

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH

O.A.NO.578/96  
M.A.NO.62/97

Hon'ble Shri S. Raju, Member(J)

patna this the 6th day of December, 2001

Satchidanand Sahay  
s/o Adityanand Sahay Ex. Conductor  
N.F.Railways, Katihar  
r/o Mohalla Lohianagar  
Baramasia P.O. and  
District, Katihar. .... Applicant.

(By None for the applicant)

Vs.

1. The Union of India through  
The Secretary, Ministry of Railways  
New Delhi.
2. The Director of Establishment  
Railway Board,  
Rail Bhawan,  
New Delhi.
3. The General Manager,  
N.F.Railways  
Maligaon  
Gawahati.
4. The Chief Personnel Officer  
N.F.Railways  
Maligaon  
Gawahati.
5. The Divisional Railway Manager  
N.F.Railways  
Katihar.
6. The Divisional Superintendent(P)  
Katihar.
7. The Secretary  
Bihar Vidhan Sabha Sachivalay  
Patna. .. Respondents

(By Shri G. Bose, counsel for the respondents)

O R D E R (Oral)

Neither the applicant nor his counsel  
had appeared yesterday. Today also none has appeared  
on behalf of the applicant. As the matter pertains

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to the year 1996, the same is disposed of as per the provisions of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. Heard the learned counsel for the respondents. ~~Briefly stated~~ the applicant has sought computation of his earlier service rendered in Vidhan Sabha for a total period of 7 years 3 months and 10 days. The applicant has also sought ~~for~~ pay protection on account of two promotions accorded him by Bihar Vidhan Sabha and seniority from the date of joining, i.e., 18.5.1966. The applicant has also sought senior scale of Rs.2000-3200. The applicant has further sought refund of Rs.7000 deducted from the DCRG and also to allow restoration of post retirement of family passes with immediate effect and had sought interest at the rate of 18%.

3. Briefly stated, the applicant was appointed as Ticket Collector on 18.5.1966 and from 5.2.1959 to 7.5.1966 he worked as Typist in Bihar Vidhan Sabha. The claim of the applicant was that his appointment with the Railways was on transfer on deputation and as such the previous service rendered in Vidhan Sabha have to be counted towards pensionary benefits. The applicant has further stated that despite making several representations his request has not been acceded to and considered and only one letter communicated on 26.9.1969 as well as the letter dated 12.12.1995 and 11.4.1996. It is in the background, stated that the claim of the applicant has not been considered and having not calculated the previous service, the applicant has been deprived of his right to reckon his total service as 34 years 5 months and 20 days which could have ~~been~~<sup>be</sup> affected ~~of~~<sup>by</sup> revision of his pension and other benefits.

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It is also stated that the respondents have deducted Rs.7000/- from his DCRG on account of his unauthorised occupation of the Railway Accommodation without according him a reasonable opportunity to show cause. It is also stated that the applicant has a right of pay protection and the two promotions which were allowed to him by Vidhan Sabha were within the knowledge of the respondents but the same have not been taken into consideration for increment purposes. Further it is stated that the seniority ~~is~~ is to be reckoned from the date of appointment, i.e., first joining and not from the any other subsequent date. It is also contended ~~in~~ in the OA that the employment notice issued vide No.8-1/64 was within the knowledge of the respondents despite this they have treated him as a direct recruit and they have not taken up the matter with the State Government for computing the service rendered in the Vidhan Sabha for the purpose of Pension. The applicant in this OA has placed reliance on several decisions to contend that the infringement of civil right would amount<sup>to</sup> to an illegality and the action of the respondents cannot be countenanced. In his rejoinder, the applicant has reiterated ~~of~~<sup>in</sup> his pleas taken in the OA and further stated that the representation of the applicant was still pending at the time of admission of the OA and he was appointed on transfer from State Government with the respondents. It is also stated that when the Office of the respondents can indicates the letter addressed to Vidhan Sabha in the year 1975, the contention of the respondents that the record is not available would be of no avail to the respondents.

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4. On the other hand, the learned counsel for the respondents vehemently opposing the contentions of the applicant in his reply has contended that the request of the applicant was rejected and communicated in the year 1969, filing of this petition in the year 1996 would be clearly beyond the stipulated period of limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985 and the OA is hopelessly barred by limitation. On merits too, it is contended that the applicant has been selected through the recruitment Board against 33  $\frac{1}{3}$  % quota and his pay which he was getting in Vidhan Sabha was protected as per the rules. It is also stated that as regards the claim of the applicant for reckoning the period of 7 years (around) rendered in Vidhan Sabha towards the qualifying service for the purpose of pension, the matter has been taken up with the State Government and it is possible only when the State Government takes up the proportionate liability, as per the Railway (Pension) Rules, it could not be extended to the applicant. However, he has been fully paid, on the basis of the service rendered with the Railways, the pension. As regards the seniority, it is contended that the seniority would be shown in the next issue of the seniority list to be published on 1.4.1969 and he was entitled to get seniority w.e.f. 18.5.1966 when he joined in Katihar Division and not from 1.4.1969 as alleged. It is further stated that the applicant has remained unauthorised occupant of the Government accommodation beyond the permissible period and as such as per the provisions of Rule 15 and 16

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of the Pension Rules, 1963 ibid as well as keeping in view of the decision of the Apex Court in Union of India & Others Vs. Shiv Charan, 1991 Supp.(2)

SCC 386, it is permissible for the Railways to deduct the damage rent on account of unauthorised occupation, from the DCRG of the Railway servant as such their action is perfectly correct and as per Rules. Lastly, it is contended that, as regards the passes, the passes have been withheld on account of unauthorised occupation of the Govt. quarter and there is no question of retrospective accord of passes to a Railway servant after the eviction from the Government servant, he is entitled for the passes as per rules.

5. I have carefully considered the rival contentions of the learned counsel for the respondents and also perused the pleadings available on record. As regards the claim of the applicant for refund of damages on account of unauthorised occupation, the respondents have stated that in view of the Full Bench cases of Pitambaram Singh and Shiv Poojan, there is no question of according any reasonable opportunity to show cause before any recovery is affected on account of unauthorised occupation. As per the statutory rules on this subject, i.e., Rule 15 and 16 of the Pension Rules ibid, permits withholding of DCRG and recovery thereof from him on account of arrears of unauthorised occupation in Railway accommodation. This action of the respondents shall not be counted fault with. As regards the question of seniority, it is stated by the respondents that a notification for the post of Ticket Collector had been issued, which inviting

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applications from State Government upto the extent of quota of 33  $\frac{1}{3}\%$  and in that event the only stipulation appointment as well as in the notification was to protect the pay. As regards the seniority, <sup>One</sup> <sub>was</sub> <sup>L</sup> in different cadre in the Vidhan Sabha, it would not be reckoned for the purpose of seniority in the cadre of Ticket Collector as such the applicant is not entitled. Further more, the applicant is treated as a Railway servant and it is made clear in the letter of 1969 that he shall not be entitled to get the seniority over those persons appointed in the same year. Even received the communication the claim of the applicant after a delay of about 27 years would amount to unsettled the settled position in the matter of seniority which cannot be countenanced. As such the claim of the applicant is rejected at the outset, as far as the seniority is concerned.

6. The claim of the applicant regarding treating his 7 years 10 months period rendered in Vidhan Sabha towards the qualifying service for the purpose of pensionary benefits and further revision of the pension with arrears on interest are concerned, the respondents have already taken the issue with the State Government in the year 1975. As I find that Respondent No.7, Vidhan Sabha, has been impleaded in the array of parties the Respondent No.7 would not come under the jurisdiction of this Court, no directions can be issued to Respondent No.7 but yet keeping in view <sup>the</sup> ~~of~~ the interest of justice and the fact that the service is to be computed for pensionary benefits, the respondents No.1 to 6 are directed to take up the issue regarding computation of period, towards the qualifying service, rendered in Vidhan Sabha for the purpose of pensionary benefits. But this is

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possible only when the State <sup>the</sup> Government  
is agreeable to share the proportional liability.  
In this view of the matter, the only direction which  
could be given is to direct the respondents to  
pursue the grievance of the applicant, regarding  
the computation of his service rendered in  
Vidhan Sabha, with the State Government. In the  
event the State Government is agreeable to bear  
proportional liability, the same would be  
reckoned for the purpose of pensionary benefits  
and the applicant in that event shall be entitled  
for accord of revised pension and other benefits  
as per rules. The OA is accordingly disposed of.  
No costs.

*S. Raju*  
(S. RAJU)  
M(J)

/rao/