

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3565 of 2012

=====

1. Chairman, Railway Recruitment Board, Mumbai, Divisional Office Compound,
Mumbai Central, Mumbai-400202

.... Petitioner/s

Versus

1. Rajiv Kumar Mohalla Rambagh Road, Baba Vimal Lane, Post-Ramna, District-
Muzaffarpur, Bihar
2. General Manager, Central Railways, Headquarters Office, Central Railway, Cst,
Mumbai-400001
3. General Manager, Western Railway, Church Gate, Mumbai
4. General Manager, South Central Railway, Secunderbad, Andhra Pradesh

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 6498 of 2012

=====

1. The General Manager, Western Railway, Church Gate, Mumbai

.... Petitioner/s

Versus

1. Rajiv Kumar S/O Shri Tara Nandan Sahay R/O Mohalla- Rambagh Road, Baba
Vimal Lane, P.O.- Ramna, District- Muzaffarpur
2. The Chairman Railway Recruitment Board, Divisional Office Compound,
Mumbai Central, Mumbai - 400202
3. The General Manager Central Railways, Headquarters Office, Central Railway
Cst, Mumbai-400001
4. The General Manager, South Central Railways, Secunderabad, Andhra Pradesh

.... Respondent/s

=====

Appearance :

(In CWJC No. 3565 of 2012)

For the Petitioner/s : Mr. ANIL SINGH

For the Respondent/s : Mr. MAHESH PRASAD

(In CWJC No. 6498 of 2012)

For the Petitioner/s : Mr. ANIL KUMAR SINHA

For the Respondent/s : Mr. MAHESH PRASAD

=====

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date:- 22- 09-2015

The two writ applications, one filed by the Railway



Recruitment Board, Mumbai and the other by Western Railway, Mumbai, arise out of an order dated 25.05.2011, passed by the Central Administrative Tribunal, Patna Bench in T.A. No. 1 of 2010, by which the learned Tribunal has directed the respondents, who are petitioners before us, to ensure compliance of the procedure as laid down in the order dated 05.05.2006 issued by Railway Recruitment Board, Mumbai, herein-after referred to “RRB”, to consider giving appointment to the applicant, who is the Respondent No. 1 before us, in both the writ petitions, for filling up the notified vacancies from the replacement panel on the vacancies as existing from the non joining of selected candidates.

The facts giving rise to the present writ application in short, is that the RRB, Mumbai, published an Advertisement bearing No. 03/2005 on 05.11.2005 to fill up inter-alia 198 vacancies of Group-“C” posts which included post of Signal Maintainer, Grade-III whereunder 35 posts were ear marked for Western Railway, 143 posts for Central Railway and 10 posts for South Central Railway. The Board had issued instructions on 05.05.2006, calling 20 % candidates over and above, the number of vacancies at the time of document verification primarily to avoid short fall in the panel. The other stipulation in the said letter was that the CPO after the stipulated joining time of the selected candidates of original panel had to supply the number of vacancies left to be filled up category wise to the RRB which in turn will send the replacement panel to the CPO.



The respondent no. 1, who was the applicant in T.A. No. 1/2010 before the Tribunal submitted that out of 143 vacancies projected by the Central Railway, a total of 24 unreserved vacancies are still lying vacant to be filled up because of non joining of the candidates, whereas against 35 vacancies projected by Western Railway, 11 vacancies are still vacant and in South Central Railway, there were three vacancies because of non joining. The applicant further submitted that he was one of the candidates, who had been called for document verification but could not find place in the list of selected empanelled candidates as the cut off merit list for unreserved category in final result was up to 121 whereas the applicant was at 127th position in the list.

It was further been submitted that the C.P.O., Western Railway and C.P.O., Central Railway did not send replacement panel inspite of the vacancy having occurred due to non joining and that the South Central Railway, RRB had sent a requisition for three vacancies due to non joining to the RRB and the RRB, South Western Railway, Bangalore had sent a replacement list against the examination conducted on 24.06.2007. The respondent No. 1 thus claimed that the RRB, Mumbai had no knowledge regarding 35 (11 + 24) unreserved vacant posts in Western and Central Railways due to non joining of candidates because no such requisition was ever sent by the C.P.O., Western Railway and C.P.O., Central Railway whereas the Southern Western Railway had already sent the list due to non joining against

which the RRB had sent the replacement list on 29.01.2010.

Learned counsel for the writ petitioners, RRB and Western Railway, however reiterated, as urged before the learned Tribunal, that the Central Administrative Tribunal, Patna Bench had no jurisdiction to adjudicate the application filed by the respondent No. 1 as para-20 of the said Advertisement clearly provides that any legal matter arising of this Employment Notice would fall within the legal jurisdiction of Central Administrative Tribunal, Mumbai Bench. This plea of the petitioners was turned down by the learned Tribunal, Patna Bench which we also affirm. The respondent No. 1 had filed OA before the Principal Bench for retaining the O.A. at the Principal Bench or permission to file the same at Patna Bench for final hearing. The Principal Bench had allowed the applicant to file the O.A. at Patna Bench. This is how, the matter was heard by the Patna Bench of the Tribunal and rightly so.

Yet another ground has been taken by the writ petitioners that the O.A. is barred by limitation as the cause of action arose in the year 2007 and that the panel is no longer in currency being an expired panel. It was also asserted that the Western Railway has placed fresh intent for 100 posts for ESM –III on 04-03-2009 before the RRB, Mumbai double the recruitment, in which the vacancies which remained unfilled due to non joining of Advertisement 2005, was also placed in the said 100 posts. It has been submitted that the last recommended candidate of RRB was on

27.6.2008 and the currency of the panel thus expired on 27.06.2009 that is after one year. This is totally incorrect. After the panel had expired, how the RRB in the case of Southern Western Railway sent the replacement list on 29.01.2010 out of the same panel against the examination conducted on 24.06.1997 of which the petitioner was also an applicant? To this the petitioners have no answer, nor has been controverted either before the Tribunal or in these writ petitions.

Thus the panel did not lapse till the year 2010. The petitioner moved the Principal Bench in 2010 and then the Tribunal, Patna Bench in T A 01/2010 as per permission granted by the Principal Bench. The Western and Central Railway never sent the vacancies of the replacement panel, notifying the vacancies due to non joining to the RRB yet the CPO, Western Railway sent a fresh intent of 100 posts of E.S.M. on 04.03.2009 to the RRB, Mumbai calculating the unfilled vacancies due to non joining of 2005 Advertisement whereas the South Central Railway had sent three vacancies due to non joining in pursuant to which the RRB had sent the replacement panel on 29.01.2010. Hence, the claim of the applicant/ Respondent No. 1 is not barred nor time barred. Hence the panel remained subsisting till , 2010.

Having considered the matter, in our view, the appellant can not be deprived of his right because of the default committed by the authorities as held in the **case of All India Groundnut Syndicate Ltd., v. Commr. of Income Tax, Bombay City, -232 –**

“A person cannot say that the party claiming the right is deprived of that right because “ I have committed a default and the right is lost because of that default.”

As a result, both the writ applications are dismissed and the order of the Tribunal is upheld. The authorities are directed to ensure filling up of the notified vacancies, existing out of non joining of the selected candidates of Advertisement No. 3 of 2005 and consider giving appointment to the respondent No. 1, Rajiv Kumar and issue appointment letter to the respondent No. 1 (Rajiv Kumar), whose verification has already been done, within a period of four months.

With these observations and directions, these two writ application stands disposed of.

(Nilu Agrawal, J.)

(Navaniti Prasad Singh, J.)

(Navaniti Prasad Singh, J.)

Sudha/-
A F R

U			
---	--	--	--