

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1765 of 2017

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1. The Union Of India through the Secretary, Government of India, Ministry of Railway, New Delhi.
 2. The General Manager, East Central Railway, Hajipur.
 3. The Divisional Railway Manager, Samastipur Railway Division, ECR, Samastipur.
 4. The Divisional Railway Manager (Personnel), Samastipur Rail Division, ECR, Samastipur.
 5. The Senior Divisional Commercial Manager, Samastipur Rail Division, ECR, Samastipur.
 6. The Senior Divisional Personnel Officer, DRM/P, ECR, Samastipur.

.... Petitioners

Versus

1. Shashi Bhushan Sharma, Son of Sri Kameshwar Sharma, Resident of Village- Janardanpur, P.S.- Kalyanpur, District- Samastipur, at present posted as Clerk, Zonal Office, Hajipur.
2. Manish Kumar, Son of Sri Radheshyam Prasad, resident of Village- Bandhar, P.S. Hathori, District- Samastipur, at present working as Enquiry-cum-reservation clerk, Samastipur.
3. Abhilasha Kumari, Wife of Sri Amar Kumar Gupta, resident of Village- Birsinghpur, P.S. Kalyanpur, District- Samastipur, at present working as Sr. Enquiry-cum-reservation clerk, Samastipur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dr. Anand Kumar, Advocate

For the Respondent/s : Mr.

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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: 24-07-2017

The railways are aggrieved at least by a part of the order dated 27th May, 2016 passed in O.A. No. 637/2014 by Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna, where the private respondents who were applicants in the O.A. were given



promotion from an earlier date without completion of training which is a condition precedent. The dispute arose because there was certain delay in sending the private respondents for training which was held to be arbitrary by the Tribunal and the Tribunal gave its reason in paragraph-12, which is reproduced as under: -

“12. However, there is one obvious arbitrariness which the Railways have not explained. There is a great deal of uncertainty in sending people for training. It appears that training fixed from 22.04.2003 to 05.06.2003 was re-scheduled from 22.05.2003 to 04.07.2003. There is no explanation why after completion of this training the applicants could not be promoted from 04.07.2003. Further, sending different persons at different times for training also introduces arbitrariness. Therefore, as a matter of legal principle we hold that the promotion shall be effective from the earliest date on which any person in the panel completed the training successfully. As it appears from the respondents’ own document that the training was re-scheduled from 22.05.2003 to 04.07.2003, it is directed that the applicants shall be entitled for promotion w.e.f. 04.07.2003.”

Learned counsel representing the Railways i.e. the petitioners submits that an error of record seems to have



been committed by the Tribunal. There is no element of arbitrariness at all, people were sent for training according to their seniority and since there are limited number of seats for training a sequence of seniority is maintained. The tribunal seems to have gone by the impression as if Annexure-7 to the O.A. application, which is a letter dated 08.05.2003, is the complete list of persons, who were sent for training, which included the private respondents. It is specifically urged and argued by learned counsel for the petitioners that this list included names of ten (10) candidates only who were admittedly senior to the present respondents and they completed their training between 05.06.2003 to 04.07.2003. So far as these respondents are concerned, they were sent for training on 20th November, 2003 which is evident from Annexure-14 which is on record in the rejoinder application of the petitioners to the counter affidavit of the private respondents. In the same Annexure a notification dated 16.01.2004 has been brought on record which was issued under the signature of the Principal of the training college which certifies that the training of the candidates which included the private respondents were successfully completed and, therefore, directed publication of their results in the next gazette.

The submission based on the above Annexure-14 is that the respondents were sent for training on 20th November, 2003, they completed their training on



16.01.2004, there was hardly an extra-ordinary delay which has been talked about by the Tribunal. Therefore, linking the case of these private respondents with completion of training with the earlier set of recommendees and fixing the entitlement to 04.07.2003 seems to be an error committed on behalf of the Tribunal.

Having perused these documents, we are in agreement with the submission of learned counsel for the petitioners that the entitlement of the private respondents, which has been given to them from 16.01.2004, cannot be said to be arbitrary or irrational. The Tribunal, in fact, has committed an error by clubbing these respondents with the list contained in Annexure-7 to the Original Application which has no correlation whatsoever, so far as training is concerned. The Tribunal has also not gone into the controversy and has accepted that the training is a precondition to promotion.

Learned counsel representing the private respondents however strenuously submits that for all practical purposes the private respondents had obtained training and that is the reason why they were considered for promotion and in this regard he relies an information obtained under Right to Information Act (hereinafter referred to as the "RTI") and has been annexed as Annexure (H), which is dated 25.03.2009. With due respect to the counsel for the respondents, he has misread if not misunderstood



the context of the reply given under the RTI. The said response or information has no correlation with the requirement of training and the training which has been undergone by the private respondents and completed on 16.01.2004. The private respondents have been given the benefit from 30th January, 2004 i.e. within a fortnight of a notification of completion of training issued by the Principal of the training college.

The order of the Tribunal to that extent is set aside. The benefit, which the private respondents will derive of the promoted post, will be 30th January 2004 and not 04.07.2003.

The fact being what they are the element of arbitrariness perceived by the Tribunal is not established because the training was being allowed to the candidates keeping in mind the limited seats and the seniority of such promoted candidates.

The writ application is allowed to the extent indicated above.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

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