

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11182 of 2016

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1. The Union Of India through the Secretary, Ministry of Railway, Rail Bhawan, Delhi.
 2. The Director General, Health Railway Board, New Delhi.
 3. The Director General, Establishment Department, Railway Board, New Delhi.
 4. The General Manager, East Central Railway, Hajipur
 5. The Senior Divisional Personnel officer, E.C. Railway, Samastipur
 6. The Chief Medical Superintendent, Railway Hospital, E.C. Railway, Samastipur
 7. The Divisional Manager, E.C. Railway, Samastipur

.... Petitioners

Versus

1. Renu Kumari wife of Rambhajan Chourdary, resident of village- Sir Chand Nawada, P.O. & P.S. Jamui, District- Jamui Presently working as Nursing Sister, Railway Hospital, E.C. Railway, Samastipur
2. Urmila Kumari, Chief Matron, Divisional Hospital, E.C. Railway, Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate
Mr. Bijoy Kumar Sinha, Advocate
For the Respondent/s : Mr. Kumod Kr. Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 22-06-2017

Heard learned Senior counsel for the
petitioners and learned counsel for the respondents.

2. The Original Application No. 669/2009 filed by the private respondent no. 1 was allowed by the Central Administrative Tribunal, Patna Bench, Patna (in short the "Tribunal") on 07.05.2014, giving a direction upon the petitioners to consider the application of the private respondent no. 1 for appointment on the post of Chief Matron in the scheduled caste category and to grant



her promotion notionally from the date when one Smt. Punam Thakur was promoted, if she is otherwise found eligible.

3. The authorities of the Railway filed a review application before the Tribunal, which was dismissed on 08.01.2016, because the Tribunal did not find any error apparent on the face of the record. Now, the writ application has been filed seeking quashing of the order dated 07.05.2014, passed in the O.A. application as well as the order dated 08.01.2016 passed in review application.

4. In the year 2007, the applications were invited for promotion to the post of Matron. As per the pleadings and evidence, there was one vacancy for scheduled caste candidate beside one in general category. In the examination conducted for selection and promotion, the private respondent namely, Renu Kumari, Nursing Sister, obtained 7.50 marks only out of 50, because of the same she was held to be ineligible and not appointed. The general category candidate one Smt. Punam Thakur was promoted on the post of Matron. This exercise was completed on 10.10.2007, which is evident from Annexure-4 to the writ application.



5. In the meanwhile, the recommendation of the 6th Pay Revision Committee was notified. The post of Matron and Chief Matron were merged with a particular pay scale. The total number of vacancies, therefore, available in the merged cadre of Chief Matron became 15. The break-up of the 15 posts was 12 for unreserved, 2 for scheduled castes and 1 for scheduled tribes.

6. On actual headcount on the post of Chief Matron it emerged that 13 persons are already working. There are 9 unreserved category candidates 2 scheduled castes and 2 scheduled tribes holding the post. There was no shortfall in SC & ST category. The private respondent no. 1 despite having failed to qualify in earlier round of appointment on the post of Matron claims the same after merger. According to her, the same should be made available to her now and she should be given benefit of promotion to the post of Chief Matron. When the authorities rejected such a prayer, the O.A. application came to be filed, wherein the impugned order dated 07.05.2014, came to be passed by the Tribunal allowing the O.A. application.

7. The submission of the learned Senior counsel representing the Railway is that the Tribunal committed



error of fact and, therefore, allowed the O.A. by treating the 2009 exercise to be in continuity with the earlier exercise initiated in the year 2007. Not realizing that the exercise for filling up the post of Matron was completed in terms of Annexure-4, and there was nothing left in terms of carryover. The 2009 exercise was a fresh exercise necessitated from the fact that in the meantime the recommendation of the 6th Central Pay Commission (CPC) came into play. The post of Matron/Chief Matron got merged with a common pay scale, and this merger, therefore, led to reconstitution to the strength of the cadre, and because of the vacancy of 2 posts under the unreserved category, the 2009 exercise was done and promotion granted to the eligible candidates including respondent no. 2.

8. Learned counsel representing the private respondent submits that one post of Schedule Castes which was available and remained vacant has to be reflected in the new vacancy and the said post which is reserved in nature cannot disappear. The said post got carried over and if the Railway Authorities wanted to change the status of reservation there was an obligation upon them to seek due approval and permission. The right of the private respondent with



regard to the said post and reservation cannot be defeated by categorizing the vacancy and making it available for unreserved category.

9. The submission of private respondent initially looked attractive, but there is a basic fallacy and even the Tribunal fell into the same fallacy in allowing the O.A. application.

10. Both the private respondent no. 1 and the Tribunal failed to appreciate that no sooner the recommendation of 6th Central Pay Commission (CPC) came and was notified the very structure of the cadre of Matron/Chief Matron got altered. The number of posts due to merging of the two cadres was identified as 15. The reservation will have to be applied against those 15 posts now and there is no co-relation between the previous vacancies which was filled up on the basis of things existing under the 5th Central Pay Commission. The post of Matron which was available for Scheduled Castes in the year 2007 is not a carryover post but the exercise ended with the failure of the private respondent no. 1 to make it, due to her ineligibility. A new cadre was created after merger of post of Matron and Chief Matron. The recalculation with regard to the reservation had to be done against the 15



post of Chief Matron.

11. From the counter affidavit filed on behalf of the Railway before the Tribunal, the mystery of missing vacancy of the scheduled castes stands adequately explained. In this regard, attention of the Court was drawn to paragraph nos. 5, 6 & 7, the chart reproduced in those paragraphs indicated the vacancy position and reservation position, pre-merger and post-merger. In paragraph-6, the chart indicates that as per actual headcount of Chief Matron, there are already two persons belonging to the scheduled castes occupying the post. Two posts in the category of scheduled tribes are also filled up. Therefore, it is not a case that persons under the reserve category of scheduled castes or scheduled tribes do not have representation in the restructured cadre. The vacancies which are two in number, therefore, have been rightly made available to the unreserved category.

12. The Bench is of the opinion that the Tribunal made the mistake in allowing the O.A. application of the private respondent no. 1 because of, may be lack of appreciation that the exercise done in the year 2007 has no co-relation with the exercise initiated in the year 2009. Much had changed between the two exercise.



Therefore, any effort made on behalf of the private respondent no. 1 to claim yet another seat in the scheduled caste category, is a case of over-reach. The direction of the Tribunal, in fact, will have the effect of reworking the percentage of reservation which is constitutionally approved and mandated.

13. The petitioners, therefore, succeed in making out a case of interference with the impugned order dated 07.05.2014 passed in O.A. No. 669/2009 and the order dated 08.01.2016 passed in R.A. No. 5/2015. Both the impugned orders stand quashed. By virtue of this the appointment of the other private respondent no. 2 to the writ application stands restored.

14. The writ application stands allowed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

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