

[8.2] That the respondents further be directed to treat the applicant as TGT (Arts) henceforth with all consequential benefit including

eligible for appearing in the selection of PGT with arrears of salary and interest thereon.

[8.3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant."

2. The brief facts of the case are as under:-

- (i) The applicant was initially appointed as TGT (Arts) on 23.04.2007 (Annexure A/1) in the pay scale of Rs.5500-9000/- revised as Rs9300-34800/- with Grade Pay of Rs.4600/- The applicant after serving under S.E. Railway for quite some time, submitted a representation for his Transfer from S.E. Railway to East Central Railway on grounds of his parents illness and also on his own ground being physically handicapped. His representation was considered and the applicant was transferred to E.C. Railway and accordingly the applicant joined in the month of September 2013.
- (ii) After some time, it has come to the knowledge of applicant that E.C. Railway is treating him as PRT instead of TGT therefore, he submitted a representation on 23.01.2013 stating that he is directly appointed as TGT (Arts) and when a person is directly recruited on a post he can never be posted to a lower post therefore he prayed for treating him as TGT (Arts). In this regard the applicant referred REB No. 127 of 2000, Rule 227 (2) of IREC and Rule 312 of the IREM which speaks that in case of own request transfer, a person cannot be posted below the post on which he holds lien.
- (iii) In the meantime, the department has published a notification calling willingness in prescribed format for promotion to the post of PGT in the Grade Pay of Rs.4800/- and in pursuant to this notification, the applicant also submitted his willingness in the prescribed format but it came to his knowledge by reliable

sources that his name has been kept out of consideration for promotion.

- (iv) The applicant received information from the department under RTI Act which shows the availability of TGT post in E.C. Railway therefore he submitted that there is no reason to post the applicant on lower post and pay. In this regard the applicant approached the concerned officer and requested to allow him for appearing in the selection of PGT but no response elicited hence this O.A. The learned counsel for the applicant placed reliance on judgement passed by Hon'ble Supreme Court in Secretary cum Chief Engineer, Chandigarh vs Hari Om Sharma and others reported in 1998 SCC (L&S) 1273. Further, relied upon judgement passed by Hon'ble High Court of Patna in the case of Ram Chandra Singh vs Savitri Devi and others reported in 2003 (4) PLJR 208, AIR 2017 SC 4438 and submitted that the undertaking given by the applicant for the purpose of transfer by which he had accepted lower pay scale cannot be a ground to deny the applicant to claim for higher pay scale in connection with his original appointment and posting i.e pay scale of TGT (Arts).

3. In response to the notice, the respondent have filed their written statement and submitted as below :-

- (i) The learned counsel for respondents submitted that the applicant was appointed as T.G.T in scale Rs.9300-34800/- grade pay Rs.4600/- through RRB, Kolkata under S.E. Railway and he was posted at S.E. Inter College Sini, Chakradharpur Division vide letter dated 23.04.2007 (Annexure A/1) thereafter, the applicant had submitted a representation for his transfer to E.C. Railway which was duly forwarded to General Manager (P) E.C. Railway, Hajipur. The said request of applicant was turned

down as at that relevant period, there was no post of TGT (Arts) was vacant.

- (ii) Thereafter, the applicant again made a representation dated 16.05.2012 (Annexure R/1) giving consent that he is ready to join as PRT in Grade Pay of Rs.4200/- and accordingly the applicant was transferred to Danapur Division vide letter date 07.08.2012 (Annexure R/2) on the terms and conditions stipulated therein.
- (iii) Vide letter dated 11.09.2012 addressed to GM CPS/ECR/Hajipur, the applicant was released from Sini, Chakradharpur so that he can join at his transferred place in Grade pay Rs 4200/- On joining on the said post, the applicant was two posts lower than the notified post (Grade Pay Rs.4800/-) therefore he is not entitled for to the post of PGT (Grade Pay Rs.4800/-).
- (iv) Since the applicant himself made representation and submitted that he is ready to join on lower post and accordingly he joined then how he can be permitted to apply and appear on two higher posts accordingly his willingness was kept out. In view of the above facts and circumstances, the O.A is fit to be dismissed.

4. Heard the parties, perused the documents and considered their submissions.

5. It is admitted fact that the applicant firstly applied for his transfer on the same post i.e. TGT (Arts) on 23.04.2007 (Annexure A/1) in the pay scale of Rs.5500-9000/- revised as Rs9300-34800/- with Grade Pay of Rs.4600 but when his representation was rejected on ground that there is no such post vacant, thereafter, the applicant himself given consent that he is ready to join as PRT in Grade Pay of Rs.4200/- as per his representation dated 16.05.2012, and accordingly the applicant was transferred to Danapur Division vide letter date 07.08.2012 (Annexure R/2) on the terms and conditions stipulated therein which are (i) Shri Balbant Prakash, TGT (Arts) is transferred to EC Railway on his request

in bottom seniority in PRT cadre. (ii) He should not seek retransfer to his parent unit at a later date (iii) He is not eligible for any transfer benefits as his transfer is ordered on his own request (iv) He should be free from SPE/Vig & DAR cases at the time of release. (v) He should vacate railway quarter if any, in his possession before being spared to EC Railway. Once the applicant had accepted the said order and joined the transferred place as per his choice by accepting the GP of Rs.4200/- (lower post with lower scale) voluntarily and without any objection thereafter he is not entitled to apply or claim for the post directly in the Grade Pay Rs.4800/-. He has to follow the terms and conditions of the service and can claim the higher pay scale or a promotion as per the hierarchy prescribed under the service rules. The judgement relied upon by the applicant are not applicable in the facts and circumstances of the present case, it is seen that in the present case, the applicant himself voluntarily agreed to accept the lower pay scale for the purpose of his own choice of place of service by way of transfer, there was no fraud or concealment on the part of respondents. Therefore, we do not find any illegality in the order of the respondents. The submission of the applicant that though there was vacancy available at the time he had claimed the transfer but the respondents had concealed the fact about the vacancy in TGT (Arts) Hence; the reliefs prayed for in para 8 is denied and accordingly, the O.A is dismissed with no order as to costs.

(Jayesh V. Bhairavia) M [J]

(A.K. Upadhyay) M (A)

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