

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2647 of 2017

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Rakesh Kumar Singh, S/o Shree Ram Ashish Singh, Resident of
Village- Bauthu, PO- Satpura, PS- Bhagwanpur, Dist- Vaishali,
presently working as Service Boy, Store Depot Canteen, East Central
Railway, Samastipur Division, District- Samastipur.

.... Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hazipur.
2. The Divisional Railway Manager, East Central Railway, Samastipur.
3. The Senior Divisional Personnel Officer also known as Divisional Railway Manager (Personnel), East Central Railway, Samastipur.
4. The Chief Personnel Officer (HR), East Central Railway, Hazipur.
5. The Assistant Personnel Officer, East Central Railway, Samastipur.
6. The Honorary Secretary, North Eastern Railway Employees Consumer Co-operative Limited, Now, East Central Railway, Samastipur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rabindra Nath Tiwari, Advocate
For the Railway : Mr. Abbas Haidar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-05-2017

Heard learned counsel for the appellant and
learned counsel for the Railway.

2. O.A. No. 792 of 2013 was filed by the petitioner
seeking following reliefs : -

*"(i) The order dated 22.07.2013 passed by the
DRM(P), EC Railway, Samastipur forwarded to the*



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applicant vide letter dated 30.07.2013, which is Annexure A/1 series to this application, be quashed and set aside.

(ii) The respondents may be directed to absorb the applicant in Group-D in the Railways.

(iii) The respondents may also be directed to grant all the consequential benefits to the applicant after his absorption in Railway Service.

(iv) The cost of litigation may be awarded in favour of the applicant.

(v) Any other relief or reliefs may be forwarded in favour of the applicant, to which he is found entitled to by this Hon'ble Court."

3. As per the averment made before the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), he claims that he was working in a Canteen run by the Railways as a Canteen Manager and he had a right for being absorbed or appointed on a regular substantive post under the Railways. This claim of the petitioner was rejected by the Office of the Divisional Railway Manager (Personnel), E.C. Railway, Samastipur, and now, even the Tribunal has dismissed the O.A. application holding that the petitioner does not come within the scheme which was in vogue as per the Railway Board Circular, and, therefore, the writ application.

4. From a reading of the order impugned, there are basically two core issues:

I. Whether the petitioner is working in a Canteen which comes within the ambit of the Railways;



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and,

II. Whether the petitioner was found working in one of the recognized Canteen on 10.06.1997, which was a cut off date.

Both the findings are against the petitioner.

5. Strenuous arguments have been made on behalf of the petitioner and large number of documents has also been brought along with the second supplementary affidavit filed on his behalf. Extracts relating to Staff Welfare, provisions of Canteens, the principles governing the setting up of Canteens, the Cooperative Societies and the nature thereof have been annexed as Annexure-23. Some other documents such as Annexures-25 & 26 as well as certain information under Right to Information Act have all been brought on record.

6. From a reading of these documents, it is evident that there are two category of Canteens, one, which are statutory in nature and have been set up in terms of some legislative provision, one of them being under Section 46 of the Factories Act, 1948, and second, there are non-statutory Canteens, where there is a role of the Railways to develop and at times subsidy are also granted. Even, such kind of Canteen workers are extended benefit which are available to a Railway



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employee, and opportunity is given to them also whenever vacancy is occurs, for their absorption.

7. However, from some of the annexures, annexed by the petitioner himself, members of Consumer Cooperative Society do not come within the ambit of either statutory or non-statutory Canteens.

8. Learned counsel for the petitioner disputes the finding on the cut off date by producing an attendance register, but the Court would not like to go into such dispute, if the first question of eligibility of such employees of the Consumer Cooperative Society does not remain a bone of contention.

9. In the entirety of the materials and arguments, this Court also comes to a considered opinion that the petitioner does not belong to any of the category of Canteens whose employees can derive the benefit of the circular of the Railway Board, and, therefore, there was occasion for the Railway Authorities to consider his claim in terms of the direction of the Tribunal in previous O.A. application and reject the same.

10. The speaking order dated 22.07.2013, which is Annexure-18 to the writ application and was under challenge in the O.A. reveals all.

11. In the totality, therefore, this Court while



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exercising the power of judicial review agrees with the finding and the reasoning given by the Tribunal in the impugned order dated 09.09.2016, passed in O.A. No. 792/2013 by the Patna Bench, Patna. The petitioner has no case for interference with the order either passed by the Senior Divisional Personnel Officer (Annexure-18 to the O.A.) or the impugned order of the Tribunal dated 09.09.2016.

12. This writ application stands dismissed being devoid of merit.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26.05.2017
Transmission Date	N.A.

