

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7510 of 2015

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Madan Prasad, S/o Late Ram Sewak Prasad, Licence Porter, Licence Batch No. 1205, East Central Railway, Jehanabad Railway Station, Resident of Village-Khaskhori, P.S. Alahganj, District Jehanabad (Bihar).

.... Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, District Patna (Bihar).
3. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, District Patna (Bihar).
4. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O. Khagaul, District Patna (Bihar).
5. The Section Engineer (Permanent Way), East Central Railway, Jehanabad.

.... Respondents

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Appearance :

For the Petitioner : Mr. M.P.Dixit, Advocate.
Mr. Sanjay Kumar Chaubey, Advocate.
For the Respondents : Mr. Naresh Dikshit, 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: 12-05-2016

Heard learned counsel for the petitioner and the respondents.

2. The order dated 16th of May, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) in O.A. No. 512 of 2010 is subject matter of challenge in the present writ application, wherein claim of the petitioner for appointment to the post of Gangman/Trackman remained

unsuccessful.

3. The entire claim of the petitioner is based upon transfer of Porter’s Licence No. 1205, East Central Railway, Jehanabad Railway Station on 30th of September, 2004. The petitioner claims transfer of licence from Sri Ram Sanjiwan Paswan in his favour. The policy for transfer of the Porter’s Licence has been reproduced by the Tribunal, which, for facility of reference, reads as under:-

“2. It has now been decided that the porter’s licence may be transferred to his son or, if he has no son or his son is not alive, to his near relative in the event of his death or when he becomes very old, infirm or very sick and is not able to carry out his duties properly. The son will include the adopted son. Near relatives will include brother, or brother’s son or wife’s brother.

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4. Before allowing such transfer of licence, it should be ascertained that the porter was the sole earning member of the family. An affidavit produced by the licensed porter under the seal of a magistrate may be taken as adequate proof of the dependence of the family on the licensed porter and the nature of relationship of the nominee.”

4. The petitioner claims to be nephew of Ram Sanjiwan Paswan. However, the Tribunal has found that petitioner is *Yadav*; whereas Ram Sanjiwan Prasad was *Paswan*. Therefore, he could not be a member of the same family. The Tribunal found that both petitioner and Ram Sanjiwan Prasad misled under oath as the very transfer of the licence was on wrong declaration of relationship of transferee and transferor.



5. The transfer of the Porter's licence is permitted only in favour of his son and if he has no son or the son is not alive, to his near relative in the event of his death or when he becomes very old, infirm or very sick and is not able to carry out his duties properly. Even near relative is defined to include brother, or brother's son or wife's brother. The petitioner does not fall in any of the categories. There is no assertion that Ram Sanjiwan Paswan had no son or his son was not alive. The petitioner relies upon his assumed relationship as of nephew to seek transfer of Porter's licence. The petitioner is neither brother, nor brother's son nor wife's brother. The Tribunal has rightly found that the transferee and transferor were not the members of the same family as both of them belong to different castes.

6. Learned counsel for the petitioner has vehemently argued that the action of the respondents in denying benefits consequent to the transfer of the Porter's licence is discriminatory inasmuch as the respondents have permitted transfer in the case of numerous other porters.

7. It is well settled that illegality committed in one case cannot be made basis of discrimination and the illegality cannot be perpetuated. Reference may be made to Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr., AIR 1995 SC 705. Therefore, even if some illegalities have been committed by the respondents, that will

not confer any right in the petitioner to seek appointment when the very transfer of the Porter’s licence was not in terms of the policy of the Railways.

8. In view thereof, we do not find any merit in the writ application, which is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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