

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11512 of 2021

=====

Prabhat Kumar S/o Late Rajendra Prasad, Resident of Mohalla-Bahadurpur Housing Colony, Bhootnath Road, Patna-800026.

..... Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi 110001.
2. The Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi 110001.
3. The Joint Secretary (E)-II, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi 110001.
4. The General Manager, East Central Railway, Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, 844101.
5. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, 844101.
6. The APO/Gaz, O/o the General Manager (O), East Central Railway, Hajipur 844101.
7. The General Manager, Central Railway, Mumbai.

..... Respondent/s

=====

- A. **Promotion – Deputation – non- appearance in departmental examination due to deputation – notional promotion awarded from the date person similar to / junior to – given promotion.**

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11512 of 2021

Prabhat Kumar S/o Late Rajendra Prasad, Resident of Mohalla-Bahadurpur
Housing Colony, Bhootnath Road, Patna-800026.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi 110001.
2. The Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi 110001.
3. The Joint Secretary (E)-II, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi 110001.
4. The General Manager, East Central Railway, Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, 844101.
5. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, 844101.
6. The APO/Gaz, O/o the General Manager (O), East Central Railway, Hajipur 844101.
7. The General Manager, Central Railway, Mumbai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jayant Kumar Karn, Advocate Mr. Hemant Kumar Karn, Advocate Mr. Jay Karn, Advocate
For the Respondent/s	:	Mr. Naresh Dikshit, Sr. CGC Mr. Shyam Bihari Singh, CGC Ms. Kalpana, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-01-2024

The petitioner has assailed the orders of the Central Administration Tribunal, Patna Bench dated 15.10.2020 passed in O.A. No. 339 of 2020 vide Annexure P-13, order dated 07.12.2020 passed in Review Application No. 09 of 2020 read with order on Miscellaneous Application No. 208 of 2020 on 7.12.2020, order dated 21.08.2020 issued by the General Manager, ECR vide Annexure P-10 and the order dated 17.12.2020 Annexure – P-15 and further sought for a direction to consider his name for promotion from the post of Senior Section Engineer (Electrical) to Group –B Assistant Engineer.

2. The petitioner while working in the Mumbai Railway Division, he was on deputation to Eastern Central Railway in the year 1997 and continued to be on deputation till 2005, thereafter his services were absorbed at ECR Hazipur. In this backdrop such of those persons who were similarly situated and who were working in the Mumbai Railway Division, their names were considered for promotion to the post of Group B Assistant Engineer and petitioner's name was overlooked. Of



course petitioner was required to pass certain departmental examination which is stated to have been conducted in the year 2001. Such departmental examination was conducted by the Mumbai Railway Division in the year 2001 and it has not been notified to the petitioner who was on deputation. On the other hand, Mumbai Railway Division – Respondents 7 has taken a contention at para 14 to the extent that there was a communication to the counterpart, namely, borrowing authority – ECR Hazipur to inform the petitioner in respect of holding of departmental examination for the post of Group – B Assistant Engineer, the same has been countered by the ECR Hazipur respondents in their counter affidavit at para 7, denial of such receipt of communication from the Mumbai Railway Division. Therefore, one has to draw inference that petitioner has not been provided an opportunity of participating in the departmental examination conducted by the Mumbai Railway Division insofar as consideration of petitioner's name for the post of Group – B Assistant Engineer (promotional post). In this backdrop the petitioner has approached the concerned authority and they have declined to grant any relief. In the result petitioner invoked the remedy of filing original application before the Central Administration Tribunal and it was rejected at



threshold on the score of delay in filing original application and it was confirmed by this Court in writ petition. Thereafter, he has approached the Hon'ble Supreme Court. The Hon'ble Supreme Court while disposing the petitioner's petition made an observation that petitioner is at liberty to file representation. The petitioner had submitted representation and it was dismissed. Therefore, once again petitioner knocked the door of CAT in respect of the aforementioned relief which was rejected and thereafter there were certain errors stated to have been committed by the CAT insofar as certain communication of departmental examination to the petitioner and the same was rectified to the extent that there were no communication to the petitioner insofar as holding departmental examination. He has also filed review petition and review petition was converted into miscellaneous application and it was rejected, hence the present writ petition.

3. Learned counsel for the petitioner submitted that having regard to the fact that petitioner was on deputation to ECR Hazipur from Mumbai Railway Division, whatever the benefit made available to similarly situated employees of the Railway who were working at Mumbai Railway Division, the same was required to be extended to the petitioner as long as his



lien is vested in the Mumbai Railway Division. It is to be noted that in the year 2001 departmental examination was conducted for the purpose of promotion to the post of Group B – Assistant Engineer. The petitioner has been denied to participate in such examination. On the other hand, after his absorption in the ECR Hazipur identical examination was conducted and he had passed such examination and he was promoted. In this backdrop question for consideration is whether is he entitled to retrospective promotion from the date his junior was promoted at Mumbai Railway Division or not? (on notional basis). Learned counsel for the petitioner submitted that in Annexure – A/8, he is relying on para 206.2 and 228 of Indian Railway Establishment Manual volume 1 to the extent that such of those deputationist is entitled to have certain service and other benefits. The Central Administrative Tribunal has not apprised the aforementioned clauses read with the fact that departmental examination held by the Mumbai Railway Division was not made known to the petitioner so as to make an opportunity of participation in the departmental examination conducted by the Mumbai Railway Division. The Tribunal has failed to examine 206.1 and 228 of Indian Railway Establishment Manual volume – 1.



4. Per contra, learned counsel for the respondents resisted the aforementioned contentions and submitted that the petitioner was provided an opportunity to write examination as is evident from para 14 of the seventh respondents counter affidavit.

5. Therefore, there is no infirmity on behalf of the respondents. Respondents have also supported the orders of the CAT to the extent that there is no infirmity in all the three orders read with the impugned order issued by the official respondents.

6. Heard the learned counsels for the respective parties.

7. Core issue involved in the present lis is whether petitioner is entitled to have the benefit of promotion to the post of Group B – Assistant Engineer in the Mumbai Railway Division, while he was on deputation to ECR Hazipur or not. Undisputed facts are that petitioner was on deputation to ECR Hazipur from Mumbai Railway Division from the year 1997 till 2005, in which year he was absorbed in the ECR. Promotion to the post of Group – B Assistant Engineer at Mumbai Railway Division occurred in the year 2001. One of the eligibility criteria for promotion to the post of Group B Assistant Engineer is that respective employee was required to pass certain departmental



examination. Departmental examination were stated to have been conducted by Mumbai Railway Division in the year 2001 while the petitioner was on deputation to ECR Hazipur. Conduct of departmental examination was not made known to the petitioner as is evident from the record. Therefore, passing of departmental examination for the purpose of Group B – Assistant Engineer promotion by the petitioner was beyond his control as he was on deputation to ECR, Hazipur. Therefore, there are certain lapses on the part of the Mumbai Railway Division insofar as holding departmental examination for the post of Group B – Assistant Engineer in the Mumbai Railway Division by ignoring the claim of the petitioner, who was on deputation to ECR, Hazipur. For no fault on the part of the petitioner, he shall not be denied the benefit of participating in the departmental examination and earning of promotion. It is true that the petitioner has not passed the departmental examination for the purpose of promotion to the post of Group B – Assistant Engineer at the relevant point of time and it was beyond his control. On the other hand, he has passed departmental examination at ECR with reference to his absorption at ECR. Para 206.1 and 228 which reads as under:

“206.1 Consideration of Employees on deputation

—



In cases where employees eligible to take the selection are abroad on deputation / secondment and are not likely to return in a few months time, the selection held in their absence should be finalized without waiting for their return. On their return they should be called for the first selection held thereafter and on the basis of their performance in the selection they should be considered for proforma inclusion in the panel framed during their absence abroad. If an employee is thus included in the panel no arrears would be payable to him and entitlement to pay in Group 'B' would commence only from the date of his actual officiating promotion. For the panel thus enlarged Board's approval should be obtained. In respect of eligible employees who are on deputation to offices / establishments, within the country, it should be ensured that adequate advance notice is given to such employees and they are considered at the selection without fail.

228. Erroneous Promotions – (I) Sometimes due to administrative errors, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :-

- (i) Where a person has not been promoted at all because of administrative errors and
- (ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative errors.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the



duties and responsibilities of the higher posts.”

8. Reading of the aforementioned provision, it is crystal clear that certain rights are vested with such of those employees who are on deputation read with ignoring the name of an employee for the purpose of promotion. Tribunal has not appreciated factual aspect of the matter that petitioner has been denied to participate in departmental examination and further the aforementioned para 206.1 and 228 have not properly interpreted to the extent that the petitioner has certain remedies under these two clauses. In this backdrop ultimately the question for consideration is whether petitioner is entitled to retrospective promotion on notional basis or not. No doubt he has not discharged duties of the post of Group B – Assistant Engineer from 2001 at par with his immediate junior at Mumbai Railway Division, at the same time it was beyond his control insofar as appearing in departmental examination and passing it. On the other hand, he has passed identical examination and was promoted at ECR Hazipur. For no fault on the part of the petitioner, denial of promotion to the post of Group B – Assistant Engineer on notional basis would be arbitrary. The Tribunal has not appreciated that petitioner has been denied opportunity in not writing the examination and to have the



benefit of promotion to the Group B – Assistant Engineer in the Mumbai Railway Division. Therefore, he has to be compensated by promotion to the post of Group B – Assistant Engineer from the date his immediate junior who was promoted to the aforesaid post at Mumbai Railway Division. The same shall be taken note of and petitioner shall be promoted from the date of his junior. Such retrospective promotion to the post of Group B – Assistant Engineer be considered only on notional basis, in other words, for the purpose of fixation of pay and consequential service benefits. It is made clear that petitioner is not entitled to any monetary benefits from the date of his junior's promotion till regular promotion awarded to him by the ECR Hazipur.

9. Accordingly, Annexure – P-13 dated 15.10.2020, Annexure – P-10 dated 21.08.2020 and Annexure P-15 dated 17.12.2020 is set aside. Writ petition stands allowed.

10. The service benefits shall be extended to the petitioner insofar as the fixation of pay, other than monetary benefits and the same be considered within a period of three months. While passing detailed speaking order by the concerned competent authority, if there is any dispute in respect of who would be the competent authority, since the petitioner was out of



control as the petitioner’s services have been absorbed at ECR, Hazipur, in that circumstances, it is required to be determined by the concerned authority and thereafter the paper shall be transmitted for the purpose of passing speaking order in favour of the petitioner for complying the directions of this Court.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

saaurabhkr/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

