

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.430 of 2017

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1. Syed Irshad Ahmad, Son of Syed Ashfaque, Shed Peon Diesel Lobby, East Central Railway, Darbhanga Under Samastipur Division (Bihar)
 2. Sanjay Prasad, Son of Kashi Raut Chowkidar, under Senion Section Engineer, East Central Railway, Samastipur (Bihar)
 3. Sanjay Kumar, Son of Late Deo Narayan, Peon Office of the Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar)
 4. Ramakant Lal Prasad, Son of Sri Parmeshwar Rai, Peon Office of the Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar)
 5. Mukesh Kumar, Son of Sri Rajendra Rai, Peon, Office of the Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar)
 6. Baidya Nath Yadav, Son of Sri Ram Swarup Yadav, Peon, Office of the Senior Divisional Personnel officer, East Central Railway, Samastipur (Bihar)
 7. Manoj Kumar Pathak, Son of Late Nawal Kishor Pathak, Chowkidar (Signal), East Central Railway, Narkatiyaganj (Bihar)

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar)
2. The General Manager (Personnel), East Central Railway, Hajipur, District - Vaishali (Bihar)
3. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar)
4. The Senior Divisional Personnel officer, East Central Railway, Samastipur (Bihar)
5. The Senior Divisional Engineer (Co - Ordination), East Central Railway, Samastipur (Bihar)
6. The Senior Divisional Signal & Telecom Engineer, East Central Railway, Samastipur (Bihar)
7. The Senior Divisional Mechanical Engineer, East Central Railway, Samastipur (Bihar)
8. The Assistant Divisional Engineer, East Central Railway, Darbhanga (Bihar)
9. The Advisor (Vigilance), Railway Board, New Delhi- 110001.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit (M.P. Dixit)
Advocate
For the Respondent/s : Mr. Anil Kumar Sinha
Advocate

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

Date : 09-11-2017

The seven petitioners before this Court were also applicants before the Central Administrative Tribunal, Patna Bench, Patna (“CAT” for brevity) in O. A. No. 699 of 2015. They filed the O.A. application, seeking following reliefs:

“(i) For issuance of Writ in the nature of Certiorari for quashing / setting aside the Order dated 29.07.2016 as contained in Annexure – 16 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna hereinafter Tribunal in Original Application No. 050/00699 of 2015 whereunder the prayer of Petitioners for quashing and setting aside Order dated 15.07.2015 as contained in Annexure – 8 and their further to give effect the Order dated 18.06.2015 as contained in Annexure – 6 with their further their prayer for issuance of posting / promotion Order to



the post of Junior Clerk with all consequential benefits has been rejected illegally.

(ii) For issuance of Writ in the nature of Certiorari for quashing / setting aside the Order dated 03.10.2016 as contained in Annexure – 18 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna in Review Application being R. A. No. 050/00104 of 2016 whereunder the request of the Applicant for recalling the Order passed in the aforesaid Original Application dated 29.07.2016 has also been rejected on totally illegal and unsustainable ground.

(iii) For issuance of any appropriate writ(s) / order(s) / direction(s) in the nature of Mandamus commanding the Respondents to give effect the order dated 18.06.2015 as contained in Annexure – 6 whereby the Petitioners have been found suitable / successful in all respect after their being facing selection test under the due process of law.

(iv) For issuance of any appropriate writ(s) / order(s) / direction(s) in the nature of Mandamus commanding the Respondents to issue posting / promotion order in favour of the Petitioners to the post of Junior Clerk henceforth with all consequential benefits.



(v) For any other appropriate relief(s) for which the Petitioners are entitled to may be granted in their favour.”

The O. A. was dismissed. The Tribunal refused to give any relief and therefore the present writ application has been preferred against the order, dated 29.07.2016, passed in O. A. No. 699 of 2015.

The fact, which led to the present litigation, is that a notification, dated 12.01.2015 was issued by the Railway Authorities for promotion to the post of Junior Clerk in the pay-scale of Rs. 5200-20200/- in the Grade Pay of Rs. 1900/- under 16.2/3rd % quota. The petitioners submitted their willingness. 41 persons, including the present petitioners, were found eligible for the said selection. A written examination was held on 30th of May, 2015 and then the results were published on 18.06.2015. Name of the petitioners were included in the final declaration of results amongst the successful candidates. Despite the result being declared, when the respondent – authorities failed to issue any posting orders, the petitioners decided to file an application, dated 10.07.2015 for taking action on the basis of outcome of the final result. However, instead of doing so, on 15.07.2015, the Railway – Authorities canceled the examination, against which representations were filed, but the same was not accepted and



therefore the petitioners decided to move the CAT Bench, seeking direction in their favour.

The stand of the respondents in their written statement as well as supplementary written statement was that they received complaints against the said selection that all was not well in the manner in which the exercise was done. There were large-scale irregularities and a Three-Men Committee was constituted with approval of the Divisional Railway Manager, Samastipur, who inquired into the matter. They indicated certain anomalies and on the recommendation of the Three-Men Committee it was decided to cancel the selection process and also hold a vigilance enquiry and take action against the erring officials or staffs.

The matter was looked into. The issue was referred to the Vigilance and finally in the controversial circumstances and the reasons, which emerged, the Railway – Authorities decided to cancel the examination and hold the same afresh. However, since these petitioners were successful candidates, therefore, naturally they were aggrieved by the said development and they moved the Tribunal for a direction that they be treated as successful and selected candidates for the said promotion and the Railways be barred from canceling the result or holding a fresh exercise.



Counsel for the petitioners found loopholes in the stand taken before the Tribunal as well as before this Court in the reasonings assigned. He also pointed out that the Vigilance refused to hold any enquiry, because they did not find anything amiss and, therefore, the Railway – Authorities took various stands or variable stands and they cannot be permitted to find excuses to annul an otherwise validly held examination, in which the petitioners were successful. It is also their stand that valuable right for promotion had accrued to them and if the cancellation of result is not interfered with, the petitioners will suffer irreparably.

To some extent, the stand of the petitioners with regard to variable positions was correct. But that is because of certain tentativeness in the manner of pleadings and assertions made before the Tribunal as well as before this Court. In view of the same as also to instill confidence in the system the Court decided to implead the Principal Executive Director (Vigilance), Railway Board as a party respondent and directed him to hold an enquiry independent of what the local authorities may have said or done, since certain serious misgivings were expressed with regard to the reason behind such cancellation.

The Principal Executive Director (Vigilance) Railway Board conducted an enquiry and submitted a report, dated 27.10.2017 in



a sealed cover, which was taken on record. It is a comprehensive kind of report where the entire background to the conduct of the examination has been taken note of and he came to a considered opinion that whatever be the reasons, but the manner in which the written examination was conducted was not above board and therefore in the interest of fairness and fair play, cancellation of the examination was warranted. The summary of lapses and the conclusion reached in the report reads as follows:

“4.0 Summary of Lapses

To summarise, the shortcomings that have been observed in the process are as under:

(i) Selection under LDCE quota should have been conducted after completion of the process of selection under the promotee quota, since as per the extant provisions, the unfilled vacancies of the promotee quota would have been diverted to the LDCE quota. This was not done.

(ii) Constitution of the Selection Committee was wrong. The Selection Committee consisted of two Senior Scale Officers and one Junior Scale Officer, whereas it should have consisted of Officers not lower in rank than Senior Scale. The officer representing SC/ST could have been added to the Senior Scale level Committee.



(iii) Addition of the three names consequent to their representation long after the expiry of cut-off date and without their formal application was wrong as the right course would have been to re-circulate the notifications with extended cut-off dates.

(iv) Due care should have been taken for wide circulation of the selection notifications and there should have been effective mechanism in ensuring that the notifications reached the desired offices.

(v) Further to above, a perusal of the files indicates that the approval of the number of vacancies is based on noting of the COS/P/Admin in the Divisional file No. Ka/254/v/Chaturth Shreni se Tritiya Shreni/14. The file was put up to DPO and Sr. DPO who have not checked if the calculations have been made correctly taking into account anticipated vacancies and if the extant rules have been kept in mind.

5.0 Conclusion:

5.1 It is clear that the selection process was flawed and a large number of lapses have come to notice which have been summarised in Para 4 above. The action taken by the Divisional Railway Manager, Samastipur for cancellation of the selection process on 09.07.2015 was done based on the lapses mentioned in paras 4(iii) & (iv) above based on a JA grade level Committee's



recommendation and endorsed by ADRM. While these shortcomings by themselves were sufficient reasons for cancellation of the selection process, it is observed that the shortcoming regarding the faulty constitution of the Selection Committee (mentioned in para 4 (ii) above) had also been raised by then as is evident from notings on Nps 6 & 7 of Divisional File mentioned above. Thus cancellation of the Selection process is considered to be in order. Subsequent examination of the matter had thrown up other irregularities which are mentioned in paras 4(i) and 4(v) above.

5.2 At this point of time it is not possible to identify vigilance or corruption angle in the matter as there appear to be no allegations of any money changing hands on record, except the statement of Shri Narendra Kumar which was unverifiable and was subsequently withdrawn.

5.3 The lapses discussed in para 4 are considered to be serious failures from the administrative point of view. It is observed that Shri Dayanand Thakur, Chief Office Superintendent has been transferred out vide order dated 14.07.2015 and Shri Vijendra Kumar Gupta, OS (Confidential) has been served with a written warning on 15.07.2015. While action has been taken against these Group 'C' staff, the role of the DPO Shri Prem



Kumar and Sr. DPO Shri Arun Kumar Yadav indicates that they have clearly not discharged their responsibilities properly. It was expected that the officers of the Personnel Department would be conversant with rules regarding sequencing of the selection process, composition of selection committee, inclusion of fresh names at a subsequent date, ensure proper circulation of notice and ensure correct calculation of vacancies. In the light of these, it is proposed to ask Zonal Railway Headquarters to review the matter from the administrative point of view and examine the roles of the Personnel Officers and staff involved in the matter afresh. Since the processing of the matter has been found to be defective at virtually every stage, appropriate disciplinary action is recommended against all those found responsible.

5.4 The Hon'ble Court has observed that “the authorities sitting in Delhi must also know about how the administration is being run by the subordinate officers at the divisional level, especially in the State of Bihar”. Observations of the Court have been noted and the shortcomings of this selection process are proposed to be brought to the notice of the concerned authorities of the Establishment Directorate in the Railway Board and in the Zonal Railway HQ so that appropriate action is taken to ensure that such incidents do not occur anywhere in future. This will,



however, be done after perusal of the report by the Hon'ble High Court and subject to its further direction in the matter.”

Since enquiry has been held by the highest level and the reasons have been assigned comprehensively which warrants cancellation of the examination the decision of the Tribunal to reject the OA and not direct the Railway Authorities to proceed on the basis of the result so declared is not required to be interfered with.

There has to be objectivity as well as impartiality in any exercise which culminates into either appointment or promotion on a public post. People's confidence in the system is paramount and fairness should prevail. Each and every person must be given an opportunity for such participation and selection. Since these elements were missing in the examination, which was conducted and since the Principal Executive Director, (Vigilance), Railway Board is willing to proceed against the persons responsible for such omission, which caused the present embarrassment for the Railways, the Court allows the Principal Executive Director, Vigilance to proceed in accordance with the law against appropriate authorities, so that such omissions and commissions are not committed by any responsible person and due objective



and fair play is maintained in selection, even it be a case of promotion.

The writ application in the above facts have no merit. The decision of the Tribunal for the above reasons are not required to be interfered with. Writ Application is dismissed, accordingly.

(Ajay Kumar Tripathi, J)

skm/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	N.A.F.R.
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