

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5969 of 2011

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1. The Union of India represented through the General Manager N.F. Railway Maligaon, Guwahati (Assam).
 2. The General Manager (Personnel), N.F. Railway Maligaon, Guwahati (Assam).
 3. The Divisional Railway Manager, N.F. Railway, Katihar Division, Katihar (Bihar).
 4. The Divisional Railway Manager (Personnel), N.F. Railway, Katihar Division, Katihar (Bihar).
- Petitioners.

Versus

1. Ram Deo Mahto, son of Late Bhola Mahto, resident of village-Singhiya, P.S.-Singhiya, District-Samastipur (Bihar), working as Sr. Goods Guard, Malda under the DRM N.F. Railway, Katihar.
 2. Vinay Kumar Ganguly, son of Late Dharnidhar Ganguly, residing in Railway Q. No.494, Girija Colony Katihar, working as Sr. Goods Guard, N.F. Railway, Katihar, Bihar.
 3. Hawaldar Yadav, son of Late Ram Murat Yadav, resident of Mohalla Lalyahi Indranagar, District-Katihar, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 4. Dhrub Kumar Yadav, son of Late Chedi Prasad Yadav, residing in Railway Q. No.373 A, New Colony Katihar, working as Sr. Goods Guard at Katihar.
 5. Krishan Kumar Choudhary, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 6. Kamal Singh Chauhan, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 7. Harendra Kumar Srivastava, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 8. Upendra Kumar, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 9. Shachindra Nath Jha, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 10. Bankim Chakma, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
 11. Madan Gopal Singh, working as Sr. Goods Guard, N.F. Railway, Katihar (Bihar).
- Respondent 1st Set.
12. Sri Santosh Kumar Das, Passenger Guard, Katihar.
 13. Sri Uma Kant Jha, Passenger Guard, Malda.
 14. Sri Prabodh Chandra Ambasta, Passenger Guard, Katihar.
 15. Sri Indu Kant Jha, Passenger Guard, Katihar.
 16. Sri Laxman Prasad, Passenger Guard, Katihar.
 17. Sri Ashok Kumar Sinha, Passenger Guard, Malda.
 18. Sri Upendra Nr. Mishra, Passenger Guard, Katihar.
 19. Sri Pradip Kumar Biswas, Passenger Guard, Katihar.
 20. Sri Ranjit Kumar Choudhary, Passenger Guard, Malda.
 21. Sri Subash Pd. Singh, Passenger Guard, Katihar.
 22. Sri Akhileshwar Nath Pandey, Passenger Guard, Katihar.
 23. Sri Kaushik Mitra, Passenger Guard, Katihar.
 24. Sri Mukund Mishra, Passenger Guard, Katihar.
 25. Sri Binay Kr. Singh III, Passenger Guard, Katihar.
 26. Sri Prabir Sarkar, Sr. Goods Guard, Malda.
 27. Sri Kamakhya Saha (SC), Passenger Guard, Malda.
 28. Sri Dipak Kr. Roy (SC), Passenger Guard, New Jalpaiguri.
 29. Sri Gautam Sinha (ST), Passenger Guard, Malda.
 30. Sri Shantu Majumdar (SC), Passenger Guard, New Jalpaiguri.

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31. Sri Nand Lal Meena (ST), Sr. Goods Guard, New Jalpaiguri.

.... Respondent 2nd Set.

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Appearance :

For the Petitioners : Mr. D.K. Sinha, Senior Advocate
Mr. Mahesh Prasad, Adv.
For the Respondents : Mr. Amarnath Jha, Adv.

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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: 09-07-2015

An unnecessary controversy, created by the Railways in its own set up, needs to be resolved by this Court. The applicants before the Central Administrative Tribunal, Patna Bench, Patna (hereinafter for the sake of brevity 'Patna Tribunal'), from which this writ petition arises, were working as Senior Goods Guard. They are aggrieved by the procedure laid down by the Railways for their appointment from the post of Senior Goods Guard to Passenger Guard, both are Selection Grade posts, having the same pay-scale of Rs.5000-8000. Movement from Senior Goods Guard to Passenger Guard is not promotion as it is only a lateral movement. They would be a distinct class. On the other hand, Goods Guard is a junior cadre/position in the pay-scale of Rs.4500-7000. Their movement either to the post of Senior Goods Guard or to the post of Passenger Guard both of which are selection grade posts being vertical movements are pure promotions. They are a separate category.

2. The submission was that this being the position then asking the two distinct groups i.e. one of Senior Goods Guard (Selection Grade, pay scale of Rs.5000-8000) to be clubbed along with Goods Guard (non-selection grade posts, pay-scale of Rs.4500-7000) and asking both these distinct and different groups to undergo the same written examination and viva-voce for being made Passenger Guard would be arbitrary and violative of Article-14 of the Constitution. Article-14 of the Constitution provides that unequal cannot be treated equally. It appears that such a plea as before the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter for the sake of brevity 'Allahabad Tribunal') was accepted and the Allahabad Tribunal held that in one case i.e. Senior Goods Guard to Passenger Guard, it is not a promotion in any sense but lateral movement, whereas from Goods Guard to Passenger Guard is a vertical promotional movement. They both cannot be subject to the same examination process to come to the post of Passenger Guard. The Allahabad Tribunal held that Senior Goods Guard would not be subject to any written examination. They would be subject to only viva-voce to judge their competency, whereas Goods Guard would be subject to written examination on qualifying viva-voce but, ultimately, there would be a single merit list. This is what the applicants before the Patna

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Tribunal sought and were granted.

3. It may be noticed that being aggrieved by the decisions of the Allahabad Tribunal, the Railways went to the Apex Court and, while the matter was pending before the Apex Court, the Railways took a one time decision in respect of the litigants involved in that case to waive the provision of written examination for Senior Goods Guard. Thus, in respect of the litigants, the Railways accepted as one time measure the order of Allahabad Tribunal. The Apex Court noted its reservation about this one time decision but, in view of this changed situations, the proceedings before the Apex Court stood terminated without decision as to the correctness or otherwise of the judgment of the Allahabad Tribunal. rendered in the case of Gulam Mustafa and others Vs. Union of India and others being O.A. No.829 of 2001, Mithilesh Kumar and others Vs. Union of India and others being O.A. No.1268 of 2004, A. Haldhar and others Vs. Union of India and others being O.A. No.89 of 2005.

4. As noted earlier, the Patna Tribunal followed the judgment and the reasoning of the Allahabad Tribunal and allowed the original application. Hence, Railways has filed this writ petition challenging the decision of the Tribunal.

5. Mr. D.K. Sinha, learned Senior Counsel appearing

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on behalf of the Railways, raised an objection as to the maintainability of the original application as before the Tribunal by the applicants who were Senior Goods Guard. He submitted that the applicants, having taken the test along with Goods Guard and having failed therein, cannot turn around and challenge the validity of test they were made to take. Though, prima facie, it is correct but, in ultimate analysis, the objection cannot be sustained for simple reason that the applicants challenged the constitutional validity of the examination process. As noted above, they submit that it would be *ultra vires* the constitution to club them along with the junior cadre in the same examination process. The issue of constitutionality being there, there cannot be any estoppel either estoppel by conduct or otherwise. The objection is, thus, not sustainable.

6. To us, the actual dispute is with a different object in mind. So far as Guards are concerned, there are three grades. The upper most being Mail and Express Guards. The feeder cadre for this is Passenger Guard. Passenger Guard is a selection grade post. Passenger Guard in turn has two feeder branches. One from the Senior Goods Guard, which is again selection grade post or direct from Goods Guard, which is non-selection grade junior post. So far as Goods Guard is concerned, they can either first go to

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Senior Goods Guard and from there come to Passenger Guard or directly from Goods Guard to Passenger Guard. The first thing that is to be noticed is to go or to rise to the position of Mail/Express Guard, one has necessarily to pass through Passenger Guards even though Senior Goods Guard is also a selection grade post. The problem arises when we come to Passenger Guard. From the two sources, as noted above, (i) already in selection grade in the same rank and (ii) other from the junior non-selection grade post of Goods Guard, they are both clubbed together and treated similarly and are forced to the same written examination and viva-voce in a common transaction. In other words, seniors of selection grade and juniors from non-selection grade are made to sit in the same examination and to compete with each other and face the same interview competing with each other. This is what makes it arbitrary and discriminatory. Unequal cannot be treated equally. In case of Goods Guards, it is undoubtedly a promotion but, so far as Senior Goods Guard are concerned, it is not a vertical but a lateral movement in the same grade from one selection grade post to another. They are two very dissimilar posts and cannot be similarly treated.

7. Thus, we have no difficulty in holding that the two, even though competing for the same post, cannot be put to the

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same examination process. The Allahabad Tribunal was, thus, right and the Patna Tribunal was also right in following the Allahabad Tribunal. Thus, we hold that asking the Senior Goods Guard to take the same examination as of Goods Guard is arbitrary and *ultra vires* of Article-14 of the Constitution. Such examinations, in so far as Senior Goods Guard is concerned, cannot be permitted. Both Senior Goods Guard and Passenger Guard being of the same grade and both the selection grade posts only the question of suitability of posting has to be decided. It may be noted that the applicants before the Tribunal have clearly stated, which is not contradicted by the Railways that there being great shortage of Passenger Guards, invariably Senior Goods Guards are made to work as Passenger Guards. This clearly shows that Railways in itself always considered the two i.e. Senior Goods Guard and the Passenger Guards at the same level then asking them to take a formal written test and face interview along with their juniors is arbitrary. We hold accordingly.

8. Before parting, we would like to observe something of general nature. Whenever we are dealing with statute, regulation, circular or procedure, which has a pan-India application, the authorities must try for a common decision and follow a decision taken by the competent Court or Tribunal and

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apply the same pan-India otherwise it would lead to a lot of hard burning and administrative chaos. The same circular would have different application in one zone and another which is most undesirable. If the authorities are dissatisfied that the order of the Tribunal or a Court with regard to such a common circular, they should take the matter at the earliest to the Apex Court and get it settled because in that situation, automatically it would operate and bind the entire country otherwise there may be chaos, as noted above. It would be advisable that once there is a judgment in respect of a provision, regulation or a circular then either the Railways should accept it and apply it in similar manner without forcing the people at different stations to different Courts and multiplying litigations and if they are not satisfied then carry the matter to higher forums at the earliest. There must be uniformity of application of a provision throughout the country.

9. In view of the aforesaid, we are not inclined to interfere with the order of the Patna Tribunal. We find no merit in the writ application. Accordingly, the writ petition is dismissed.

(Navaniti Prasad Singh, J.)

(Rajendra Kumar Mishra, J.)

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