

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.413 of 2018

In
Civil Writ Jurisdiction Case No.236 of 2009

-
-
1. The Union Of India through the Secretary, Ministry of Railway, Government of India, New Delhi.
 2. The Chief Personnel Officer, Eastern (Now East Central) Railway, Hajipur.
 3. The Divisional Railway Manager, East Central Railway, Danapur.
 4. The Senior Divisional Personnel Officer, East Central Railway, Danapur.

... .. Appellant/s

Versus

1. Indra Dev Prasad Yadav Son of Late Sri Jamuna Yadav Resident of Lakhani Bigha, Tolapar, P.O. - Khagaul, Police Station - Danapur, District - Patna.
2. Uday Kumar Son of Late Sri Basgeet Prasad Resident of Lanka Colony, Qtr, No. 731 A, P.O. - Khagaul, Police Station - Khagaul, Danapur Cantt., District - Patna.
3. Chandeshwar Rai/Prasad Son of Late Sri Deo Chand Rai Resident of Rewa Satar, Police Station - Maner, District - Patna.
4. Kumari Ranji Daughter of Sri Lakshman Swaroop Resident of Qtr. No. 108, KL. Medical Colony, Police Station Khagaul, District - Patna.
5. Dina Nath Chaudhari Son of Sri Kari Chaudhary Resident of Out House No. 188, Medical Colony, Khagaul, District - Patna.
6. Sanjay Kumar Son of Late Sri Brij Nandan Yadav Resident of C/o Ravi Shankar Singh, Neura Colony, Qtr. No. 8509/8, Police Station - Khagaul, District - Patna.
7. The Secretary, V.N. Sharma Institute, East Central Railway (Previously E. Railway) Railway Cinema, Khagaul, Danapur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Advocate
For the Respondent/s	:	Mr. Gautam Bose, Sr. Advocate
		Mr. Ajay Kumar, Advocate
		Mr. Vikash Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-07-2019

Heard Shri Bindhyachal Singh, learned counsel for
the appellant and Shri Gautam Bose, learned Senior Counsel for



the respondent-petitioners.

The appeal questions the correctness of the judgment dated 26th of February, 2018 contending that the writ petition should not have been entertained when a challenge had been raised to a decision taken by an authority on 3rd of November, 2008 and which ought to have been assailed before the Central Administrative Tribunal. Learned counsel has invited the attention of the Court to Section 19 of Administrative Tribunal Act, 1985, to advance his submissions and to contend that entertaining of the writ petition was erroneous keeping in view the Constitution Bench judgment in the case of **L. Chandra Kumar Vs. Union of India & Ors. reported in A.I.R 1997 SC 1125.**

The second ground of challenge raised is that even on merits the direction issued by the learned Single Judge to consider the case of the respondent-petitioners to decide strictly on two grounds is contrary to the earlier directions that are contained in the judgment dated 23rd of July, 2008 in the case of Gyanendra Kumar Sharma Vs. Union of India and Ors. (C.W.J.C. No. 13920 of 2005) as well as the connected writ petitions where the respondent-petitioners were also parties.

It is, therefore, submitted that the reasoned and



speaking order dated 23rd of July, 2008 did require a re-consideration and consequently, the impugned judgment of the learned Single Judge is vitiated.

Learned counsel for the respondents on the other hand submits that this issue has now been considered in the case of Union of India & Ors. Vs. Gyanendra Kumar Sharma @G.K. Sharma (L.P.A. No. 410 of 2018) which appeal was dismissed on 18th of December, 2018 upholding the order of the learned Single Judge. It is, therefore, submitted that there is no reason to take a different view in the matter even if the answering respondents have not approached the Central Administrative Tribunal for a decision in the matter.

We have considered the submissions raised and the first issue with regard to the maintainability of the writ petition requires a consideration in the wake of the fact that the writ petition was filed in the year 2009 and was disposed off in the year 2018 which is after nine years.

The contention of Shri Bindhyachal Singh to the effect that the matter should have been brought before the Central Administrative Tribunal at the first instance may be correct, but at the same time, in view of the long pendency of the writ petition before this Court, we find it necessary to



indicate that on account of this long pendency and the exchange of affidavits and further in the wake of the Division Bench judgment in the case of Union of India & Ors. Vs. Gyanendra Kumar Sharma@ G.K. Sharma (supra), it would not be appropriate or expedient in the interest of justice to now relegate the respondent-petitioners to the Central Administrative Tribunal for a decision when a Division Bench of this Court has already taken a view in the matter on merits after contest between the Railways and similarly situate employees.

It may further be pointed out that this issue had been advanced in the case of Union of India & Ors. Vs. Gyanendra Kumar Sharma@ G.K. Sharma (supra) and the same has been dealt with by the Division Bench in paragraph No. 5 of the said decision which is also another reason for not accepting the contention on behalf of the petitioner.

Shri Bindhyachal Singh then urged that there would be a contradiction in terms inasmuch as the earlier direction of the same learned Single Judge on 23rd of July, 2008 was to exclude the two grounds of under age and under qualification, and then to proceed to decide the matter whereas in the second round of litigation, the direction issued is to proceed to consider in a confined way which according to the



learned counsel is contrary to the earlier judgment.

As noted above, the judgment of the learned Single Judge in a similar matter has been upheld by a Division Bench in the case of Union of India & Ors. Vs. Gyanendra Kumar Sharma@ G.K. Sharma (supra) vide judgment dated 18th of December, 2018 after a consideration of entire facts on record which are almost similar as in the present case. The fact remains that the impugned judgment is almost similar in nature that was challenged in the case of Union of India & Ors. Vs. Gyanendra Kumar Sharma@ G.K. Sharma (supra). In the wake of the said circumstances, we do not find any reason to differ from the view taken in the case of Union of India & Ors. Vs. Gyanendra Kumar Sharma@ G.K. Sharma (supra) and, therefore, the appeal is dismissed on the same grounds.

It shall be open to the respondents to pass appropriate orders keeping in view the terms of the impugned judgment.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	31.07.2019
Transmission Date	N.A.

