
(2017) 05 PAT CK 0002

In the Patna High Court

Case No : 14800 of 2016

The Union of India through the General Manager & Anr
Vs

APPELLANT

Sri Sanjay Kumar

RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

Citation : (2017) 05 PAT CK 0002

Hon'ble Judges : Ajay Kumar Tripathi, Nilu Agrawal

Bench : DIVISION BENCH

Advocate : Siddhartha Prasad, M.P. Dixit, Sanjay Kumar Choubey, Sanjay Kumar Dixit, Shailendra Kumar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and the private respondent.
2. The Union of India, Ministry of Railways are the petitioners before this Court assailing the order dated 23rd May, 2016 passed in O.A. No. 457 of 2012 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the CAT). The CAT allowed the O.A. application and directed that the applicant, who is the private respondent in the writ application will continue to get the benefit of pay-scale of Rs. 9300 - 34800/- + Grade Pay of Rs. 4200/- from the date of order of promotion, i.e., 04.04.2011 and no recovery would be made from the salary, which has been paid to the private respondent on the basis of the order of promotion.
3. The reason for the private respondent and the relief, which was prayed for in the O.A. application is as under: "(i) That your Lordships may graciously be pleased to quash and set aside the impugned order dated 01.12.2011 together with order dated 30.04.2012 as contained in Annexure-A/4 and A/6 respectively.
(ii) That your Lordships may graciously be pleased to direct/command the respondents to post the applicant to the equivalent post/grade/ emoluments of Senior Technician/MCM in the Pay Band of Rs. 9,300-34,800/- Grade Pay of Rs.

4200 instead of Technician Grade-1 in the Pay Band of Rs. 5,200-20200/- Grade Pay of Rs. 2800/-.

(iii) That the respondents further be directed to pay/release the difference of salary of the applicant to the post of Senior Technician/ MCM in the Pay Band of Rs. 9300-34800/- Grade Pay of Rs. 4200/- instead of Technician Grade-1 in the Pay Band of Rs. 5,200-20200 Grade Pay of Rs. 2800/- along with interest at the rate of 20 percent per annum.

(iv) That the respondents be directed to grant all consequential benefits arising out the said relief as prayed above.

(v) Any other relief or reliefs including the cost of proceeding may be allowed in favour of the applicant."

The case of the applicant, briefly, is as follows:-

(i) The applicant was initially appointed as Electrical Signal Maintainer Grade-II on 19.08.2002 in the pay scale of Rs. 4000 - 6000/- and posted as Senior Section Engineer, North Frontier Railway, Katihar.

(ii) The applicant was promoted in the year 2006 as Technician Grade-1 in the pay scale of Rs. 4500 - 7000/-.

(iii) While working as Technician Grade-1, he was empanelled for promotion for the post of Senior Technician (SM)/MCM in the scale of Rs. 9300 - 34800 plus Grade Pay of Rs. 4200 by OM dated 07.07.2010. He was promoted in this scale and Grade Pay as MCM vide order dated 04.04.2011 (Annexure-A/1).

(iv) The applicant resumed his duty on the promotional post on 09.05.2011 (Annexure-A/2).

(v) Meanwhile, the applicant was sent for Special Medical Examination on 03.03.2011, where the Medical Board decided him fit in medical category B-1 for sedentary nature of job only as he has to refrain from doing physically strenuous activities in view of recurrent hemoptysis (Annexure-A/3). The applicant contends that instead of granting/ posting him in a sedentary job as per B-1 category, the respondents sent him before the Screening Committee on 23.08.2011 and, thereafter, he was posted as Senior Clerk in the pay band of Rs. 5200 - 20200 plus grade pay of Rs. 2800/- by order dated 01.12.2011 (Annexure-A/4). Hence, aggrieved."

4. The stand was taken by the petitioners-the railways before the CAT that the private respondent could not be allowed to join the promotional post of Senior Technician/ MCM in the pay-scale of Rs. 9300 - 34800/- + grade pay Rs. 4200/- because he was de-categorized by the Medical Board, which was held on 03.03.2011. It was also the stand that because of the de-categorization, the private respondent ought not to have been permitted to join the promotional post. Even though the railways have granted the benefit of promotion by virtue of an order, which has also been brought on record as Annexure-2 to the writ

application. What is of significance in the said notification i.e. Annexure-2 dated 04.04.2011 is that this order of promotion was to take effect immediately and the pay and place of posting was also indicated for the two persons, who were beneficiaries of the notification and included the private respondent. In furtherance thereto, he gave his joining, which was accepted. He has worked for more than six months and derived pay and privileges on the promoted post. Now he is sought to be adjusted on a post of Senior Clerk, which is in the pay-scale of Rs. 5200 - 20200 + grade pay of Rs. 2800/-. This was the pay-scale which the private respondent was drawing before the order of promotion and the corresponding post, which was identified for him after de-categorization on medical ground.

5. The two submissions of the railway-authorities that the private respondent could not have joined or ought not to have joined the promoted post after a Medical Board was already held for his de-categorization are misplaced kind of submissions to make because the notification for promotion took effect immediately and it did not indicate that it will come into effect from the date of joining. This is so because the place of posting and the pay-scale was indicated in the said notification and in compliance thereof the private respondent did give his joining and continued to work till a decision was taken to accommodate him on a lower post or pay-scale, which was applicable to him prior to the date of promotion ,i.e., 04.04.2011.

6. The CAT has given its reason for allowing the relief in the following words: "11. Now we come to the question whether the applicant's promotion came into effect or not. It transpires from the document of the respondents that he availed his higher pay scale from May, 2011 to October, 2011. Therefore, the respondents' contention that the applicant's joining report dated 09.05.2011 was not accepted in view of his decategorization is not correct. If the Railways meant that the applicant had been decategorized while he was in the pay scale of Rs. 5200-20200 + GP Rs. 2800, there was no occasion to give him the pay scale of Rs. 9300-34800+Grade Pay 4200. Therefore, it is clear that his joining report dated 09.05.2011 was accepted and he worked in the promotion post for several months.

12. We next come to the issue of the date when he was medically decategorized. The medical examination took place on 03.03.2011. However, the determination by the Medical Board was issued vide letter dated 07.04.2011 (Annexure A/3). It is only when the Medical Board records its findings that it can be said that the determination of category has taken place. This is also evident from common sense because the Medical Board may have difference of opinion or they may have consultation with each other, and they could take time between medical examination and recording their determination. Till that time the applicant has no means of knowing under what category he was going to be placed by the Medical Board. Therefore, in all fairness, the date when the Medical Board declared him fit for B-1 category for sedentary job has to be taken as 07.04.2011.

The applicant had already been promoted w.e.f. 04.04.2011 as we have observed earlier.

Further, the respondents have also paid him salary for six months in the higher post.

Therefore, their contention that he was de-categorized in the grade pay of Rs. 2800/- is based on a technical triviality which is fit to be rejected."

7. The object behind accommodating an employee on medical de-categorization is to ensure that he does not feel prejudiced or in any manner is treated inferior to the position or post, which he was holding. The policy emerges from the Legislation, which is in vogue, extending the benefit to people, who are held to be disabled for one reason or the other under the Disability Act. As a model employer, the railways would be bound by the policy and they cannot be allowed to infringe the right of the promotional post, which the private respondent was conferred and allowed to enjoy that status for almost six months when a decision was taken to even reduce the post and position on the basis of de-categorization. This aspect of the matter has already been dealt with by the CAT, which has been quoted in the earlier part of the order. The railway-authorities cannot be permitted to resile from the position and the benefit, which was extended to the private respondent by virtue of the order of promotion notified by them on 04.04.2011. Since the private respondent was working on the promoted post then the decision to de-categorize him taken on a subsequent date, i.e., on 23.08.2011, which was done by the Screening Committee will be required to be revisited and the de-categorization is required to be done on the pay-scale of Rs. 9300 - 34800 + grade pay Rs. 4200/-.

8. Learned counsel representing the railways tries to draw our attention towards Annexure-8 to the writ application to take advantage of the willingness expressed by the private respondent on 23.08.2011.

9. Counsel representing the private respondent has explained the position by annexing his representation, as Annexure-R/2 to the counter affidavit which he filed before the Divisional Railway Manager, NF Railway, Katihar on 09.01.2012. He has explained the circumstances under which he was compelled to give his willingness and the Court can take judicial notice of the fact that such employees do not have bargaining power and so have to succumb under coercion and pressure, which is applied upon them by the superior authorities. Such situations are difficult to fight if an employee wants to continue in service for the left over period of his life.

10. In that view of the matter, the willingness contained in Annexure-8 has to be understood under the circumstances which emerge from the representation contained in Annexure-R/2 to the counter affidavit.

11. The writ application, therefore, has no merit. The CAT has committed no error by protecting the interest of the employee as well as the post and position

which the private respondent was holding by virtue of the promotion order issued in his favour by the railway-authorities themselves. Writ is dismissed.