

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4737 of 2017

Yogendra Prasad, Son of Late Gulab Shah, Retired Senior Section Engineer (Construction) SSE/Elect/Con./APDJ-N.F. Railway, Maligaon, Guwahati, Residing at Rajiv Nagar, Road No. 25D, Gulab Bhawan, Patna- 24, P.S.- Rajiv Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through General Manager, N.F. Railway, Maligaon, Guwahati (Assam).
2. The General Manager Con. N.F. Railway, Maligaon, Guwahati Assam.
3. The F.A. and C.A.O., N.F. Railway, Maligaon, Guwahati, Assam.
4. The Chief Electrical Engineer (Con.) N.F. Railway, Maligaon, Guwahati Assam PIN- 781011.
5. The Divisional Electrical Engineer (Construction), N.F. Railway, Alipur Dwar Junction.
6. The Deputy Chief Personnel Officer (Con.), N.F. Railway, Maligaon, Guwahati.
7. The Senior Personnel Officer (Con.), N.F. Railway, Maligaon, Guwahati- 781011.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Satish Chandra Mishra, Advocate. Mr. Md. Nurul Hoda, Advocate. Mr. Uma Kant Mishra, Advocate.
For the Respondent/s	:	Mr. Rakesh Kumar Sinha, C.G.C.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 01-12-2022

On 03.11.2022, the following order was passed:

“None appears for the Railways.
Matter is relating to fixation of pension.



Therefore, Railway counsel is hereby directed to secure service record (Service Book of the petitioner – Yogendra Prasad). He is also hereby directed to ascertain from the concerned official-respondent even though petitioner was promoted to the post of Senior Section Engineer on temporary basis, however he has been extended pay scale of Senior Section Engineer, once he has been extended pay scale attached to the post of Senior Section Engineer in the year 1997 and he continued to hold such post till 31.03.2015, the date on which he has attained age of superannuation and retired from service, the concerned authority have undertaken any action to consider the petitioner name for regular promotion to the post of Senior Section Engineer during the period from 31.10.1997 till 31.03.2015. Further whether the petitioner has been extended annual increment from 1998 to 2015 and so also whether has he been extended any benefit of TBA/MACP. If it is so, necessary material be placed on record in order to examine whether petitioner is entitled to fixation of his pension with reference to last pay drawn in the post of Senior Section Engineer or not.

If the aforesaid direction is not complied, in that event, second Respondent – The General Manager (Construction), North Frontier Railway, Maligaon, Guwahati, Assam is hereby directed to draft an official who is well conversant with the matter.

Relist this matter on 01.12.2022 as a last chance.”

2. Today, learned counsel for the respondent furnished Service Book of the petitioner – Yogendra Prasad. On 18.11.1997, there is entry in the Service Book of the petitioner as under:

“Promoted to Sr. Section Engineer (Ad-hoc) in Scale Rs. 7450-225-11550 (RP) w.e.f. 21.10.1997 vide Office Order No. 178/1997 dated 31.10.1997 and the pay fixed on Rs.7450/- w.e.f. 21.10.1997 in



Scale Rs. 7450-11550.”

3. The Tribunal refused to grant relief to the petitioner in so far as fixation of pay and pension in the post of Sr. Section Engineer while recording at Para-6 and 7 as under:

“6. The only question to be examined in this OA is whether a person on an ad-hoc promotion in a temporary organization can claim pension on the basis of that last pay drawn if his substantive lien is at a lower post in the parent permanent organization. It transpires that those working in the Construction organization have no permanent status and their permanent lien is maintained in the different cadres in open line in the Railways. As and when they become due for promotion in the open line cadre, such persons are considered and if there is a requirement for some test, the persons in Construction Wing are also invited to take the test. In the present case, the applicant on his own volition declined to take the test for promotion from Technician Grade-III to Technician Grade-II, apparently because he was already in higher grade in the Construction Wing on ad-hoc basis. It is seen from the Annexure at R/3 i.e. the order dated 25.08.2014 that a large number of persons similarly situated in Construction Wing took the said test and passed whereas the applicant has been shown unwilling.

7. The applicant has not been able to show any specific rules on the point that in the Railways, Construction Wing people are granted pension on the basis of ad-hoc promotion in the higher grade even though their substantive lien in open line in lower grade, nor has he cited any such case.”

4. In the present case, it is to be noted that from 21.10.1997 till 31.03.2015, the petitioner has discharged duties of the post of Sr. Section Engineer and pay scale attached to the



post has been extended. The reasons for not extending pension with reference to Sr. Section Engineer is that petitioner declined to take test for promotion from Technician Grade-III to Technician Grade-II on the score that he had already occupied the next higher grade / post in the Construction Wing. It is to be noted that during the period from 22.10.1997 till 31.03.2015, the respondents have not taken any action to revert the petitioner from the post of Sr. Section Engineer on the score that petitioner was required to pass certain test for promotion to the post of Technician Grade-II from Technician Grade-III. Further, it is to be noted that if the petitioner is not eligible to hold the post of Technician Grade-II, as to how petitioner was promoted to the post of Sr. Section Engineer on Ad-hoc basis. Further, no order of reversion has been passed and so also there is no observation made by the respondent-Department that there were any deficiency in petitioner's services while discharging the post of Sr. Section Engineer from 21.10.1997 till 31.03.2015, the date on which he has attained age of superannuation and retired from service. Further, no material have been placed on record by the respondents that they have undertaken review of promotion to the post of Technician Grade-II so as to revert such of those persons who have not fulfilled the requisite criteria to hold the



post of Technician Grade-II. Therefore, the contention of the respondent that petitioner failed to pass certain test to the post of Technician Grade-II cannot be appreciated. The aforesaid material have not been taken into consideration by the Tribunal while deciding OA No. 487 of 2015. Due to inaction on the part of the respondent in not taking timely action against the petitioner in reverting him or conducting promotional test from time to time. Further, Respondents have not produced materials like Rules of Recruitment or Executive Orders and final seniority list of feeder cadre in order to ascertain the eligibility criteria and whether petitioner fulfills criteria or not.

5. In the light of the fact that petitioner has rendered service more than a decade in the post of Sr. Section Engineer with pay scale attached to the post, only the word used in the promotion order is that such a promotion order is on *ad hoc*, an employee or officer cannot be promoted to higher post on *ad hoc* basis for more than a decade. In such circumstances, meaning of *ad hoc* may not exist.

6. Having regard to the fact that petitioner had rendered service in the post of Sr. Section Engineer for more than one decade, one has to draw inference that he is a regular holder of the post of Sr. Section Engineer. Therefore, revisit of



eligibility to promotion at this distance of time would be a daunting exercise for the Respondent-Department. Retrieving correct data to rework seniority commencing from the year 1997 or earlier would be extremely difficult, resulting further litigation among retired persons. The matter, in our view, must rest there so that the pensioner is not left in a stake of uncertainty at this stage of his life after rendering decades of service to the Respondent-Department.

7. In view of these facts and circumstances, petitioner has made out a prima facie case so as to interfere with the order of the Tribunal dated 23.12.2015 passed in O.A. No. 487 of 2015 and it is set aside and O.A. No. 487/2015 is allowed.

8. In the result, the concerned respondent is hereby directed to extend all service and monetary benefits from time to time during the period from 21.10.1997 till 31.03.2015 against the post of Sr. Section Engineer as if he is a regular holder of the post of Sr. Section Engineer. Further, concerned respondent is hereby directed to undertake re-fixation of pay and pension of the petitioner in the post of Sr. Section Engineer and calculate arrears of pay and pension. Difference of pay and pension shall be disbursed within a period of three months from the date of



receipt of this order, failing which the petitioner is entitled to interest on arrears amount at the rate of 8% per annum.

9. Accordingly, writ petition stands allowed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	07.12.2022
Transmission Date	N.A.

