

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16140 of 2013

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1. The Union of India Through General Manager, East Central Railway, Hajipur
 2. The Divisional Railway Manager, East Central Railway, Sonapur
 3. The Senior Divisional Railway Manager (Personnel), East Central Railway, Sonapur
 4. The Senior Divisional Operating Manager, East Central Railway, Sonapur
 5. The Chief Medical Superintendent, East Central Railway, Sonapur
 6. The Chairman, Railway Recruitment Board, Ranchi

.... Petitioner/s

Versus

Avinash Kumar Son of Late Lal Bahadur Choubey Resident Of Koat Bazar, Ward No. 14, Champa Nagar, P.S. Sitamarhi, District - Sitamarhi, Ex Goods Guard, East Central Railway, Sonapur, District - Saran (Bihar)

.... Respondent/s

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Civil Writ Jurisdiction Case No. 16804 of 2013

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1. The Union of India Through General Manager, East Central Railway, Hajipur
2. The Divisional Railway Manager, East Central Railway, Sonapur
3. The Senior Divisional Railway Manager (Personnel), East Central Railway, Sonapur
4. The Senior Divisional Operating Manager, East Central Railway, Sonapur
5. The Chief Medical Superintendent, East Central Railway, Sonapur
6. The Chairman, Railway Recruitment Board, Ranchi

.... Petitioner/s

Versus

Avinash Kumar Son Of Late Lal Bahadur Choubey Resident Of Koat Bazar, Ward No.14, Champa Nagar, P.S. Sitamarhi, District - Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Sunil Kumar Ravi, Advocate
For the Respondent/s : Mr. Sanjay Kumar Choubey
Mr. M.P. Dixit, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-04-2015

These two writ petitions have been preferred by the Railways through the Union of India against the order of the Central Administrative Tribunal allowing the claim of the sole contesting respondent in both the writ petitions.

We have heard the learned counsel for the Railways and learned counsel for the sole contesting respondent and with their consent, these writ applications are being disposed of at this stage itself.

The facts are not in dispute and are factually the same in both the writ petitions. The applicants before the Central Administrative Tribunal are the sole contesting respondent. They had filed applications before the Tribunal for direction to the Railways to consider alternative employment for them. They had both applied for employment in the Railways. They have cleared the written examination. They had cleared the interview. They were selected and were appointed as Goods Guard. They were sent for medical examination where they were declared unfit for other posts. Both of them requested Railways that they may be considered for the post of Enquiry-cum-Reservation-Clerk, for which posts they had also applied. All these happened in the year 2008. Railways did not accede to their request. Ultimately, the



original applications were filed and the Tribunal allowed the same. The Railways then preferred Review Applications, which were also dismissed. The Tribunal held that at the time when the contesting respondents, who were petitioners before the Tribunal, their applications were being considered. The Railway Board's circular that were in vogue, obliged Railways, in case of medical deficiency, to offer alternative employment. It was only subsequently in the year 2010 that these circulars were cancelled. The Tribunal also noticed that another similarly situated person, who was medically downgraded, was offered alternative employment in the year 2009 by the Railways. The Tribunal, thus, accepted the contention of the petitioners before it and directed the Railways to immediately offer alternative employment to the petitioner, who is respondent before us.

In the factual matrix, as noted above, we are of the view that the Tribunal has not committed any error and the Judgment and order of the Tribunal need no interference. A right had accrued to the applicants before the Tribunal and Railway was bound to consider the same in accordance with subsisting circular. Railways cannot say that their office slept over the matter for any reason. The right of the applicant stood frustrated.

I can only reiterate what the Chief Justice Chagla said

in the case of *All India Groundnut Syndicate Limited – Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 :*

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person – we take it that the Income-tax Department is included in that definition – can put forward his own default in defence to a right asserted by the other party. 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.”

In view of the aforesaid, I have no option but to
dismiss both the writ petitions.

(Navaniti Prasad Singh, J.)

(Rajendra Kumar Mishra, J.)

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