IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3696 of 2012

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1. The Union of India through the Chairman, Railway Board.
2. The General Manager, Eastern Railway, 17, Netaji Subhash Road, P.S.-Street, Kolkata.
3. The Divisional Railway Manager, Eastern Railway, Malda.
4. The Senior Divisional Personnel Officer, Eastern Railway, Malda.
5. The Senior Divisional Mechanical Engineer, Eastern Railway, Malda.
6. The Senior Section Engineer (C & W), Jamalpur. .... Petitioners.

Versus

Banarsi Poddar, Son of Late Jugal Kishore Poddar, resident of Village-Ekashi Tola, Post Office-Bariarpur, District-Munger. .... Respondent.

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Appearance :
For the Petitioners : Mr. D. K. Sinha, Sr. Adv. with Mr. Anil Singh, Adv.
For the Respondent : Mr. Gautam Bose, Sr. Adv. with Mr. Ajay Kumar, Adv.

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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: 24-07-2015

Railway is aggrieved by the order dated 08.04.2011 passed in O.A. No.470 of 2005 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter in short referred to as the 'Tribunal'). The contesting private-respondent, who was the applicant before the Tribunal, has appeared. Heard Sri D.K. Sinha, learned senior counsel for the Railway, as ably assisted by Sri Anil Singh, learned Advocate and learned counsel for the contesting private-respondent.

The short question for our consideration is, whether the Tribunal was correct in holding that when as a consequence of restructuring the cadre, there being no increase in the cadre

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strength, the filling up of new number of higher posts would involve reservations or not. The stand of the Railway is based on the judgment of the Apex Court in the case of **Union of India Vs. Pushpa Rani and others** since reported in **(2008) 9 Supreme Court Cases 242** that as the new posts created were required to be filled up by promotion from within the cadre itself, it will involve promotion and, consequently, the policy of reservation would apply. The Tribunal did not accept this. It held that the applicant before it was entitled to promotion without consideration of reservation.

From the facts, it appears that Railway had taken a decision to restructure the ministerial cadre as restructuring process of 16 posts of OS-II grade which were to be filled up from Head Clerk category by adopting a modified selection on one time basis. The scheme was of seniority-cum-suitability basis from amongst the eligible persons who came within the consideration zone. Thus, there is tacit acceptance of the fact that larger number of higher posts were created, as a matter of restructuring, which required to be filled up by promotion. In our view, the Railway is correct in asserting that in view of the judgment of the Apex Court in the case of **Pushpa Rani (supra)** and, in particular, what is said in paragraphs-33 & 35 thereof,

there is no escape from this position. The Apex Court is clear that once promotions have to be granted, they have to be consistent with the reservation policy. That being so, the Tribunal was clearly in error in holding that there being no change in the cadre strength and mere reassessment of posts, even though they have to be filled up by one time exercise of promotion, no reservation would apply.

We, accordingly, set aside the order of the Tribunal and dismiss the original application filed by the respondent before the Tribunal. The writ application is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/NAFR

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