

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 6981 of 2025**

Ranvijay Prasad Singh, Male, S/o Late Chandrika Prasad Singh, Resident of Indra Nagar Road No.-09 (Near Nath Utsav Hall, Bigrahpur, Patna, District-Patna-800001), earlier working on the post of Technician (Fitter)-1, Carriage and Wagon Dept., ECR-Danapur.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, New Delhi.
2. The General Manager, East Central Railway, Hajipur.
3. The Chief Personnel Officer, East Central Railway, Hajipur.
4. The Divisional Railway Manager (Personnel), East Central Railway, Danapur.
5. The Senior Divisional Manager (Commercial), Danapur.
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur.

... .. Respondent/s

**Appearance:**

For the Petitioner/s : Mr. Nawnit Kumar Tiwary, Advocate  
Mr. Rajesh Kumar, Advocate  
For the U.O.I. : Mr. Jawed Gaffar Khan, Advocate

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**and**

**HONOURABLE MR. JUSTICE ARUN KUMAR JHA**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date: 14-05-2026**

The present writ petition has been filed against the judgment dated 03.02.2025 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Ld. CAT') in OA No. 050/00516/2021 whereby and whereunder the original application filed by the petitioner herein has been dismissed.



2. The brief facts of the case, according to the petitioner are that the petitioner was working on Group 'D' post as Commission Vendor in the East Central Railways, Danapur since the year 1982 on temporary basis, being a registered vendor. Thereafter, a policy decision was taken by the Railways to absorb the services of such Commission Vendors who were discharging their services regularly, whereafter screening had taken place and during the course thereof, medical examination of the petitioner was also conducted and he was found medically fit as is apparent from the medical certificate dt. 16.7.1993. Finally, a list of 485 Commission Vendors was prepared for absorption on various Group 'D' posts *vide* letter dated 15.06.1995 wherein it was mentioned that 182 Commission Vendors have already been absorbed in various Group 'D' posts and the next 100, as per seniority will be absorbed immediately as per orders of the competent authority for which purpose it is essential to determine the SC/ST/OBC or UR status of these vendors plus those already absorbed. The name of the petitioner appears at serial No.448 in the said list.

3. In view of the aforesaid letter dated 15.06.1995, the Eastern Railway published a list of 72 Commission Vendors *vide* letter dated 22.06.1995 for the purposes of absorption and appointment and the name of the petitioner figures at serial No.55 of the said



list. Nonetheless, the services of the said 72 persons could not be regularized and they continued to work on temporary post of Group 'D', however the services of the petitioner was subsequently regularized on the post of Khalasi (Mechanical Carriage and Wagon) *vide* letter dated 26.03.2004.

4. In the meantime, the Department of Pension & PW *vide* circular dated 17.02.2020 invited options from eligible candidates for coverage under the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'Rules, 1972') and for opting the Old Pension Scheme in place of the New Pension Scheme, in such cases as have been postulated in Clause 4 of the said Circular, which is reproduced herein below:-

*"4. The matter has been examined in consultation with the Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has been decided that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the CCS (Pension) Rules, 1972. Accordingly, such Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the National Pensions System on joining service on or after 01.01.2004, may be given a one time option to be covered*



*under the CCS (Pension) Rules, 1972. This option may be exercised by the concerned Govt. servants latest by 31.5.2020.”*

5. The East Central Railway *vide* Circular dated 09.04.2020 had also adopted the aforesaid Office Order dated 17.02.2020 and had given one time option to the New Pension System (NPS) Staff, whose final results had been issued prior to 31.12.2003, for appointment against the vacancies occurring on or before 01.01.2004, but had joined on or after 01.01.2004, for opting the benefit of Old Pension Scheme under the Railway Service (Pension) Rules, 1993 (hereinafter referred to as the ‘Rules, 1993’). The time granted to the concerned eligible government servants for exercising such option was latest by 31.05.2020. The petitioner is stated to have filed an application on 29.05.2020 for switching over from the New Pension Scheme to Old Pension Scheme in terms of RBE No. 28/2020, however the claim of the petitioner was rejected *vide* letter dated 16.06.2021, issued by the Divisional Personnel Officer, East Central Railway, Danapur *inter alia* stating therein that since the petitioner was working as Commission Vendor on temporary basis in the Catering Department of the Eastern Railway prior to 01.01.2004 and his services were regularized on the post of Khalasi (Mechanical Carriage and Wagon) *vide* Office Order dated 26.03.2004, his case is not governed by Circular of the Railway Board bearing



No.28/2020. The petitioner herein had then filed the aforesaid OA No. 050/00516/2021 before the Ld. CAT *inter alia* praying therein for directing the respondent authorities to grant the benefits of Old Pension Scheme under the Rules, 1972, corresponding to the Rules, 1993 in compliance of the Circular dated 17.02.2020.

6. The respondents had filed a written statement before the Ld. CAT *inter alia* stating therein that while the petitioner was working as Commission Vendor on temporary basis in the Catering Department, he was appointed as Khalasi/C & W, Patna, *vide* order No.235 dated 25.03.2004. The petitioner had then filed an application without any enclosure for switching from the New Pension Scheme to Old Pension Scheme and after rejection of his claim, he has though filed the connected original application but the order of rejection dated 16.06.2021 has not been challenged. It was further stated in the written statement that the petitioner has been appointed with effect from 08.04.2004, *vide* Office Order No.235 dated 26.03.2004, hence he has been treated under the Non-Pensionable Scheme and accordingly retired from services on 31.08.2020. It was also stated that though the screening of the Commission Vendor was held and a panel was prepared, however the candidates who had been empanelled were required to be absorbed subject to availability of vacancies and as far as the case



of the petitioner is concerned, the vacancies arose in the year 2004, whereafter Office Order dated 26.03.2004 was issued, regularizing the services of the petitioner as per the vacancies available in the year 2004, hence it is submitted that the claim of the petitioner is not tenable in the eyes of law, inasmuch as the New Pension Scheme is applicable to all government servants who have been appointed on or after 01.01.2004 whereas the Old Pension Scheme is applicable to the government servants appointed up to 31.12.2003.

7. In reply to MA, the respondents had submitted before the Ld. CAT that the petitioner was not appointed through general selection process against any advertisement pertaining to any recruitment process of the Railways. It was also stated that for inclusion under the Rules, 1972/Rules, 1993, the concerned employee should have been appointed against a post or vacancy, which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System, *i.e.* 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004.

8. The learned counsel for the petitioner, while assailing the impugned order dated 03.02.2025, passed by the Ld. CAT has submitted that since the process of absorption of the petitioner



along with others had started prior to the cut-off date *i.e.* 31.12.2003 and for no fault of the petitioner, he could not be regularized prior to the said date, he cannot be deprived of the benefits of the Old Pension Scheme in terms of the Circular dated 17.02.2020, issued by the Deputy Secretary to the Govt. of India, Department of Pension & PW, New Delhi as adopted by the East Central Railway *vide* Circular dt. 09.04.2020, issued by the Senior Divisional Personnel Officer, East Central Railway, Danapur.

9. The learned counsel for the petitioner has also relied on a judgment dated 19.08.2013 rendered by the Ld. CAT in OA No. 779 of 2012 (***Manish Kumar and Others vs. Union of India and Others***) to submit that if the select list expires because of no fault of the candidates and the candidates are found otherwise suitable to be appointed, then expiry of select list would not come in the way of the candidates from being appointed.

10. *Per contra*, the Ld. counsel for the respondents has submitted that since the petitioner was absorbed in regular services of the Eastern Railway *vide* Office Order dt. 25.03.2004 and appointed as Khalasi in Carriage and Wagon Department as also he was not appointed through any advertisement/ notification for recruitment/appointment, prior to the date of notification for National Pension System, *i.e.* 22.12.2003, rather he was working



as Commission Vendor on temporary basis prior to absorption in the Railway, apart from the fact that the screening was held in the year 1995 for absorption of the persons working as Commission Vendors at different locations of the Eastern Railway, however owing to vacancy position at Danapur Division of Eastern Railway, the petitioner and others could be finally absorbed and appointed on regular basis only after commencement of the National Pension Scheme w.e.f 01.01.2004, hence the claim of the petitioner is not tenable in the eyes of law.

**11.** We have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the petitioner was absorbed in the regular services of the Railways *vide* letter dated 26.03.2004 and appointed as Khalasi (Mechanical Carriage and Wagon) at Danapur Division with effect from 08.04.2004. It is also not in dispute that the National Pension System was notified on 22.12.2003 and the new pension scheme came into effect on 01.01.2004, hence admittedly those employees who have been appointed up to 31.12.2003 are governed by the Old Pension Scheme and those who have been appointed after 01.01.2004 would come under the purview of the New Pension Scheme. However, we find that on account of representations being received from such employees whose appointments were



delayed on account of administrative reasons or lapses, for granting them coverage under the Old Pension Scheme, the Department of Pension and PW, Government of India, New Delhi issued a Circular dated 17.02.2020, wherein it has been postulated that in all the illustrative cases mentioned therein, since the result for recruitment was declared before 01.01.2004, denial of pensionary benefits under the Rules, 1972 to the affected government servants is not justified, hence in consultation with the Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs as well as in the light of various representations/references and decisions of the Courts in this regard, a decision has been taken that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the Rules, 1972. Accordingly, such government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the National Pensions System on joining service on or after 01.01.2004, were required to be given onetime option to be covered under the



Rules, 1972 and the said option was to be exercised by the concerned government servant latest by 31.05.2020.

**12.** We further find that in Clause 4 of the said Circular dated 17.02.2020, it has been clarified that the aforesaid option would be available to only those government servants who were declared successful for recruitment before 01.01.2004 against vacancies pertaining to the period prior to that date. It has been further clarified therein that this option shall, however not be available to the government servants appointed on or after 01.01.2004, if they fall in either of the following categories:-

*(i) Government servants whose name were included in a panel of selected candidates before 01.01.2004 for recruitment against vacancies occurring on or after 01.01.2004 and were, accordingly, recruited on or after 01.01.2004.*

*(ii) A Government servant whose name was included in a panel of selected candidates prepared before 01.01.2004 for vacancies arising before and after 01.01.2004 but was actually appointed after 31.12.2003 against a vacancy arising on or after 01.01.2004.*

*(iii) Government servants who were selected against vacancies pertaining to the period prior to 01.01.2004 on the basis of an advertisement/notification issued before 01.01.2004 or a written examination/interview held before 01.01.2004 but results for recruitment were declared on or after 01.01.2004.*

*(iv) Government servants who joined on or after 01.01.2004 after they were granted extension of joining time on their own*



*request and, in accordance with the instructions issued by the Department or Personnel & Training, their seniority was depressed on account of such extension of joining time to a batch for which the result for recruitment was declared on or after 01.01.2004.*

**13.** We have gone through the aforesaid Circulars dt. 17.2.2020 and 09.04.2020 and we find that only in cases where such government servants who have been declared successful for recruitment before 01.01.2004 against vacancies pertaining to period prior to that date are to be granted an option to avail the coverage of the Old Pension Scheme, however even those government servants whose names were though included in a panel of selected candidates prepared prior to 01.01.2004 for recruitment against vacancies occurring on or after 01.01.2004 and were, accordingly, recruited on or after 01.01.2004, would not be entitled to the option of coverage under the Old Pension Scheme. In fact, such government servants who were selected against vacancies pertaining to the period prior to 01.01.2004 on the basis of advertisement/notification issued before 01.01.2004 or a written examination/interview held before 01.01.2004 but results for recruitment were declared on or after 01.01.2004, would also not be eligible for coverage under the Old Pension Scheme.

**14.** Now coming back to the present case, we find that first of all, the petitioner was not appointed against a post or vacancy,



which was advertised/notified for recruitment/appointment, prior to the date of notification of National Pension System, *i.e.* 22.12.2003, however he was working as Commission Vendor since the year 1982 and pursuant to a policy decision taken by the Railways to absorb such temporary Commission Vendors who were working since a long time regularly, a list of 485 Commission Vendors was prepared for the purposes of their absorption and it was decided to absorb such persons on the basis of their seniority in the said list as and when the vacancies arises. As far as the petitioner is concerned, his turn could come only in the year 2004 when the vacancies had arisen and only then he was regularized as Khalasi on a Group 'D' post *vide* Office Order dated 26.03.2004 w.e.f. 08.04.2004. Thus, the case of the petitioner would fall under the exclusion Clause mentioned in the Circular dated 17.02.2020, as has been reproduced hereinabove in the preceding paragraphs. Therefore, there is no iota of doubt that since the petitioner has been regularized/appointed as Khalasi on 26.03.2004 with effect from 08.04.2004, his date of actual appointment being after 31.12.2003, he cannot be extended the coverage of Old Pension Scheme.

**15.** The judgment referred to by the learned counsel for the petitioner, rendered by the Ld. CAT Patna Bench, Patna in the



case of *Manish Kumar and Others* (*supra*) is not applicable in the facts and circumstances of the case inasmuch as the issue which has arisen for consideration in the present case is absolutely different and distinguishable from the said case.

**16.** 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)**

**(Arun Kumar Jha, J)**

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	17.03.2026
Uploading Date	14.05.2026
Transmission Date	NA

