

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22352 of 2014

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Alok Roy, Son of Late T.N Roy, Rajbhasha Superintendent office of the Divisional Railway Manager (Rajbhasha) East -Central Railway, Mugalsarai

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Railway, Rail Bhawan New Delhi.
2. The General Manager, East Central Railway Hajipur, District - Vaishali (Bihar).
3. The General Manager (Personnel), East Central Railway, Hajipur District - Vaishali (Bihar).
4. The Mukhya Rajbhasha Adhikari (Chief Rajbhasha Officer, East Central Railway, Hajipur, District - Vaishali.
5. The Deputy Mukhya Rajbhasha Adhikari (Chief Rajbhasha Officer, East Central Railway, Hajipur, District - Vaishali (Bihar).
6. Sita Ram Sharma, Son of Late Mahadeo Sharma, Resident of Mohalla Railway Quarter No-339/CD, New Colony, P.S- Khagaul District - Patna
7. Arvind Mishra, Son of Onkar Nath Mishra DRM Office, Hindi Section, E.C. Railway, Mugalsarai.
8. Gopal Pandey, Son of Sri Ganga Sagar Pandey Resident of Mohalla - New Railway Colony, P.S- Khagaul District - Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kr. Choubey, Advocate
Mr. Sailendra Kumar, Advocate
For the Respondents : Mr. Bijoy Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date : 16 -01-2017

Heard learned counsel for the petitioner and learned
counsel for the Railways.

2. Petitioner assails the order dated 18.09.2013,
passed by Central Administrative Tribunal, Patna Bench, Patna in



O.A. No. 239 of 2007, by which while hearing the petition of three other applicants, who had moved the Tribunal and were aggrieved by denial of promotion to the post of Rajbhasha Superintendent in the E.C. Railways, the Tribunal has set aside the promotion of the petitioner, who was impleaded as Respondent No. 11 in the said O.A.

3. The facts of the case is that one Sita Ram Sharma and two others, who were working as Rajbhasha Assistant Grade-I in E.C. Railway, Hajipur were aggrieved by denial of promotion to the post of Rajbhasha Superintendent under the general quota. The Department vide notification dated 10/12.01.2006 had notified three vacancies under the general quota apart from other vacancies under the different reserved categories. On representation filed by the applicants and others the Department issued another notification dated 18.05.2006 showing five vacancies under the general quota. On further representation yet another notification dated 20.09.2006 was issued showing six vacancies under the general quota. It may be noted that the petitioner had been impleaded as respondent no. 11 in the said O.A. and belonged to the general quota of vacancies, with which we are concerned at the present. The three applicants alleged that having participated in the selection procedure and having done well in the examination were confident of selection, but instead



juniors were promoted to the post of Rajbhasha Superintendent. The notification dated 20.09.2006 specified that the examination was, thus, to be conducted on 06.10.2006 and a candidate could be allowed to appear in a subsequent written examination on 17.10.2006 (if he was absent for reason beyond his control i.e. only on railway medical certificate and administrative exigencies).

Petitioner had taken casual leave on 03.10.2006 for the period 04.10.2006 to 06.10.2006 on account of attending the Sradh ceremony of his maternal aunt and the same was approved by the competent authority. Thereafter the petitioner was allowed to appear in the supplementary examination on 17.10.2006 as a sole candidate, which supplementary examination was itself doubted by the applicants and the ground stated was that the parameters for the supplementary examination had been changed in comparison to those prescribed for the main examination, as instead of 45% marks allocated to objective questions in the main examination, in the supplementary examination 55% marks were allocated. There was yet another objection regarding transparency/ bias and also that the coding of answer-book was done by two different examiner/ evaluator of the said two examinations.

Learned counsel for the petitioner Sri M.P. Dixit submits that the three applicants had appeared in the said



examination without protest and after having been unsuccessful, had challenged the selection process. He submits that his application for casual leave had been duly recommended and sanctioned by the competent authority but the result of examination was declared on 08.01.2007 and the petitioner continued on the said post and has since superannuated on 31.07.2015. It has also been submitted that the petitioner continued on the promoted post of Rajbhasha Superintendent for long six years but the learned Tribunal by order dated 18.09.2013 has set aside the promotion of the petitioner and the same would amount to unsettling of the established position after a lapse of long six years, which was subsequently stayed by this Court vide ad interim stay order dated 02.07.2015 and the petitioner superannuated thereafter on 31.07.2015 without giving any relief to the three applicants.

Considering the facts and circumstances and the materials on record, the petitioner was allowed leave and was also allowed to appear in the supplementary examination in which he became successful and had been working on the promoted post for the last six years and the impugned order being stayed by way of an ad interim measure on 02.07.2015 by the High Court and subsequently petitioner has superannuated on 31.07.2015, it may be inequitable to permit quashing of his promotion, which the Tribunal



has done.

Petitioner having worked satisfactorily for long six years on the promoted post is not doubted and unsettling the settled position after working for six years on the promoted post and now petitioner having been superannuated, unsettling the settled position, at this stage, would not be proper. Hence, the order dated 18.09.2013, passed by learned Tribunal in O.A. No. 239 of 2007, so far as petitioner is concerned, is set aside. Writ application is, accordingly, allowed.

(Nilu Agrawal, J.)

I agree.
Ajay Kumar Tripathi, J.

(Ajay Kumar Tripathi, J.)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	10.01.2017
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