

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20076 of 2018

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Mohammad Majaz S/o Mohammad Amir, Resident of Mohalla 0 Lal bagh,
P.O.-Mahendru, District-Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Director General, Prasar Bharti, New Delhi.
2. The Chief Executive Officer, Prasar Bharti Board, 2nd Floor, PTI Building, Parliament Street, New Delhi 110001.
3. The Director General, All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-110001.
4. The Dy. Director Admn.(E), O/o Director general, AIR New Delhi.
5. The Addl. Director General (Engineering) East Zone, Kolkata.
6. The Director (Engineering). Government of India, All India Radio, Hazaribagh.
7. The Assistant Engineer-Cum-Head of the Office, AIR Hazaribagh.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Karan, Adv.
For the Respondent/s : Mr. S.D Sanjay, Addl. Soc. Gen.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 01-07-2022

Heard learned counsel for the parties through video conferencing in view of COVID-19.

2. The petitioner has moved this Court for grant of following reliefs:

“A. To set aside Order dated 05.09.2017, passed by Ld. CAT Patna Bench passed in O.A.-759 of 2013 along with O.A.-373 of 2014, as contained in Annexure-P/12, whereby the prayer of petitioner to set aside erroneous



treatment of his leave & absence, has been dismissed.

B. To set aside order dated 14.11.2017, passed by Ld. CAT Patna Bench in Review Application, bearing R.A./050/00051/2017 along with R.A./050/00052/2017, as contained in Annexure-P/15, dismissing the same.

C. To set aside Corrigendum dated 25.09.2013, issued by Assistant Engineer-cum-Head of the Office, AIR Hazaribagh as contained in Annexure-P/8, whereby the earlier two Leave Sanction Memos dated 23.04.2013 as contained in Annexure-P/7, regularizing leave & absence of Petitioner, have erroneously been cancelled.

D. To set aside OFFICE ORDER No.Haz.-21(3)/(MM)2008/S/1071 Dated 28.02.2014, issued under the signature of Asstt. Engineer/HOO, Prasar Bharti, All India Radio, Hazaribagh, as contained in Annexure-P/9, whereby the period from 05-10-1990 to 04-02-2003 which was regularized earlier as Extraordinary Leave, now the same has been ordered to be treated as dies-non (i.e. not entitled for pension, increment and Leave Salary for that period) without break-in-service. It has further been observed that benefit of Pay Fixation should be given without granting back wages.

E. For a direction upon respondent authorities to extend all the financial benefits to the Petitioner in pursuance to Annexure-P/7 Series.

F. For a direction upon respondent authorities to allow the Petitioner his pay parity, benefits of MACP, along with his batchmates w.e.f. his date of joining and all the monetary arrears may be allowed to him along with statutory interest thereupon.



G. Any other incidental, consequential or other relief/reliefs, to which the petitioner is found entitled in the eye of law.”

3. The case relating to the petitioner needs to be explained here for proper appreciation. On 06.03.1990 the petitioner was appointed as Engineering Assistant and posted at Television Relay Centre, Begusarai on two years of probation. On 04.10.1990 he applied for sick leave for a period 05.10.1990 to 04.11.1990. However, thereafter he chose to default.

4. After six months, the respondent vide telegram dated 02.04.1991 asked the petitioner to join immediately. This was followed by order dated 22.07.1991 asking him to report for duty by 22.08.1991, failing which his services will be terminated as per the Temporary Service Rules effecting 22.08.1991. The petitioner instead of submitting his joining chose to seek extension of leave.

5. It was only in the year 1993 i.e. on 21.10.1993 that the petitioner to appeared in the office. He however, was not permitted to resume his duties. Aggrieved, he preferred O.A. No.510/1994 before the Central Administrative Tribunal, Patna (henceforth for short ‘the Tribunal’). The matter was disposed of on 26.03.1998 by ‘the Tribunal’ with a direction to the petitioner to submit fresh representation with further direction to the respondents to decide the same within two months.



6. Accordingly, the respondent authorities took up the representation of the petitioner vide an order dated 14.08.1998 terminated his services. Aggrieved, O.A. No.684/1999 was preferred by the petitioner. The same was allowed on 01.03.2002 with a direction to the respondents to reinstate the petitioner 'the Tribunal' in its order clearly held that he will not be entitled to back wages (Annexure-P/2). 'The Tribunal' further gave liberty to the respondent authorities to proceed against the petitioner, if they so want, departmentally in accordance with law.

7. Accordingly, the petitioner was permitted to join on 05.02.2002. Further vide an order dated 23.02.2013 and later corrigendum dated 25.09.2013 extraordinary leave was granted to the petitioner without any salary.

8. Aggrieved, the petitioner preferred O.A. No.759/2013 as also O.A. No.373/2014 before 'the Tribunal' challenging the order dated 25.09.2013.

9. Meanwhile, the respondents issued office order dated 28.02.2014 clearly explaining that the period will be treated as dies-non i.e. amongst other he shall not be allowed any leave salary for that period. The office order dated 28.02.2014 is as under:

“With reference to seeking guidelines vide this office letter no. Haz.21(3)/MM/2008/S/808



dated 25.09.2013 in the matter of covering and settlement of absence period from 05.10.1990 to 04.02.2003 with any kind of leave due and admissible to Mohammad Majaj, EA, AIR Hazaribag, the Directorate AIR has given a clear instruction to this office vide DG, AIR, S-IV(A) section letter no.14/14/2012-SIV(A)/533 dated 22.11.2013 to treat the aforesaid period as dies-non (i.e. not entitled for Pension, Increment and Leave Salary for that period) without break-in-service. It is added in that order that the benefit of pay fixation should be given without granting back wages.”

10. The petitioner chose not to challenge the said order dated 28.02.2014. Both the OAs were taken up by ‘the Tribunal’. Vide a common order dated 05.09.2017 in O.A. No.759/2013, it held as follows:

“11. Treating the period as dies non, not to be counted for pension but without break, in service is a natural consequence of the above decision. The applicant has been extremely lucky to get reinstated in service. The authorities have acted in accordance with the directions of the Tribunal on matters which lie entirely within their administrative domain. No interference is called for. Hence, dismissed. No order as to costs.”

11. In another O.A. No.373/2014 it further held as follows:

“15. The applicant is making a misconceived plea to treat him at par with his other batch mates. A person who is out of service for more



than 12 years and gets reinstated by court's direction with liberty to the authorities to proceed against him regarding the period of absence, cannot claim parity with an employee who has remained in service and earned regular increments. By virtue of courts orders the applicant got reinstatement on his initial pay. Accordingly, there is no merit in the OA. Hence, dismissed. No order as to costs. MA No.272/2014 is disposed of accordingly."

12. Aggrieved, the petitioner preferred CWJC No.20076/2018.

13. We have gone through the entire facts of the matter, the decisions taken by the respondents as also the orders passed by 'the Tribunal'. We have also taken note of the order dated 28.02.2014 passed by the respondents where they held that the period of leave will be treated as dies-non i.e. the petitioner will not be entitled to any back wages amongst others. The said order still stands inasmuch as the petitioner chose not to challenge the same.

14. It is important to point out here that even in O.A. No.684/1999 the learned 'Tribunal' in its order dated 01.03.2002 had clearly stated that the petitioner will not be entitled to back wages. 'The Tribunal' was correct in holding that the petitioner was extremely lucky to get reinstated in service.



15. We do not find any merit in the present writ petition
and the same is hereby dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.07.2022.
Transmission Date	

