

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10569 of 2013

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N.K. Pratihast S/O Late A. Pratihast P.S.-II Under Chief Mechanical Engineer, East Central Railway, Hajipur, District- Vaishali (Bihar), R/O Village And P.O.- Hissar, Via- Khirhar, District- Madhubani, 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 Deputy Chief Personnel officer, (Gazetted), East Central Railway, Hajipur, District- Vaishali (Bihar)
4. The Chief Mechanical Engineer, East Central Railway, Hajipur, District- Vaishali (Bihar)
5. The Chief Security Commissioner, Railway Protection Force, East Central Railway, Hajipur, District- Vaishali (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Advocate
Mr. Nivas Madhuvan, Advocate
For the Respondent/s : Mr. Shabbir Ahmad, 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: 06-02-2015

The petitioner is aggrieved by the order of the Central Administrative Tribunal, Patna Bench (hereinafter referred to as the Tribunal) passed in O. A. No. 66 of 2012 being order dated 12.3.2013 by which petitioner's application for a direction to the authorities to consider his case for promotion has been rejected. He has also prayed for quashing of the communication by which it is communicated that entries in his ACR having not been reviewed, his case for promotion could not be taken up.

Heard learned counsel for the petitioner and learned counsel for the Railways at length. With their consent, the writ petition is being disposed of at

this stage itself.

At the relevant time the petitioner was employed in the East Central Railways in the cadre of Private Secretary. In the year 2007-08 his ACR was filled by the Reporting Officer as 'Outstanding' on 25.5.2008. For the year 2009-09 the Reporting Officer graded the petitioner as 'Very Good' on 28.6.2009. For the year 2009-10 the Reporting Officer graded the petitioner as 'Good' vide his report dated 17.3.2010. Thereafter, petitioner was to be considered for promotion. When he found that he was not in the list for consideration, he represented and made inquiries and then, not being satisfied moved the Tribunal. Before the Tribunal it was disclosed that after the ACR were written as aforesaid by the reporting officer, they were put up before the Reviewing and Accepting Officer who disagreed in every aspect with the Reporting Officer and downgraded the over all grading of the petitioner to 'Average' on 25.10.2010 in respect of all the entries of three years. The ultimate ACR, thus, being average, he was found unfit for being considered for promotion. The Tribunal immediately noticed that neither of these were ever disclosed or communicated to the petitioner nor the petitioner granted an opportunity to represent against these down grading which had serious civil consequences inasmuch as it is because of this that he was now being deprived of his promotion. The Tribunal accordingly, directed the petitioner to make representation to the Reviewing and Accepting authority who would reconsider the matter and then, communicate the result thereof to the petitioner. Petitioner would then, represented with regard to the entries, so written, before the next higher authority. To us, the matter was clear and correct but that was not to be. Upon petitioner representing before the Reviewing and Accepting authority, rather than reconsidering the matter, it appears the Reviewing and Accepting authority took affront to the direction of the Tribunal

and virtually in arrogant manner held thus:

“On reconsideration of ACR of Shri N. K. Pratihast for the Fin. Year ending 31-03-2008, undersigned is of the opinion that the performance of work and the qualities exhibited by Shri N. K. Pratihast in the period under review were as have already been mentioned in Part IV- Column 3, in Section 11- Columns 2 (a) to 2 (e), and in Section II- Column “Remarks by the Head of the Department”, in the aforesaid ACR, and again mentioned in paragraphs 3.2. and 3.3 above. However, it is not possible for undersigned to quantify concerned indiccs in terms of numerical values. Therefore if any superior authority or any Honourable Court is of the opinion that the reasons mentioned by undersigned in Part IV Column 3, in Section II- Columns 2 (a) to 2 (e), and in Section II- Column “Remarks by the Head of the Department”, in the aforesaid ACR are not sufficient to justify the disagreement of undersigned with concerned Reporting Authority, then the remarks recorded by concerned Reporting Authority may be accepted.”

If this is not arrogance, then what it is? It is not expected of a senior officer to write such a note upon being asked by the Tribunal to reconsider the matter. This was not the end. Against this, the petitioner then represented, as directed by the Tribunal, to the next higher authority, who would be AGM, but the matter was placed before the GM because it was thought that the GM, being the authority to grant promotion, he would reconsider the matter. When the matter come up before the GM he also washed his hands off stating that if the Reviewing Authority has refused to review the entries in the ACR, he was also helpless in considering the promotion. Thus, the petitioner was left where he was, notwithstanding orders of the Tribunal. He once again came to the Tribunal. The



matters were placed before the Tribunal to show that earlier orders of the Tribunal had, in fact, not at all been obeyed but curiously this time the Tribunal held for some reason that, petitioner being in the cadre of Private Secretary, which was a sensitive post, the assessment, as made by high officials after consideration of all relevant facts, should not be interfered with. It is a tragedy that the Tribunal noted that the Reviewing Authority had given cogent reasons for not reviewing the matter. As we have quoted earlier, we fail to see any cogent reason at all given except arrogance. All we can say is to quote the observations made by Justice L. M. Sharma in the case of **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others**, since reported in **AIR 1991 SUPREME COURT 101** in paragraph 223:

There is a need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however, high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law”



In view of the aforesaid, we fail to understand the reasoning of the Tribunal, who refused to interfere in the matter, even though, apparently the earlier order of the Tribunal was not acted upon in true letter and spirit. We, therefore, are constrained to hold that the earlier order of the Tribunal directing the reviewing authority to reconsider all the matter and thereafter the next higher authority to look into the matter, if the petitioner aggrieved, both not being complied with. We, thus, have no option but to set aside the order of the Tribunal as also the order of the General Manager and of the reviewing and accepting authority. As quoted above, it must be noted that when a responsible officer, under whom a person is working, writes something positive in the ACR and the Reviewing and Accepting Authority drastically wants to alter the same, he must have some good reasons for it. 'Outstanding' granted by the reporting authority in one stroke has been reduced to 'Average'. Why, we still do not know. That is not the law. There being no reason disclosed for this down gradation, we would set aside the assessment as made by the reviewing and accepting authority and maintain the same as granted by the reporting authority. The General Manager would now take the ACR entries to be as entry made by the reporting authority and proceed in consideration of matters of promotion of the petitioner and other consequences. The order impugned of the Tribunal, the GM and the Reviewing and Accepting Authority are consequently set aside.

The writ petition, thus, stands disposed of.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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