

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.208 of 2014

In
Civil Writ Jurisdiction Case No. 10491 of 2013

- =====
1. Union of India, through the General Manager, Central Railway CST, Mumbai.
 2. The Chief Personnel Officer, Central Railway, CST, Mumbai.

.... Petitioners/Petitioners

Versus

Bijay Kumar, Son of Shri Brijdeo Paswan, Resident of Village and Post Office- Ariyaon, P.S.- Krishn Brahm, District Buxar, Bihar.

.... Respondent/Opposite Party.

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Appearance :

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate
Mr. Anil Singh, Advocate

For the Respondent/s : Mr. Ram Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

9 07-01-2015

The instant application has been filed seeking review of the order, dated 19.03.2014, passed in C.W.J.C. No. 10491 of 2013, whereby the writ application of the petitioners preferred against the order, dated 09.08.2012, passed by the learned Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 436 of 2009, has been dismissed.

2. The facts of the case, in brief, are that the opposite party herein applied, in response to Employment Notice No. RRB/BPL/1/2000, for Vocation Course in Railway Commercial (hereinafter referred to as 'VCRC'). He

(opposite party) was selected for the course in the year 2001 after clearing the written test and interview and, thereafter, he was sent to D.G.T. High School and Jr. College for two years job linked VCRC 2001-2001 vide letter, dated 28.06.2001.

3. Opposite party herein appeared, for the first time, in VCRC examination main examination in March, 2003, but failed. He (opposite party), then, appeared in March, 2005 and 2006 and was, declared *fail*, on both the occasions, he finally succeeded in passing the course in March, 2007.

4. According to the Railways, the opposite party did not avail 2nd, 3rd and 4th chance allowed by the Board. He also did not avail 6th and 8th chance of compartmental examination of October, 2005, and October 2006. He passed the said examination in his 9th chance, and, hence, he was not eligible to be considered for appointment in Railways as Ticket Collectors/Commercial Clerk.

5. Being aggrieved, the opposite party herein filed O.A. application, bearing O.A. No. 436 of 2009, before the Central Administrative Tribunal, Patna Bench. The learned Tribunal took the view that if the applicant (opposite party herein) had dropped the examination in

certain years and there was no compulsion to appear in departmental examination, for consecutive appearance, he ought not to have been declared failed and, consequently, he ought not to be treated ineligible for appointment to Railway services.

6. Being aggrieved by the order of the learned Tribunal, the Union of India (petitioners) filed a writ petition, which gave rise to CWJC No. 10491 of 2013. In the writ petition, the Union of India stressed before the Division Bench that in view of the Circular, dated 27.10.1995, which stood modified on 01.01.2004 and 10.12.2004, the opposite party ought to have passed the examination in 6th *consecutive examination*; but he passed in 9th *consecutive examination*. The Division Bench noticed that the learned Tribunal has relied upon pronouncement of Allahabad High Court on the same issue in the context of departmental Circular, dated 10.12.2004, to the extent that the opportunity to appear, at the succeeding examinations, was not to be read '*consecutively*' if the candidate passed, within the prescribed number of chances. With the conclusions, so reached, the Division Bench of this Court refused to reconsider the matter inasmuch as the Allahabad High Court had already interpreted the extent and scope of the Circular, dated

10.12.2004.

7. The case of the Railways is that the opposite party secured qualifying marks in his 9th *consecutive attempts*, whereas he ought to have secured qualifying marks within 6th consecutive attempts. Learned counsel, appearing for the Railways, submits that this Court committed an error apparent on the face of record by misreading the departmental Circular, dated 10.12.2004, which provided a maximum of 6th *consecutive attempts* and not total of six attempts and, thus, the writ Court was incorrect in taking the view that the Circular aforementioned permitted passing of the examination in an individual's 6 (six) attempts, which may not be at *consecutive examinations* held by the Railways.

8. We have perused the Examination Bye-laws of the year 1995 and the Circular, dated 10.12.2004. The Examination Bye-laws of the year 1995 was modified vide Circular, dated 01.01.2004 and 10.12.2004. Para 2 of the Circular, dated 10.12.2004, clearly stated that the students should attain qualifying marks in his 6th attempt, which must be at examination held immediately after each other. Para 2 of the Circular, being referred, is quoted hereinbelow for easy reference:

*"Para 2: It has now been
decided by the competent Authority*

that in addition to the above mentioned chances, students who secured prescribed percentage of marks in the immediate next year's main and / or its compartment examination (5th and / or 6th chances) may also be considered for appointment on the Railway subject to medical examination as per prescribed standard and other requisite formalities."

9. Further-more, the Government of India (Bharat Sarkar) Ministry of Railways (Rail Mantralaya) vide letter, dated 04.03.2005, after detailed review of the subject, decided to discontinue the scheme, which provided 6th *consecutive attempts* to clear the VCRC course.

10. In our view, this Court, whose order is under review, failed to take into account that even 2004 scheme did not provide for 9th attempt, but only 6th *consecutive attempts*, which scheme, too, was abolished on 04.02.2005 and, as such, the opposite party (respondents in the writ petition) could not have been given the benefit of the scheme.

11. In the result, this review application is allowed. The order, dated 19.03.2014, passed in C.W.J.C. No. 10491 of 2013, is accordingly recalled and the order,

dated 09.08.2012, passed by the learned Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 436 of 2009, is hereby set aside.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J: I agree

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(I. A. Ansari, J.)

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