

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23065 of 2013

=====

1. Bindhyachal Sharma S/O Late Lal Bahadur Sharma Senior Trackmen Under Senior Section Engineer, (Permanent Way), East Central Railway, Arrah (Bihar)

.... Petitioner/s

Versus

1. The Union Of India Through The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar)
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar)
3. The Divisional Railway Manager, East Central Railway Danapur, P.O- Khagaul, District- Patna, (Bihar)
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O- Khagaul, District- Patna (Bihar)
5. The Senior Divisional Engineer (Co- Ordination), East Central Railway, Danapur, P.O- Khagaul, District- Patna (Bihar)

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. MUNNA PRASAD DIXIT (M.P. DIXIT)
Mr. Sanjay Kumar Chubey, Advocate,
Mr. Shailendra Kumar, Advocate
For the Respondent/s : Mr. Mr. Sunil Kumar Ravi, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-12-2015

The writ petitioner is a Group-D (Class-IV) permanent employee of the East Central Railway at Danapur Division. He is aggrieved by the judgment and order of the Central Administrative Tribunal passed on 3rd September, 2013, in Miscellaneous Application No. 508 of 2012, arising out of O.A. No. 910 of 2012. His application before the Central Administrative Tribunal, Patna Bench, Patna, was



rejected consequent to his Miscellaneous Application for condonation of delay being rejected. From the order of the Tribunal, we find that though the Tribunal refused to condone the delay and thus rejected the application, it traversed on merits as well. When we look into the merits, we find that grave injustice appears to have been done to the petitioner, and it would be a graver injustice to deny him relief. We, therefore, directed the Railways to file a proper comprehensive counter affidavit. That has been filed and that clears the controversy.

2. In view of the facts involved and the rights involved, we are of the view that instead of legal technicality, depriving petitioner of relief, considering the fact that he was a Group-D (Class-IV) employee working as a Gangman on the railway tracks, the Tribunal ought have entertained the matter after condoning the delay on merits. Now that counter affidavit has been filed and the facts are before this Court and there are no controversies, instead of remanding the matter and wasting further time, with consent of parties, we have heard them at length for final disposal of the matter at this stage itself.

3. In Railways so far as Group-C posts are concerned, in respect of some of them with which we are concerned, there is a reservation with regard to filling up the posts. Fifty percent of the vacancies are to be filled up by promotion from Group-D. It is not in dispute that there are different cadres of Group-D posts, who are all



eligible for promotion to Group-C posts in the same transaction. The promotion has to be on the basis of merit-cum-seniority, which is only logical, because the persons under consideration appear from different cadres and their inter se seniority cannot be determined or there exists no inter se seniority. Thus, it is primarily merits followed by seniority, which would be length of service. This is of some significance because of the facts we would note hereinunder.

4. The examination for this promotion or the limited departmental examination, as it is known, was conducted in the year 2003. There were 10 vacancies in the un-reserved sector. The petitioner is an un-reserved category employee. Ten persons were selected and the petitioner did not figure therein. Neither the result was published, nor the petitioner was told as to why he had not been selected. What was known was that selection had been made of ten senior persons, as per the examination results. It is much later when the petitioner discovered that, in fact, he had been unjustly treated and the result had been deliberately not published. He, accordingly, made an application under R.T.I and obtained the merit list. He and we are, both, surprised. The Railways do not dispute this merit list in their counter affidavit. The petitioner had topped the merit list with 79.57 percent marks. We may just note that learned counsel for the petitioner submits that 79.57 percent marks would qualify him to be



securing 80 percent and, thus, would be “outstanding” and would have entitled him to immediate appointment by way of promotion to Group-C. The counter affidavit also admits that the petitioner had 79.50 percent marks. We need not go into the controversy of 80 percent or otherwise, for, in our view, if we see merit list, there is no one securing above 70 percent. It appears that, as in seniority, the rationale of which we do not know, the petitioner has been placed at serial no.12 for this examination. The first ten, irrespective of merits, have been selected, ignoring the merit of the petitioner. People with 60 percent, the highest being 67.65 percent having been selected, the petitioner having 79.57 percent not appointed, would be a travesty of justice, if merit-cum-seniority is the norm, which is not in dispute. Thus, we have to give a finding that amongst all the persons, the petitioner was the most meritorious and, therefore, was the person, who ought to have been first selected for grant of the said promotion. He was kept in dark, while others, who are less meritorious were selected and promoted. We have to do justice *ex- debito justitiae*.

. 5. Accordingly, we have to set aside the order of the Tribunal and allow the writ petition, directing the Railways to promote the petitioner from Group-D posts, where he has been unjustly made to work for over 10 years, to Group-C post forthwith. However, this would be subject to the condition that the promotion to

Group-C post would be prospective. The effect of this order must be given within one month.

.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

B.K.Roy/-

U			
---	--	--	--