

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13423 of 2015

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Shambhu Kumar, S/o Shri Krishna Nandan Prasad, now working as Assistant Divisional Engineer(Special), East Central Railway, Dhanbad

... Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway Hajipur, District-Vaishali at Hajipur.
2. The General Manager(Personnel), East Central Railway, Hajipur, District-Vaishali at Hajipur.
3. The General Manager(Vigilance), East Central Railway, Hajipur, District-Vaishali at Hajipur.
4. The Principal Chief Engineer, East Central Railway, Hajipur, District-Vaishali at Hajipur.
5. Krishna Deo Prasad, S/O Sri Deonandan Prasad, resident of Village Karai Parsurai, P.S. Karai Parsurai, District-Nalanda, at present working as Junior Engineer(P.Way)/ E.C. Railway under Sr. Divisional Engineer(Co-ord)/E.C.Railway/Sonepur Division

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S Chittaranjan Sinha,Sr.Adv. & Mrityunjay Kumar,Adv.

For the Respondent No.5 : M/S.Gautam Bose,Sr.Adv. & Udai Shankar Singh,Adv.

For the Railway : Mr. Anil Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 08-10-2015

Heard Mr. Chittaranjan Sinha, learned senior counsel for the petitioner, Mr.Gautam Bose, learned senior counsel for the contesting respondent no.5 and Mr. Anil Kumar Sinha, learned

counsel for the Railway, and with their consent this writ petition is being disposed of at this stage itself.

2. The writ petitioner was respondent no.5 in the original application filed by respondent no.5 herein before the Central Administrative Tribunal, Patna Bench, Patna.

3. The matter relates to promotion as against thirty percent quota, reserved for limited competitive examination from amongst the Junior Engineers to the posts of Assistant Engineer, Technical Staff, Group-B. The facts are not in dispute.

4. The post of Assistant Engineer is a promotional post, feeder post being Junior Engineer. From Junior Engineer promotions are effected by two means: (i) thirty percent of the vacant posts are to be filled up by limited competitive examination from amongst Junior Engineer; and (ii) the balance seventy percent of the vacancies has to be filled by promotion on seniority basis. We are concerned with the limited competitive examination quota. The original applicant before the Tribunal, who is respondent no.5 herein, and the writ petitioner, who was respondent no.5 before the Tribunal, had both applied. There was a written test consisting of two theory papers. After the results of written test were declared, respondent no.5 to the writ petition was shown qualified along with several others, but the writ petitioner was not shown as qualified. Interviews were held, but final results were



not being published. Respondent no.5 and others then moved the Tribunal. The Tribunal directed the Railways to publish the results finally. It also appears that the writ petitioner also moved the Tribunal, pointing out various discrepancies that were made in the evaluation at the written test level. There was an interim order by the Tribunal that any promotion made would be subject to the result of that application. It appears that, in the meantime, upon protest being made by the writ petitioner, the Railway re-evaluated the petitioner's answer sheets, and found that he had, in fact, qualified for interview. He was, accordingly, called for interview. Subsequently, after almost 14 months the final results were published. This came as a shock to the contesting respondent no.5, because he had been shown qualified for interview at an early stage in which the writ petitioner was not shown, as one of those who had qualified. In the final results, the writ petitioner had finally qualified for promotion, but respondent no.5 got excluded. This brought respondent no.5 to the Tribunal. He challenged not only the results, but he challenged his exclusion. He also challenged the inclusion of the writ petitioner. The Tribunal examined the facts. The Tribunal allowed the application, and set aside the selection of the writ petitioner, who was respondent there, on the sole ground that whereas all other candidates were interviewed on 11-3-2010, the writ petitioner, who was the contesting respondent



before the Tribunal, was interviewed in May 2011. Thus, there was a gap of about 14 months. The Tribunal was of the view that this gap vitiated the interview. The standard could not be the same. Accordingly, the Tribunal set aside the selection of the writ petitioner, and consequently directed the inclusion of the contesting respondent, who was the applicant before the Tribunal. This is how the writ petitioner has come, challenging the order of the Tribunal.

5. Having heard the parties, we are of the view that the order of the Tribunal cannot be sustained. The reason is simple. The Tribunal does not dispute or does not disregard the fact that on re-evaluation of the answer sheets the writ petitioner had qualified for the interview. This, not having been interfered by the Tribunal, the necessary fall-out was that the petitioner had to be interviewed. That interview, having taken place 14 months later, cannot be a ground to set aside the interview. It would have been a different matter, if the Tribunal had set aside the re-evaluation itself of the theory papers on any ground available to it, but unfortunately the Tribunal did not do so. That being the fact, the interview was inevitably to be held. That it was held after a gap of 14 months is not a ground to set aside the interview, because that would leave and that leaves the writ petitioner without remedy. Thus, the interview had to be held and the interview-marks had to be taken into consideration to come to the final result.

Thus, inevitably we would have to set aside the order of the Tribunal on merit and restore the position as in the final results and final select list.

6. That leads to a problem. The contesting respondent no.5 to this writ petition, who was the applicant before the Tribunal had qualified, but became non suited, merely because the petitioner was declared qualified, and he had been promoted and has been working as such. He had been initially shown to be selected for interview, but thereafter he was removed from the list. This, in our view, would lead to iniquitous result, because the applicant before the Tribunal had, in fact, got 12th position, which is not denied, but by virtue of re-evaluation of answer sheet and subsequent interview of the petitioner, he was pushed out, and the writ petitioner entered the select list. It would be unfair to the contesting respondent no.5.

7. There is no dispute that there were 16 vacancies that were to be filled up by limited competitive examination and total number of candidates, who have now been selected were 12 in general category. Overall in 15, there is one vacancy still available. The order now we propose to pass, is subject to the vacancy available, as aforesaid. In the fitness of things, we would direct that while retaining the writ petitioner, as per the final select list, respondent no.5, who was the applicant before the Tribunal, be also suitably taken in the

merit list and accordingly promoted. Let this be done within a period of one month from today.

B.K.Roy/-

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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