

(2020) 09 PAT CK 0116

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16019 Of 2015

Rajanish Kumar Sinha

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Citation : (2020) 09 PAT CK 0116

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Chandra Shekhar Singh, D.K. Sinha

Final Decision : Disposed Of

Judgement

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video

Conferencing from their residence.

Heard learned counsel for the petitioner and learned counsel for the Railways.

Petitioner has prayed for following reliefs:-

â??(i) For setting aside the order dated 07.08.2014 passed in O.A. No. 132/2011 as contained in Annexure-23 by Patna Bench of Central

Administrative Tribunal whereby learned Tribunal dismissed the said O.A. which was preferred by the petitioner for direction in the name of

respondents to adjust the petitioner to the equivalent post and emoluments of Electrical Signal Maintainer Gr.-II instead of Jr. Clerk and further the

petitioner had prayed for salary for the period 15.05.2005 to 29.07.2009 and other consequential benefits.

(ii) Further prays for setting aside the order dated 09.09.2014 passed in R.A. No. 050/00029/2014 as contained in Annexure-24 whereby the learned

Tribunal dismissed the prayer of review of the order dated 07.08.2014 passed in O.A. No. 132/2011.

(iii) Further prays for issuance of direction in the name of respondents to grant pay protection to the petitioner and to adjust him in an equivalent post

and emolument of Electrical Signal Maintainer Gr.II which he was holding prior to declaration of Medical Unfit which was carrying pay scale of 5200-

20200 with grade pay Rs. 2400/-whereas the petitioner has been adjusted as per IREM Vol-1/chapter/XIII/1302 (ii)(b) unfit on the post of Jr. Clerk

which is carrying lower pay scale 5200-20200 Gr. Pay 1900 only without pay protection of Sixth pay commission and further prays for salary for the

petitioner 15.05.2005 to 29.07.2009 alongwith interest at the rate of 20% per annum which has not been paid to the petitioner by the respondents and

also prays for maintaining seniority for that period in signal & Telcom Deptt. In Clerical cadre where the petitioner was originally posted and other

consequential benefits.

(iv) Further prays for grant of any other relief(s) for which the petitioner is found entitled.

Petitioner's case before Tribunal was that he was Electrical Signal Maintainer Gr. II at Neura Railway Station, who met a road accident at

Kankarbagh, Patna and suffered grievous injuries. Petitioner was subjected to Medical Board where he was declared unfit in B1 category but was

declared fit in B1 sedentary job not involved in climbing. Senior Divisional Personnel Officer, Hajipur on 03.10.2008 wrote a letter to Senior D.P.O.

S.E. railway Hajipur to accommodate the applicant on any post except in ministerial and commercial department who finally referred the case of the

petitioner to recruitment cell and petitioner was spared for screening test schedule on 11.04.2008.

Petitioner was posted in equivalent grade on the post of Data Entry Operator by order dated 24.02.2009, however, subsequently by order dated

12.05.2009 petitioner was posted as Junior Clerk (Ministerial category) which carries lower pay scale. Petitioner has challenged his posting on the post

of Jr. Clerk being in contravention of railway Board's own practice and circulars.

Railways in their written statement have stated that petitioner himself had written on 27.07.2009 to post him on the post of Jr. Clerk which has lower

pay scale. Petitioner was earlier posted on the post of Data Entry Operator which

post was equivalent to post on which petitioner was working having equal pay scale.

The tribunal has held that as per railway Board's circular dated 29.04.1999 if a railway servant acquires disability during service and becomes

physically incapable of performing the duties on the post, he should not be dispensed with or reduced in rank but should be shifted to some other posts

in same pay scale and service benefits and if no such posts is available special supernumerary post in the same grade has to be created. The tribunal

has further held that petitioner was initially given sedentary job of Data Entry Operator which was a equivalent post with equal pay scale but on the

request made by petitioner to post him as a Jr. Clerk which was a lower post carrying lower pay scale, as such, railways were not at fault a railways

had offered him equivalent post with equal pay scale but it was the petitioner who opted for Jr. post with lower pay scale and accordingly declined to

grant him the relief as prayed for.

This Court does not find any infirmity or error in said finding of a tribunal.

Petitioner had also prayed for payment of salary for the period from 15th of May 2005 to 29th of July 2009 and this Court by order dated 26.09.2016

had asked respondents to reply with respect to claim of salary of petitioner from 3rd of February 2006 to 27th of July 2009, although tribunal had not

considered this prayer of the petitioner either in the order dated 07.08.2014 passed in original application or order of review dated 09.09.2014.

The order dated 26.09.2016 passed by this Court is reproduced below:-

“Learned counsel for the respondents has no answer as to why petitioner was not paid salary from 3rd of February, 2006 to 27th of July, 2009

though the petitioner has claimed salary from 15th of May, 2005 to 29th of July, 2009 in an Original Application filed by him. The learned counsel for

the respondents seeks a week's time to assist the Court.

We make it clear that if the counsel is unable to clarify, we will be constrained to call the General Manager, East Central Railway, Hajipur to assist

the Court in arriving at a proper decision.”

Counter affidavit has been filed on behalf of railways pursuant to order dated 26.09.2016 passed by this Court in which it has been stated that

petitioner had met an accident and remained under medical treatment from

17.05.2005 to 08.02.2006 at Divisional Hospital, Danapur. Meanwhile, decision of medical board dated 03.02.2006 declared him as unfit in B1 category but fit in B1 category with sedentary job which was to be reviewed after six months.

It has been further stated that medical officer (psychiatry) Eastern Railway examined petitioner on 08.06.2007 and he was under medical treatment of

A.D.M.O. (Psychiatry) Eastern Railway and he was advised on 10.01.2008 to avoid climbing height and was prescribed some medicines.

Petitioner was subsequently screened on 25.04.2008 by Divisional Screening Committee and recommended for alternative post of Commercial clerk

duly approved by D.R.M./D.N.R. and same was sent to head quarter on 18.06.2008. However, said proposal was turned down by letter dated

03.08.2008 with advise to redeploy him in the alternative post in the department except ministerial and commercial. Petitioner was again screened on

26.12.2008 and was offered the alternative post of Data Entry Operator against Special Supernumerary post but he did not join and filed

representation dated 24.04.2009 to be observed in ministerial cadre and by order dated 12.05.2009 he was absorbed as Jr. Clerk and by order dated

29.07.2009 he was posted as Jr. Clerk.

It has been further stated that as per railway rule the special supernumerary post is created for charging salary to medically de-categorized staff till his

absorption against alternative post, however, the staff has to report to his parent office before his regular absorption on alternative posts but in present

case petitioner failed to report to his office and remain absent for the period from 03.02.2006 to 29.07.2009. It is further stated that since petitioner

was not reporting to his previous office, as such, his salary was not paid. As per service record and leave record, period of absence was regularized

and thereafter there was no leave due in his leave record and he remained leave without pay till his regular absorption. It has lastly been stated that if

petitioner applies under rule 528 of I.R.E.C. he may be sanctioned post facto leave not due for the period he remained absent.

After hearing the counsel for the petitioner as well as counsel for the Railways and going through records, it transpires that Medical Board vide letter

dated 03.02.2006 declared him unfit in B1 category for duties but found fit in B1 sedentary job, it was incumbent upon the railways to either post him

on some alternative posts or create supernumerary post for payment of his salary and since petitioner was not posted anywhere during said period, he could not have marked his attendance or get his salary against any post and it was fault of the railways for which petitioner cannot be blamed. Nothing has been brought on record by the railways as to where he was supposed to mark his attendance or in which attendance register his name appeared against which he had to mark his attendance. No attendance register has been brought on record showing the name of petitioner in said attendance register where his attendance has been marked as absent for said period and same appears to be afterthought to cover up their laches when this Court by order dated 26.09.2016 asked respondents to state the reasons for non-payment of salary for the period from 3rd of February 2006 to 27th of July 2009. The railways in their written statement filed before the Tribunal have not taken such plea of non-payment of salary to the petitioner for said period. Accordingly, this Court finds that petitioner is entitled to receive salary for the period from 03.02.2006 to 27.07.2009 and respondents railways are directed to pay the same within three months from the date of receipt/production of a copy of order passed by this Court, if it is not paid within three months a simple interest at the rate of 8% p.a. will be payable after three months till the date of payment on said amount.

The writ petition is accordingly disposed of.