

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1151 of 2025

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, Pin Code-844101, Bihar.
2. The Divisional Railway Manager, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.
3. The Additional Divisional Railway Manager, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.

... .. Petitioner/s

Versus

1. Deo Lal Thakur S/o Hardangi Thakur, Ex-Line Clear Porter Under Station Superintenden, East Central Railway, Mansi (Bihar) R/o-Village - Hariharpur, Pos - Rajauli, P.S. - Hajipur Sadar, District - Vaishali, 844102 (Bihar).
2. The Divisional Railway Manager, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.
3. The Additional Divisional Railway Manager, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.
4. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.
5. The Senior Divisional Operating Manager, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.
6. The Senior Divisional Operating Manager, East Central Railway, Sonpur, P.O.-Sonpur, District-Saran, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Sr. CGC Mr. Ram Tujabh Singh, CGC
For the Respondent/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Adv. Mr. S.K. Dixit, Adv. Mr. S.K. Chaubey, Adv. Mr. Punit Ranjan Dixit, Adv. Mr. Milind Raj Dixit, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE RAJ KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 07-07-2026

Heard the learned counsel for the parties.

2. The present writ petition has been filed challenging the



order dated 01.08.2023, passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Ld. CAT') in OA No. 050/00211/2022 whereby and whereunder the original application filed by the sole respondent has been allowed, the impugned orders dated 03.12.2021 and 10/11.11.2017 have been quashed and the petitioners herein have been directed to treat the period in-between 19.09.2011 to 09.10.2017 as on regular service notionally with all consequential benefits as also they have been directed to issue revised order(s) for pension and other retirement benefits and make payment of permissible subsistence allowance apart from paying the arrears of pension and other retirement benefits.

3. The short facts of the case are that while the respondent herein was working as Line Clear Porter (LCP), the disciplinary authority had conducted a disciplinary proceeding and had imposed punishment upon him of reduction of pay to the lower stage for five years with cumulative effect vide order dated 26.05.2011, which was challenged by the petitioner by filing an appeal on 13.06.2011, however the appellate authority instead of deciding the appeal had issued show cause notice to the respondent vide letter dated 01.09.2011, whereafter the appellate



authority vide order dt. 19.09.2011 while exercising the power of *suo motu* review had imposed the penalty of removal from service qua the respondent. The respondent had then challenged the said order dt. 19.09.2011 before the Ld. CAT by filing O.A No. 734 of 2011 and the Ld. CAT by an order dt. 11.05.2017 had allowed the said original application filed by the respondent, paragraph No. 10 whereof is reproduced herein below:-

“10. The OA is allowed. The punishment order passed on 19.09.2011 [Annexure-2 to MA 330 of 2011] by Mr. Vineet Kumar as Sr. Divisional Operations Manager is quashed. Since departmental appeal is pending, the matter is remitted to the Appellate Authority for disposal in accordance with law. Since the appeal has been addressed to Addl. Divisional Railway Manager, ECR, Sonapur, under Annexure-9, either he is to dispose of the same, and if he feels that the same should be disposed of by the statutory Appellate Authority i.e. Respondent No. 4, he is at liberty to transmit the same to the Divisional Railway Operations Manager, ECR, Sonapur to dispose of the appeal in accordance with law. The respondents are to take precautionary measure that the persons who were involved in furnishing a fact-finding report should not be entrusted with disposal of the departmental appeal to avoid all apprehensions of bias or miscarriage of justice.



Since Departmental Appeal is pending, we refrain from passing any comment on the legality of the order passed by the Disciplinary Authority and leave it to the wisdom of the Appellate Authority to deal with this case in accordance with law at his level.”

4. The appellate authority had thereafter, passed a speaking order dt. 22.8.2017, imposing punishment of reduction to one stage lower in time scale of pay and withholding of increment for 35 months with non-cumulative effect qua the respondent. The Divisional Railway Manager (P), Sonapur had then vide order dated 09.10.2017 directed for reinstatement of the respondent in service w.e.f. 19.09.2011 as a consequence of passing of the appellate order on 22.8.2017. The respondent superannuated from service w.e.f. 30.06.2020 and after retirement when he received the service certificate along with details of retiral benefits, it transpired that the qualifying service of the respondent for calculating the pensionary benefits has been reduced leading to the respondent filing a representation in the month of July, 2020 for counting of his service for the removal period i.e. from 19.09.2011 to 09.10.2017 as qualifying service, resulting in the petitioners having sent a letter dated 03.12.2021 to the respondent enclosing one memo dt.



10/11.11.2017 wherein it has been stated that the period from 19.09.2011 to 09.10.2017 has been treated as 'dies-non'.

5. The petitioner had then challenged the aforesaid order dated 03.12.2021 along with the order dated 10/11.11.2017 before the learned CAT by filing an original application bearing O.A. No. 050/00211/2022. The Ld. CAT by the impugned order dated 01.08.2023 has allowed the original application filed by the respondents, has quashed the impugned orders dated 03.12.2021 and 10/11.11.2017 and the petitioners have been directed to treat the period in-between 19.09.2011 to 09.10.2017 as on regular service notionally with all consequential benefits as also they have been directed to issue revised order(s) for pension and other retirement benefits and make payment of permissible subsistence allowance apart from paying the arrears of pension and other retirement benefits.

6. The learned counsel for the petitioners Sri. Subodh Kumar Jha assisted by Sri. Ram Tujabh Singh, Advocate has submitted that the original application filed by the respondent before the learned CAT was time-barred inasmuch as the same was filed after lapse of more than four years from the date of issuance of the order of 'dies-non' dated 11.11.2017 and the



respondent neither made any prayer for condonation of delay nor filed any miscellaneous application for condoning the period of delay which had taken place in filing the original application. The Ld. counsel for the petitioner has next submitted that the period starting from the date of removal of the respondent from service, i.e. 19.09.2011 upto the date of joining the services, i.e. 09.10.2017 has been treated to be 'dies-non' on account of the fact that the petitioner has not worked during the said period, thus the principle of 'no work no pay' would apply. In this regard, reliance has been placed on Rules 37 and 39 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 'Rules, 1993'), which are reproduced herein below :-

“37. Counting periods of suspension- Where a Railway servant is kept under suspension pending inquiry into his conduct the period of such suspension shall count as qualifying service only where on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified and in other cases, the period of such suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declare that it shall count to such extent as that authority may declare. Where the authority reinstating the railway servant had not passed order as to the treatment of the period of suspension for the purpose of qualifying service for



pensionary benefits the period of suspension shall qualify only if it had been treated as duty or leave due, as the case may.

39. Counting of past service on reinstatement:-

1. A railway servant, who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal review, is entitled to count his past service as qualifying service.

2. The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension if any, shall not count as qualifying service unless regularized as 'duty' or 'leave' by a specific order of the authority which passed the order of reinstatement."

7. Thus, it is submitted by the learned counsel for the petitioners that since the period of suspension/period of interruption in service between the date of removal and date of reinstatement has been treated to be 'dies-non' period and the same has not been treated as duty or leave due, there is no error in the impugned order dated 11.11.2017.

8. Per contra, the learned counsel appearing for the sole respondent has submitted that for the first time, the petitioners had communicated the decision regarding treating the period starting from 19.09.2011 upto 09.10.2017 as 'dies-non' period



vide letter dated 03.12.2021, written by the Divisional Railway Manager (P) Sonapur and with the same an un-communicated memo dated 10/11.11.2017 was enclosed, by which the said period was directed to be treated as 'dies-non' period. Hence, it is submitted that if the date of communication to the respondent regarding treatment of the period in-between 19.09.2011 to 09.10.2017 as 'dies-non' period is taken to be 03.12.2021 for all purposes, then the O.A. filed by the respondent in the year 2022 is well within time.

9. It is next submitted by the Ld. counsel for the respondent by relying on Rule 39(1) and (2) of the Rules, 1993 that in cases where a railway servant is dismissed, removed or compulsorily retired from service but is reinstated on appeal/ review, is entitled to count his past service as qualifying service, however the said period shall not count as qualifying service unless regularized as 'duty' or 'leave' by a specific order of the authority concerned. It is submitted that in the present case, the authority concerned i.e. the Divisional Railway Manager (P) Sonapur had vide order dated 09.10.2017 directed for reinstatement of the petitioner in service w.e.f. 19.09.2011 hence, the aforesaid period from 19.09.2011 to 19.10.2017 had stood regularized as duty period, thus in such view of the matter,



there is no iota of doubt that the period of interruption in service between the date of removal and the date of reinstatement is to be counted as qualifying service for all purposes.

10. We have heard the learned counsel for the parties and perused the materials available on record and we find that the facts lie in a narrow compass, inasmuch as though the petitioner was punished by the disciplinary authority by an order dated 26.05.2011, however in his challenge to the same by filing an appeal, the appellate authority had by exercising power of *suo motu* review passed an order of punishment of removal of the respondent from service, which was challenged by the respondent before the Ld. CAT and the Ld. CAT by an order dated 11.05.2017 had set aside the order of removal dated 19.09.2011 and remanded the matter back to the Appellate Authority. Thereafter, the Appellate Authority had by an order dt. 22.8.2017, passed an order inflicting punishment of reduction to one stage lower in time scale of pay and withholding of increment for 35 months with non-cumulative effect. The competent authority had then issued an order dated 09.10.2017 reinstating the respondent in service w.e.f. 19.09.2011.

11. As far as the issue of limitation is concerned, we find



that the communication regarding treatment of the period in-between 19.09.2011 to 09.10.2017 as 'dies-non' period was sent to the respondent by a letter dated 03.12.2021, issued by the Divisional Railway Manager (P) Sonepur, while enclosing a copy of one memo dated 10/11.11.2017, hence considering the said order dated 03.12.2021 to be the first communication to the respondent regarding treatment of the period in-between 19.09.2011 to 09.10.2017 as 'dies-non', the original application which was filed by the respondent in the year 2022, cannot be said to be time-barred, thus we find that the original application filed by the respondent was/is not time-barred apart from the fact that the Ld. CAT has held in the impugned order dated 01.08.2023 that it is a settled law that issues of continuing and recurring loss can be considered beyond the period of limitation and as far as the present case is concerned, the order of the petitioners to treat the period in-between 19.9.2011 to 9.10.2017 as 'dies-non' and as non-qualifying service has led to reduction in fixation of pensionary benefits, which has been causing recurring loss in pension to the respondent, hence it is deemed in the interest of justice that the OA be not debarred on the ground of limitation and the issue of legal sustainability of the impugned order of dies-non be adjudicated.



12. The other ground which has been urged by the learned counsel for the petitioners for assailing the impugned order dated 01.08.2023 is that as per Rules 37 and 39 of the Rules 1993, the period in between the date of removal and the date of reinstatement of a railway servant, who is removed from service but is reinstated on appeal/review, cannot be counted as qualifying service unless regularized as duty or leave by a specific order of the competent authority, however in the present case since neither the order passed by the appellate authority dt. 21.08.2017 nor the order dt. 22.08.2017 communicating the speaking order dated 21.08.2017 to the respondent speaks of regularizing the aforesaid period as on duty or leave, the said period will be treated as non-qualifying service and the respondent will not get any benefit. In this connection, we may refer to the provision contained in Rule 39 of the Rules, 1993, which is very clear and the same stipulates that the interruption in service period between the date of removal from service and the date of reinstatement shall not count as qualifying service unless regularized as duty or leave by specific order of the competent authority, however as far as the present case is concerned, we find from the order passed by the competent authority i.e. the Divisional Railway Manager (P) Sonapur dated



09.10.2017 that the petitioner has been directed to be reinstated in service w.e.f. 19.9.2011, meaning thereby that the petitioner's duty period has stood regularized. Thus, the petitioners are required to treat the period in-between 19.09.2011 to 09.10.2017 as on regular service notionally with all consequential benefits and accordingly the petitioners have to issue revised order(s) for pension and other retirement benefits and make payment of the arrears of pension and other retirement benefits.

13. It is yet another aspect of the matter that the respondent had not voluntarily refrained from working on his post with the railways, however he was kept out of service by the illegal orders of the appellate authority, which was not only quashed by the learned Tribunal vide order dated 11.05.2017 but also reviewed by the appellate authority itself by an order dated 22.08.2017, whereby the punishment of removal from service was modified to the punishment of reduction to one stage lower in time scale with stoppage of increments for 35 months without cumulative effect. Thus, the petitioners had taken away illegally the right to work of the respondent contrary to the relevant law and simultaneously deprived him of his earnings. Hence, the respondent cannot be penalized for the unfair and illegal action of the petitioners. Therefore, we do not find any infirmity in the



impugned order dated 01.08.2023 passed by the learned CAT in
OA No. 050/00211/2022.

14. Having regard to the facts and circumstances of the
case and for the foregoing reasons, we do not find any merit in
the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

(Raj Kumar, J)

Nirmal/AKV

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	17.07.2026
Transmission Date	N/A

