

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14063 of 2013

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1. The Union Of India Through General Manager, E.C. Railway, Hazipur
 2. The Chief Personnel Officer, E.C. Railway, Hazipur
 3. The Divisional Railway Manager, E.C. Railway, Danapur
 4. The Sr. Divisional Personnel Officer, E.C. Railway, Danapur
 5. The Sr. Divisional Electrical Engineer (Operation), E.C. Railway, Danapur

.... Petitioner/s

Versus

1. D.K. Singh Son Of Late T.K. Singh Loco Pilot (Passenger) E.C. Railway, Danapur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SUNIL KUMAR RAVI

For the Respondent/s : Mr. M.P. Dixit, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 26-02-2015

Railway, through Union of India, has filed this writ petition against the order of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the Tribunal) in O. A. No. 140 of 2008 being order dated 13.4.2012 by which it has allowed the Original Application of the sole respondent who has appeared in this writ proceedings without notice.

Heard the parties and with their consent, the writ petition is being disposed of at this stage itself.

The sole respondent, who was the applicant before the Tribunal, had challenged the order of the Railway, by which he had been held to be ineligible for being considered for the selection to the post of Loco Inspector. It appears several persons, who were employees of the Railway, had applied for their selection. His application was rejected by the Railway solely on the ground



that he lacks three years' experience as Foot Plating in moving running train. This was the solitary dispute before the Tribunal. The Railway contended that he had no requisite experience. The Tribunal with reference to the Railway Regulations found otherwise. The Tribunal found that the sole respondent had much more than three years experience and was wrongly held ineligible. The Tribunal, accordingly, allowed the Original Application and directed Railway to consider placing the sole respondent as Loco Inspector. Being aggrieved, Railway has filed this writ petition challenging the order of the Tribunal. The only ground, taken to attack the order of the Tribunal, was that, in fact, there was no vacancy left for considering the petitioner for being placed on the post of Loco Inspector. One Devendra Prasad, who was senior, had been selected and appointed, as such, there was no further vacancy. The employee, accordingly, had not only to make said Devendra Prasad a party to the proceedings before the Tribunal but he would be required also to challenge his selection. In absence of Devendra Prasad who was a necessary party, the proceedings before the Tribunal were not maintainable. Accordingly, the order of the Tribunal ought to be set aside and the employee's Original Application before the Tribunal was required to be dismissed.

We have considered the matter and in our view, the writ petition is misconceived. Whether a party is a necessary party or not or whether a proceeding has to fail for non-joinder of necessary party is a plea that is available to a party and he must raise it at the earliest possible. Had this plea been raised by the Railway before the Tribunal, the sole respondent before us would have had opportunity to add the said Devendra Prasad as a party respondent and then to contest the matter. Railway cannot keep quite in the matter. It let the Tribunal proceed and took a chance before the Tribunal and having failed, then, came in the writ petition taking this ground which was never raised before the Tribunal.

Thus, this ground is not available to the Railway.

There is yet another reason for holding so. The sole respondent before us rightly contends that the Railway had not rejected the candidature of the employee for reasons of there being no vacancy. That was never the ground at any stage. The ground was ineligibility because he lacks experience. In our view, it was rightly contended by the employee that if the employee had lacked the eligibility, where was the question of senior being appointed and the Railway taking a plea of there being no vacancy. Such eventuality of ineligibility would come when there was a vacancy and not otherwise. That being so, we find no merit in the writ petition, it is accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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