

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P.(S) No. 7495 of 2023**

Devendra Kumar Tiwari @ Dewendra Tiwari, son of Late Bikram Tiwari, resident of Village- Sharshaw, P.O. & P.S.- Dharundha, District- Siwan (Bihar)

... .. Petitioner

Versus

1. The Union of India, through the General Manager, East Central Railway, Hajipur (Bihar)
2. The General Manager, East Central Railway, Hajipur (Bihar)
3. The Divisional Railway Manager, East Central Railway, Dhanbad Division, Dhanbad
4. The Senior D.P.O., East Central Railway, Dhanbad Division, Dhanbad
5. The Divisional Personnel Officer, East Central Railway, Dhanbad Division, Dhanbad
6. The Station Manager, East Central Railway, Dhanbad Division, Dhanbad

.... ... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner	: Mr. M.M. Sharma, Advocate Mr. Saibal Mitra, Advocate Mr. S.B. Gupta, Advocate
For the Respondents	: Mr. Anil Kumar, A.S.G.I.

Reserved on 06.05.2025
Per : Rajesh Shankar, J. :

Pronounced on 05.06.2025

The present writ petition has been preferred seeking following reliefs: -

- (i) For quashing of the order dated 09.10.2023 passed by the Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi in OA/051/00062/2021 whereby and whereunder the original application filed by the petitioner for calculation of entire service period rendered by him for the purpose of counting the length of service along with annual increments and for grant of pension, gratuity along with

other retiral benefits after calculation of the total period of service and for grant of all other pecuniary benefits which the petitioner is found entitled along with interest, has been rejected.

(ii) For direction upon the concerned respondents to calculate the entire service period rendered by the petitioner for the purpose of counting the length of service along with annual increments.

(iii) For further direction upon the respondents to grant the pension, gratuity along with other retiral benefits after calculation of the total period of service.

(iv) For further direction upon the respondents to grant all other pecuniary benefit to the petitioner with interest.

(v) For issuance of any other appropriate writ(s)/order(s)/direction(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of this case.

2. The learned counsel for the petitioner submits that the petitioner was appointed as Volunteer Ticket Collector (VTC) in Sealdah Division of Eastern Railway in the month of February, 1981 and he worked till 05.10.1994. Thereafter, the petitioner along with several others moved before the Central Administrative Tribunal, Calcutta Bench by filing O.A. No. 161 of 1992 seeking direction upon the respondents to absorb them in regular/permanent service with temporary status and to grant them all consequential benefits retrospectively. The said O.A was disposed of on 19.08.1993 directing the respondents to treat the petitioner and other similarly situated persons as temporary railway employees, however it was observed

that the railways would have the right to deploy them wherever vacancy arises. It was also observed that they would be absorbed against regular vacancies in accordance with their seniority.

3. Pursuant to the direction of the Tribunal, the petitioner was declared as a substitute with temporary status vide office order dated 10.04.1995 and he was deployed as Shuntman, a Group-D post in the scale of Rs. 750-940/-. The petitioner was posted under Station Master, Phusro Railway Station and he joined there on 14.06.1995 where he fell ill. Due to frequent illness, he requested to transfer him elsewhere and accordingly, he was relieved by the Station Master to join the office of Assistant Operations Manager (A.O.M.), Dhanbad vide order dated 28.03.1996.

4. Thereafter, the petitioner reported to the office of A.O.M., Dhanbad on 29.03.1996 but he was kept waiting for posting. He filed representation but no action was taken. He then filed O.A. No. 595 of 1999(R) in Central Administrative Tribunal, Patna Bench, Circuit Bench, Ranchi and the said O.A. was allowed in favour of the petitioner vide order dated 26.10.2010. Subsequently, the petitioner was given posting as 'Shuntman' at Dhanbad and he finally retired from there on 31.01.2020. Thereafter, the petitioner filed OA/051/00062/2021 in Central Administrative Tribunal, Patna Bench, Circuit Bench, Ranchi for grant of pension, gratuity and other retiral benefits after calculation of his entire service period rendered by him, however the said O.A. was dismissed vide impugned order dated 09.10.2023 applying the doctrine of estoppel by acquiescence.

5. It is further submitted that the petitioner had worked continuously under the respondents on different posts since 1981,

initially as VTC and subsequently as substitute temporary staff and as such he is entitled to be paid pension, gratuity and other retiral benefits after counting his entire previous service.

6. It is also contended that as per the order dated 26.10.2010 passed in O.A No. 595 of 1999(R), the petitioner was denied back wages treating him in continuous service and the respondents were directed to arrange his posting against the vacancy of Group-D post. The learned Tribunal in its order dated 09.10.2023 passed in OA/051/00062/2021 however failed to take into consideration the previous order dated 26.10.2010 passed in O.A. No. 595 of 1999(R). It is a well settled principle of law that the pension is not a bounty, rather it is the legal right of an employee who has devoted his life under the management.

7. Learned counsel for the petitioner puts reliance on the judgment of the Hon'ble Supreme Court rendered in the case of **Union of India & Others vs. Munshi Ram** reported in **2022 SCC OnLine SC 1493**.

8. Per contra, learned counsel for the respondents submits that the petitioner worked as VTC since 1981 which was not an approved post and pursuant to the direction given by the Calcutta Bench of the Central Administrative Tribunal vide judgment dated 19.08.1993 passed in O.A. No. 161 of 1992, the petitioner was deployed as 'Substitute' under Station Master, Phusro Railway Station vide office order dated 10.04.1995 and he joined on 14.06.1995, however he was not given temporary status due to habitual absenteeism.

9. It is further submitted that the petitioner was given temporary status under Dhanbad Division only on 11.01.2012. Hence on the

date of his retirement, he had served for a total period of 8 years 18 days only. As such, he was covered under the New Pension scheme. Moreover, the petitioner was paid all admissible retirement benefits including Gratuity, GIS, Leave Encashment and Composite Transfer Grant (CTG).

10. It is further argued that the learned Tribunal, vide order dated 26.10.2010 passed in O.A. No. 595 of 1999, specifically observed that the petitioner would not be entitled to back wages. The office order dated 08.09.2011 whereby the petitioner was given posting as 'Substitute' at Maintenance Work Force under SM/MWF, clearly mentioned that he would not be eligible for any pension or any benefit under State Railway Provident Funds or Gratuity Rules and the said office order was never challenged by the petitioner and thus the same attained finality.

11. It is also submitted that the learned Tribunal has rightly dismissed the OA/051/00062/2021 based on the doctrine of estoppel by acquiescence.

12. Heard learned counsel for the parties and perused the materials available on record.

13. Thrust of the argument of the learned counsel for the petitioner is that the petitioner was appointed as VTC in Sealdah Division of Eastern Railway in the month of February, 1981 and retired from the post of 'Shuntman' on 31.01.2020 from East Central Railway, Dhanbad and as such his entire period of service should be counted for grant of pension, gratuity along with other retiral benefits.

14. Learned Additional Solicitor General of India appearing on behalf of the Union of India, while refuting the said contention of learned

counsel for the petitioner, submits that the petitioner was given temporary status under Dhanbad Division only on 11.01.2012 and on the date of retirement, he had served for a total period of 8 years and 18 days and all the admissible retiral benefits have been paid to him.

15. On perusal of the record of the case, it appears that initially the petitioner was appointed as VTC in the year 1981 which was not an approved post. The petitioner and other VTC employees moved before the Calcutta Bench of CAT in O.A. No. 161 of 1992 for their absorption in regular service with temporary status and pursuant to the order dated 19.08.1993 passed by the learned Tribunal, the petitioner was deployed as 'Substitute' with Temporary status vide office order dated 10.04.1995 and he joined the post of 'Shuntman', a Group 'D' post, in the scale of Rs.750-940/-. However, due to habitual absenteeism, the petitioner did not complete 120 days of continuous service required to attain the temporary status and he was not conferred that status.

16. Further, vide order dated 26.10.2010 passed in O.A. No. 595 of 1999, the respondents were directed to arrange the posting of the petitioner against the vacancy of Group-D post and accordingly, the Assistant Personnel Officer, East Central Railway, Dhanbad issued an office order no. 243 of 2011 dated 08.09.2011 posting him as a Substitute at MWF. The said letter explicitly mentioned that the petitioner would not get any back wages and action might be taken against him as per rule with regard to his previous performance. It was further mentioned in the said office order that the petitioner would not be eligible for any pension or any benefit under State

Railway Provident Funds or Gratuity Rules or any leave beyond that admissible to a Substitute under the rules enforced from time-to-time. It was also mentioned that the petitioner would have no claim to be absorbed in regular cadre in any Group-D category unless he was selected by duly constituted screening committee as per his turn.

17. The petitioner joined the post of 'Shuntman' by accepting the said terms and conditions mentioned in the office order dated 08.09.2011 and he never challenged the said office order before the court of law and thus the same attained finality. Moreover, after retirement, the petitioner also availed the benefit of New Pension Scheme.

18. We are of the view that the learned Tribunal has rightly dismissed the OA filed by the petitioner applying the doctrine of estoppel by acquiescence. The doctrine of estoppel by acquiescence applies when a party remains silent on a matter where he has a duty to speak or disclose and his inaction leads another party to believe that he agrees to something resulting in the silent party being prevented from contradicting that belief. This legal principle prevents someone from taking a position that is inconsistent with his previous silence or inaction, particularly if that silence has caused another party to change the position to his detriment. While applying the principle of estoppel by acquiescence, the court is primarily concerned with the conduct of a party to determine as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict.

19. In the present case, the petitioner neither challenged the conditions mentioned the office order dated 08.09.2011 at the time

of joining as 'Substitute' nor challenged the same during his entire service tenure. Even after the retirement, he availed the retirement benefits under the New Pension Scheme. If the conditions mentioned in the office order dated 08.09.2011 were not acceptable to the petitioner, he should have challenged the same at that very time itself and his silence will be deemed to be his acceptance of the said conditions.

20. The petitioner, by filing the OA claimed for calculation of entire service period rendered by him for the purpose of grant of pension, gratuity and other retiral benefits which deserved to be disallowed in view of the specific terms and conditions mentioned in the office order dated 08.09.2011.

21. The judgment of **Munshi Ram (supra)** relied upon by learned counsel for the petitioner is not applicable in the facts and circumstance of the present case in view of the specific conditions mentioned in the office order dated 08.09.2011 that he would not be eligible for any pension or any benefit under the State Railway Provident Funds or Gratuity Rules.

22. The writ petition being devoid of merit is, accordingly, dismissed.

(M.S. Ramachandra Rao, C.J.)

(Rajesh Shankar, J.)

A.F.R.

Ritesh/