

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13810 of 2023

Vijai Srivastava Son of Late Shiva Shanker Lal, Resident of Flat No. 402, Sarswati Tower, Kusumpuram, Near Shiva Mandir, P.O. - Rupaspur, Danapur, District- Patna - 801503, At Present Working Senior Law Officer Office Of The Chief Administrative Officer (Construction), East Central Railway, Mahendrughat, Patna - 800004 (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Government of India, Ministry of Railways, Rail Bhawan, Raisina Road, New Delhi - 110001.
2. The Secretary, Railway Board, Government of India, Ministry of Railways, Rail Bhawan, Raisina Road, New Delhi- 110001.
3. The Director/E (GP), Railway Board, Government of India, Ministry of Railways (Railway Board), New Delhi - 110001.
4. The General Manager, East Central Railway, Hajipur - 844101.
5. The Principal Chief Personnel Officer, East Central Railway, Hajipur - 844101.
6. The Dy. CPO/GAZ Office of The General Manager (P), East Central Railway, Hajipur - 844101.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit, Advocate Ms.Swatika, Advocate Mr.Sanjay Kumar Choubey, Advocate
For the Respondent/s	:	Mr.Pradeep Kumar, Sr. Panel Counsel Mr.Shyam Bihari Singh, CGC Mr.Sushant Praveer, 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 : 20-02-2024

In the instant petition, petitioner has prayed for the following relief(s):-

“(A) For issuance of Writ in the nature of Certiorari for quashing / setting



aside the Order dated 12.07.2023 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna herein after CAT in Original Application No.050/00466 of 2021 as contained in Annexure-1 to the writ application whereby instant Original application has been dismissed illegally.

(B) For issuance of Writ in the nature of Certiorari for quashing the part of Order /Notification bearing No.E (GP) 2016/3/13 (Law) New-Delhi dated 16.04.2021 issued by the Railway Board as contained in Annexure A/1 with Paper Book in respect of effective date of promotion of petitioner shown therein from 30.12.2020 instead of 01.04.2018.

(C) For issuance of Writ in the nature of Mandamus commanding the respondents to modify the Order/Notification bearing No.E (GP) 2016/3/13 (Law) New-Delhi dated 16.04.2021 as contained in Annexure A/1 with Paper Book, both issued by the Railway Board by giving effective date of Promotion of the petitioner to the post of Senior Law Officer in Group-A/Senior Scale with effect from 01.04.2018 against the vacancies for the panel year 2017-18 in place of / instead of 30.12.2020 in the same manner similarly placed co-employee namely Sri Harendra Prasad Gupta has been granted in compliance to the order dated 23.05.2016 and 24.11.2016 passed by Learned CAT, Patna in OA No.749/2015 and OA No.476/2016 respectively, upheld by this Hon'ble Court on 20.04.2017 in CWJC No.2868/2017 and CWJC No.2784/2017 reported in 2017 (3) PLJR 261 as contained in Annexure A/17 with Paper Book and implemented by the



Respondents on 17.07.2017 as contained in Annexure A/21 with Paper Book.

(D) For issuance of Writ in the nature of Mandamus commanding the respondents to grant all consequential, benefits including promotion and posting as Deputy Chief Law Officer/Deputy General Manager (Law) in Junior Administrative Grade henceforth w.e.f. 01.04.2018.

(E) Any other appropriate relief/reliefs for which the petitioner may be entitled, to be granted by this Hon'ble Court alongwith all consequential benefits."

2. Matter was heard on 06.02.2024 at length and following order was passed:-

"Core of the matter is whether petitioner is entitled to have the benefit of promotion to the post of Senior Law Officer - Group A with effect from 01.04.2018 the date on which the vacancy occurred. D.P.C. was required to be held from time to time with a certain rider to the extent that concerned authority was required to pass reasons for deferring D.P.C., in the light of D.P.C. instruction dated 10.04.1989. On the other hand, D.P.C. was conveyed on 29.12.2020 while granting promotion with effect from 30.12.2020 to the petitioner with reference to vacancies for the year 2017-2018. The petitioner feeling aggrieved by the date of promotion as 30.12.2020 in the light of vacancies accrued with effect from 01.04.2018 filed Original Application No. 050/00481 of 2021 before the Central Administration Tribunal, Patna Bench, Patna. The Tribunal has rejected the petitioner's claim.



2. On the other hand, learned counsel for the petitioner submitted that matter is covered by decision of this Court in the case of *Union of India Vs. Harendra Prasad Gupta* reported in 2017(3) PLJR 261 wherein, Harendra Prasad Gupta had been promoted retrospectively from the year 2013 to the post of Senior Law Officer Group- A. The same yardstick is applicable to the case in hand. However, it is disputed by learned counsel for the respondents to the extent that such retrospective promotion is not permissible. He has apprised this Court with reference to para 6.4.1 of D.P.C. instruction dated 10.04.1989 as to whether the concerned authority has recorded in not holding D.P.C. for the year 2018 and reasons thereof or not. Such a material shall be placed on record before the next date of hearing.

3. Re-list this matter on 20.02.2024.”

3. Today, learned counsel for the Union of India on instruction submitted that were no records in respect of recording reasons for not holding DPC timely. In such circumstances the petitioner has made out a case for retrospective promotion in the light of our previous order 06.02.2024. Accordingly, impugned order of the Central Administrative Tribunal, Patna Bench, Patna dated 12.07.2023 passed in O.A. No. 050/00466/2021 stands set aside while allowing O.A. No. 050/00466/2021 filed by the petitioner. Accordingly, the present writ petition stands allowed.



4. The concerned respondent/promoting authority is hereby directed to promote the petitioner from the retrospective date with effect from 01.04.2018 to the post of Senior Law Officer Group ‘A’ on notional basis and proceed to re-fix the pay of the petitioner in the post of Senior Law Officer Group ‘A’ with effect from 01.04.2018.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.02.2024
Transmission Date	NA

