

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18615 of 2010

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SUMAN KUMAR, S/O Siya Ram Saran Prasad, R/O F- 102, Peoples
Cooperative Colony, Kankarbagh, Police Station Kankarbagh, Distt. Patna

... .. Petitioner/s

Versus

1. THE UNION OF INDIA through the General Manager, Central Railway, Mumbai, CST, Maharashtra.
2. The Chief Personnel Officer, [C], G.M.'S Officer, Central Railway, Mumbai C.S.T., Maharashtra
3. The Chairman, Central Board of Secondary Education, 2, Community Center R/O Preet Vihar, Shiksha Kendra, New Delhi - 92
4. The Secretary, Central Board of Secondary Education, 2, Community Centre R/O Preet Vihar, Shiksha Kendra, New Delhi - 92
5. The Controller of Examination, Central Board of Secondary Education, 2, Community Centre R/O Preet Vihar, Shiksha Kendra, New Delhi - 92
6. The Regional Officer, Central Board of Secondary Education, 35 - B, Civil Station, M.G. Marg, Civil Lines, Allahabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uttam Kumar Mishra, Advocate
For the Respondent/s : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-04-2019

Heard Shri Uttam Kumar Mishra, learned counsel
for the petitioner.

2. The availability of a chance to appear in the
consecutive examinations held by the Ministry of Railways in
the scheme known as “Vocational Course on Railway
Commercial” is the issue which involves consideration in the



present writ petition. The order of the Central Administrative Tribunal rejecting the application of the petitioner dated 3rd March, 2010 passed in O.A. No. 439/2009 is under challenge before us.

3. There are two issues involved. The first is with regard to the very territorial jurisdiction of the Tribunal to entertain the application and the second on the merits of the claim made by the petitioner.

4. On the issue of territorial jurisdiction, it is worth extracting Paragraph 12 of the impugned order hereinunder:

“12. An important issue in this case needs to be mentioned. In the opinion of this Bench, the jurisdiction for hearing this case did not lie with the CAT, Patna Bench, as no part of the cause of action in this case arose within the jurisdiction of this Bench of the Tribunal, in Bihar State. It has been held separately by us repeatedly in many other cases, on the basis of authorities cited, that in such cases, merely receipt of postal communication by the applicant for Government jobs, jurisdiction does not lie with this Bench of the Tribunal. However, since in this case, a concurrent bench of this Tribunal in O.A. 438 of 2008 entertained an application of the applicant along with two others, and had passed orders dated 2nd March, 2009 on that O.A.,



we refrain from rejecting this O.A. on the ground of territorial jurisdiction.”

5. We do not agree with the aforesaid observations made by the Tribunal, inasmuch as, the question of territorial jurisdiction goes to the root of the matter and if the Tribunal was of the opinion that the cause of action disclosed did not give rise to any such issue which could be tried within the territory of the Bench at Patna, then it was not open to the Tribunal to rely on the orders of another concurrent Bench which otherwise was also beyond the territorial jurisdiction of the Tribunal. The entire exercise, therefore, was *coram non judice*, yet the Tribunal discarded any attempt of decision on the said issue and proceeded to decide the case on merits. As observed above, we do not approve the aforesaid approach of the Tribunal.

6. Nonetheless, on the merits of the claim also, we find that the Tribunal was justified in coming to the conclusion after having considered the applicable circular and rejecting the claim of the applicant for which the learned counsel for the Railways has rightly relied on a Division Bench order in Civil Review No. 208 of 2014 arising out of C.W.J.C. No. 10491 of 2013 decided on 7th January, 2015, which is extracted hereinunder:-



“The instant application has been filed seeking review of the order, dated 19.03.2014, passed in C.W.J.C. No. 10491 of 2013, whereby the writ application of the petitioners preferred against the order, dated 09.08.2012, passed by the learned Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 436 of 2009, has been dismissed.

2. The facts of the case, in brief, are that the opposite party herein applied, in response to Employment Notice No. RRB/BPL/1/2000, for Vocation Course in Railway Commercial (hereinafter referred to as ‘VCRC’). He (opposite party) was selected for the course in the year 2001 after clearing the written test and interview and, thereafter, he was sent to D.G.T. High School and Jr. College for two years job linked VCRC 2001-2001 vide letter, dated 28.06.2001.

3. Opposite party herein appeared, for the first time, in VCRC examination main examination in March, 2003, but failed. He (opposite party), then, appeared in March, 2005 and 2006 and was, declared *fail*, on both the occasions, he finally succeeded in passing the course in March, 2007.

4. According to the Railways, the opposite party did not avail 2nd, 3rd and 4th chance allowed by the Board. He also did not avail 6th and 8th chance of compartmental examination of October, 2005, and October, 2006. He passed the



said examination in his 9th chance, and, hence, he was not eligible to be considered for appointment in Railways as Ticket Collectors/Commercial Clerk.

5. Being aggrieved, the opposite party herein filed O.A. application, bearing O.A. No. 436 of 2009, before the Central Administrative Tribunal, Patna Bench. The learned Tribunal took the view that if the applicant (opposite party herein) had dropped the examination in certain years and there was no compulsion to appear in departmental examination, for consecutive appearance, he ought not to have been declared failed and, consequently, he ought not to be treated ineligible for appointment to Railway services.

6. Being aggrieved by the order of the learned Tribunal, the Union of India (petitioners) filed a writ petition, which gave rise to CWJC No. 10491 of 2013. In the writ petition, the Union of India stressed before the Division Bench that in view of the Circular, dated 27.10.1995, which stood modified on 01.01.2004 and 10.12.2004, the opposite party ought to have passed the examination in 6th consecutive examination; but he passed in 9th consecutive examination. The Division Bench noticed that the learned Tribunal has relied upon pronouncement of Allahabad High Court on the same issue in the context of departmental Circular, dated 10.12.2004, to the extent that the opportunity to appear, at the



succeeding examinations, was not to be read 'consecutively' if the candidate passed, within the prescribed number of chances. With the conclusions, so reached, the Division Bench of this Court refused to reconsider the matter inasmuch as the Allahabad High Court had already interpreted the extent and scope of the Circular, dated 10.12.2004.

7. The case of the Railways is that the opposite party secured qualifying marks in his 9th consecutive attempts, whereas he ought to have secured qualifying marks within 6th consecutive attempts. Learned counsel, appearing for the Railways, submits that this Court committed an error apparent on the face of record by misreading the departmental Circular, dated 10.12.2004, which provided a maximum of 6th consecutive attempts and not total of six attempts and, thus, the writ Court was incorrect in taking the view that the Circular aforementioned permitted passing of the examination in an individual's 6 (six) attempts, which may not be at consecutive examinations held by the Railways.

8. We have perused the Examination Bye-laws of the year 1995 and the Circular, dated 10.12.2004. The Examination Bye-laws of the year 1995 was modified vide Circular, dated 01.01.2004, and 10.12.2004. Para 2 of the Circular, dated 10.12.2004, clearly stated that the students should attain qualifying marks in his 6th



attempt, which must be at examination held immediately after each other. Para 2 of the Circular, being referred, is quoted hereinbelow for easy reference:

“Para 2: It has now been decided by the competent Authority that in addition to the above mentioned chances, students who secured prescribed percentage of marks in the immediate next year’s main and/or its compartment examination (5th and/or 6th chances) may also be considered for appointment on the Railway subject to medical examination as per prescribed standard and other requisite formalities.”

9. Further-more, the Government of India (Bharat Sarkar) Ministry of Railways (Rail Mantralaya) vide letter, dated 04.03.2005, after detailed review of the subject, decided to discontinue the scheme, which provided 6th consecutive attempts to clear the VCRC course.

10. In our view, this Court, whose order is under review, failed to take into account that even 2004 scheme did not provide for 9th attempt, but only 6th consecutive attempts, which scheme, too, was abolished on 04.02.2005 and, as such, the opposite party (respondents in the writ



petition) could not have been given the benefit of the scheme.

11. In the result, this review application is allowed. The order, dated 19.03.2014, passed in C.W.J.C. No. 10491 of 2013, is accordingly recalled and the order, dated 09.08.2012, passed by the learned Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 436 of 2009, is hereby set aside.”

7. We see no reason to differ from the view already taken by the Division Bench and the judgments referred to therein, and accordingly no ground is made out for interference on the facts of the present case as recorded in the order of the Tribunal. The writ petition lacks merit and is, accordingly, rejected subject to the observations hereinabove.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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CAV DATE	
Uploading Date	11.04.2019
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