

(2019) 07 PAT CK 0314

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3803 Of 2019

Indrajit Singh

APPELLANT

Vs

Union Of India Through The General Manager And Ors

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 07 PAT CK 0314

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Munna Pd Dixit (M.P. Dixit), S.K. Dixit, Sanjay Kumar Coubey, Swastika, Shailendra Kumar, Kalpana

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioner and the learned counsel for the Railways and perused the 2nd Supplementary counter affidavit filed on behalf of the Railways.

The issue raised in this petition is of benefits of restructuring of the grade pay admissible to the petitioner at par with Pradip Kumar Paswan, who has been extended the said benefit with effect from 1st of November, 2003. The contention raised by Shri Dixit is that once the claim of the petitioner for promotion as Office Superintendent Grade II has been accepted in terms of the judgement in O.A. No.51 of 2002 decided on 19th February, 2010, then the mere pendency of the said litigation or attaining the age of superannuation on 31st July, 2012 cannot denude the petitioner from receiving such benefits to which he is entitled at par with Pradip Kumar Paswan who was admittedly junior to the petitioner.

Learned counsel for the petitioner contends that the issue with regard to promotion in O.S. Grade II was raised before the Tribunal arraying Pradip Kumar Paswan as respondent no.6 in the proceedings before the Tribunal in O.A. No.51 of 2002. The Tribunal ultimately found that the respondents had committed an

error in calculating the vacancies by denying the benefit of promotion in O.S. Grade II to the petitioner. It was finally held by the Tribunal that there are two unreserved vacancies and one Scheduled Caste vacancy and thus there being three vacancies, the claim of the petitioner was bound to be considered. In the light of the said findings, the petitioner's application was allowed holding that the petitioner would be entitled to get promoted to the O.S. Grade II from the date his junior, namely Pradip Kumar Paswan, has joined on the post of O.S. Grade II.

As a consequence of the aforesaid order of the Tribunal, the respondents granted the said benefit to the petitioner and promoted him in O.S. Grade II giving him the "performa benefit" with effect from 05.10.2001. Thus, the petitioner's grievance stood redressed with the passing of the order dated 14th March, 2011, but during the pendency of this dispute, the grade pay and restructuring had been undertaken as a result whereof Pradip Kumar Paswan had been extended the benefit of grade pay of Rs.4600/- in terms of his then seniority which was existing prior to the decision of the Tribunal whereas the petitioner was still in the grade pay of Rs.4200/-

The change that has come about is on account of the judgement of the Tribunal wherein it has been held that the petitioner was entitled to the benefits of promotion keeping in view the available vacancies and consequently the petitioner now came up with a case that he should also be extended the grade pay of Rs.4600/-, inasmuch as, the same is extendable on the basis of seniority, and the petitioner being senior to Pradip Kumar Paswan, he should also be granted the same as a junior person to him has been extended the said benefit. Thus taking a plea of discrimination and violation of Article 14 of the Constitution of India, the petitioner instituted the Original Application being O.A. No.269 of 2013 that has given rise to the present petition.

The Tribunal has dismissed the application on that the ground that the petitioner would have been aware of the consequences and that he would be eligible for restructured financial benefit of O.S. Grade I. The Tribunal came to the conclusion that at this distance of time, it was not possible to turn the clock back and proceeded to deal the matter. On merits it was observed that if there was no post available as on 01.11.2003, it would not be possible to create a supernumerary post for the said purpose.

Questioning the correctness of the said finding of the Tribunal, Shri Dixit submits that the said assumption of the Tribunal is erroneous both on fact as well as in law, inasmuch as, the issue was for grant of such benefit which has been denied to the petitioner while in service, and which was extended to his junior. The cause of denial was the pendency of the claim, inasmuch as, the petitioner's claim for treating him to be senior to Pradip Kumar Paswan and for being promoted in O.S. Grade II was still engaging the attention of the Tribunal.

A supplementary counter affidavit has been filed on behalf of the respondent-Railways wherein it has been stated that at the time of restructuring since Pradip

Kumar Paswan was the senior most as on 01.11.2003, therefore, the benefit was extended to him. Secondly, it has been stated that since the petitioner has retired on 31st July, 2012, therefore, the said benefit cannot be extended to him.

Learned counsel for the Railways submits that this being the reason, the order of the Tribunal does not call for any interference.

We have considered the submissions raised and we find that the Tribunal has proceeded on an incorrect assumption, firstly because the question of seniority came to be reversed with the judgement of the Tribunal on 19th February, 2010 when the petitioner was very much in service. It was held that the petitioner had been wrongly denied the benefit to promotion as O.S. Grade II as he was senior to Pradip Kumar Paswan and an unreserved vacancy was available, and therefore he was entitled to other consequential benefits. In the meantime, Pradip Kumar Paswan had been extended the benefit of pay restructuring in the grade pay of Rs.4600/- and Pradip Kumar Paswan being admittedly junior to the petitioner, the said benefit should not be denied to the petitioner on the ground that he retired later on on 31st July, 2012.

We, therefore, find both the reasons to be not founded on any reasonable logic and consequently the Tribunal appears to have not appreciated the facts in its true perspective. The petitioner was discriminated and he was entitled to the benefit of pay restructuring being senior to Pradip Kumar Paswan and resultantly he was entitled to the consequential benefits as well. The finding of the Tribunal that there was a distance of time in the claim set up by the petitioner does not appeal to reason, inasmuch as, the petitioner had represented the matter and in the meantime he retired on 31.07.2012 whereafter he filed the Original Application in the year 2013 which has been dismissed in the year 2017. We, therefore, do not find the passage of time to be a legal impediment in the grant of benefit to which petitioner was entitled while in service.

The writ petition is, accordingly, allowed and the impugned judgement of the Tribunal dated 30th March, 2017 is set aside with a direction to the respondents to calculate the grade pay of Rs.4600/- from the date it was extended to Pradip Kumar Paswan at par and extend him all consequential benefits in accordance with law.

The petition is, accordingly, allowed.