

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4705 of 2014

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1. The Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi
 2. The General Manager, East Central Railway, Hajipur
 3. The General Manager (Personnel), E.C. Railway, Hajipur
 4. The Deputy C.P.O. / Gazetted, E.C. Railway, Hajipur
 5. The D.R.M., E.C. Railway, Danapur
 6. The Senior Divisional Commercial Manager, E.C. Railway, Danapur
 7. The Senior Divisional Commercial Manager, E.C. Railway, Danapur
 8. The Divisional Personnel Officer, E.C. Railway, Danapur
 9. The Chairman, Railway Recruitment Board, Mahendrughat, Patna

Respondents.... Petitioners

Versus

Sanjeev Verma, Son of Late Rajni Kant Verma, Resident of 301, Rameshwaram Apartment, D.V.C. Road, Yarpur, Patna – 1.

Applicant.... Respondent

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Appearance :

For the Petitioners : Mr. Anil Singh, Advocate

For the Respondent: Mr. Gautam Bose, Sr. Advocate,
Mr. Ajay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-03-2016

Railways are aggrieved by the order of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') dated 04.03.2013 passed in O.A. No. 534 of 2008 filed by the sole respondent herein.

We have heard both the parties and with their consent, are disposing of this writ petition at this stage itself.

It appears that the applicant-respondent being an



employee in the Railways contended that he was liable to be considered for selection in 30% quota in the Commercial Department of the Railways on the post of ACM Group 'B'. At the first instance, he was declared medically unfit. At that time he filed O.A. No. 36 of 2007. The Tribunal appreciating the facts, held that he was being fitted in Commercial Branch and not in Traffic Branch, medical unfitness being colorblindness, was relevant so far Traffic Branch is concerned and not Commercial Branch. Therefore, the medial unfitness recorded would not bar him for being considered against the 30 % quota for the post of ACM Group 'B'. The Tribunal vide its judgment and order dated 12.05.2008 disposed of the aforesaid O.A. No. 36 of 2007 with a direction to the Railways to hold viva voce of the applicant and declare results accordingly. It is not in dispute that viva voce was then held and the applicant was now communicated by order dated 30.07.2008 that having participated in the viva voce he was not found as per merit suitable for the post of ACM Group 'B' against 30 % quota. Being aggrieved by this, the applicant then filed the present O.A. being O.A. No. 534 of 2008 challenging this communication to him that on merits he was not selected after viva voce. The Tribunal by the impugned order has noticed that the Railways failed to file any document to show that after viva voce they had found him unsuitable for

appointment, accordingly, the Tribunal directed that the applicant be adjusted in some other promotional post ignoring the mental condition of colorblindness which was relevant only for Traffic. Railways are aggrieved by this order, and rightly so.

We have perused the order of the Tribunal and found that the Tribunal proceeded on misapprehension of facts that in fact no viva voce was held and the applicant was disqualified once again on ground of medical unfitness.

Firstly, the applicant himself admitted that he was called for viva voce. Then the very impugned order was challenged in the Original Application that the order dated 30.07.2008 of the Railways clearly stating that viva voce was held and as per merit, the applicant was not found suitable for promotion against the 30 % quota. Thus, the Tribunal was wrong in holding that the Railways were sitting over the mandate of the Tribunal in not holding the viva voce. We fail to understand from where the Tribunal got materials to hold that the applicant was once again not being promoted on grounds of medical unfitness. That situation had already been laid to rest by the first order of the Tribunal. Here, the Railways themselves communicated and the applicant did not dispute that viva voce was taken, but on merit he did not make a mark.

Let it be noted that keeping in view those



circumstances, vide order dated 26.02.2016, this Court had directed the Railways to produce the marks of all the candidates considered for promotion as well as the viva voce and other marks of the candidates, before this Court. Counsel for the Railways produced the same in a sealed envelope. On perusal of the same, we find that out of 25 marks available for viva voce, the respondent, who was the applicant before the Tribunal, was given 15 marks and this viva voce was held pursuant to orders of the Tribunal, on 28.07.2008. The total marks including that of written exam and service records of the applicant-respondent is 230.4. It is not in dispute that there were five vacancies for unreserved category to which the applicant belonged, the marksheet of other candidates shows that 5th unreserved candidate, who was selected, had the lowest marks 254.30. Thus, the applicant was far short of the lowest mark, and could not be promoted because of fewer promotional post available.

Thus, in our view, the Tribunal was totally in error in directing that the applicant be adjusted on some other post, virtually ignoring viva voce and other considerations for promotion, through reserved quota. Before we close, we would like to observe two further facts. Firstly, the Tribunal did not enforce, as we have done for production of the results.

Mr. Bose learned senior counsel appearing for the



applicant stated that the Tribunal did pass orders for Railways to produce the results, but Railways failed to produce the results, as such Tribunal reached its own conclusion. We have noticed this fact only for the purposes of reminding the Tribunal of its powers. Under Section 22(3) (b) of the Administrative Tribunal Act, 1985, it has powers of a Civil Court requiring the discovery and production of documents. The power is wholesome and in appropriate cases be exercised accordingly. Instead of exercising this power, the Tribunal proceeded on conjecture and surmises which has also prolonged the litigation at the expense of parties including our time. Had the Tribunal exercised its power in right letter and spirit within its jurisdiction, the results which is now before us, would have been before the Tribunal and the matter would have rested then and there.

Secondly, Mr. Bose learned senior counsel appearing for the applicant submitted that the first round of viva voce was held on 11.01.2007. So far as the applicant's viva voce pursuant to order of the Tribunal is concerned, it was held on 28.07.2008, they are not comparable, unless the Railways states that the officers and the parameters were the same and comparable. In that view of the matter, the viva voce of the applicant and its result singularly is not proper. We would not like to speculate. For viva voce, marks are only 25. The applicant has got 15. The differences between him and

the last selected candidate is of 13.09. Even if we award 100 % marks in viva to the applicant i.e. 25 marks thus, being enhancement of 10 marks, he does not qualify. He would still be short by 3.9 marks from the last selected candidate.

Thus, in our view, the order of the Tribunal cannot be sustained in the facts and circumstances stated above. The same is set aside. O.A. No. 534 of 2008 is dismissed. The writ petition is allowed. The marksheet are returned to the learned counsel for the Railways a copy whereof to be filed for Court’s record with a request to make available a copy of the same to the learned counsel for the applicant for maintaining their records.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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