

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1512 of 2014

In

Civil Writ Jurisdiction Case No. 23062 of 2013

- =====
1. Rajnikant Ojha S/o Shri Siyaram Ojha R/o Village - Pipra Jagdish, P.O. Lahanga Dumariya, P.S. Bihiya, Distt. - Bhojpur (Bihar)
 2. Tej Narayan Ojha S/o Shri Jay Narayan Ojha R/o Village - Pipra Jagdish, P.O. Lahanga Dumariya, P.S. Bihiya, Distt. - Bhojpur (Bihar)

.... Petitioners-Appellants

Versus

1. The Union of India, through Secretary, Ministry of Railways
2. Chief Security Commissioner/RPF/ECR/Hajipur
3. Dy. Chief Security Commissioner/RPF/ECR/Hajipur
4. Chief Security Commissioner/RPF/NR
5. Chairman, Ancillary Recruitment Committee (RPF/RPSF), Patna Centre

.... Respondents

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with

Letters Patent Appeal No.447 of 2015

IN

Civil Writ Jurisdiction Case No. 23062 of 2013

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 2. Chief Security Commissioner /RPF/ECR/Hajipur
 3. Dy. Chief Security Commissioner/ RPF/ECR/Hajipur
 4. Chief Security Commissioner/ RPF/NR
 5. Chairman, Ancillary Recruitment Committee (RPF), Patna Centre

.... Respondents-Appellants

Versus

1. Rajnikant Ojha S/O Shri Siyaram Ojha R/O Village Pipra Jagdish, P.O. Lahanga Dumariya, P.S. Bihiya, Distt. Bhojpur (Bihar)
2. Tej Narayan Ojha S/O Shri Jay Narayan Ojha R/O Village Pipra Jagdish, P.O. Lehnga Dumariya, P.S. Bihiya, Distt. Bhojpur (Bihar)

.... Petitioners-Respondents

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Appearance :

(In LPA No.1512 of 2014)

For the Appellant/s : Mr. Harsh Singh, Advocate

For the Respondent/s : Mr. Siddharth Prasad, Advocagte

(In LPA No.447 of 2015)

For the Appellant/s : Mr. Siddharth Prasad, Advocate

For the Respondent/s : Mr. Harsh Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

appeals who are also the respective respondents.

Both these appeals arise out of the judgment and order dated 2.9.2014 passed by a learned Single Judge of this Court in writ petition being CWJC No. 23062 of 2013 by which the writ application has been allowed with certain directions.

The grievance of the appellants in LPA No. 447 of 2015 is with regard to the finding that the decision to cancel the entire process of selection was an arbitrary exercise of power and further with respect to the direction to the Chief Security Commissioner/RPF/NR, respondent No.4 to pay the two writ petitioners a sum of Rs.5 lac each in order to compensate the infringement of their fundamental rights by the respondents. The writ petitioners, on the other hand, have filed LPA No. 1512 of 2014 being aggrieved by the fact that although the finding has been recorded by the learned Single Judge that it cannot be said that irregularities were all pervasive and beyond correction/segregation and it was difficult to sustain the decision of the respondents to cancel the entire selection process and that the said cancellation of selection process was arbitrary exercise of power yet the consequential direction for being considered for appointment to the posts which had been advertised has not been given.

The short facts as may be relevant for the consideration of the appeals are that pursuant to an Employment Notice No.1 of



2008 dated 17.3.2008 for selection on Class IV posts of Ancillary Staff in RPF/RPSF for three recruitment centres, Patna, Jaipur and Hyderabad, the petitioners along with others applied for the posts of Water Carrier under General Category of Patna Centre and had participated in the selection process held at recruitment centre, Patna under the supervision of ancillary Recruitment Committee Board in Physical Examination Test (PET) and fitness test/viva voce. It is claimed by the petitioners that the merit list was prepared in which the petitioners were successful but the same was not published. It is not disputed, as has been recorded in the judgment itself, that the records of the case were called by the learned Single Judge and it was found that the writ petitioner No.1 was placed at serial No. 42 and writ petitioner No.2 at serial No.30 in the tentative merit list of 86 unreserved posts of Water Carrier. However, certain irregularities and deficiencies having been reported in the selection process an order dated 22.12.2008 was passed by which the Scrutiny Committee was constituted for looking into the illegality and deficiency of the said selection process. The four Member Scrutiny Committee while looking into the matter called for the records from the authorities involved in the selection process and at the outset as many as 34 irregularities/deficiencies were found but subsequently in the course of the scrutiny they were clarified/removed; ultimately by the report dated 16.4.2009 it was reported that most of the



mistakes were reported to have been corrected, clarified and verified and only with regard to non-receipt of discarded records as also certain candidates having filed only provisional certificate with regard to caste, educational qualification and date of birth; apart from that the irregularities in the totaling of vacancies under the category of OBC/Safaiwala and UR/BARBER were noted, with regard to which a comment was made that the same needs to be clarified by the Chairman as to whether it is a printing error or otherwise. The final conclusion of the Scrutiny Committee was on perusal of the third scrutiny report and it has been observed that the irregularities pointed out during various stages of scrutiny seemed to have been clarified satisfactorily. However, by notice issued in the employment news dated 26.9.2009-2.10.2010 the Employment Notice No.1 of 2008 dated 7.3.2008 published in the Employment News dated 22-28 March, 2008 for the post of Ancillary Staff in RPF/RPSF for recruitment centre Patna was cancelled stating that fresh notification for recruitment of Ancillary Staff shall be issued shortly; however, all the candidates found fit in physical measurement during the recruitment held at Patna centre will be allowed to appear in the fresh recruitment and they need not apply afresh.

Aggrieved by the same the petitioners filed writ petition challenging the said cancellation notice. Subsequently by Employment Notice No.01/2013 published on 11.1.2014



applications were invited for various posts of Ancillary Staff of different grades, including admittedly the vacancies caused by cancellation notification. It may here be noted that so far as the recruitment process undertaken at the other two centres, Jaipur and Hyderabad, were concerned they were carried to their logical conclusion resulting in appointment against the said vacancies. In the fresh notification the eligibility criteria was changed as also the process of recruitment to be followed. Educational qualification was enhanced from Class VIII to Matriculation, age limit was fixed from 18 years but not more than 25 years as on 1.1.2014, whereas earlier it was 18 to 33 years as on 1.7.2008 and recruitment was to be made on the basis of the performance of the eligible applicants in a written examination, physical efficiency test, physical measurement test, trade test, bonus marks, if any, and document verification, whereas there was no provision for any written test in the earlier advertisement.

The learned Single Judge has dealt with all the materials in detail in the order impugned before us as also perused the records with regard to the recruitment process which had been called for by him and ultimately came to the conclusion that the irregularities pointed out during various stages of scrutiny seemed to have been clarified satisfactorily. The Court also took note of the fact that nothing has been brought on the record to demonstrate that the observations in note file dated 16.4.2009 were considered



by the competent authority before taking into account the said note file, which was part of Annexure-10 to the writ application, and was, accordingly, of the view that it cannot be said that the irregularities were all pervasive and beyond correction/segregation. It was further held that upon perusal of the records it was difficult to sustain the decision of the respondents to cancel the entire selection process in the facts and circumstances of the case and as such the decision was not based upon proper application of mind to the relevant facts. The Court was also of the view on perusal of the original records produced before him that had there been merit list published on the basis of the selection merit in question the petitioners ought to have been declared successful as the petitioner No.1 was placed at serial No.42 and petitioner No.2 at serial No.30 respectively but the said selection process was cancelled. The Court also took note of the fact that the subsequent advertisement maintained a complete silence with regard to the earlier cancellation notice upon the rights of the petitioners which had been preserved by the said cancellation notice. The learned Judge was accordingly of the view that the fundamental rights of the petitioners guaranteed to them under Articles 14 and 16 of the Constitution of India have been breached by the respondents and such infringement will be required to be compensated by the respondents under Article 226 of the Constitution of India but further noted that since six years had



passed after commencement of selection process, therefore, it desisted from issuing any direction to the respondents compelling them to appoint these petitioners against those posts on the basis of selection process which came to be cancelled, although the cancellation, according to him, was arbitrary exercise of power. Accordingly direction was issued to pay a sum of Rs.5 lac each to the two writ petitioners in order to compensate the infringement of their fundamental rights, to the Chief Security Commissioner, Railway Protection Force, Northern Railway, respondent No.4. Further direction was issued to the Railway Board of Ministry of Railway to hold an enquiry into the circumstances in which the terms of cancellation notice were not complied with, obviating consideration of these petitioners and other similarly situated persons for their appointment to the posts advertised and such enquiry must be instituted by the Railway Board and concluded within a period of three months from the date of the communication of that order and further the Chairman of the Railway Board was to consider initiation of disciplinary proceeding against the persons found responsible for their inaction in the matter.

In the memo of appeal filed by the Railways before this Court certain fresh documents have been filed, particularly with regard to the decision taken for the cancellation of the recruitment. It is pointed out that the decision was taken at the level of DG/RPF



and communicated to the Chief Security Commissioner, RPF/NR, New Delhi by letter dated 13.8.2009 by the Government of India. Ministry of Railways (Railway Board) under the signature of the Deputy Director/Security (E), Railway Board in which the following decisions were communicated, i.e., fresh recruitment may be held by issuing a fresh Notification but before doing that a notification indicating the cancellation of the recruitment held at Patna Centre in pursuance of Employment Notification No. 01/2008 dated 07.03.2008 may be issued by CSC/NR; all those candidates who were found fit in physical measurement during earlier recruitment may be allowed to appear in the fresh recruitment and such candidates may not require to apply afresh; the vacancies to be advertised by fresh Notification may be open to all eligible male citizens of India and lastly the existing and anticipated vacancies to 31.12.2010 on all zonal Railways/RPSF may be compiled and sent to the Security Directorate and a fresh Notification may be issued by CSC/NR as was done earlier.

It is submitted by learned counsel for the appellant-Railways that the letter was issued by the CSC/NR only on the basis of the decision taken at the level of the DG/RPF under the Railway Board and not by CSC/NR and thus there could be no occasion to saddle the CSC/NR with the direction to pay compensation of Rs.5 lacs to each of the petitioners.

It is further submitted that at worst the decision may be



called a wrong decision there was no arbitrariness involved as the matter was considered at the highest levels of the RPF and on a consideration of the entire materials the decision was taken to cancel the entire recruitment process at Patna centre and there was neither any mala fide nor any attempt to deliberately deprive the petitioners of their rights in the matter. It was according to learned counsel a bona fide administrative decision taken on the given facts in view of the irregularities/deficiencies reported in the recruitment process and thus does not call for the direction to pay compensation even if it is ultimately held by this Court that the decision was wrong.

It is also submitted by learned counsel for the Railways that the earlier cancellation Notification itself being very clear that the eligible applicants of the earlier recruitment process at Patna centre need not apply afresh and they were permitted to participate in the fresh recruitment process, there was no requirement to mention the same in the fresh advertisement and, as a matter of fact, the admit cards were also prepared with respect to all the eligible candidates, although admittedly a letter dated 22.5.2014 referring to earlier Board's letter dated 13.8.2009 stated that only Matriculate candidates, who were found fit on physical measurement during the earlier recruitment process, may be permitted to appear in the examination as and when conducted pursuant to the fresh advertisement. It is submitted by learned

counsel for the Railways that the writ petitioners can have no grievance on that count as both of them were matriculates and their admit cards had also been uploaded on website of the Railways but they chose not to appear in the competitive examination.

Learned counsel also relied upon another writ petition, being CWJC No. 7095 of 2011, filed by one Manoj Kumar Choudhary with regard to non-publication of results although he claimed that he had appeared for physical test and was successful pursuant to the advertisement of the year 2008 and since the respondent Board took a stand that the Employment Notice No. 01 of 2008 dated 7.3.2008 itself has been cancelled, the writ application was dismissed by order dated 22.07.2011 holding that the Court cannot command the respondents to publish the result since they had already decided not to go ahead with the said selection process for the reasons set out in the counter affidavit. It is thus submitted that the present writ petitioners cannot be permitted to agitate the issue afresh and the relief sought by them is practically on the same lines as that of the said Manoj Kumar Choudhary. It is submitted that in the impugned order the said order dated 22.7.2011 passed in Manoj Kumar Choudhary's case (supra) has been considered.

Learned counsel for the Railway further submits that even after the third round of scrutiny although the Scrutiny

Committee has stated that irregularities pointed out during various stages have been removed satisfactorily but as a matter of fact on several issues there was no comment and further clarifications were found to be required from the Chairman of the Selection Committee on certain points.

Learned counsel for the writ petitioners, on the other hand, while forcefully pressing in his support the conclusion drawn by the learned Single Judge with regard to arbitrariness and non-application of mind in passing the order of cancellation, has merely sought to submit that the consequences of such wrong cancellation have not been rightly applied by the learned Single Judge and having found that the cancellation of the recruitment process was arbitrary and unjustified, the Court ought to have directed the respondents to consider the case of the petitioners for appointment on the basis of the said selection process instead of merely directing payment of compensation on account of violation of their fundamental rights. Learned counsel also sought to emphasise before us that fresh conditions have been imposed in the new advertisement specially with regard to the written examination as also educational qualification, although they are also not directly affected by the educational qualification part, which goes to show that it is practically a new selection process in which the petitioners would be compelled to participate along with fresh applicants and thus it does not take care of their rights in the



matter. It is submitted that once the cancellation itself was found to be not justified the petitioners could not have been compelled to participate in the fresh selection process. It is also submitted that no steps were taken by the respondents with respect to the petitioners in the matter as even the subsequent advertisement was silent with regard to the case of the earlier candidates and merely by referring to certain internal letters of the respondent Board, the respondent Railways cannot be absolved of their responsibility.

In support of his stand learned counsel relies upon a decision of the Supreme Court in the case of East Coast Railway and another vs. Mahadev Appa Rao and others : (2010) 7 SCC 678, relying upon paragraphs 23 and 33 of the said decision, which are quoted below :

“23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.

33. If upon due and proper consideration of the representation received from the candidates who were unsuccessful in the first examination, the competent authority comes to the



conclusion that the test earlier held suffered from any infirmity or did not give a fair opportunity to all the candidates, it shall be free to pass a fresh order cancelling the said examination after recording such a finding in which event the second test conducted under the directions of the Tribunal would become the basis for the selection process to be finalized in accordance with law. In case, however, the authority comes to the conclusion that the earlier test suffered from no procedural or other infirmity or did not cause any prejudice to any candidate, the second test/examination shall stand cancelled and the process of selection finalised on the basis of the test held earlier.”

Learned counsel also relies upon a decision of the Apex

Court in the case of Union of India and others vs. Rajesh P.U.

Puthuvalnikathu and another : (2003) 7 SCC 285, in paragraph 6

of which it has been held as follows :

“6. On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions- which report itself seems to have been also produced for the perusal of the High Court- there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination- either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no jurisdiction to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting



of invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer-sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme

and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

It is submitted on the basis of the aforesaid decisions that neither any reasoning has been given in the order of cancellation nor the order of cancellation or contemporaneous records show the reasons for reaching such a conclusion, when the Scrutiny Committee after three rounds of scrutiny and examining all the records held that all the irregularities pointed out at various stages have been removed satisfactorily and as such the conclusion was wrong with regard to cancellation of selection process.

Learned counsel further submits that the reasons given by the learned Single Judge for not granting the benefit to the petitioners for consideration of appointment also do not appear to be justified as passage of six years could not be relevant in the matter since the petitioners had been agitating their case continuously from the very beginning as has been noted in the impugned order itself and the advertisement itself provided the maximum age as 33 years, whereas the petitioners even on the date of impugned order dated 2.9.2014 were approximately 28 years and 32 years old which was still within the range of 33 years fixed by the advertisement itself. Further having held that the case of Manoj Kumar Choudhary did not decide the matter with regard

to the cancellation of selection process it cannot be said that the direction in the case of Manoj Kumar Choudhary would stare at the Court and would stand in the way of the grant of final relief.

We have considered the submissions of learned counsels for the parties and perused the judgment of the learned Single Judge. So far as the holding of cancellation of selection process as an arbitrary exercise of power is concerned, on a consideration of the facts narrated above as also discussed in detail in the judgment of the learned Single Judge, it is evident that no reason has been assigned in the order of cancellation nor could the Railway satisfy the Court either on the basis of the materials and pleadings of the record or the records produced before the learned Single Judge, as to the application of mind by superior authorities even at the level of Director General, RPF in the Railway Board as to how the conclusion drawn by the Four Member Scrutiny Committee in its report dated 16.4.2009 that the irregularities pointed out during various stages of scrutiny seemed to have been clarified satisfactorily was unjustified, on the basis of the records of the recruitment process. Learned counsel for the Railway has asserted that something still remained to be clarified on scrutiny but on a consideration of the same we find that nothing substantial remained after three rounds of scrutiny and the Scrutiny Committee has rightly come to a conclusion that the irregularities pointed out earlier have been satisfactorily clarified. What





remained were matters which do not lead to any conclusion of irregularity in the recruitment process itself, such as existence of total vacancies, etc. which are clearly matter of record. Moreover the said vacancies did not relate to candidates under open category of Water Carriers like the petitioners. We are thus constrained to hold that the finding of the learned Single Judge that the cancellation of selection process was a case of non-application of mind and arbitrary exercise of power is fully justified.

Having held so, normally the direction to be given in such case is to restore the selection process and direct the respondents to proceed with the same and complete it in accordance with law. As a matter of fact, the Courts in such matters normally grant benefit not only to the writ petitioners but all the others who had participated in the selection process but to deny the same even to the petitioners on the ground of delay, according to us, appears to be wholly unjustified. The six years of commencement of selection process may be a good ground for denying to those who had not approached this Court but not to the petitioners who have been diligent throughout and are qualified both in regard to the age factor as also the educational qualification and as such impugned order is not justified in not giving final relief to the petitioners. Thus while setting aside the direction of the learned Single Judge in this regard we direct the respondents to appoint the petitioners on the post applied for by

them within a period of 60 days from the date of receipt/production of a copy of this order before the Chief Security Commissioner, RPF, ECR, Hajipur.

In view of the fact that the decision was taken by the Director General, RPF under the Railway Board, we are of the view that no such direction could have been given to the Chief Security Commissioner, RPF/NR, respondent No.4 to the writ petition, to pay compensation to the petitioners. Moreover, since the petitioners have already been granted the relief of appointment to the post applied for by them by us, there can be no question of further compensation to them. The said direction is, accordingly, set aside as also the direction to the respondent Board to hold an enquiry into the matter.

L.P.A. No. 1512 of 2014 is, accordingly, allowed and L.P.A. No. 447 of 2015 is partly allowed to the extent as indicated above.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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