

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14384 of 2022

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Gulab Chand S/o- Late Jagdish, Ex- Peon, under Financial Advisor and Chief Accounts Officer (Traffic), East Central Railway, Hajipur, Resident of Village and P.O.- Birra, P.S.- Makhdumpur, Distt.- Jehanabad, Bihar, PIN- 804405.

... .. Petitioner/s

Versus

1. The Union of India Through The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar)- PIN- 844101.
2. The Principal Financial Advisor, East Central Railway, Hajipur, District- Vaishali (Bihar)- PIN- 844101.
3. The Financial Advisor and Chief Accounts Officer (Traffic), East Central Railway, Hajipur, District- Vaishali (Bihar)- PIN- 844101.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Advocate Mr. Anurag Kumar, Advocate Mr. Abhay Kumar, Advocate
For the Respondent/s	:	Mr. (Dr.) K.N. Singh, A.S.G. Mr. Tuhin Shankar, Advocate & CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-03-2023

Heard learned counsels for the parties.

2. Pursuant to order dated 27.02.2023, Mr. Madhukar Sinha, Principal Financial Advisor and Mr. A.P. Srivastava, DGM/Law are present in the Court.

3. In the instant petition, petitioner has prayed for following reliefs:-

"A. For issuance of writ/writs in the nature of writ of certiorari or mandamus or any other appropriate writ,



for setting aside or modify Para 7 of the order dated 04.10.2021, passed in O.A. No. 050/545 of 2019, Gulab Chand Vs. The Union of India & Others, by the Central Administrative Tribunal, Patna, by which the Hon'ble Central Administrative Tribunal, Patna though Partly allowed the O.A. but the first relief prayed in para 8.1 of the O.A. has not been considered. First relief prayed by the petitioner in Para 8.1 of the O.A. No. 050/545 of 2019 was as follows -

"8.1. That your lordships may graciously be pleased to direct/command the Respondents to fix the pay of the applicant after granting ACP in scale of Rs. 2650-4000/- w.e.f. 01.10.1999 till fixation of the pay in 6th Pay Commission, duly granting annual increments accordingly as per order of the Hon'ble CAT/ Patna in O.A. No. 1018/2003 and O.A. No. 456 of 2007."

B. For paying the difference of Pay, Allowances and Retiral dues accordingly after such fixation of pay with applicable interest."

4. The matter is heard at length from time to time.

We are required to take note of grievance of the petitioner which is relating to pay protection to the post of *Khalasi* with reference to transfer from Varanasi to Hajipur and further entitlement of MACP w.e.f. 01.09.2008, in the light of MACP Scheme.

5. Initially, petitioner was appointed with the respondent in the year 1977 and his service was regularized in



the year 1981 as Group 'D' employee. In the light of ACP Scheme, petitioner was extended ACP benefit with reference to his service particulars w.e.f. 01.10.1999 in the pay scale of Rs. 2650/- to 4000/- while fixing his pay @ Rs. 3300/-. Thereafter, he has earned two annual increments on 01.10.2000 and 01.10.2001 which resulted in pay @ Rs. 3370/- and 3440/- respectively. When things stood thus, vide Office Order No. 744 dated 29.01.2002 he was transferred from Varanasi to Hajipur in the pay-scale of Rs. 2550/- to 3200/- and he has joined on 23.09.2002. Thereafter his pay was re-fixed @ Rs. 3200+240(PP). Stage of pay was also assigned w.e.f. 23.09.2002.

6. Respondents have committed error in the Office Order No. 744 dated 29.01.2002 while assigning the pay-scale @ Rs. 2550/- to 3200/- in stead of giving pay protection in the pay-scale of Rs. 2650-65-3300-70-4000/- which was extended w.e.f. 01.10.1999 while extending benefit of upgradation of pay (ACP). In other words, as on 29.01.2002, petitioner has already entered the pay-scale of Rs. 2650-4000/-. Such decision has been taken by the respondents with reference to Rule 312-**'Transfer on Request'** under Chapter III of **Seniority Rules & Regulating For Non-Gazetted Railway Employee**. In other words, if Railway Employee- Non-gazetted Railway Servants'



request for transfer from one zone to another zone or one division to another division, in such circumstances, he would be extended pay-scale of entry level for that particular post. In the present case, Khalasi post carries the pay-scale of Rs. 2550/- to 3200/-, that has been ordered while transferring the petitioner from Varanasi to Hajipur on 29.01.2002. The official respondents have committed error in re-assigning the pay fixation with reference to Rule 312 of Chapter III- Rules regulating seniority of Non-gazette Railway Servants. The Chapter itself is dealing with seniority of a Non-gazetted Railway Servants and not the pay-scale. Moreover, in the service jurisprudence the normal principle is that in the event of an employee is transferred from one division to another division or one district to another district or one zone to another zone, in such circumstances at the best he is losing seniority in that particular cadre and unit. In other words, he would be accommodated at the bottom of the transferred district or zone of seniority list. The object is that such a transferring employee to occupy the bottom of the list in the transferred place or district is to see that such of those persons who are already in seniority and their ranking shall not be disturbed. The other situation is also is that it is relating to transfer of an employee



from one district to another district, one zone to another zone in public interest. In this situation, seniority and pay protection are mandatory. No doubt, in the present case petitioner must have requested for his transfer from Varanasi to Hajipur. In such circumstances, at the best he would be losing his seniority in Hajipur in that particular cadre and not losing pay protection. The act of official respondent fixing the petitioner's pay-scale @ Rs. 2550/- to 3200/- on his transfer from Varanasi to Hajipur on 29.01.2002 is nothing but taking away the benefit of ACP which has been extended to him when he was working at Varanasi as on 01.10.1999. Therefore, Rule 312 of Chapter III relating to Rules regulating seniority of Non-gazetted Railway Servants is required to be restricted to only losing seniority and not to the pay protection and not fitting to the entry level to that particular post.

7. Transfer of Railway employees are like on administrative ground like simple transfer, promotion, reduction in establishment and punishment. The other transfers are like request by one way transfer or mutual transfer. We are concerned with the own request transfer. In the request transfer, if it is for a new seniority unit the employee gets bottommost seniority on the date of joining at new station. If the transfer



takes place within the same seniority unit, the seniority will not be maintained. Services rendered in the old unit will count as qualifying service for promotion in the new unit provided (i) he is otherwise eligible for selection to the post as per extant rules. (ii) The category in which he was working in the old unit is an eligible category for selection in the new unit also. (iii) The service so allowed to be counted does not exceed the length of service of immediate senior in the new unit.

8. In the light of these facts and circumstances, petitioner has made out a *prima facie* case so as to entitlement of fixation of pay and protection of pay as on 29.01.2002 with reference to post hold by him at Varanasi as on 29.01.2002, i.e. in the pay-scale of Rs. 2650-65-3300-70-4000/-. This pay-scale is after extending benefit of upgradation of pay ACP as on 01.10.1999. The official respondents are hereby directed to re-fix the petitioner's pay w.e.f. 29.01.2002 in the pay-scale of Rs. 2650-4000/- in stead of Rs. 2550- 3200/- (entry level). The above exercise shall be completed within a period of four months from the date of receipt of this order. The concerned respondent is hereby directed to carry out necessary correction in the corresponding entries while granting annual increment from time to time, 6th Pay Commission from 01.01.2006 further



promotion dated 10.02.2006, so also benefit of MACP granted from 01.09.2008 till his date of retirement and proceed to re-fix the pension with reference to last pay drawn (re-fixation). Arrears shall be calculated and disbursed within a period of four months, failing which petitioner is entitled to interest @ 8% *per annum*.

9. Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.03.2023
Transmission Date	N.A.

