

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13718 of 2014

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1. Sanjay Kumar, Son of Late K.K. Prasad, presently posted as Chief Office Superintendent, General Manager Office, East Central Railway, Hajipur permanent resident of Late Bahadurpur, Samastipur, District- Samastipur.
 2. J.K. Lakra, Son of Mahesh Lakra, presently residing at 8L-29, Bahadurepur Housing Colony, Patna and posted as Office Superintendent, General Manager Office, East Central Railway, Hajipur.
 3. Masood Jawed, Son of Mahfooz Hassan, presently posted as Office Superintendent under DGM (Law) Office, Biscomaun, Tower, 5th Floor, Patna, resident of Mohalla Patwa, P.O.- Barh, District- Patna.

.... Petitioners

Versus

1. The Union of India, through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hajipur.
3. The General Manager (Personnel), East Central Railway, Hajipur.
4. The Deputy Chief Personnel Office, HRD, East Central Railway, Hajipur.
5. The Senior Personnel Office, East Central Railway, Hajipur.
6. The Assistant Personnel Officer, East Central Railway, Hajipur.
7. Pradip Kumar Sharma, Son of Shri D.N. Sharma, Administrative Department, East Central Railway, Hajipur.
8. Vindhychal Pandey, Son of Sri Rameshwar Pandey, resident of Village-Kachainiya, P.O.- Athar via Korausarai, District- Buxar.
9. Kameshwar Singh, Son of Late J.P. Singh, resident of Paharichat, P.O. Sonepur, District- Saran.
10. Rabindra Chaudhary, Son of Late Baleshwar Chaudhary, resident of Adalwari, P.S. Budha Colony, Ward No. 22, Hajipur.
11. Vishwa Ranjan Kumar, Son of Sri Mukhya Deo Prasad, resident of near Survey, Gulzarbagh, District- Patna.
12. Sushil Kumar, Son of Rajendra Prasad Singh, resident of Sri Diwakar Kumar, Swaraj Path, Tilak Nagar, Kankabragh, Patna.
13. Rajesh Kumar, Son of Ram Lakhan Singh, resident of Adarsh Nagar, Biscuit Factory More, Nasriganj, Digha, Patna.
14. Balram Mishra, Son of Sri Ram Bilas Singh, resident of Village & P.O. Silout, District- Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Vijay Shankar Shrivastava, Advocate
For the Railway	:	Mr. (Dr.) Anshuman, Advocate
For Respondents 7 to 14	:	Mr. Gautam Bose, Sr. Advocate Mr. Vikash Jha, Advocate Mr. Ajay Kumar, 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: 14-02-2017

The private respondents no. 7 to 14 approached the Central Administrative Tribunal, Patna Bench, Patna in OA 607 of 2006 with the following reliefs :

“8.1 The impugned orders dated 4/5.08.2004, 23.11.2004 and 17.08.2006 as contained in Annexures-A-1, A-1/1 and A-2 respectively be quashed and set aside.

8.2 The applicants may also be given the benefits of promotion under restructuring to the post of OS-II and put above the private respondents.

8.3 Any other consequential reliefs be awarded in favour of the applicants to which they are found entitled to.

8.4 Any other relief or reliefs may be granted to the applicants for which they are found entitled to

8.5 Cost of litigation may be given to the applicants.”

Since the Central Administrative Tribunal allowed the OA and granted the relief to the applicants vide order dated 25th of February, 2013, the petitioners, who were private respondents in the OA, have filed the writ application challenging the decision of the Tribunal.

As per the pleadings emerging from the records of the case, the applicants before the Tribunal pleaded that they were recruited by the Railway Recruitment Board on clerical cadre between 1992 and 1997 and were working in different zones of Railways.



When the zones were restructured and a new zone was created as East Central Railway, Hajipur options were asked for and in exercise of such option for administrative reasons transfers were effected. The East Central Railway, Hajipur started functioning from 01.10.2002 and the cadre was closed on 31.10.2003. All was well till the petitioners of the present writ application, who also arrived in the said zone from different cadres, subsequently became beneficiary of grant of promotion as Head Clerks or thereafter. The promotion was granted to the petitioners making them senior to the private respondents, despite not being borne on the cadre. This is how the litigation started.

The Central Administrative Tribunal has taken note of the history of the birth of the three petitioners in service by tracing the history of their service in the impugned order. After considering the fact that at-least some of these petitioners came to be accommodated on the post of Clerk by virtue of restructuring to save their employment and job, it also took note of the fact that these petitioners were not borne in the cadre when the cadre was closed on 01.11.2003. If by a subsequent decision of the respondent railway authorities they are shown over and above the head of the private respondents then naturally the law will kick in and in this regard the Tribunal has gone by the ratio of the decision rendered in the case of ***Nani Sha Vs. State of Arunachal Pradesh*** reported in **AIR 2007 SC 2356**. The relevant



paragraph being paragraph 14, which is reproduced hereinbelow :

“14. Lastly, the High Court has specifically rejected the claim of the appellants on another ground, namely, that the appellants were not borne in the cadre of the ACF on the date from which they have been given the seniority. We are in complete agreement with the High Court, particularly in view of the decision of this Court reported in State of Bihar and Others vs. Akhouri Sachindra Nath [(1991) Supp. 1 SCC 334] which decision was reiterated in the case of State of Bihar and Ors. Vs. Bateshwar Sharma [(1997) SCC 424]. We do not want to burden this judgment with further reported decisions. However, the same view has been taken in another reported decision of this Court in Uttranchal Forest Rangers' Assn. (Direct Recruit) and Ors. Vs. State of U.P. and Ors. [JT 2006 (12) SCC 513] where in paragraph 18 this Court has taken a view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely affecting those who were appointed validly in the meantime.

The law being what it is, and the facts as such, not seriously in dispute, therefore, the Tribunal has reached a correct decision that no body can be given the benefit of seniority from a prior date i.e. even prior to the person being borne in the cadre.



The accepted position is that none of these petitioners were borne in the cadre prior to the private respondents in the clerical grade, and, in fact, these persons have been accommodated in the clerical grade subsequently by virtue of a restructuring and that cannot beget them the benefit of seniority over and above the substantively appointed clerks by direct recruitment which has already been noticed in the earlier part of the order.

Since the principle applied by the Tribunal in Nani Sha (supra) is the correct interpretation of law, therefore, the Tribunal has committed no error by allowing the OA again and quashing the orders of promotion which came to be granted vide orders dated 4/5.08.2004, 23.11.2004 and 17.08.2006.

The writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	28.02.2017
Transmission Date	

