

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22253 of 2014

=====

Harish Chandra Rai, Son of Ram Pratap Rai, working as Pointsman under S.S.,
Bhagwanpur Desua, Railway Station.

.... Petitioner

Versus

1. The Union of India through General Manager, East Central Railway, Hajipur, District-Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District-Vaishali (Bihar).
3. The Divisional Railway manager, East Central Railway, Samastipur (Bihar)
4. The Senior Divisional Operating Manager, East Central Railway, Samastipur (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar)
6. Rajendra Sharma, Son of Ram Chandra Sharma, Working as Pointsman under S.S., Samastipur Railway Station.
7. Shambhu Narayan Yadav, Son of late Bal Govind Working as Pointsman under S.S., Mohammadpur Railway Station.
8. Sukhdeo Rai, Son of Ramakant Rai, Pointsman under S.S., Koparia Railway Station, under East Central Railway, Samastipur Division.

.... Respondents

=====

Appearance:

For the Petitioner/s : Mr. M. P. Dixit, Advocate.
Mr. S. K. Dixit, Advocate.
Mr. Sanjay Kumar Chaubey, Advocate.
Mr. Sunil Kumar, Advocate.

For the Respondent/s : Mr. Nivedita Nirvikar, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 22-08-2016

The challenge in the present writ application is to an order dated 01.08.2014 passed by Central Administrative Tribunal, Patna Bench, Patna, whereby the claim of the petitioner for a direction for his appointment in respect of the vacancies advertised on 23.07.2010 remained unsuccessful.

2. 39 posts of Goods Guard were advertised on 23.07.2010. The vacancies were required to be filled up by selection from amongst staff in the category of Trains Clerk (Guard Lipik), Ticket Collector, Shuntman, Pointsman, Leverman, Line Jamadar, Commercial Clerk, Sr. Guards Clerk, etc.

3. The petitioner challenged the employment of certain candidates from the list prepared in pursuance of the said advertisement as it was alleged that the certain candidates were not eligible as they have not completed three years of regular service in Grade Pay of Rs. 1900/- . In an earlier challenge, the respondents directed to prepare a fresh panel from amongst the candidates who are eligible as per Rules. In the revised selection list, the name of the petitioner did not find place though he was amongst the short-listed candidates.

4. Subsequently, another advertisement was issued on 18.07.2013 for filling up 44 posts of Goods Guard. The petitioner did not apply for the posts so notified. The claim of the petitioner is that once he has been short-listed in pursuance of earlier advertisement issued, he has the right for appointment against the posts which should not be filled up by initiating fresh selection process.

5. The learned Tribunal found that against 39 vacancies, panel of 36 candidates was published and that remaining 3



SC vacancies were not made filled in the absence of suitable candidates. The claim of the petitioner does not arise against three unfilled SC vacancies. Since the petitioner has not participated in the subsequent selection process vide advertisement issued on 18.07.2013, he cannot claim any right of appointment as the two selection processes are distinct and separate. The Selection process in which the petitioner participated has to be filled up for the posts advertised. Since the petitioner is not an applicant in the subsequent advertisement, therefore, he cannot claim right of appointment on the basis of selection in the previous advertisement.

6. Learned counsel for the respondents Mrs. Nivedita Nirvikar refers to a judgment of Hon'ble Supreme Court in the case of ***Babita Prasad and others Vs. State of Bihar & others*** reported as ***1993 Supp (3) SCC 268***, wherein the Court has held as under:

“26. The mere fact that the candidates who had been brought on the panel had been sent for training at the government expense, would also not imply that any indefeasible right had been created in their favour for appointment after they had completed their training and their names were entered in the panel because the training was merely intended to confer eligibility on the candidates for being brought on the list. In the facts and circumstances of the case, we, therefore, hold that the panel prepared in the present case was only in the nature of an eligibility list of qualified trained teachers arranged according to their merit in a chronological order. It had been prepared without any process of selection whatsoever as none who was a trained qualified teacher was excluded from being brought on the list. The list was

neither related to existing vacancies nor to anticipated vacancies. Such a panel did not create any vested or indefeasible right on the empanelists to be appointed.”

7. In a recent Judgment of Hon’ble Supreme Court in the case of *Kulwinder Pal Singh Vs. State of Punjab* reported as *AIR 2016 SC 2281*, it has been held that mere name of the candidate in the select list does not confer any right to appointment. The relevant extract are as under:

“11: It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. v. Bhanu Lodh and Ors., (2005) 3 SCC 618 : (AIR 2005 SC 2775); All India SC & ST Employees’ Association & Anr. v. A. Arthur Jeen & Ors. (2001) 6 SCC 380: (AIR 2001 SC 1851) and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1990) 5 SCC 180: (AIR 1999 SC 2137).”

“12. This Court again in the case of State of Orissa & Anr. v. Rajkishore Nanda and Ors. (2010) 6 SCC 777: (AIR 2010 SC 2100, paras 13, 15), held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection

or create a vested right to be appointed.

The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.”

“14. As noticed earlier, as against twenty seven posts of general category advertised for the year 2007-2008, thirty one general category candidates have joined and are working. In *Rakhi Ray And Ors. v. High Court of Delhi And Ors.* (2010) 2 SCC 637: (AIR 2010 SC 932, paras 14, 15), observing that the vacancies cannot be filled up over and above the number of vacancies advertized, recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates, this Court held as under:-

“12. In view of above, the law can be summarized to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.

13. In the instant case, as 13 vacancies of

the general category had been advertised and filled up, the selection process so far as the general category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room.”

8. In view of the above discussion, we do not find any merit in the writ petition. Accordingly, this writ petition is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.09.2016
Transmission Date	N.A.