

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 4630 of 2016

1.Pramod Kumar Singh

2.Murtunjay Naik

..... Petitioners

Vrs.

1.Union of India through General Manager, SER, Kolkata

2.Chief Personnel Officer(Engg.) SER, Kolkata

3.Chief Engineer(Track Machine) SER, Kolkata

4.Executive Engineer(Track Machine), SER, Kolkata

5.Sr.Personnel Officer, SER, Kolkata

6.Asst. Personal Officer, SER, Sini, West Singhbhum, Jharkhand

7.Assistant Engineer(TT), SER, Sini, West Singhbhum, Jharkhand

..... Respondents

.....
CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Petitioners : Mr. Md. Ashrafuzaman Khan

For the Respondents : None

03/08.03.2018 Heard learned counsel for the petitioner. No one appears for the Respondent Railways.

2. Learned Central Administrative Tribunal (CAT), Patna Bench, Ranchi Circuit Bench by the impugned order dated 28.04.2016 passed in O.A. No. 051/00192/2014 (Annexure-10) has upheld the order of reversion dated 19.08.2014 and 28.08.2014 where under petitioner no.1 and 2 were reverted from the post of Junior Engineer to Technician and Senior Technician respectively.

3. The Applicants/ writ petitioners herein participated in the Limited Departmental Competitive Examination (LDCE) pursuant to the notice dated 19.08.2010 (Annexure-1) and found themselves in the merit list contained in Annexure-2 dated 03.11.2011 at Serial No. 7 and 8 in the unreserved and Schedule Tribe category. Consequent thereto, they were promoted to the post of Junior Engineer by Annexure-3, order dated 08.04.2013. The merit list dated 03.11.2011 was challenged before learned CAT, Kolkata Bench in O.A. No. 190 of 2012 by certain candidates. The present applicants/ writ petitioners also appeared being Respondents therein, apart from the Railways being the official Respondent. Learned Tribunal by order dated 29.08.2013 quashed the merit list and directed the Railways to prepare a revised panel on the basis of merit i.e. the marks obtained in the written examination without counting the seniority. After seeking some extension by the Railways, a revised panel was prepared on merit excluding the seniority marks in which these applicants did not find place (Annexure-6 dated 20.01.2014).

4. These applicants were served with show cause notice on 09.04.2014

(Annexure-4) asking them to explain as to why they be not reverted to the lower post in the light of the revised panel notified in obedience of the order of learned CAT, Kolkata Bench in O.A. No. 190 of 2012. The Applicants filed their reply by Annexure-5 series dated 21.04.2014. They also pleaded that their appointment was made after approval of the competent authority on the higher post of Junior Engineer on the basis of merit list prepared in pursuance of the LDCE conducted by the Railways to fill up 25% quota for the post of JE-II/TM in the scale of Rs.9300-34800 with Grade Pay of Rs.4200/-. They also took plea that since the Railways were represented before the learned CAT, Kolkata Bench and were well versed with the selection criteria, the counsel representing these applicants did not explicitly contested the case there. They also stated that having served for more than 2 years including the training, reversion to the lower post could not only entail pecuniary loss but could also be unjustified. However, by the impugned order dated 19.08.2014 and 28.08.2014(Annexure-7 and 7/A) the Railways reverted the Applicants to the lower post.

5. Being aggrieved, they approached the learned Tribunal, Patna Bench, Ranchi Circuit Bench in the instant O.A. No. 051/00192/2014. Learned counsel for the petitioners submits that the merit list prepared on 03.11.2011 was in consonance with the Establishment SL. No. 140/2003. The Respondent Railways has erroneously acted upon Establishment SL. No. 113 of 2009. Preparation of revised panel also indicates that it has been done to accommodate candidate from unreserved category i.e. Pankaj Kumar at S.No. 8 in preference to Scheduled Caste category candidate. The candidate at S. No. 4 Partha Pratim Bhadra has been empanelled under Scheduled Caste category, though he should have been in the unreserved category on the basis of his seniority in the light of the Establishment circular RBE No. 128/2002 (Annexure R1). Learned counsel for the applicants/ writ petitioners submits that the stand of the Railways is not in consonance with the Railway Establishment Manual and the reversion order cannot be sustained on the order of learned CAT, Kolkata Bench alone. Learned counsel for the petitioners further submits that the revised merit list was published on 20.01.2014 before even the show cause notice was issued to the writ petitioners on 09.04.2014 indicating a premeditated mind on the part of the Railways.

6. We have considered the submission of learned counsel for the

petitioner, gone through the relevant materials on record and also perused the impugned order. On the basis of the discussion made herein above, both on the conspectus of facts and legal submission made, we find that these applicants were very much part of the proceedings in O.A. No. 190/2012 where in the merit list dated 03.11.2011 containing their names were under challenge by the aggrieved candidates. The learned Tribunal, Kolkata Bench did not approve of the merit list drawn by the Railways pursuant to the LDCE as they also counted the seniority of the applicants while ignoring the merit reflected in the written test. The learned Tribunal quashed the merit list and directed for preparation of a fresh merit list as per the guidelines of Estate SL. No. 60/2006. They relied upon the Establishment SL. No. 140/2003 but learned Tribunal was of the firm view that the panel ought to be prepared on the basis of merit alone without counting the seniority of the candidates since the selection were to be made under LDCE. It was only in pursuance of the directions of learned Tribunal, Kolkata Bench, which attained finality in the absence of any challenge by the Railways or the Applicants, that the revised merit list was notified on 20.01.2014. The Railway Board clarified in the instant O.A. that the selection would be made under Establishment SL. No. 113 of 2009.

7. It is further borne out from the records that out of the 13 vacancies notified, 7 belonged to Unreserved (UR) category, 5 belonged to Scheduled Caste(SC) category and 1 belonged to Scheduled Tribe (ST) category. Out of the 70 applications received, 58 candidates appeared in the written examination, but only 18 UR candidates, 4 SC candidates and 4 ST candidates qualified for viva-voce. When the panel was recasted , 12 candidates were finally selected amongst whom 7 candidates belonged UR category and 4 candidates belonged to SC category. 1 candidates belonging to ST category found place in the merit list out of 4 ST candidates, who have qualified in the viva-voce test. The Railways therefore justified the revised merit list in view of the vacancy available to the 3 categories and the number of candidates qualifying from reserved category. The applicants/ writ petitioners surprisingly did not challenge the revised panel dated 20.01.2014 in which their names did not find place. This panel was prepared only pursuant to the directions of learned CAT, Kolkata Bench dated 29.08.2013 passed in O.A. No. 190 of 2012. Since the names of the applicants did not find place in the revised panel, show cause was issued to them to explain as

to why they be not reverted. The impugned orders of reversion were passed by the Railways on the basis of the revised panel dated 20.01.2014.

8. In the aforesaid chronology of facts and the position in law that has come to be in view of the exercise done in the light of the directions of learned CAT, Kolkata Bench, the order of learned CAT, Patna Bench, Ranchi Circuit Bench upholding the reversion of the applicants / writ petitioners cannot be said to be suffering from any such error of law or facts which can be interfered in the writ jurisdiction by this Court. We do not find any merit in the writ petition. Accordingly, the writ petition is dismissed.

(Aparesh Kumar Singh, J.)

(Ratnaker Bhengra, J.)