

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1520 of 2016

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Hari Madhav Prasad Singh son of Shri Lalji Singh, resident of village- Mishrawaliya, P.O. Sakaddi, Police Station- Jalalpur, District- Saran (Chapra), retired while working as L.C.P. (Trained Points Man), under Station Superintendent, North East Railway, Chapra Junction, District- Saran (Chapra).

.... Petitioner

Versus

1. The Union of India through the General Manager, North-East Railway, Gorakhpur (Uttar Pradesh).
2. The General Manager (Personnel), North-East Railway, Gorakhpur (Uttar Pradesh)
3. The Divisional Railway Manager, North-East Railway, Varanasi (Uttar Pradesh)
4. The Divisional Railway Manager (Personnel), North-East Railway, Varanasi (Uttar Pradesh)
5. The Divisional Railway Manager (Operating), North-East Railway, Varanasi (Uttar Pradesh)
6. The Senior Division finance manager, North-East Railway, Varanasi (Uttar Pradesh)

.... Respondent/s

WITH

Civil Writ Jurisdiction Case No. 16998 of 2015

- =====
1. Anil Kumar Singh son of Late Chaturbhuj Prasad Singh, resident of village & P.O. Rajapakar, P.S.- Rajapakar, District- Vaishali, at present posted and working as L.C.P. (Trained Points Man), under Station Superintendent, North-East Railway, Chapra Junction, District- Saran (Chapra)

.... Petitioner/s

Versus

1. The Union of India through the General Manager, North-East Railway, Gorakhpur (Uttar Pradesh)
2. The General Manager (Personnel), North-East Railway, Gorakhpur (Uttar Pradesh)
3. The Divisional Railway Manager, North-East Railway, Varanasi (Uttar Pradesh)
4. The Divisional Railway Manager (Personnel), North-East Railway, Varanasi (Uttar Pradesh)
5. The Divisional Railway Manager (Operating), North-East Railway, Varanasi (Uttar Pradesh)
6. The Senior Divisional Finance Manager, North-East Railway, Varanasi (Uttar Pradesh)
7. Shri Rama Nand Sharma son of Gagan Deo Sharma, at present working as Points Man, under Station Superintendent, North-East Railway, Chapra Junction, District- Saran (Chapra)



.... Respondent/s

Appearance :

(In CWJC No.1520 of 2016)

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate

For the Respondent/s : Mr. Mahesh Prasad, Advocate

Mr. Bijoy Kumar Sinha, Advocate

(In CWJC No.16998 of 2015)

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate

For the Respondent/s : Mr. Bijoy Kumar Sinha, Advocate

Mr. Mahesh Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 28-11-2016

Heard learned counsel for the petitioners and learned counsel for the respondents.

Both the writ applications, which arise out of the common order dated 28.07.2015 passed by the Central Administrative Tribunal in Original Application (OA) No.907 of 2011, have been heard together and are being disposed of by the common order.

The writ applications have been filed for quashing the said order dated 28.07.2015 by which the O.A. has been dismissed, rejecting the claim of the petitioners.

The O.As. had been filed for grant of benefit of promotion to the post of Points Man in the pay scale of Rs.2650-4000/- and Rs.3050-4590/- respectively to the petitioners from the



date their juniors who were screened with them vide order dated 24.05.1988/1997, including one Shri Rama Nand Sharma (original respondent No.8, subsequently deleted) who was appointed after the applicants and also screened much later in the year 2007, and have been granted the said promotion and for quashing the letter dated 03.07.2010 issued by the respondents as arbitrary, discriminatory, unconstitutional and bad in law and for other consequential benefits.

The brief facts of the case are that the petitioners were working as Line Clear Porter (LCP) under the Station Manager, North Eastern Railway, Chhapra Junction. Their initial appointments were made as casual labourers and they were granted temporary status in 1983 and upon a subsequent screening vide order dated 20.05.1988, they were appointed on permanent post of Group 'D' in the pay scale of Rs.2610-3540/- on being found successful by the Screening Committee.

The grievance of the petitioners was that their junior (respondent No.7 in the writ petition but not party before the CAT), including the said Rama Nand Sharma were called for screening for the post of Points Man in the pay scale of Rs.2650-4000 and were granted the said post and pay scale, whereas the petitioners were ignored.

Representations were filed by the petitioners on



24.11.2009 and 16.08.2010, the latter in response to the letter dated 03.07.2010 by which they had been informed that they had never submitted their options for the post of Points Man in the pay scale of Rs.2650-4000, hence, were not considered. The petitioners denied that any such option was ever asked to be submitted from them. The petitioners filed another representation on 16.07.2011 but no response was given by the respondents. Aggrieved by the same, the O.As. were filed.

The Tribunal after considering the stand of the parties and the materials on the record dismissed the O.A. after holding that the petitioners have not sent their options to the office, hence, they were not promoted in the scale of Rs.2650-4000 and pay scale of Rs.3050-4590/-. The Tribunal noted that the respondents had issued a notification dated 06.12.2006, calling for options from the eligible Group 'D' employees, including the applicants, for filling up the posts in the pay scale of Rs.2650-4000. The applicants had claimed that the letter dated 06.12.2006 was not circulated and they were never informed; the Tribunal however found that there were corroborative facts that similarly situated other employees including four employees from Chhapra exercised their options, whereas since the petitioners did not give their options, their claims for promotion could not be considered.



The Tribunal also refused to go into the matter of promotion of Shri Rana Nand Sharma (respondent No.8) on the ground that he had neither been impleaded as party nor any specific relief against his promotion had been sought in the application.

Learned counsel for the petitioners before us has reiterated the submissions made before the Tribunal. It is sought to be argued that the petitioners were never informed about the letter dated 06.12.2006 and nothing had been brought to show that the said letter was served upon them. In this regard, the Tribunal has already noted that the considerable time had passed by before the petitioners approached the Tribunal. As a matter of fact, one of the issues under consideration before the Tribunal was with regard to the question of the OA itself being barred by limitation since the cause of action had arisen in 2007 and evidently the O.A. had been filed in the year 2011. The point does not appear to have been decided by the Tribunal except to mention the fact that the claim has been raised after a lapse of considerable time, which may lead to non-availability of papers and would not automatically lead to the conclusion that the said letter was not circulated to the petitioners. The Tribunal found that as many as four other Group 'D' employees of the said station had exercised their option in terms of the letter dated 06.12.2006, apart from employees of other stations and thus



the same corroborated the fact regarding the issue and circulation of the letter in question. The Tribunal also did not accept the plea of mala fides holding that there was nothing in the pleadings of the petitioners to establish any such mala fide.

Learned counsel for the respondent Railway has sought to support the order of the Tribunal. It is urged that the jurisdiction of the writ Court against the order passed by the CAT is only of judicial review of the order and not of the appellate authority. The findings of fact recorded by the Tribunal are conclusive unless the findings are perverse in the sense that the Tribunal had not taken into consideration the relevant materials on the record, whereas the order impugned has considered all aspects of the matter and come to the conclusion that the letter dated 06.12.2006 seeking option had been circulated and as many as four employees posted at Chhapra Station had also exercised his option. Thus, it cannot be said that the finding of the Tribunal is perverse on that count, especially in the absence of any factual pleadings of mala fide against the authorities.

That being the position, the entire case of the petitioners would fall on the ground that no promotion can be granted to the pay scale of Rs.2650-4000 due to their default in exercise of option in response to the letter dated 06.12.2006. The



further promotion to the scale of Rs. 3050-4590 was only for the employees who were already in the scale of Rs.2650-4000, which the petitioners certainly were not. Hence, there could be no question of they being considered for promotion to the said higher post.

In view of the aforesaid findings of fact by the Tribunal, the only conclusion that could be drawn was that the petitioners were not entitled to promotion either in the pay scale of Rs.2650-4000 or Rs. 3050-4590. Hence, the dismissal of the O.A. was wholly justified.

For the aforesaid reasons, we do not find any merit in the writ applications and they are, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	
CAV DATE	
Uploading Date	11.01.2016
Transmission Date	

