

(2016) 04 PAT CK 0174

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17968 of 2012

Raj Kishore

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 BBCJ 338 : (2016) 4 PLJR 88

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Anjani Kumar Jha, Advocate, for the Petitioner; Mr. Anil Kr. Sinha, Mr. Abhimanyu Deo, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Navaniti Prasad Singh, J. (Oral)—This writ petition is directed against the final order passed by the Central Administrative Tribunal, Patna Bench, Patna dated 24.07.2012 in O.A. No. 176 of 2008.

2. We have heard learned counsel for the petitioner and learned counsel for the Railways at length.

3. The writ petitioner had moved the Tribunal for a direction to the Railways to treat the petitioner in the seniority of Assistant Commercial Manager (Group - "B" Gazetted) in East Central Railway, from the date of his posting as such with effect from 05.02.2004, and grant all consequential benefits. The facts are simple and not in controversy except unwanted controversy created by the Railways. The petitioner was posted as Chief Commercial Clerk in Sonapur Division at Hajipur in the year 1997 under North Eastern Railway. It appears, at about the same time a decision was taken to create a new zonal railway being East Central Railway with its headquarters at Hajipur. This was by cutting certain area from North Eastern Railway in which Sonapur Division falls. Therefore, options were asked from the employees whether they would like to continue in

North Eastern Railway or would like to be absorbed in East Central Railway. Options were, accordingly, invited vide notification dated 16.01.1997. The petitioner immediately exercised his option on 24.01.1997 preferring to be absorbed in the newly created East Central Railway. He accordingly, became the Chief Commercial Clerk immediately in East Central Railway. Subsequently, he came to be promoted to Assistant Commercial Manager and it is at this stage his problem of seniority arose in the year 2004. It seems, Railways, in 2002, again asked for options. Naturally petitioner did not respond because he had earlier opted in 1997 itself for East Central Railway and did not want to go out of East Central Railway. He continued in the East Central Railway. Railways, as is apparent from the order of the Tribunal, treated his case as a case of seeking transfer from North Eastern Railway to East Central Railway on his own request and, thus, shifted him to the bottom of the seniority. We fail to understand this. A person, who was already absorbed in 1997 in the East Central Railway, could never be required to give option to stay in East Central Railway. If at all he could have given an option to move out of East Central Railway but petitioner not being interested, rightly, had not given any option as he was already in East Central Railway. Thus, his promotion would accrue as a staff or official of East Central Railway. He cannot be treated as having come to East Central Railway on his own request pursuant to an option exercised in the year 2002 and then shifted to the bottom of the seniority. We are, thus, of the view that the order of the Tribunal and the stand of the Railways is contrary to the facts and cannot be sustained.

4. We, accordingly, allow the writ petition, set aside the order of the Tribunal and direct that petitioner be treated as an employee in the East Central Railway from 1997 itself and further clarify that non-exercise of option in the year 2002/2004 is of no consequence. He would, accordingly, be given due seniority with effect from 05.02.2004 with all consequential benefits within a period of two months from today.