocate Mr. Shailendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH



and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 10-08-2022

The Union of India through its General Manager East Central Railway, Hajipur and other officials of the East Central Railway have preferred this writ application putting to challenge a judgment and order dated 29.09.2021 passed in O.A. No. 050/0042/2019, whereby and whereunder, the Patna Bench of the Central Administrative Tribunal (for short 'the Tribunal') has quashed the orders dated 02.11.2018 and 05.12.2018 which were impugned before the Tribunal, and has accordingly directed the petitioners to revise the pay scale, pay and pension of the sole respondent, by extending him the benefit of *ad-hoc* promotion for the purpose of determination of pay scale, salary and retiral benefits.

2. The respondent had filed the aforesaid O.A. No. 050/0042/2019 assailing the aforementioned two orders dated 02.11.2018 and 05.12.2018, whereby the basic pay of the respondent, which he was getting against a Group-C post of Senior Store Issuer, was reduced to the pay scale admissible for the post of *Khalasi*, a Group-D post. Consequent upon re-fixation of pay at a reduced rate admissible to a Group-D post of *Khalasi*,



the petitioners intended to recover a sum of Rs. 11,41,125/- (Eleven Lakh Forty One Thousand One Hundred Twenty Five Only) from the post retiral dues admissible to the respondent apart from fixation of pension and post retiral dues at a lower rate than what the respondent would have been entitled to, had he been treated to have retired holding the Group-C post of Senior Store Issuer.

3. The Central Administrative Tribunal, by its impugned judgment and order dated 29.09.2021 has allowed the respondent's Original Application under Section 19 of the Administrative Tribunals Act, 1985 by quashing the said orders dated 02.11.2018 and 05.12.2018 and has directed the petitioners to revise the pay scale, pay, and pension of the respondent by giving the respondent benefits of *ad-hoc* promotion, for the purpose of determination of pay and pay scale as well as retiral benefits. Certain recoveries in the light of the orders impugned before the Tribunal were effectuated by the petitioners. The amount so recovered has been directed by the Tribunal to be refunded to the respondent immediately. The Tribunal, while allowing the Original Application of the respondent has referred to and relied on a Co-ordinate Bench decision of this Court dated 22.08.2019 passed in ***CWJC No. 5401 of 2017 (The Union of***



India and Others Vs. S.S. Choubey), whereby in identical circumstance this Court had refused to interfere with the judgment and order passed by the Tribunal in O.A. No. 165 of 2013.

4. We have heard Mr. Ratnesh Kumar, learned Central Government Counsel for the petitioners and Mr. M.P. Dixit, learned counsel for the sole respondent.

5. The facts relevant for the present adjudication are short and undisputed. The respondent had joined as a casual labour in the Construction Department of the Railways on 28.04.1979. He was granted temporary status with effect from 01.01.1983. *Ad-hoc* promotion to the post of Store Issuer was granted to the respondent on 01.07.1990 with the pay scale of Rs. 950-1500 which was revised to Rs. 3050-4590 and was revised further to the Pay Band of Rs. 5200-20200 and Grade Pay of Rs. 1900. Subsequently, the respondent was again granted *ad-hoc* promotion to the post of Senior Store Issuer with effect from 20.02.1996 in the Pay Scale of Rs. 1200-2040, which was revised to Rs. 4000-6000 and was further revised to Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 2400/-. While holding the Post of Senior Store Issuer on *ad-hoc* basis with the aforementioned pay band and grade pay with effect from



20.02.1996, the respondent attained the age of superannuation on 30.06.2018. At the time of his superannuation, the basic pay of the respondent as Senior Store Issuer was admittedly 43,500/-.

6. No issue was ever raised relating to validity of the respondent's *ad-hoc* promotions which were granted to him with effect from 20.02.1996, till the date he attained the age of superannuation on 30.06.2018. More than four months after the superannuation of the respondent, the emoluments granted to him came to be revised/re-fixed by a memorandum issued on 02.11.2018 under the signature of Deputy Chief Engineer (Con)-IV, East Central Railway, Samastipur (Petitioner No. 9) treating him to have retired while holding the post of *Khalasi*. His basic pay thus stood reduced to Rs. 34,000/- in place of 43,500/- consequent upon revision/re-fixation of pay to a reduced rate. The petitioner No. 9 came out with another letter dated 05.12.2018 addressed to the respondent communicating recovery of excess amount to the tune of Rs. Rs. 11,41,125/- (Eleven Lakh Forty One Thousand One Hundred Twenty Five Only) which, according to the petitioners, was paid to him in excess of his actual entitlement.

7. The said revision/re-fixation of pay vide order dated 02.11.2018 and the decision to recover excess amount of salary



said to have been paid to the respondent vide order dated 05.12.2018, were subject matter of challenge before the Tribunal as has been noted above.

8. From the pleading and other documents available on record and the submissions advanced on behalf of the petitioners, we notice that in nutshell it is the petitioners' case that the respondent was wrongly given second *ad-hoc* promotion with effect from 20.02.1996 in violation of Clause 216 (A)(1) of the Indian Railway Establishment Manual (IREM) Vol. 1. It is further case of the petitioners that the excess amount of salary paid to the respondent because of an invalid grant of second ad-hoc promotion is recoverable under Rule-15 of the Railway Service (Pension) Rule, 1993 (Pension Rule, 1993, for brevity).

9. In the backdrop of the nature of controversy which this matter involves, we consider it apt to reproduce hereinbelow Clause 216(A)(1) of IREM and Rule-15 of Railway Service (Pension) Rule, 1993:-

IREM (Vol. 1)

216. A. Adhoc Promotions:-

(1) *Selection/Suitability tests/trade tests should be conducted timely as per provisions in this Manual so as to obviate the need for making adhoc promotions which should be avoided both in selection and non-selection posts. However, whenever ad hoc promotions are found inescapable in selection posts in the exigency of service, the same should be ordered only from*



amongst the senior-most eligible staff strictly in accordance with the existing guidelines. As a rule, a junior should not be promoted, ignoring his senior unless the competent authority ordering the ad hoc promotion, considers him unsuitable. In any case no second ad hoc promotion should be allowed under any circumstances.

(Railway Board's letter Nos. E(NG)I/77/PM1/117 dated 17-10-77, E(NG)II/81/RC1/1, dt. 1-4-81 E(NG)I/85/MP5/3 dt. 23-8-85 and E(NG)I/94/PM1/10 dated 9-12-98-ACS No. 65 & 72)

(2) The following further guidelines should be adhered to while considering ad hoc promotions:-

*(a) **Ad hoc promotion in non-selection posts:-** In the case of non-selection posts including posts filled on the basis of trade tests, the vacancies shall be filled after following the prescribed procedure quickly. There shall thus be no ad hoc promotions in non-selection posts.*

[Railway Board's letter No. E(NG)II/81/RC1/1, dated 1-4-81 and E(ND)I/94/PM1/10 dated 9-12-98]

*(b) **Ad hoc promotion in selection posts:-***

(i) Ad hoc promotions may be made in leave vacancies and short duration vacancies upto 4 months beyond which period the FA & CAO should not draw the pay of concerned employee unless the Chief Personnel Officer has personally approved the continuance.

(ii) Normally no ad hoc promotion should be made against regular vacancies. If it becomes inescapable to make ad hoc promotion against regular vacancies warranted by such circumstances as Court's orders etc. such promotion should be allowed only with the prior personal approval of the Chief Personnel Officer who should satisfy himself with the reasons for



non-finalisation of the selection before according his sanction. In any case such arrangements should not be allowed to last over six months save in exceptional circumstances like where a panel cannot be formed because of stay orders from Courts etc. The Chief Personnel Officer should keep record of having accorded approval to such ad hoc promotion or continuation thereof and review the progress made in filling up these posts by selected persons every month. He should also review the position of selections to all posts whether such posts are controlled at Zonal, Divisional or Extra-Divisional level.

[Railway Board's letter No.E-55/PM1/19/3, dated 11-6-55, E(NG)I/73/PM1/222, dated 23-2-74, E(NG)II/81/RC1/1, dated 1-4-81 and E(NG)I/94/PM1/10, dated 9-12-98].

(iii) Notification for ad hoc promotion against the selection posts should specifically include a remark to the effect that the person concerned has not been selected for promotion on regular basis and that his promotion is on ad hoc basis and does not give him any right of holding the post for regular promotion.

[Railway Board's letter No.E-55/PM1-19-3, dated 11-6-55 and E(NG)I/94/PM1/10, dated 9-12-98]

* * * *

Railway Service (Pension) Rules, 1993

15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) For the dues other than the dues pertaining to occupation of Government or Railway accommodation, the Head of Office shall take steps to assess the dues "one year" before the date on which a railway servant is



due to retire on superannuation.

(1A) The assessment of Government or Railway dues in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of retirement of the railway servant. (Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression “railway or Government dues” includes

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee),. if any; . (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.(Underscored for emphasis)

10. Strong reliance has been placed on behalf of the



petitioner on Clause-216(A)(1) of IREM (Vol. 1) as quoted above, which according to the petitioners, prohibits grant of second *ad-hoc* promotion in any circumstance. It has also been argued that in view of the provision under Clause 216 (2)(b), the *ad-hoc* promotion can be made for a short duration, upto four months. It has been admitted in the writ petition that though there is an order permitting the respondent to continue against the Group-C post on *ad-hoc basis*, it is their case that any order contrary to the Rule has no significance.

11. Mr. Ratnesh Kumar, learned Central Government Counsel has strenuously submitted that the Tribunal ought not to have allowed the Original Application filed by the respondent by quashing the aforesaid two orders dated 02.11.2018 and 05.12.2018, in the light of clear provision under Clause-216(A) (1) of IREM (Vol. 1). He has made an alternative submission to the effect that in any event, the respondent should not be allowed to get the benefit of an illegal order granting him second *ad-hoc* promotion for the purpose of determination/ fixation of his pension and other retiral benefits. He has, however, not been able to distinguish the case of the respondent from that of **S.S. Choubey** (supra) in which case in identical circumstance Tribunal had interfered with the impugned action of the East Central



Railway Hajipur, which order came to be affirmed by a Co-ordinate Bench of this Court. He has relied on a Supreme Court's decision in the case of **The Union of India and Ors. Vs. Shri Bhanwar Lal Mundan** reported in **(2013) 12 SCC 433** to bolster his contention with reference to paragraph 14 thereof which reads as under:-

“14. In the case at hand, as stated earlier, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, needless to say, was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus analysed, the irresistible conclusion is that the tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before this retirement.”

12. Mr. M.P. Dixit, learned counsel appearing on behalf of the sole respondent has submitted that it is not the case of the petitioners that the respondent had any role to play in grant of the first and second *ad-hoc* promotions. The ad-hoc promotions were granted to the respondent by the competent authority based on which respondent performed his duties of higher responsibilities and received pay and other emoluments accordingly. There is no



allegation of any misrepresentation or fraud played by the respondent in the matter of grant of the promotion and fixation of pay and pay scale. He has contended that the decision to recover the amount, in the aforesaid background, is wholly arbitrary and illegal in view of the principle laid down by the Supreme Court in the case of *The State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors.* reported in (2015) 4 SCC 334. He has further submitted that the case of the respondent is on a better footing than that of **S.S. Choubey** (supra) since in the case of **S.S. Choubey** (supra), the Pay Scale and Grade pay was sought to be reduced before his superannuation, whereas in the present case the petitioners had decided to take away the benefits of promotion granted to him in 1990-1996, after the respondent had already attained the age of superannuation. He has further argued that the petitioners have, in so many other cases, implemented the Tribunal's order passed in identical situation.

13. We have examined the pleadings on record with the documents annexed thereto, and have given out anxious consideration to rival submissions made on behalf of the parties.

14. At the outset, we record without any demur that the case of the respondent is indistinguishable from the case of **S.S. Choubey** (supra) as decided by the Co-ordinate Bench of this



Court. In the case of *S.S. Choubey* (supra) also, a plea was taken on behalf of the Union of India that the promotion on *ad-hoc* basis could be allowed for a period of three months alone and that no proper procedure was followed before granting such benefit of *ad-hoc* promotion. Rejecting the said contention, the Co-ordinate Bench of this Court in the case of *S.S. Choubey* (supra) held in paragraphs 5 to 9 as under:-

“5. Just before his superannuation, the Grade Pay and the Pay Scale of the private respondent was sought to be reduced without reverting him from the post of Assistant Estimator on the ground that such promotion was granted in complete violation of the process, procedure or the rules.

6. The argument made on behalf of the parties as well as the Railway was taken into consideration by the CAT Bench, it took note also of a Railway Board Circular No. 85/2011, and finally a conclusion was reached that a person, who has continued to hold the post of Assistant Estimator uninterruptedly from 1985 till his superannuation, cannot be made to suffer a reduced Pay Scale or Grade Pay unilaterally in violation of the principles of natural justice and ironically without reverting the private respondent from the post of Assistant Estimator.

7. This submission of learned counsel for the Railway does not impress this court in any manner to interfere with the order of the Tribunal, because the Railway cannot be allowed to take a plea that such promotion on Ad hoc basis is required to be made for a period of three months alone and no proper procedure



was followed before granting such benefit of Ad hoc arrangement and no authority ever discovered this socalled aberration right from 1985 till the year 2012.

8. Either it is a reflection in the manner decisions are taken by the Railway or there is complete failure on the part of the superior authorities to exercise effective control and review situations. Twenty Seven Years is a long-long time for any breach of rules to be discovered and since the benefit cannot accrue to the authorities who themselves want to be rewarded for their omission, the Tribunal rightly quashed the impugned order, restored the Grade Pay and directed payment of his salary if not post retiral dues as a consequence thereof.

9. If the Railway do not want such incident to happen again they need to have proper review mechanism in place if not mechanism for fixing responsibility within reasonable time frame instead of trying to redeem the situation by testing such cases with no benefit to the system.”

15. The Tribunal has found the said decision of the Coordinate Bench of this Court in the case of **S.S. Choubey** (supra) to be binding for consideration of the respondent's case as made out before the Tribunal. The said reasoning applied by the Tribunal to interfere with the impugned action of the petitioners is sound and does not suffer from any legal infirmity, in our considered view.

16. It would be apt to notice at this juncture, Rule-15 of the Railway Service (Pension) Rules, 1993, which has been



quoted hereinabove. Rule-15 of Pension Rules 1993 permits recovery or adjustment of Government or Railway dues from pensionary benefits. Sub-rule (1) of Rule-15 of the Pension Rules, 1993 clearly mandates that for the dues other than the dues pertaining to occupation of Government or Railway accommodation, the Head of Office shall take steps to assess the dues “one year” before the date on which a railway servant is due to retire on superannuation. Sub-rule (1A) of Rule-15 further mandates that the assessment of Government or Railway dues in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of retirement of a railway servant. Sub-rule (2) of Rule-15 requires that the Railway or Government dues as ascertained and assessed, apparently under Rule-15 (1) and Rule-15 (1A) which remain outstanding till the date of retirement or death of Government servant, shall be adjusted against the amount of retirement gratuity or death gratuity or terminal gratuity. Sub-rule (3) of Rule 15 merely gives the definition of “Railway or Government dues”. The procedure for recovery and adjustment from pensionary benefits has been prescribed under Rule 15(1).

17. In our opinion, fulfillment of the requirements under Rule-15(1) and Rule 15(1A) is one of the requisite conditions for



recovery and adjustment of the Railway dues from pensionary benefits under the Pension Rules, 1993. Admittedly, no exercise was undertaken to assess the dues one year before the date on which the petitioner was due to retire on superannuation as contemplated under Rule-15(1) of the Pension Rules, 1993. The period “one year” prior to the date of superannuation appears to have been emphasised in Rule -15(1) of the Pension Rules, 1993 for the purpose of beginning the exercise of assessment of dues for recovery. The said requirement of beginning the exercise for recovery of dues assumes significance in view of further stipulation in sub-rule (2) of Rule-15 of the Pension Rules, 1993. Sub-rule (2) of Rule 15 of the Pension Rules, 1993 stipulates that the exercise undertaken under Rule-15 (1) of the Pension Rules, 1993 must be completed eight months prior to the date of retirement of Railway/Government servant. In the case of the respondent, the provision under Rule-15 of the Pension Rules, 1993 was sought to be invoked after his superannuation without any assessment having been done in accordance with the statutory prescription under Rule-15 of the Pension Rules, 1993.

18. The submission made on behalf of the petitioners that the petitioners should be permitted to determine the retiral benefits of the respondent taking into account the post which he



was lawfully entitled to hold, on the date of his superannuation, as the promotions granted to the respondent on *ad-hoc* basis are patently illegal, does not have any merit as such direction would amount to taking away from the respondent the benefit of promotion on *ad-hoc* basis granted to him. The petitioners have not cancelled the said promotions granted to the respondent way back in the year 1996. In our opinion, at this stage, it would be impermissible for the petitioners to undo the effect of grant of promotion to the respondent much after his superannuation, without following due process of law and compliance with the principles of natural justice. If the aforesaid submission made on behalf of the Union of India were to be accepted by this Court, the same would amount to annulment of the benefits of promotion granted to the respondent, despite there being no order passed by the competent authority cancelling the promotions granted to the respondent.

19. The Supreme Court's decision in the case of ***Bhanwar Lal Mundan*** (supra) is inapplicable in the facts and circumstances of the present case for more than one reason. Firstly, the petitioners have not cancelled the promotion granted to the respondent. Secondly, the Division Bench decision of this Court dealing with the identical issue of the same department has



attained finality. Thirdly, the case of *Bhanwar Lal Mundan* (supra) relates to re-fixation of pay after rectification, whereas in the present case, the petitioners intend to nullify the effect of promotion granted to the respondent in 1996 by re-fixing his pay and pay scale.

20. In such view of the matter, in our opinion, the impugned order of the Tribunal does not suffer from any illegality requiring this Court's interference.

21. In view of the foregoing discussions and reasons, we do not find any merit in this writ application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J: I agree

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
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