

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4842 of 2023

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.- Hajipur, District- Vaishali (Bihar).
2. The A.G.M. East Central Railway, Hajipur, P.O.- Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, Dhanbad Division, East Central Railway, Dhanbad.

... .. Petitioners.

Versus

Amrish Ranjan, Son of Shri Chitranjan Prasad, presently posted at Krishna Shila Railway Station as Crew Controller under Chief Loco Inspector, Krishna Shila, Dhanbad Division, E.C. Railway, Dhanbad.

... .. Respondent.

Appearance :

For the Petitioners-U.O.I.: Mr. Anand Kumar Ojha, Sr. C.G.C.

Mr. Arvind Kumar, C.G.C.

For the Respondent : Mr. Arbind Kumar Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 10-05-2024

In the instant writ petition, the Union of India-Railways (petitioners) have assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT') passed in OA/050/00655/2015 dated 21.01.2019.

2. Respondent-Amrish Ranjan was appointed with the Railways. He has reached the post of Chief Operating Superintendent in the pay-scale of Rs.9300-34800+Grade pay of Rs.4600/-. While working as such, he was medically de-categorized, resulted in providing alternative post, namely, Crew



Controller with the aforementioned pay-scale. However, grade-pay is at Rs.4200/- instead of Rs.4600/-, sanctioned earlier. The aforementioned change of posting to the post of Crew Controller is stated to have been notified on 16.12.2011. The petitioners fail to rectify the grievance of the respondent in not extending the grade-pay of Rs.4600/- against Crew Controller Post. Respondent-Amrish Ranjan approached the CAT, Ranchi Bench, in filing O.A. No.44 of 2013 [R] and it was decided on 07.01.2015, asking the respondent to approach the authorities in submission of representation. Respondent had submitted representation on 21.01.2015. It was rejected while passing order and stated to be a speaking order dated Nil (25.05.2015). Still aggrieved by the action of the petitioners in not extending grade-pay of Rs.4600/-, the respondent has once again knocked the door of the CAT in filing OA/050/00655/2015. CAT proceeded to allow OA/050/00655/2015 on 21.01.2019 to the extent that respondent is entitled to grade-pay of Rs.4600/- instead of Rs.4200/-. Hence, the present writ petition on behalf of the Union of India-Railways.

3. Learned counsel for the petitioners vehemently contended that grievance of the respondent is highly belated and it cannot be entertained. In support of the same, he has cited



decision of the Hon'ble Supreme Court in the case of **State of Uttaranchal and another Versus Shiv Charan Singh Bhandari and others**, reported in **(2013)12 SCC 179 (paragraph-18)**. It is further submitted that Railways' circulars do not provide for extending grade-pay in the event of medically de-categorized from one wing to another wing. Therefore, the CAT has committed error in allowing OA/050/00655/2015. Hence the order of the CAT dated 21.01.2019 is liable to set aside while rejecting OA/050/00655/2015 filed by the respondent.

4. Per contra, learned counsel for the respondent resisted the aforementioned contentions and submitted that there is no delay as stated by the learned counsel for the petitioners. It is submitted that cause of action accrued to the respondent on 07.09.2012, the date on which he was appointed by transfer to the post of Crew Controller from the post of Chief Operating Superintendent. If the cause of action is to be taken as 07.09.2012, in that event the respondent had time of one year and six months, after submission of representation. Therefore, cause of action accrued to the respondent on 06.03.2014. Whereas, he has filed O.A. prior to 06.03.2014, O.A. No.44 of 2013[R] before CAT (Circuit Bench at Ranchi). Therefore,



prima facie, there is no delay. It is also submitted that after submission of representation, the concerned authorities has turned down the grievance of the respondent on 25.05.2015 and second OA/050/00655/2015 was filed in the year 2015. Therefore, there is no delay. Hence, the contention of the petitioners is liable to be rejected. It is further submitted that Circulars are not applicable in respect of pay protection in the event of an employee/official was disabled to discharge a particular post during the course of the employment. He shall be provided alternative job while giving pay protection even though pay-scale and other works are different from the what was the employee was getting in the light of the Rights of Persons with Disabilities Act, 2016.

5. Heard the learned counsel for the respective parties.

6. Core issue involved in the present lis is whether the respondent is entitled to pay protection of grade-pay from the post of Chief Operating Superintendent in the pay-scale of of Rs.9300-34800/- + grade pay of Rs.4600/- or grade-pay of Rs.4200/- in the post of Crew Controller.

7. It is to be noted that respondent was medically decategorized on account of certain disabilities and it was



beyond the control of the respondent. Therefore, he has been provided alternative post, namely, Crew Controller, even though pay-scale carries on par with Chief Operating Superintendent **cited supra**, however, grade-pay is Rs.4200/- and it is lesser than the grade-pay to the Chief Operating Superintendent, namely, RS.4600/-. The medical de-categorization was in the public interest. Therefore, the respondent is entitled to pay protection. The Circular which denies the benefit of protection of grade-pay of Rs.4600/- is arbitrary and illegal. Certain provisions of the Rights of Persons with Disabilities Act, 2016 provides for protection of service conditions of the employees/Government Servant. In those provisions, respondent is entitled to have the benefit of protection of grade-pay. Circulars will not prevail over Act, 2016.

8. Taking note of these facts and circumstances, the petitioners have not made out a case so as to interfere with the order dated 21.01.2019 passed in OA/050/00655/2015 by the CAT.

9. Accordingly, the instant writ petition stands dismissed while affirming the order dated 21.01.2019 passed in OA/050/00655/2015 by the CAT. Order dated 13.11.2019 passed by the CAT in RA/050/00052/2019 with MA/050/00393/



2019 is also affirmed.

10. Pending Interlocutory Application(s), if any,
stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2024.
Transmission Date	NA

