

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (S) No.6636 of 2014**

Manjeet Singh

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Versus

1. Union of India through General Manager,  
South Eastern Railway, Kolkata.
  2. Sr. Divisional Personnel Officer, Hatia Division,  
South Eastern Railway, Ranchi.
  3. Sr. Divisional Personnel Officer, Adra Division,  
South Eastern Railway, Adra.
  4. Dy. Chief Engineer (Con.), Construction Organisation,  
South Eastern Railway, Ranchi.
- --- Respondents

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**CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh**  
**Hon'ble Mr. Justice Deepak Roshan**  
Through: Video Conferencing

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| For the Petitioner  | : M/s. Anurag Kashyap, Prem Pujari Roy,<br>S. Dayal, Advocates |
| For the Respondents | : M/s. Mahesh Tewari, Vijay Kr.Sinha, Advs.                    |

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**17/03.01.2022**      Heard learned counsel for the petitioner Mr. Prem Pujari Roy and learned counsel for the railway Mr. Mahesh Tewari assisted by Mr. Vijay Kr. Sinha.

2.            Petitioner being aggrieved by the dismissal of O.A. No.272/2012(R) vide order dated 6<sup>th</sup> August 2014 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) whereby his prayer for protection of the last pay drawn by him in the scale of Rs.5200-20200/- with grade pay of Rs.2400/- and for payment of its arrears has been rejected, preferred the instant writ petition. To recapitulate the case of the petitioner and the stand of the respondents as brought on record through their earlier affidavit dated 14<sup>th</sup> May 2015, the order dated 1<sup>st</sup> February 2021 is being reproduced hereunder :-

*“Learned counsel for the petitioner has placed Annexure-2 letter dated 18<sup>th</sup> July 2012 which is an office order releasing the petitioner w.e.f. 18<sup>th</sup> July 2012 asking him to report to the Sr. DPO, South Eastern Railway, Adra for further posting. This letter shows his scale of pay as Rs.5200-20200/- with grade pay of Rs.2400/-. Annexure-1 dated 7<sup>th</sup> August 2012 has been issued by the Assistant Personnel Officer (I), Adra for Sr. Divisional Personnel Officer, Adra which is an order of repatriation of the petitioner to Ranchi Division. Annexure-3 is a letter dated 8<sup>th</sup>*

August 2012 issued by the Deputy Chief Engineer/Con/Ranchi to the Divisional Personnel Officer, South Eastern Railway, Ranchi which again shows his grade pay as Rs.2400/-. The whole case of the petitioner before the learned CAT was restoration of his grade pay to Rs.2400/- which has been arbitrarily reduced to Rs.1800/- in the same scale of pay Rs.5200-20200/- without any basis or notice. CAT declined the prayer on certain grounds. Petitioner being aggrieved has approached this Court.

In the instant writ petition respondent no.2 has filed a counter affidavit and stated that the petitioner, who was initially engaged as on temporary status on 4<sup>th</sup> May 1985, was absorbed in Group-D post after screening on 5<sup>th</sup> March 1998 vide order issued by the Divisional Personnel Officer, Adra. He was released on deputation for work in construction organization under Deputy Chief Engineer (Construction), Ranchi. Originally the lien remained in Signal & Telecom Department where his pay scale was Rs.2550-3200/- under 5<sup>th</sup> Pay Commission and under 6<sup>th</sup> Pay Commission at Rs.5200-20200 with grade pay of Rs.1800/-. Later he was relieved to his parent cadre (Open Line) at Ranchi Division on being declared surplus in construction organization. His service in railway electrification as well as construction organization was purely on deputation. He availed financial benefits of promotion on higher grade on ad-hoc basis in the scale of Rs.5200-20200/- with grade pay of Rs.2400/- which is the basis of his claim for pay protection at grade pay of Rs.2400/-. Other averments have also been made in the counter affidavit. The written statement filed before the learned CAT has been enclosed to the counter affidavit but photo copy of para-17.18(b) of Estt.Srl.No.87/96 mentioned as Annexure-R/1 has not even been enclosed. Only bland averments have been made in the counter affidavit without any supporting documents by an officer no less than the rank of Senior Divisional Personnel Officer. The counter affidavit fails to give any clear picture regarding the service records of the petitioner and moreover no supporting documents have been annexed in proof of such averments. [See *Bharat Singh Vs. State of Haryana* (1988) 4 SCC 534, para-13].

We are constrained to say that in absence of a proper response and the supporting documents, this Court has been precluded from arriving at a considered decision.

Learned counsel for the railways prays for a short time to file a supplementary affidavit in order to support it. We grant two weeks' time to the respondent no.2 to file supplementary affidavit, however with a cost of Rs.2000/- to be paid in JHALSA within the same period. Matter be listed on 22<sup>nd</sup> February 2021. Petitioner, if so advised, may file rejoinder

*thereto, in the meantime.”*

3. As it appears, the supplementary counter affidavit filed by the respondents on 24<sup>th</sup> February 2021 thereafter once again failed to bring on record the documents relating to pay fixation of this petitioner as are borne out from his service records. Respondents were, however, granted further time on 1<sup>st</sup> March 2021 to do so on the condition that failure on their part would require the presence of the concerned respondents. Thereafter the second supplementary counter affidavit has been filed by the respondent no.2 Sr. Divisional Personnel Officer, South Eastern Railway, Ranchi on 16<sup>th</sup> March 2021.

4. The respondents have taken the following stand as borne out from paragraphs-5 to 10 of the last affidavit. As per their statements made therein, petitioner was initially engaged as a Casual Jeep Driver in Railway Electrification Project Organization vide Railway Board's letter dated 11<sup>th</sup> September 1986 and 16<sup>th</sup> February 1987 and was granted temporary status in the scale of Rs.260-400/- vide memorandum dated 25<sup>th</sup> May 1987 on the pay of Rs.260/- w.e.f. 4<sup>th</sup> May 1985. Relevant entry of the service record of the petitioner is enclosed as Annexure-R/2. As per the statements made at para-6, petitioner was screened by the Committee under Adra Division and found suitable for absorption in Group-D post in the scale of Rs.2550-3200/- under 5<sup>th</sup> pay revision vide memorandum dated 5<sup>th</sup> March 1998 issued by the Divisional Personnel Officer, South Eastern Railway, Adra and letter dated 16<sup>th</sup> March 1998 issued by the CPM(P)/RNC being office order no. Misc/84/98. Respondents contend that the petitioner did not report in the open line and continued his service under Railway Electrification Project Organization on temporary status of jeep driver. Office order dated 16<sup>th</sup> March 1998 is enclosed as Annexure-R/3 to this affidavit. It is further stated at para-7 that in terms of office order no.P/57/89 dated 31<sup>st</sup> March 1989 the services of the petitioner a casual temporary status driver along with Vehicle No. BPN 4346 was utilized for a period of maximum three months under administrative control of Chairman / RRB / Ranchi and his salary was continued to be charged in Railway Electrification, Ranchi. The further averments made at para-7 of this affidavit are quoted hereunder with underline to add emphasis :

“It is further submitted that the petitioner was released on deputation to work in construction organization and reported to Dy. Chief Engineer / Construction, South Eastern Railway, Ranchi with effect from 20.01.1999 vide letter no.CPM(P)/RE/RNC's OO No.P18/99 dated 20.01.1999 and DYC STE's Order No.PSRE/S&T/E 1081 81 dated 20.01.1999.

*Photo copies of the office order no. P/57/89 dated 31<sup>st</sup> March 1989 and order dated 20.01.1999 are hereunto annexed and marked as Annexure-R/4 and Annexure-R/5 respectively to this affidavit.”*

5. Respondents have further averred at para-8 that the petitioner's services continued on purely temporary basis on temporary status post in Railway Electrification Project Organization and Construction Organization where he availed financial benefits on promotion on higher grade post on ad-hoc basis in pay scale of Rs.5200-20200/- + Grade Pay Rs.2400/-. The respondents further averred that the lien of the petitioner originally remained in Signal and Telecom Department, Adra Division, where his pay scale was Rs.2550-3200/- under 5<sup>th</sup> Pay Revision and Rs.5200-20200/- + grade pay Rs.1800/- under 6<sup>th</sup> Pay Revision. Photocopies of the pay fixation chart of the petitioner are marked as Annexure-R-6A and R-6B respectively. It is pertinent to mention here that as per the fixation of pay under RSPP Rules 2008 at Annexure-R-6B at page-18 of this affidavit, pay of the petitioner was fixed in the scale of Rs.5200-20200/- with the grade pay attached to the scale Rs.2400/-. This pay fixation was certified by the Deputy Chief Engineer (Construction), S.E. Railway/RNC and also countersigned by the APO (Con), S.E. Railway / GRC.

6. As per the further averments made in para-9 of this affidavit, petitioner was reverted from Construction Organization through letter dated 14<sup>th</sup> July 2012 and office order dated 18<sup>th</sup> July 2012; release letter dated 27<sup>th</sup> July 2012 to his parent cadre in open line signal and telecom department of Adra Division on being declared surplus in construction organization. Though he reported to Adra Division, but he was redirected to AXEN/CON/RNC vide letter dated 7<sup>th</sup> August 2012 stating that after bifurcation of Adra Division in 2003, the lien of the petitioner should have been fixed in S & T Department of Ranchi Division in terms of Establishment Serial no.66/02 on the ground

of geographical jurisdiction of the office where petitioner rendered his service i.e. in Railway Electrification Organization and Construction Organization situate at Ranchi (Annexure-R-7, R-8 and R-9 respectively annexed in support). Thereafter, the petitioner was directed to report to Divisional Personnel Officer, Ranchi vide letter dated 8<sup>th</sup> August 2012 issued by the Deputy Chief Engineer / Construction / Ranchi in compliance whereof he reported to Ranchi Division and was posted under SSE (Sig)/Muri as Khalasi (Signal) in pay band of Rs.5200-20200/- + Grade Pay Rs.1800/- vide office order no. PERS/RNC/471/12 dated 5<sup>th</sup> November 2012. His pay was refixed in terms of para-17.18(b) of the Railway Board's letter no. E(NG)II/91/CL/Master Circular/157 (M.C. No.48) dated 30<sup>th</sup> June 1992 circulated under Estt. Srl. No.87/1996 (Annexure-R/1). Further averments of this affidavit state that petitioner was granted MACP in the year 2014 with the grade pay of Rs.1900/- w.e.f. 1<sup>st</sup> September 2008 and Rs.2000/- w.e.f. 10.10.2011 vide office order dated 27.11.2014. Thereafter, petitioner has retired from railway service on 31<sup>st</sup> January 2019 and has been paid his retirement dues.

7. The stand of the petitioner and the respondents placed before the learned Central Administrative Tribunal was dealt with in the following manner :-

Learned Tribunal has held that the pay scale of jeep driver and Khalasi (Signal) are identical and there is no case of denial of pay protection to the applicant. The grade pay under 6<sup>th</sup> pay revision has its linkage with the category and the post held by an employee and a higher pay of Rs.2400/- in his earlier assignment under deputation will not be admissible in his present post whose grade pay is Rs.1800/-. Therefore, the applicant was not entitled for a grade pay of Rs.2400/-.

8. Learned counsel for the respondents has relying upon the averments made in the second supplementary counter affidavit profusely quoted above, stated that the petitioner continued in temporary status in the railway electrification project organization as a jeep driver and did not report in open line as per the statements made at para-6 of this affidavit. However, the statement made at para-6 of this second supplementary counter affidavit is in contradiction to the statement made at para-7, the extract of which has been quoted in the foregoing paragraphs. A perusal of the statement made at para-7

of the affidavit shows that the petitioner was relieved on deputation to work in construction organization w.e.f. 20<sup>th</sup> January 1999 and was released on reversion from construction organization vide letter dated 14<sup>th</sup> July 2012 and after few correspondences he was redirected to report under Ranchi Division instead of Adra Division where he joined pursuant to the letter dated 8<sup>th</sup> August 2012 issued by the Deputy Chief Engineer/Construction, Ranchi. Though the scale of the petitioner has been kept intact, but the grade pay of Rs.2400/- has been reduced to Rs.1800/- relying upon the terms of para-17.18(b) of the Railway Board's letter dated 30<sup>th</sup> June 1992 circulated under Estt. Srl. No.87/1996. Para-17.18(b) of Estt. Srl. No.87/96 is enclosed as Annexure-R/2 to the supplementary counter affidavit dated 24<sup>th</sup> February 2021 and is quoted hereunder :-

*“17.18 Casual labour with temporary status on absorption in regular Group ‘D’ posts will be allowed fixation of pay as follows :*

- (a) those drawing pay in identical grades will have their pay fixed with reference to the last pay drawn;*
- (b) those working in semi-skilled and skilled grades but absorbed in Group ‘D’ unskilled grades will have their pay fixed by granting increments in the unskilled grade with reference to their earlier service as casual labour in higher or equivalent grades.*

*(Ref: Board's letter No.E(NG)II/76/CL/79 dated 5.11.76).”*

9. Two things emerge out of the conspectus of the facts noted above and the relevant provisions of the Estt. Circular No.87/96:

It is not in dispute that the petitioner was absorbed in regular Group ‘D’ post after screening by the constituted screening committee of Adra Division in the pay scale of Rs.2550-3200/- under 5<sup>th</sup> pay revision vide memorandum dated 5<sup>th</sup> March 1998 and office order no. Misc/84/98 dated 16<sup>th</sup> March 1998. It was only thereafter that he was released on deputation to work in construction organization w.e.f. 20<sup>th</sup> January 1999 (Annexure-R-5). It is also not in dispute that while remaining under the construction organization till his reversion under Ranchi Division as per the office order dated 8<sup>th</sup> August 2012 issued by the Deputy Chief Engineer (Construction), Ranchi, petitioner continued for 13 years under the said Division organization. It was during his tenure in the said posting that the fixation of pay under RSPP Rules 2008 was done and duly certified by the competent authority in the scale of

Rs.5200-20200/- with grade pay of Rs.2400/-. This has been reduced after his reversion to his parent cadre in open line under Ranchi Division. Such reduction in grade pay has been done without following the principles of natural justice which is not in dispute. The respondents have not questioned the jurisdiction of the competent authorities who have fixed his pay under RSPP Rules 2008 in the grade pay of Rs.2400/- in the pay band of Rs.5200-20200/- under 6<sup>th</sup> pay revision w.e.f. 1<sup>st</sup> January 2006. Petitioner had approached the Central Administrative Tribunal in the year 2012 seeking protection of his pay scale and grade pay of Rs.2400/-. Therefore, the cause of action as raised by him was not belated, though during course of this litigation he appears to have superannuated on 31<sup>st</sup> January 2019 and has been paid his retirement dues.

10. In the aforesaid facts and circumstances, we are of the considered view that the reduction of grade pay of the petitioner from Rs.2400/- to Rs.1800/- has been done without following the principles of natural justice. As such, the matter is remitted to the competent authority / respondent no.2 to take a fresh decision in accordance with law after giving due opportunity to the petitioner on the question of restoration of the grade pay of Rs. 2400/- in the scale of Rs.5200-20200/-. Needless to say, the petitioner be also allowed an opportunity of hearing.

11. In the light of the reasons discussed herein above and the matter being remanded to the competent authority for fresh consideration, the impugned order dated 6<sup>th</sup> August 2014 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) (Annexure-7) is set aside. Writ petition is allowed in the manner and to the extent indicated herein above. Needless to say, upon such reconsideration, if the claim of the petitioner is found genuine and tenable in law and on facts, all consequential benefits arising out of such grade pay and pay fixation be conferred to him. Let such reconsideration be made within a period of 12 weeks from the date of receipt of a copy of this order.

***(Aparesh Kumar Singh, J.)***

***(Deepak Roshan, J.)***