

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7910 of 2024

Subrat Kumar Jena Son of Sri Hara Mohan Jena, Resident of Flat No. 405, D Block, Sai Enclave Apartment, Vijay Singh Yadav Path, P.O.- Khagaul, P.S.- Khagaul, District- Patna, Bihar-801105, permanent resident of- Village- Balijhati, P.O.- Ramakrishnapur, P.S.- Bhuban, District- Dhenkna, Odisha- 759017, Lastly posted as Deputy Chief Electrical Engineer (Loco), East Central Railway, Hajipur, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin- 110001.
2. The Secretary, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin-110001.
3. The Director (Establishment), Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin- 110001.
4. The Member, Traction, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin-110001.
5. The Member (Staff), Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi, Pin- 110001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Avinash Kumar Singh, Advocate
For the Respondent/s	:	Mr. Deepak Kumar, Sr. CGC Mr. Arvind Kumar, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

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

Date : 20-07-2024

In the instant writ petition, petitioner has assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'CAT') dated 22.02.2024 passed in O.A./051/01130 of 2019. Petitioner – *Subrat Kumar Jena* has



assailed the order of compulsory retirement and consequential relief in O.A. No. 051/01130 of 2019. On 14.05.2024, Co-ordinate Bench has passed the following order :

“Petitioner has assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short "CAT") dated 22.02.2024 passed in O.A. No. 051/01130/2019. Grievance of the petitioner is against order dated 06.12.2019 of the EC Railway by which petitioner was retired compulsorily under Rule 1802 (a) of the IREC Volume II. CAT in para-17 held as under:-

"17. Any order of compulsory retirement should sustain the ground of public interest. The minutes of both, the Internal Committee as well as Review Committee lack in specific details on the basis of which they recommended for applicant's compulsory retirement. Applicant also filed this OA without exhausting the remedy of Representation available in terms of RBE No. 130 of 2019. Applicant was required to make Representation within three weeks of receiving the order of compulsory retirement. More than four years have passed. At this stage, we do not wish to examine the applicant's compulsory retirement from the public interest perspective."

2. Perusal of Circular/OM bearing RBE No. 130 of 2019 is an executive instruction whereas Rule 1802 is statutory rules. That apart under executive instruction, para-6 and 6(a) reads as under:-

"6. Procedure for Consideration of Representation (Reference: E(P&A)I-77/RT-53 dated 15.11.1979 and E(P&A)I-2015/RT/38 dated 10/12.11.2015):

a) A railway employee, who has been served with a notice/order of premature retirement, may submit a representation within 3 weeks from the date of service or such notice/order." [underline supplied]



3. Even in the executive instruction it is not mandatory that representation was required to be filed. The word used is "may submit a representation". Be that as it may, there is no provision under Rule 1802 (a) of the IREC Volume II for submission of representation. Therefore, whatever the circular asking the employee to submit representation against the premature retirement is directory and not mandatory.

4. The concerned respondents are hereby directed to secure original records so as to analyze whether the finding of the CAT at para 17 is in order or not?

5. Re-list this matter on 25.06.2024.”

2. Today, learned counsel for the respondents have furnished original records relating to premature retirement of Railway servants. The committee which was constituted for the purpose of examining records of the various officials was undertaken on 30.09.2019. Among 18 persons 3 were found to be retired compulsorily. In paragraph No. 3 of the committee report, they have assigned four criteria like *a, b, c, d*. However, there is no analysis and discussion about three officers / employees who have been retired compulsorily with reference to each of the criteria for example, *Paragraph 3 - (a) Performance : Performance of the officer as reflected in the APARs in the entire career. Entire APARs dossiers were scrutinized. Special attention was given to the performance during the last five years (i.e. up to APAR year 2017-18)*. There is no material and its discussion as to how each of the



criteria has been examined in respect of three officers including petitioner – employee.

3. *Prima facie*, decision of the committee followed by compulsory retirement order is bereft of material information. In other words, there is no analysis with reference to the criteria laid down by the committee. It is necessary to reproduce committee's reports dated 30.09.2019 and 19.11.2019 and it read as under:

E(O)/2019/SR-10-P/04

“Sub: Premature retirement of Railway Servants - Periodic review under Rule 1802(a)/1803(a)/1804(a)-R-II 1987 Edition

1. With a view to strengthening of administration, the process to review services under Rule 1802(a), 1803(a), 1804(a) of IREC Vol-II 1987 (parallel of 56(j) of CCS rules) of officers was commenced with internal committee scrutinizing the service records of the officers. Review of services of officers of IRSEE is under consideration in this file.
2. Board's letter No. E(P&A)1/2019/RT-21 dated 08.08.2019 encapsulating all the relevant provisions of the instructions circulated from time to time is placed below at SN.01.
3. In line with the above instructions, (i) officers who would be attaining 50 years of age during January to March 2020 and (ii) officers who have attained 50 years of age, but review was not done earlier have been covered. However, all those officers who are left with less than one year of residuary service prior to superannuation have been left out.
4. While undertaking the scrutiny, the following aspects have been kept in view:
 1. APAR Grading of the officers for the last 5 years (i.e., up to 2017-18);
 2. Vigilance history of the officers;
 3. Remarks (including uncommunicated, if any) in the APAR dossiers;
 4. Integrity as mentioned in the APARS
5. Out of 168 officers, who were due for review as per para 3 above and whose services have been considered for review, the Internal Committee has found 150 officers fit for continuance in service and shortlisted the following 18 officers for review by the Review Committee.



S.No.	RLY	NAME	GRADE	DOB
1	CR	TYAGI SHISHIR	SG	05-03-70
2	SER	TIWARI RAMENDRA KUMAR	SAG	15-06-67
3	SER	KUMAR NAVEEN	SAG	14-03-67
4	ER	SARAF VIJAY PRAKASH	SAG	18-05-68
5	RDSO	KUMAR YATENDRA (SC)	SAG	20-07-67
6	DEP	BHAREL NARINDER SINGH	SAG	04-01-68
7	DEP	JAIN ANIL KUMAR	SAG	10-01-70
8	RE	DUBEY SUDHANSHU KRISHNA	SAG	17-07-68
9	NR	SINGH RAJESH	SAG	15-02-68
10	DEP	RAJ BALDEV (SC)	SAG	02-05-68
11	WR	BRIJ RAJ (P)	SG	23-10-65
12	RE	SAMADDAR B. (P)(SC)	SG	16-01-63
13	CR	SYALI K.S. (P)	SG	30-05-62
14	ECR	JENA S.K. (P)	SG	29-04-66
15	DEP	KUMAR SUNIL (P)	SG	12-04-65
16	SER	CHAKRABORTY BC (P)	SG	10-07-66
17	ER	GHOSH KUNTAL (P)	SG	05-12-65
18	SECR	UTPAL DEY (P)	SG	19-07-65

5.1. The APAR dossiers and Vigilance history of the above-named 18 officers are placed below. As it may be seen from the summary (SN-02), performance-wise all these above named officers have been graded Outstanding/ VG/G. Integrity as reflected in the Integrity Column in their APARS also appears satisfactory. However, since their vigilance history shows multiple substantiated cases, which casts a shadow on their # integrity, the Review Committee may like to associate PED/Vigilance while reviewing the services of the above-named officers.

6. Review Committee for IRSEE officers comprise CRB, MTR and MS.

7. CRB may like to convene the Review Meeting on a date and time as and when convenient to the Review Committee

(H Moharana)	(Pramila H Bhargav)	(S.K.Mishra)
JS(E)	JS(C)	Secretary
Member	Member	Chairman

Sub: Premature retirement of Railway Servants - Periodic review under Rule1802(a)/1803(a)/1804(a)-R-II 1987 Edition: Meeting of the Review Committee for recommendations w.r.t. Indian Railway Service of Electrical Engineers (IRSEE).

The Review Committee met on 14.11.2019 to review the services of IRSEE officers under Rule 1802(a), 1803(a), 1804(a) of IREC Vol-II 1987 (parallel of 56(j) of CCS Rules). Inputs of Principal Executive Director/Vigilance were taken in to account during the



deliberations. Secretary Railway Board also assisted the Review Committee with factual inputs during the deliberations.

2. The Internal Committee, headed by Secretary/Railway Board, had earlier scrutinized the service records of 168 officers (SN-2) who are eligible to be considered for review under this rule. This included all those who would be attaining 50 years of age by March 2020 and those who have already attained 50 years of age, but review of services was not done earlier. Those officers who are left with less than one year of residuary service prior to superannuation have been left out as per the extant instructions. One more officer (SN-6) was considered on recommendation of PED/Vigilance on ground of questionable integrity.

3. While undertaking the review, the report of the Internal Committee and the entire service records of the officers including the following aspects have been kept in view:

- a) Performance: Performance of the officer as reflected in the APARS in the entire career. Entire APAR dossiers were scrutinized. Special attention was given to the performance during the last 5 years (i.e., up to APAR year 2017-18).
- b) Vigilance history of the officers.
- c) Integrity as reflected in the APARS and as per the assessment of PED/Vigilance.
- d) Integrity and general reputation as ascertained from the officers he has worked with/ under during his entire service period.

4. Out of 169 officers who were due for review, the Review Committee has found the following officers fit to be retired prematurely/ compulsorily in public interest, in keeping with the Government's policy of improving efficiency by dispensing with public servants who are no longer found useful to the administration.

SN	RLY	NAME	GRADE	DOB
1	RE	B. SAMADDAR (P) (SC)	SG	16-01-1963
2	ECR	S.K.JENA (P)	SG	29-04-1966
3	ER	KUNAL MUKHERJEE (P)	JAG	01-04-1965

5. Hon'ble MR, as Competent Authority, exercising the power of the President of India. may like to consider for approval.”

(Member, Staff) (Member, Traction)

(Chairman, Railway Board)



4. Retiring compulsorily as non-fit for service (premature retirement) has a civil consequence, therefore, in the absence of analyzing the service records by the Committee, we have to draw inference that there is no application of mind. Accordingly, petitioner has made out a case so as to interfere with the order of the CAT dated 22.02.2024 passed in O.A./051/01130 of 2019. Resultantly, OA filed by the petitioner stands allowed while quashing the impugned orders in the OA dated 06.12.2019 and 03.12.2019.

5. Petitioner shall be reinstated forthwith while extending all service and monetary benefits, during the entire intervening period. The present order would not come in the way of respondents revisiting the matter and proceed to take fresh decision / order, if it is warranted at this distance of time.

6. Pending I.As., if any, stand disposed of.

(P. B. Bajanthri, J)

(G. Anupama Chakravarthy, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2024
Transmission Date	NA

