

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16244 of 2015

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Bhushan Kumar, Son of Late Laxmi Kant Singh, resident of Mohalla - Navtanpur,
Appu Bhawan, Postal Park, P.O. & P.S. Kankarbagh, District - Patna

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi
2. Executive Director (Res.), Railway Board, Rail Bhawan, New Delhi
3. General Manager, Eastern Railway, Fairlie Placa, Kolkata
4. Financial Adviser and Chief Accounts Officer, Eastern Railway, Fairlie, Place, Kolkata
5. General Manager, East Central Railway, Hajipur, Vaishali
6. Financial Adviser and Chief Accounts Officer, East Central Railway, Hajipur, Vaishali
7. Deputy Chief Accounts Officer (Works), Eastern Railway, Jamalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Saha, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-05-2016

The order dated 27th January, 2015 passed by the Central Administrative Tribunal, Patna Bench, Patna in M.A.No. 050/390/2014 in O.A. No.050/00628/2014 is the subject matter of challenge in the present writ petition. By the aforesaid order, the application for restoration of the Original Application dismissed for default was dismissed being barred by limitation.

The petitioner filed an Original Application in the year 2003 challenging the result of the viva voce test for his promotion to



the post of Assistant Accounts Officer. The said application was dismissed in default on 27th October, 2009. It was thereafter in the year 2014, the petitioner filed an application for restoration of the Original Application which was dismissed in default way back in the year 2009. The Tribunal found that the challenge is to the viva voce test held in 2003, therefore, the claim is grossly barred by limitation.

We have heard learned counsel for the petitioner not only in respect of application for condonation of delay but also on merit as well. The grievance of the petitioner is that he qualified in written examination while attempting the same in Hindi language but in viva voce he was not conversant with English and, therefore, could not answer the question properly. He was declared unqualified in the viva voce test. The argument of the petitioner is that condition of minimum cut-off marks in the viva voce has been set aside by the Hon'ble Supreme Court in a judgment in the case of **K. Prabhakara Rao vs. The Union of India (AIR 2002 SC 205)**. Therefore, condition of minimum marks in viva voce test cannot be sustained.

Firstly, the petitioner has participated in the selection process knowing the condition that in viva voce test there is a condition of obtaining 15 marks for unreserved categories as against

25 of the maximum marks. Once the petitioner has appeared in the interview having known the minimum requiring qualifying marks for viva voce test, the petitioner is estopped to dispute the minimum qualifying marks in viva voce test.

The judgment in the case of **K. Prabhakara Rao** (supra), has not struck down Paragraph-205 of the Indian Railway Establishment Manual. The Supreme Court followed the two judgments of Ernakulam Bench of the Tribunal against which S.L.P. filed by the Union of India was dismissed but ordered to consider the case of the appellant as if there is no qualifying mark in viva voce test. Since Paragraph-205 has not been struck down, such judgment will not come to the rescue of the petitioner.

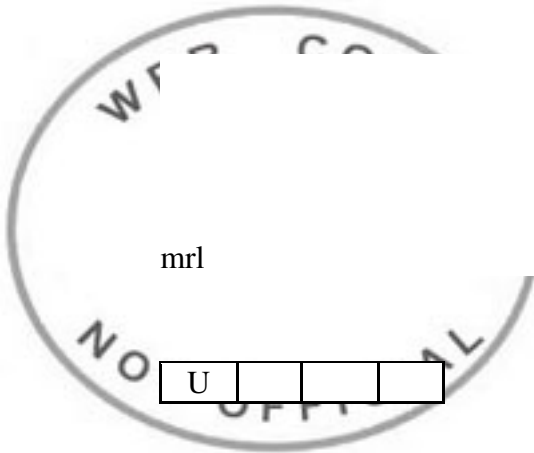
The minimum marks for viva voce test was fixed in the Circular inviting applications for limited departmental competitive examination held on 09.04.2001 Annexure-3 to the writ petition. Since the minimum qualifying marks were fixed in the letter inviting applications to fill up the post against which the petitioner appeared, the petitioner will be estopped to challenge the qualifying marks fixed for viva voce test.

In the above view of the matter, we do not find any error in the order of the learned Tribunal warranting interference by this Court in the present writ jurisdiction.

The writ petition is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)



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