

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19729 of 2015

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Mahesh Kumar Paswan, Son of Karu Paswan, Resident of village - Kothia, P.S.
Dildarganj, District - Patna

.... Petitioner/s

Versus

1. The Union of India, Ministry of Railway, Govt. of India, New Delhi
2. Union of India through the Secretary, Govt. of India, New Delhi
3. D.R.M. East Central Railway, Danapur
4. G.M. East Central Railway, Danapur
5. C.P.O. East Central Railway
6. W.I. East Central Railway, Danapur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash Om, Advocate
For the Respondent/s : Mr. Ashok Kumar Kesheri, Sr. Advocate.
Mr. Sanjay Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 28-06-2016

Heard learned counsel for the parties.

The petitioner have approached this Court being aggrieved against the order passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') dated 27th October, 2015 by which Original Application No. 621 of 2011 filed by him has been dismissed.

The petitioner was appointed as a Peon on 08.01.1988. Subsequently, a list of Quasi Administrative Office Staff was prepared for screening in the year 1997. The name of the petitioner is at serial No. 31. Subsequently, the Railway absorbed some persons on 18.01.2002 leaving out the petitioner. The challenge to the exclusion of the petitioner before the Tribunal failed, leading to filing of the present writ petition.



Learned counsel for the petitioner submits that though the petitioner was fulfilling all the criteria for his absorption but he has been left out only on the ground that he was under age on the date of initial appointment. It is submitted that the same was not correct as in the list with the Railway his date of birth has wrongly been mentioned as 11.01.1970 whereas it should have been 01.01.1970. Learned counsel submits that the certificate issued by the Bihar School Examination Board (hereinafter referred to as the 'BSEB') also shows his date of birth as 01.01.1970 and thus he was over 18 years on the date of initial engagement i.e., 08.01.1988. Learned counsel submits that his various representations have also not been considered. Learned counsel has drawn the attention of the Court to Annexure-10, which is copy of order dated 08.12.2011 passed in **C.W.J.C. No. 9847 of 2007 (Hari Shankar Prasad Singh vs. The Union of India & Ors.)** wherein the Court has granted relief where there was a dispute with regard to the person being under age at the time of initial employment.

Learned counsel for the respondents submits that the petitioner while being appointed as Peon has himself given his date of birth as 11.01.1970 and the certificate of the BSEB dated 24.08.1988 was much subsequent and thus has rightly not been considered by the authorities. Learned counsel further submits that the instructions of the Railway Board itself makes it clear that one of the criteria for absorption was that the candidate should have been engaged within the prescribed age limit. It is submitted that the matter was properly screened and documents were verified by the Welfare Inspector and as per his report, based on the attendance register, the date of birth of the petitioner has been recorded as 11.01.1970 and the date of appointment as 08.01.1988. It is, thus, submitted that there was no error by the Railway in accepting the date of



birth of the petitioner to be 11.01.1970 and the certificate from the BSEB, being of a much later date, cannot change such documentary fact noted in the official records. It is further submitted that even the Original Application before the Tribunal was not maintainable since it was filed much beyond the limitation period i.e., after almost 14 years of the cause of action having arisen on 18.01.2002 when the petitioner's name was not included in the list prepared for screening.

Having considered the rival contentions, we do not find any merit in the present writ petition. The petitioner at the time of his engagement had disclosed his date of birth as 11.01.1970, which has been recorded in the official documents of the Railway which, in the absence of any cogent material or reason, cannot be disbelieved. The date of birth recorded in the BSEB certificate issued after more than 8 months of the engagement of the petitioner would, thus, not create any right in him. The petitioner also had not taken steps or objected to the recording of his date of birth as 11.01.1970 in the official Railway records and cannot, now, be allowed to claim the same. From the records, it is also apparent that the name of the petitioner was in the list of persons who were found eligible for screening as on 10.06.1997 for Group-D post. Thus, the same cannot be said to be a list of persons who were finally approved as the same was only for the purposes of preparing a list of persons whose cases were to be screened. The said screening was of persons who were cleared in the eligibility criteria and list of such persons was declared on 03.01.2002 and they were called for screening test on 18.01.2002. The said list were of 03.01.2002 not having been assailed by the petitioner and the Original Application being filed only in the year 2011, was impermissible in view of the limitation prescribed for filing any application before the Tribunal. The judgment of the learned Single Bench of this Court in

the case of **Hari Shankar Prasad Singh** (supra) is also of no help to the petitioner for the reason that in the said case, the date of engagement of the writ petitioner was under dispute as to whether it was 01.03.1981 or 03.01.1981 and as per the documents, the General Manger (Personnel), Hajipur had arrived at the finding, based on the report of the Welfare Officer, that the writ petitioner was engaged on 01.03.1981 and not 03.01.1981. Thus, in that background, the writ petitioner was found to be over18 years of age on the date of his engagement and there was no controversy with regard to his date of birth. In the present case the date of birth disclosed by the petitioner himself to the authority at the time of his initial engagement clearly makes him under age for such appointment at the initial stage itself.

For the reasons aforesaid, the writ petition, being devoid of merit, stand dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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