

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2765 of 2018

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1. The Union of India, through the General Manager, E.C. Railway, Hazipur.
 2. The General Manager (P), E.C. Railway, Hazipur.
 3. The Divisional Railway Manager, E.C. Railway, Danapur.
 4. The Senior Divisional Personnel Officer, E.C. Railway, Danapur.
 5. The Assistant Personnel Officer (IR&W), E.C. Railway, Hazipur.
 6. The Assistant Personnel Officer, E.C. Railway, Danapur.

... .. Petitioner/s

Versus

1. Ambika Prasad Upadhyay, Son of Late Sarju Upadhyay, resident of Railway Quarter- 549-B, New Coloney, Khagaul, P.O.- Khagaul, District- Patna-Bihar- 801105.
2. Sri Ravi Kumar Shukla, Teacher (TGT), E.C. Railway Inter College, Mugalsarai.
3. Amrendra Kumar, TGT (officiating PGT) in E.C. Railway Inter College, Mugalsarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate
For the Respondent/s	:	Mr. Gautam Bose, Sr. Advocate
		Mr. Ajay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 18-06-2018

A mammoth organisation like the Railways which at times is referred to a Government within the Government does not have the freedom or leeway of behaving like an ordinary employer or litigant. They have an obligation towards its employees and are as much bound by the ethos as well as the preamble of the Constitution as any other citizen is.



The present writ application has been preferred against the order dated 14.03.2014, passed in O.A. 97 of 2010 by the Central Administrative Tribunal, Patna Bench, Patna. The Tribunal after considering the various facts relating to non-consideration or grant of substantive promotion as a post-graduate teacher in Mathematics as well as substantive promotion on the post of a Headmaster on which post the private respondent was made to officiate from 28.07.2008 gave the following directions:

“14. In the light of foregoing discussion, this OA is disposed of with following directions/observations :-

(i) *The respondents shall complete the process of promotion to the post of PGT (Maths) and/or other posts as per notification dated 13.05.2005 as per rules within a period of three months from the date of receipt/production of a copy of this order.*

(ii) *If the applicant is found fit for promotion to the post of PGT (Maths) than the said promotion shall be granted to him notionally w.e.f. the date on which any of the TGT junior to the applicant in the seniority list of TGTs has been granted promotion as PGT or from the date he is discharging the responsibilities of Headmaster/Principal at Danapur against a higher post, which ever is earlier. The actual benefits shall be given from the date from which he has assumes or has assumed higher responsibility in the post of PGT or of equivalent scale post.*

(iii) *If on the basis of such promotion to PGT w.e.f. the date as mention in clause (ii) above, the applicant finds place in the zone of consideration for the post of Principal for which selection process was initiated vide notification dated 12.10.2010, then he should*



also be considered for promotion and if found fit, he shall also be promoted against a post of Principal notified in the notification dated 12.10.2010 or against any future vacancy as per his position in list. In this connection, it is also noted that vide order dated 15.12.2010 passed in MA 402 of 2010 arising out of this OA, the Tribunal directed that any selection in pursuance of memo dated 12.10.2010 [Annexure M/1] of MA 402/2010] shall be subject to outcome of this OA.

(iv) Regarding the claim of the applicant for granting the scale of pay of Headmaster or at least officiating allowance, the respondents shall examine the case as per rules and in the light of observations made in preceding paragraph no. 13.”

The Railways are aggrieved with the above directions.

One of the primary submission on behalf of the counsel for the Railways is that the notification dated 13.05.2005, which was a process initiated to fill up the post of PGT (Maths) by promotion, had been recalled, and, therefore, the first direction given in paragraph 14(i) by the Central Administrative Tribunal is unwarranted.

At a close look of the pleadings, it is evident that no material or notification was produced before the Tribunal that the notification dated 13.05.2005 was recalled or withdrawn. What emerges, however, is that the exercise, which was initiated and required to be completed within a period of three months, was not acted upon, meaning thereby, that the Railway authorities



deliberately dragged its feet on the question of grant of promotion to the eligible teachers on the post of PGT (Maths) and they have been taking work in ad hoc manner may be in officiating capacity for years and years, if not a decade.

A model employer cannot exploit its employees and belie them their original claim for consideration for promotion if they are otherwise eligible and entitled to by not holding the exercise for years together. It deliberately amounts to denial and which in our opinion violates Article 14 if not 16 of the Constitution of India.

It is in this background and factual position that the Tribunal was compelled to pass the orders and directions in paragraph 14 of the impugned order, which in our opinion, cannot be said to be erroneous or illegal in any manner.

Merely because the private respondent had superannuated without earning the promotion by non-consideration, cannot be wished away by interfering with the direction of the Tribunal. The obligation upon the Railways is to do away with ad-hocism prevailing in such matters and is required to be commented upon. The Court cannot be a party to such illegal kind of conduct or their part of inaction.



We are satisfied that the facts speak for themselves and the directions issued by the Tribunal in the operative part of the impugned order is required to be carried out within a time frame.

The writ application is dismissed. The Railway authorities are directed to complete the exercise within a period of six months from today.

(Ajay Kumar Tripathi, J) 2017

(Nilu Agrawal, J)

Rajesh/Pragya

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.06.2018
Transmission Date	NA

