

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13169 of 2021

1. Bishnudeo Roy, Son of Late Rameshwar, Resident of Village- Birnama Tula, P.O.- Birnama Tula, P.S.- Angarghar, District- Samastipur, Pin Code- 848134 (Bihar).
2. Pawan Kumar Rout, Son of Late Basudeo, Resident of Village- Muradpur, P.O.- Muradpur, P.S.- Rosera, District- Samastipur, Pin Code- 848210 (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.- Dighi Kalan, P.S.- Hajipur Sadar, District- Vaishali, Pin Code- 844001 (Bihar).
2. The Divisional Railway Manager, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar).
3. The Senior Divisional Personnel Officer, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar).
4. The Assistant Commercial Manager, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar).
5. The Assistant Personnel Officer, Administration, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar).
6. The Station Manager, Samastipur Division, East Central Sitamarhi, P.O.- Sitamarhi, P.S.- Sitamarhi, District- Sitamarhi, Pin Code- 843301 (Bihar).
7. The Station Superintendent, Samastipur Division, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar).
8. The Station Superintendent, Samastipur Division, East Central Railway, Bhikhnatodi.
9. The Station Superintendent, Samastipur Division, East Central Railway, Hayaghat, P.O.- Hayaghat, P.S.- Hayaghat, Pin Code- 847301 (Bihar).
10. The Station Superintendent, Samastipur Division, East Central Railway, Saharsa, P.O.- Saharsa, P.S.- Saharsa, District- Saharsa, Pin Code- 852124 (Bihar).
11. Bhola Nath, Son of Late Ram Prasad Mahto, Resident of Railway Qtr. No. 548/A, Type- I, Gandak Colony, P.O. 7 P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Munna Pd. Dixit, Advocate



For the Respondent/s : Mr. S.K. Dixit, Advocate
Mr. Sanjay Kr. Choubey, Advocate
Ms. Swastika, Advocate
Mr. Ramadhar Shekhar (Addl S. C. Railway)
Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 07-12-2021

The petitioners have put to challenge a judgment and order dated 13.05.2019, passed by Central Administrative Tribunal, Patna Bench, Patna in Original Application No. 050/00336/2015, whereby the Tribunal has dismissed the application filed by the petitioners under Section 19 of the Administrative Tribunal Act, 1985. The petitioners had claimed before the Tribunal their entitlement of pay-band of Rs. 5200-20200/- with Grade Pay of Rs. 1900/- instead of pay band of Rs. 5200-20200 with Grade Pay of Rs. 1800/-. They had also claimed scale of Courier, a Group-C post, from the date with effect from which they were made to work against the said post, though their substantive appointment was against the post of Relieving Unskilled (RUS/Hamal), which was a Group-D post.

2. Short facts relevant for adjudication of the present case are not in dispute. The petitioners No. 1 was appointed on 12.11.1993 and petitioner No. 2 on 06.04.1990 on



compassionate ground against the post of RUS (Hamal), which was at the said point of time a Group-D post. It is the petitioners' case that they were asked to work against the post of Courier, which was a Group-C post, on officiating basis since 1994. This is also not in dispute that the petitioners received pay-scale admissible for the post of RUS (Hamal).

3. It was with the implementation of the recommendations of 6th Pay Revision Commission (PRC in short) that Group-D posts were merged with Group-C posts with effect from 01.01.2006. Post of RUS (Hamal) a Group-D Post was, thus, merged with the post of Courier (Group-C) with effect from 01.01.2006.

4. This is not in dispute that in terms of the said PRC recommendation, pay-scale of Rs. 5200-20200/- with Grade Pay of Rs. 1800/- is admissible to Group-C post of Courier.

5. Years after implementation of recommendation of 6th Pay Revision Commission, the petitioners filed a representation in October, 2014 claiming scale admissible to Courier in Group-C from the date with effect from which they were asked to work against the said post while holding the post of RUS (Hamal). They claimed that since they were discharging the responsibility of higher grade posts, they were entitled for officiating pay



admissible to the post of Courier.

6. The petitioners were communicated through letter dated 10.11.2014 about rejection of their claim for higher pay-scale. They, thereafter, approached the Tribunal seeking a direction for quashing of the said letter dated 10.11.2014 and for a direction to the respondents to grant them higher pay-scale, higher pay band and grade pay after necessary modifications in the orders with retrospective effect along with all consequential benefits. They relied on a Railway Board Establishment Order No. 137/2007 dated 31.10.2007 in support of their claim that they were entitled for higher pay from the date they were discharging duties of Courier and, therefore, entitled to arrears of salary accordingly. The petitioners claimed that since they were continuously shouldering and discharging duties and responsibilities of higher grade on the sanctioned post of Courier since long, considering mandate of Rule 108 of the Indian Railway Establishment Manual, 2009 and the Railway Board's Order No. E(D&A) 65 RG6-24 dated 09.06.1965 and Railway Board's Order No. E(D&A) 2001 RG 6-3 dated 20.10.2002 and other decisions, they were entitled for regularisation of their services on the post of Courier, a Group-C post.



7. The Tribunal has rejected the claim of the petitioners on the ground that the petitioners cannot claim pay-scale over and above what has been allowed for the post of Courier (Grade-C). In relation to the petitioner's claim for grant of arrears of salary, the same too has been rejected by the Tribunal.

8. Mr. M.P. Dixit, learned counsel appearing on behalf of the petitioners has submitted that the minimum grade pay applicable for Group-C posts in terms of recommendation of the 6th Pay Revision Commission is Rs. 1900/- and, therefore, the petitioners could not have been allowed grade pay less than Rs. 1900/-. He has further submitted that there is no reason why the petitioners should not be given pay-scale of Couriers against which they were discharging their duties, as directed by the authorities for substantial period of time. Invoking the doctrine of equal pay for equal work, he has contended that the petitioners are entitled for arrears of salary from the date with effect from which they were asked to officiate as Couriers till the date of merger of the post of RUS (Hamal) with Group-C post of Courier with effect from 01.01.2006.

9. Mr. Dixit has placed reliance on a Division Bench decision of this Court reported in **2017 (4) PLJR 282 (Chairman, Bihar State Power Holding Company Limited &**



Ors. vs. Ganesh Lal).

10. In our considered opinion, it is preposterous on the part of the petitioners to claim higher grade pay than the grade pay allowed for the post of Courier. They have been granted pay band with grade pay of Rs. 1800/-, consequent upon merger of Group-D post which they were holding with Group-C post of Courier. Mr. Dixit has not been able to point out any material in support of his contention that Rs. 1900/- is the minimum grade pay recommended by the 6th Pay Revision Commission. The said claim of the petitioners has been rightly rejected by the Tribunal.

11. In any view of the matter, fixation of pay is purely executive function. Unless an employee is in a position to demonstrate arbitrariness or discrimination in the matter of fixation of pay-scale in violation of Articles 14 and 16 of the Constitution of India, this Court is not required to entertain any challenge to pay fixation in a proceeding under Article 226 of the Constitution of India.

12. On the question of the petitioners' claim for arrears of salary for the period during which they claimed to have worked as Couriers, we are of the view that the same deserves to be rejected on two counts. Firstly, the petitioners did not



claim such scale when they were asked to discharge the duties as Couriers since 1994. For the first time, they raised such claim much after merger of the said post with Group-C post. The cause of action for the petitioners to claim higher pay on the ground that they were asked to shoulder responsibility of a higher post had arisen in 1994. They did not raise any such claim and for the first time they filed their representation in 2014. Secondly, the petitioners have not been able to demonstrate that because they were allowed to work against the post of Couriers they were made to shoulder higher responsibility of higher posts. There is no specific pleadings on record dealing with nature of their job and distinguishing features of the responsibilities of the two posts, viz; RUS (Hamal) and Courier.

13. In our view, the guideline, as contained in R.B.E. No. 137/2007 is of no help to support the case of the petitioners, relevant portion of which reads as under :-

X X X
X X X

However, instructions were issued vide Board's letter of even number dated 13.12.2006 to effect that when staff in the lower grade are made to shoulder responsibility of higher grade posts, they may be compensated momentarily by grant



of suitable awards, as deemed fit, by the General Managers under their powers depending upon the circumstances and the extent of work involved.

X X X

14. In any view of the matter, a belated claim of the petitioners without proper pleadings could not have been entertained by the Tribunal, which has been rightly rejected.

15. The Division Bench decision of this Court in case of *Chairman, Bihar State Power Holding Company Limited vs. Ganesh Lal* (supra) has no application in the facts and circumstances of the case in the background of the pleadings on record.

16. This application, in our opinion, has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2021
Transmission Date	NA

