

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.566 of 2021

1. The Union of India through the General Manager, East Central Railway, Hajipur
2. The General Manager (P) East Central Railway, Hajipur
3. The Divisional Railway Manager, East Central Railway, Danapur
4. The Sr. Divisional Mechanical Engineer, East Central Railway, Danapur
5. The Sr. Divisional Personnel Officer, East Central Railway, Danapur
6. The Assistant Personnel Officer, East Central Railway, Danapur

... .. Petitioner/s

Versus

Ajay Kumar Singh (M), Son of Hari Prasad Singh, resident of Vivekanand Road No. 2, Adarsh Colony P.O.- Keshri Nagar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Dr. Anand Kumar, Advocate
For the Respondent/s : Mr. Rakesh Kumar Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 30-09-2021

Heard Dr. Anand Kumar, learned counsel for the petitioners and Mr. Rakesh Kumar Sharma, learned counsel for the respondent.

2. The petitioners have moved the Court being aggrieved by the order dated 09.01.2020 passed in OA No./050/00501/2016 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal').

3. The respondent, who was an Assistant Loco Pilot,



appeared in the selection process in terms of the notification dated 01.05.2013 for the post of Chief Loco Inspector (DSL). Upon the result being declared, he was included in the panel of selected candidates pursuant to the written examination held on 28.05.2014. However, the entire process was cancelled by communication dated 23.12.2014 for administrative reasons. The respondent moved the Tribunal against such cancellation of the entire selection process in OA No. 050/00501/2016 which was finally decided on 09.01.2020, directing (i) the Railways (petitioners herein) to consider the candidature of the respondent for promotion to the post of Chief Loco Inspector (DSL) pursuant to the notification dated 01.05.2013 as also the result of the written test declared on 11.07.2014, and (ii) setting aside the communication dated 23.12.2014 cancelling the entire process. Being aggrieved by the same, the petitioners have preferred the present writ petition.

4. Learned counsel for the petitioners submitted that the selection process was cancelled on cogent ground for valid reasons, both factually as also in law. It was submitted that the initial notification dated 01.05.2013 was not in terms of the relevant circulars of the Railway Board with regard to fixation of eligibility criteria, inasmuch as, certain group of persons who



would be eligible to participate in such selection process were not included in the notification to be eligible. For this purpose, learned counsel relied upon the circular of the Railway Board bearing No. 51 of 2009 dated 26.03.2009 (Annexure-3 to the writ petition). Further, it was submitted that even if the selection list and the panel prepared is compared with the position of the candidates, who were ultimately shown to be successful, the total marks obtained by the respondent who belongs to unreserved category would not make him eligible for appointment on unreserved post for the reason that two candidates belonging to the Scheduled Castes category having better marks would have filled those two positions of the unreserved category in terms of the settled law, as also clarified by circular No. RBE No. 126 of 2010 issued by the Ministry of Railways (Railway Board) dated 01.09.2010. Thus, it was contended that if the order impugned is allowed to remain, it would in effect mean that the selection process, which has been cancelled, would be revived and the persons from the panel would have to be appointed as against the vacancies. Learned counsel submitted that this would also unsettle the settled position and for that there have been 4-5 such transactions in which various persons have qualified and have been promoted



and even the respondent, as of now, has been promoted to such post as also received further promotion. It was submitted that in the present case, the contention of the respondent explaining the reason of him approaching the Tribunal belatedly giving the reason that such cancellation was not widely published and was not known to him also does not stand scrutiny, for the reason that after the said selection process, in the following next two selection processes, he had participated, though was unsuccessful.

5. Learned counsel for the respondent submitted that he was not aware of such cancellation and that was the reason for him moving the Tribunal after some delay. Moreover, it was submitted that the issue with regard to the respondent being unsuited or ineligible for appointment would come only upon the railways considering the case of the respondent as has been directed by the Tribunal and in any view of the matter, no prejudice has been caused to the Railways as the direction is only for consideration of his case.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. On a plain reading of the ultimate direction issued by the Tribunal,



the same does appear to be innocuous as only a direction has been given to consider the candidature of the respondent for promotion to the post of Chief Loco Inspector (DSL). However, the real import upon reading the further stipulation in the order impugned is that such consideration should be pursuant to the notification dated 01.05.2013 as also the result of the written test declared on 11.07.2014. This direction, in effect, in our opinion, would amount to revival of the old selection panel and, but certainly, result in affecting the settled seniority position of the parties which will involve not only the respondent, but many other persons. We may also note that the said other parties are not parties herein. Further, the Court is in agreement with the submission of learned counsel for the petitioners that the recruitment process had to be in accordance with the rules and regulations and the relevant circulars of the Railway Board in connection thereto which clearly had not been adhered to, as has been noted above. Thus, the initial notification dated 01.05.2013 stands vitiated in the eyes of law. Moving further, even if for the sake of argument, it is assumed that the selection process was required to be taken to its logical conclusion, in view of the materials brought on record, this Court is satisfied that the marks obtained by the respondent would not have made him



eligible for being promoted to the post of Chief Loco Inspector (DSL) even in terms of that selection panel since the two candidates of the reserved category having higher marks than him would be taking two posts in the unreserved category, on merit, in view of the settled law.

7. Thus, on an overall view of the matter, the writ petition stands allowed. The order dated 09.12.2019 passed in OA No./050/00501/2016 by the Central Administrative Tribunal, Patna Bench, Patna, is set aside, and the said Original Application stands dismissed.

(Ahsanuddin Amanullah, J)

(Anjani Kumar Sharan, J)

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