

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7451 of 2016

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1. The Union Of India through the General Manager, North East Frontier Railway, Maligaon, Guwahati.
 2. The General Manager (Personnel), North East Frontier Railway, Maligaon, Guwahati.
 3. The Divisional Railway Manager, North East Frontier Railway, Katihar, Bihar.
 4. The Divisional Railway Manager (Personnel), North East Frontier Railway, Katihar, Bihar.
 5. The Senior Divisional Electrical Engineer, North East Frontier Railway, Katihar, Bihar.

.... Petitioners

Versus

1. Sri Anil Kumar Mishra, S/o Late Ram Bhajan Mishra, Junior Engineer-II, Electrical/P, North East Frontier Railway, Katihar, Bihar.
2. Sri Shiv Kant Yadav, S/o Sri J.P. Yadav, Junior Engineer-II, Electrical/P, North East Frontier Railway, Katihar, Bihar.
3. Sri Bhola Nath Singh, S/o Sri B.N. Singh, Junior Engineer-I, Electrical/P, North East Frontier Railway, Katihar, Bihar.
4. Sri Mithilesh Choudhary, S/o Sri Kanhaiya Choudhary, Junior Engineer-I, Electrical/P, North East Frontier Railway, Katihar, Bihar.
5. Sri Ram Chandra Sharma, S/o Late Parmeshwar Sharma, Section Engineer, Electrical/P, North East Frontier Railway, Katihar, Bihar.
6. Sri Laxman Kumar, S/o Late Deosharan Mandal, Junior Engineer-I, Electrical/P, North East Frontier Railway, Katihar, Bihar.
7. Sri Rakesh Kumar S/o Sri Jai Kant Prasad Bhagat, Junior Engineer-II, Electrical/T.L.& A.C., North East Frontier Railway, Katihar, Bihar.
8. Sri Binay Kumar, S/o Gajendra Das, Junior Engineer-II, Electrical/Tech Section, North East Frontier Railway, Katihar, Bihar.
9. Sri Sanjeev Kumar, S/o Sri Gokul Prasad, Junior Engineer-II, Electrical/Tech Section, North East Frontier Railway, Katihar, Bihar.
10. Sri Binod Kumar Singh, S/o Bhubaneshwar Singh, Junior Engineer-II, Electrical/P, North East Frontier Railway, Katihar, Bihar.
11. Sri N.N. Singh, Apprentice Junior Engineer-II, Electrical/North, North East Frontier Railway, Katihar, Bihar.
12. Sri A.K. Rana, Apprentice Junior Engineer-II, Electrical/North, North East Frontier Railway, Katihar, Bihar.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 17156 of 2016

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1. Nidhitya Nand Singh Son of Late R.S. Singh resident of Village- Bamoura, P.O. & P.S.- Vidyapati Nagar, District- Samastipur, presently posted as SSE/Electrical/HDB, working under SSE/IC/P/NJP, Power House, North Frontier Railway, New Jalpaiguri (West Bengal).
2. Ajit Kumar Rana Son of Vipin Chandra Mahto resident of Village- Chhori Lagma, P.O. & P.S.- Shivkund, District- Munger, presently posted as SSE/Train Lighting and AC, working under SSE/IC/TL & AC, North East Frontier Railway, Katihar (Bihar).



.... Petitioners

Versus

1. The Union of India through the General Manager, North East Frontier Railway, Maligaon (Guahati).
2. The Union of India through the General Manager (Personnel), North East Frontier Railway, Maligaon (Guahati).
3. The Divisional Railway Managar, North East Frontier Railway, Katihar (Bihar).
4. The Divisional Railway Managar (Personnel), North East Frontier Railway, Katihar (Bihar).
5. The Senior Divisional Electrical Engineer, North East Frontier Railway, Katihar (Bihar).
6. Anil Kumar, Mishra, Son of Late Ram Bhajan Mishra, Junior Engineer-II, Electrical/P, N.F. Railway, Katihar (Bihar).
7. Shiv Kant Yadav Son of Sri J.P. Yadav Junior Engineer-II, Electrical/P, N.F. Railway, Katihar (Bihar).
8. Bhol Nath Singh Son of Sri B.N. Singh Junior Engineer-I, Electrical/P, N.F. Railway, Katihar (Bihar).
9. Mithilesh Chaudhary Son of Sri Kanhaiya Chaudhary Junior Engineer-I, Electrical/P, N.F. Railway, Katihar (Bihar).
10. Ram Chandra Sharma Son of Late Parmeshwar Sharma Section Engineer, Electrical/P, N.F. Railway, Katihar (Bihar).
11. Laxman Kumar Son of Late Deosharan Mandal Junior Engineer-I, Electrical/P, N.F. Railway, Katihar (Bihar).
12. Rakesh Kumar Son of Sri Jai Kant Prasad Bhagat Junior Engineer-II, Electrical/T.L. & A.C., N.F. Railway, Katihar (Bihar).
13. Binay Kumar Son of Gajendra Das Junior Engineer-II, Electrical/Tech. Section, N.F. Railway, Katihar (Bihar).
14. Sanjeev Kumar Son of Sri Gokul Prasad Junior Engineer-II, Electrical/Tech Section, N.F. Railway, Katihar (Bihar).
15. Binod Kumar Singh Son of Bhubaneshwar Singh Junior Engineer-I, Electrical/P, N.F. Railway, Katihar (Bihar).

.... Respondents

Appearance :

(In CWJC No.7451 of 2016)

For the Petitioners	:	Mr. D.K.Sinha, Sr. Advocate
	:	Mr. Siddhartha Prasad, Advocate
	:	Mr. Prashant Sinha, Advocate
For the Respondents	:	Mr. M.P. Dixit, Advocate

(In CWJC No.17156 of 2016)

For the Petitioners	:	Mr. D.K.Sinha, Sr. Advocate
	:	Mr. Siddhartha Prasad, Advocate
	:	Mr. Prashant Sinha, Advocate
For the Respondents	:	Mr. M.P. Dixit, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 07-03-2017



There are two sets of Writ Applications. Both arise from the same order dated 31st July, 2015 passed in O.A.No.535 of 2010 along with M.A. No.161 of 2015.

2. In C.W.J.C. No.7451 of 2016, it is the Railways, who are aggrieved by the order of the Tribunal and in C.W.J.C.No.17156 of 2016, it is the private respondent nos. 6 and 7 in the O.A, who are aggrieved because the Tribunal has quashed the respective orders dated 05.12.2014 and 09.01.2015, by virtue of which the absorption of the private respondents in the Mechanical Department was ordered and their absorption in the Electrical Department with seniority was set aside.

3. Learned Counsel appearing for the Railways, who is supported by the learned counsel appearing for the private respondents in another Writ Application submits that there is statutory obligation to accommodate and adjust the medically de-categorized employees and this flows from the mandate created under and Act known as The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Special reference is made to Section 47 of the said Act.

4. The Railways have issued circulars and guidelines and there is a mechanism in place by which such decision and adjustment is made. It was in this background that in absence of any vacancy in



the Mechanical Department, on the recommendation of the Committee, the two, namely, Sri N.N.Singh and Sri A. K.Rana were accommodated in the Electrical Department with due seniority based on the entry into service. It is this decision, which has rattled the petitioners of the O.A. because their chances of promotion becomes directly affected and that is the background, under which the O.A. came to be filed initially. The decision to accommodate the two private respondents in the Electrical Department and subsequently also giving them seniority, was challenged in the M.A. application.

5. The Central Administrative Tribunal, after considering submission and keeping in view guidelines or the rules has opined as under :

“10. Thus, in our view, the action of the respondents is not valid as the respondents cannot protect the interest of some staff by depriving others from their legitimate claim. It is also observed that the action of the respondents is contrary to their own submissions as well as provisions of para 1034 of IREM [Vol.1], 1989 which stipulates as under : -

“.....While finding alternative posts for absorption of disabled/medically de-categorized staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the



disabled/medically de-categorized staff.....”

11.The private respondents no.6 & 7 have not made any appearance. We find from the records that notices to them were issued by registered post on 29.12.2014. On 09.03.2015, the Tribunal passed orders directing respondent no.6 & 7 to appear and plead their case. Sending notices by registered post is deemed to be proper service of notice. Therefore, we are passing this order in the absence of their pleadings, because it is possible to adjudicate the matter on the basis of pleadings of the applicant and official respondents and rules in this regard.

12. If there is a conflict between protecting the interests of employees already working in a department, and medically de-categorized employees of other departments, it is clear from the scheme and rules in this regard, as well as commonsense, that the interest of the employees who are already working in a department has to prevail. A strict meaning of absorption in other departments adjusted against direct recruit quota is that their seniority would count from the date of such absorption. This does not cause any conflict. But, apparently, the Railways have not done that. There is a contradiction in their action reflected by Annexures-A/6 & A/7 and their reply in the written statement. Annexures- A/6 & A/7 clearly indicates that the medically de-categorized employees have been put above some of the employees of the electrical cadre. This is contrary to the reply of the official respondents



themselves.

13. In view of the above, we quash and set aside the impugned orders dated 05.12.2014 & 09.01.2015 [A/6 & A/7 respectively]. The official respondents are free to absorb the private respondents in Mechanical Department. In case they have to be absorbed in the Electrical Department, then seniority will be fixed appropriate to their date of joining in the Electrical Department, which is an obvious meaning of adjustment against direct recruit quota. The O.A. is, accordingly, allowed. M.A./050/00161/2015 also stands disposed of. No order as to costs.”

6. Railways are aggrieved because their decision has been set to naught and they have been directed to re-do the exercise. So far as grievance of the Railways is concerned, even if their decision to accommodate the de-categorized employees in the Electrical Department is not faulted keeping in mind their stand before the Tribunal in the two written statements that the accommodation is being made in the post of direct recruitment quota where no avenue is hampered but despite such stand of the Railways when it comes down to the actual decision making, it seems that the two private respondents have been put in the category of such employees, who are working on the post of Junior Engineers and they anticipated their promotion and due seniority being directly affected.



7. This Court clarifies that the order of the Central Administrative Tribunal will be read to mean that the same would be required to be read in the sense that the two private respondents would be accommodated in the direct recruitment quota and not in the quota, which is required to be filled up by promotion. Rest of the observations of the Tribunal to that extent may stand modified.

8. In view of the above observation and direction of this Court, even C.W.J.C. No.17156 of 2016 stands disposed of. Their right will flow from their accommodation in the Electrical Department, but they will have to be absorbed in the direct recruitment quota and not on the promotion quota.

9. Both the Writ Applications are allowed to the extent of modified order.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.03.2017
Transmission Date	N/A

