

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5779 of 2017

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1. The Union of India through the Secretary, Ministry of Railway, New Delhi.
 2. The General Manager (G.M), East Central Railway, Hajipur.
 3. The Divisional Railway Manager, East Central Railway, Sonapur.
 4. The A.P.O. (Assistant Personnel Officer), East Central Railway, Sakadhi (Mukhyalaya), Krite Divisional Railway Manager Karmik/ Sonapur.

.... Petitioners

Versus

Santosh Kumar, Son of Sri Jagadish resident of Arsandih, Post-
Amarpur, Police Station- Bihpur, District- Bhagalpur- 853201.

.... Respondent

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Appearance :

For the Petitioners : Mrs. Nivedita Nirvikar (C.G.C.)

Mr. Manoj Kumar, Advocate

For the Respondent : Mr. Ram Sandesh Roy, 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: 03-07-2017

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

The order dated 29.11.2016, passed by the
Central Administrative Tribunal (in short the "Tribunal"),
Patna Bench, Patna in O.A. No. 104/2015 is being challenged
on behalf of the Railway, since the Tribunal has given a
direction upon the Railway authorities to appoint the private
respondent on a lower post despite his medical categorization
as B-1 instead of A-3 which is required. Though the post in
question available to him is the post vacated by his father i.e.
Trolleyman, under what is known as Liberalized Active
Retirement Scheme for Guaranteed Employment for Safety



Staff (for brevity the "LARSGESS") Scheme.

The Ministry of Railway notified what is known as LARSGESS Scheme. The concept behind the scheme was to provide employment to otherwise able bodied children of railway employees who are working on post like Driver, Gangman and other such related post, because the Railway authorities were of the opinion that with advancing age and lack of physical fitness the reflexes of the staff deteriorates and they become a safety hazard. To replace such workforce, the Railway decided to give an opportunity to such employee holding the post in question to be replaced by one of the children, if they otherwise fulfilled the requirement and standards, as laid down by the Railways. The father of the private respondent was a Trolleyman. He opted to opt out of service under the LARSGESS scheme. The private respondent, the son, was called for the exercise related to such scheme. He underwent medical examination and it was found that he fell in the medical category B-1 instead of minimum Grade of A-3 required as a Trolleyman.

Submission of learned counsel for the Railway is that the scheme envisages filling up of the post vacated by an employee by the ward or children of the employee and it amounts to replacement of one employee by yet another employee on a one to one basis. It is not a case of recruitment arising out of vacancy existing in the Railway but a case of appointment to fill up the vacancy caused within the scheme which is or was in vogue.



The claim of the private respondent was rejected by the Railways on the ground that his medical fitness does not qualify him to be appointed on the post of Trolleyman. In other words, the post, which was going to be vacated by the father making way for the son, would remain vacant, keeping in view that the medical fitness of the private respondent prevents him from occupying the post being vacated by the father. Since such employment or appointment is being made under a special scheme keeping the safety as a priority, therefore, jugglery cannot be resorted to accommodate a person and find him employment in one manner or the other.

What was urged before the Tribunal, Patna Bench, Patna on behalf of the applicant, who is private respondent here, is the argument which is being pressed even before this Court. The attractive argument which found favour with the Tribunal is that the Trolleyman post is a promotional post. Even the father of the private respondent reached the position of a Trolleyman by earning promotion over a period of time, and if the Railways kept that into consideration then the post lower than Trolleyman like Gangman etc. do not need medical category Grade-A. The private respondent can very well fit in on the post of Gangman with his medical category B-1.

The fallacy in the reasoning provided by the Tribunal, Patna Bench, Patna, in allowing the O.A. Application emerges from the fact that the Tribunal got carried away as if the scheme was a compassionate appointment scheme where



an outgoing employee's eligible son had to be accommodated and provided employment to take care of the family. The object of the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) is not a scheme for providing employment to an outgoing employee but to replace the otherwise unfit employee with an able-bodied person to fill in the post which had fallen vacant keeping in mind the replacement of the safety staff.

The scheme has not been challenged, therefore, the benefit which anybody claims under the scheme has to come within the framework of the scheme and this Court would not allow any kind of flexibility or leeway to accommodate a person otherwise not fit in the pool by filling up the vacancy caused by an offer of an employee under the Scheme.

The Court is not impressed by the submission of the private respondent that there has been merger and reconstitution of the cadre and a bunch of posts have been clubbed together as one, and therefore, they should be treated as the pool where such appointments can be made.

This Court holds that since the claim is of replacement of one against the other on the post which could fall vacant, it makes no difference whether the post is a promoted post or not. if the opting out of private respondent's father created a vacancy on the post of Trolleyman, the post of Trolleyman is required to be filled up by such eligible persons and not provide leeway of



recruitment at a lower post hoping that some day such an employee will grow up to the level his father was going to superannuate.

In view of the above, the direction of the Tribunal upon the Railway authorities to adjust the private respondent in the same category to which the minimum medical eligibility is B-1 is a misplaced kind of reasoning provided, which, in fact, has the effect of modifying or altering the scheme and killing the meaning thereof.

The writ application succeeds. The impugned order dated 29.11.2016 passed in O.A. No. 104/2015 by Central Administrative Tribunal, Patna Bench, Patna is set aside. The writ application is allowed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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

