

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.30 of 2016

IN

Civil Writ Jurisdiction Case No. 13423 of 2015

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Krishna Deo Prasad, son of Sri Deonandan Prasad, resident of Village Karai Parsurai, P.S. Karai Parsurai, District Nalanda, at present working as Junior Engineer(P.Way)/ E.C. Railway under Sr. Divisional Engineer (Coord)/ E.C. Railway/ Sonapur Division

.... Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway, Hajipur, District Vaishali at Hajipur
2. The General Manager (Personnel), East Central Railway, Hajipur, District Vaishali at Hajipur
3. The General Manager (Vigilance), East Central Railway, Hajipur, District Vaishali at Hajipur
4. The Principal Chief Engineer, East Central Railway, Hajipur, District Vaishali at Hajipur
5. Shambhu Kumar, son of Shri Krishna Nandan Prasad, now working as Assistant Divisional engineer (special), East Central Railway, Dhanbad
6. Sanjay Kumar, son of name not known to the petitioner, at present working as AEN/ Construction Ganga Bridge under CAO/CON/ South, E.C. Railway, Mahendrughat at Patna
7. Samar Kant Pathak, son of not known to the petitioner, at present working as AEN/ Construction under CAO/CON/ South, E.C. Railway, Mahendrughat at Patna
8. Manoj Kumar, son of name not known to the petitioner, at present posted as ADEN/ Sonapur at Hajipur under Sr. Divisional Engineer/ E.C. Railway/ Sonapur
9. Navin Kumar Sinha, son of name not known to the petitioner, at present posted as AEN under CAO/ Workshop project/ Patna at Patna
10. Narendra Kumar Singh, son of name not known to the petitioner, at present posted as AEN/ Construction/Koderma under CAO/CON/ South, E.C. Railway, Mahendrughat at Patna
11. Vijay Kumar Singh, son of name not known to the petitioner, at present posted as AIE/ Hajipur under Principal Chief Engineer/ E.C. Railway/ Hajipur, District Vaishali at Hajipur
12. Miland Kumar Shukla, son of name not known to the petitioner, at present working as AEO/ Hajipur under Principal Chief Engineer/ E.C. Railway/ Hajipur, District Vaishali at Hajipur
13. Manohar Lal, son of name not known to the petitioner, at present working as AEN/ Construction/ Dhanbad under CAO/CON/ South, E.C. Railway, Mahendrughat at Patna
14. Shailendra Kumar, son of name not known to the petitioner, at present working as AEN/ Construction/ Hazaribagh under CAO/CON/ South, E.C. Railway, Mahendrughat at Patna
15. Krishna Nandan Prasad, son of name not known to the petitioner, at present working as AEN/ Rail Wheel Factory/ Bela, under CAO/CON/ Workshop Project/ Patna at Patna
16. Vijay Shankar Singh, son of name not known to the petitioner, at present

working as AEN/ Construction under CAO/CON/ North, E.C. Railway,
Mahendrughat at Patna

.... Respondents----Opposite Parties
With

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Civil Review No. 180 of 2016

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1. The Union of India through the General Manager, E.C. Railway, Hajipur, District Vaishali at Hajipur
2. The General Manager (Personnel), East Central Railway, Hajipur, District Vaishali at Hajipur
3. The General Manager (Vigilance), East Central Railway, Hajipur, District Vaishali at Hajipur
4. The Principal Chief Engineer, East Central Railway, Hajipur, District Vaishali at Hajipur

.... Petitioner/s

Versus

1. Shambhu Kumar, son of Shri Krishna Nandan Prasad, now working as Assistant Divisional Engineer (Special), East Central Railway, Dhanbad
2. Krishna Deo Prasad, son of Sri Deonandan Prasad, resident of Village Karai Parsurai, P.S. Karai Parsurai, District Nalanda, at present working as Junior Engineer(P.Way)/ E.C. Railway under Sr. Divisional Engineer (Co-ord)/ E.C. Railway/ Sonapur Division

.... Respondent/s

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Appearance :

(In C. REV. No.30 of 2016)

For the Petitioner	:	Mr. Rajendra Narain, Sr. Advocate Mr. Anju Narain, Advocate Mr. Kunj Bihari Sharan, Advocate
For the Railways	:	Mr. Anil Kumar Sinha, Advocate Mr. Abhimanyu Deo, 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: 09-05-2016

Heard Sri Rajendra Narayan in respect of

Civil Review No. 30 of 2016 and Sri Anil Kumar Sinha learned

counsel for the Railways in respect of Civil Review No. 180 of

2016.

Both these review applications are directed against the judgment and order dated 08.10.2015, passed by this Court in C.W.J.C. No. 13423 of 2015. The review petitioner in Civil Review No. 30 of 2016 was respondent no. 5 Krishnadeo Prasad in the writ proceedings. Railways were the respondents in the writ proceedings as well.

Sri Rajendra Narayan, learned Senior Counsel in support of first review application draws our attention to various Railway Board circulars with regard to evaluation and reevaluation of departmental answer books. His effort has been that in view of various Railway Board circulars, which he accepts, were not even noticed by the Tribunal upon these applications to the Tribunal. The reevaluation done in respect to the writ petitioner's answer-sheet was incorrectly done. These are questions of fact. Both the parties including the Railways were heard by the Tribunal as well as by this Court. The issues, as has been sought to be now raised, were not raised in course of hearing, as before the Tribunal nor before this Court. In such a situation, it would be highly improper for us to rehear the matter and deliver judgment. If the review petitioner, who was respondent no. 5 in the writ proceedings, is not satisfied by our judgment and feels that the judgment is erroneous, he has the liberty of challenging our judgment in appeal, but,

certainly, in such a situation, review is not the remedy. Civil Review No. 30 of 2016 is dismissed.

By Civil Review No. 180 of 2016 filed by the Railways, Railways wants this Court to review the order to the extent this Court passed an order in favour of respondent no. 5 in the writ proceedings. In order to appreciate the controversy, we may once again visit the facts.

In a departmental examination for promotion the writ petitioner Shambhu Kumar did not succeed in written examination, whereas respondent no. 5 to the writ petition Krishna Deo Prasad succeeded. He also succeeded in interview and, accordingly, was selected for promotion. Shambhu Kumar complained. Vigilance enquiries were made and thereafter the General Manager sent his answer-sheet for reevaluation. While doing so, he kept one post vacant in the matter of promotion. Upon reevaluation Shambhu Kumar passed and was called for interview. Interview was taken, but after 14 months of the first batch of interview. He qualified. The result was that respondent no. 5 Krishna Deo Prasad was pushed out and place had to be made for Shambhu Kumar. It is this step that was challenged before the Tribunal by Krishna Deo Prasad and he succeeded and, thus, the Tribunal ordered that as Shambhu Kumar is now to be removed,



he would not be required to pay or reimburse the Railways for excess payment received. Similarly, Krishna Deo Prasad, who was now to be brought back, would not claim any back wages but would be granted notional seniority. Looking to these facts, which were available on the record, and the order of the Tribunal, we directed the Railways that one seat that was kept vacant be made available to respondent no. 5 Krishna Deo Prasad where he was reinstated pursuant to Tribunal's order having been earlier selected in the year 2010 itself.

Railways by this review application states that there is no post vacant to accommodate Krishna Deo Prasad and, as such, he would have to be reverted. We cannot accept this in view of the findings as recorded in the Tribunal's order which was based on the written statement of the Railways that one post had been kept vacant by the General Manager and that being so, respondent no. 5 of the writ petition has to be accommodated on that post. We may further note that even if the post is not available, such a supernumerary post to meet the contingency can always be created. It would only be valid for the service life of respondent no. 5 of the writ petition. This is to avoid injustice to either party. We would, thus, not consider it fit to review our earlier order as no case for review has been made out. Review

application as filed by the Railways also is thus dismissed. It is expected that the Railways would end the litigation by complying with the orders forthwith.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11/05/2016
Transmission Date	