

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10089 of 2021

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1. Bablu Kumar Pandey, S/o Ramesh Pandey, R/o Village- Sakaddi, P.S. Jalalpur, District- Saran.
 2. Brijesh Kumar Sharma, S/o Mishri Lal Sharma, R/o Village- Bhaluhi Sikandra, P.S. Sahebganj, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The Union of India through Chairman, Railway Recruitment Boards, Government of India, New Delhi- 110001.
2. The Chairman, Railway Recruitment Board, Muzaffarpur, Lichi Bagan, Muzaffarpur, PIN- 842001.
3. The General Manager, Personnel and Administrative Department, ECR Railway Recruitment Board, Hajipur, PIN- 844101.
4. The Additional General Manager, Personnel and Administrative Department (ECR) Railway Recruitment Board, Government of India, Hajipur, PIN- 844101.
5. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
6. The District Magistrate, Saran at Chapra.
7. The District Magistrate, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Dr. K. N. Singh (ASG)
		Mr. Bijoy Kr. Sinha, Advocate
		Mr. Sheo Shankar Prasad, SC-8
		Mrs. Priyanka Raj Lakshmi, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

17 27-04-2022 The petitioners have put to challenge an order dated 11.12.2020, passed by a Division Bench of the Central Administrative Tribunal, Patna Bench Patna, in OA No. 050/00464/2020 and MA 216/2020, whereby the petitioners'



original application filed under Section 19 of the Administrative Tribunal Act has been rejected.

2. The short facts of the case relevant for present adjudication are that the petitioners had applied against an advertisement for appointment to the post of Assistant Loco Pilot and Technician as ST category candidates. Both of them claimed to be belonging to *Lohar* by caste. The status claimed by them as Scheduled Tribe was not accepted. Petitioner No. 1 was treated as a general category candidate, whereas petitioner No. 2 as a candidate belonging to OBC category.

3. The petitioners had approached the authorities under the Right to Information Act whereupon certain informations were supplied to them. Curiously enough, the petitioners questioned the correctness of the information supplied to them under the Right to Information Act before the Tribunal. They sought for quashing and setting aside of the reply furnished to them under Right to Information Act on 16.03.2020 and on an appeal under the said Act dated 30.04.2020 before the Tribunal. They further sought for a direction from the Tribunal to consider the selection of the petitioners under Scheduled Tribe category in the light of their caste certificate which they had submitted.



4. It appears from the impugned order that the petitioners had placed reliance on a notification issued by the State Government wherein *Lohar* caste was declared to be a Scheduled Tribe.

5. Without entering into the aforesaid controversy, the Tribunal noticed that the marks scored by petitioner No. 1 was less than the cut-off-marks fixed even for a Scheduled Tribe candidate and, in no circumstance, any relief could be granted to him. The said finding is not in dispute.

6. Learned counsel appearing on behalf of the Union of India has drawn our attention to a Supreme Court's decision rendered recently on 21.02.2022 in case of ***Sunil Kumar Rai and others vs. State of Bihar and others*** reported in ***2022 SCC Online SC 232***, wherein the State Government's notification dated 23.08.2016, whereby it was decided to issue caste certificate of Scheduled Tribe and other facility to *Lohra* (*Lohar*) community was under challenge. It has been argued that in view of the aforesaid decision the petitioners cannot claim the status of Scheduled Tribe, as the Supreme Court has held the notification unconstitutional.

7. Learned counsel appearing on behalf of the petitioners in reply has submitted that the said decision of the Supreme Court shall not apply in relation to the selection process



in question which was initiated much before the said decision.

8. We do not find any merit in such submission in view of the observations made by the Supreme Court in paragraphs 25, 26 and 27 in case of **Sunil Kumar Rai** (supra), which read as under :-

“25. We are deeply anguished by the state of affairs which has been brought to our notice through the contents of the petition under Article 32. This is not a matter which has not engaged the attention of this Court, which as we have noticed has dealt with the issue on as many as three occasions. It has been clearly and unequivocally declared that Lohars are not members of the Scheduled Tribe and they are members of the OBCs. Under the principle of separation of powers, in the manner we have it under the Constitution, it becomes the duty and the right of the Courts to settle disputes. The Constitution, no doubt, has given powers to the other organs of the State. When it comes to taking decisions which affect the rights of the citizens, it is the paramount duty of the Executive to enquire carefully about the implications of its decisions. At the very minimum, it must equip itself with the law which is laid down by the Courts and find out whether the decision will occasion a breach of law declared by the highest Court of the land. This is a case where we have noticed an unbroken line of reasoning and decisions as noticed in the three judgments which we have referred to. This Court has also pronounced on the aspect of the English language prevailing over the Hindi version, if there is a conflict.

26. We should further realize the impact of a decision on the Rights and what is more, Fundamental Rights of the citizens flowing from of Government's action : and the need



to increasingly evolve a system, whereby decision making promotes and strengthens the rule of law. Respect for the decisions of the Courts holding the field are the very core of Rule of Law. Disregard or neglecting the position at law expounded by the Courts would spell doom for a country which is governed by the Rule of Law.

27. In this case, it is clear as daylight that the Lohars were not included as members of the Scheduled Tribe right from the beginning and they were, in fact, included as members of the OBCs in the State of Bihar. This position has attained articulation at the hands of this Court and this Court has traced the history of the matter in the decision in Prabhat Kumar Sharma (supra).”

9. The Supreme Court in case of **Sunil Kumar Rai**

(supra) has concluded in paragraph 35 as under :-

“35. Resultantly, we allow the writ petition. We quash the impugned Notification. We may notice that in the impugned Notification, the direction is to give certificate to ‘Lohara’, (‘Lohar’) community. While ‘Lohara’ is a member of the Scheduled Tribe, ‘Lohar’ is not. Therefore, while we have quashed the notification, it must not be understood as meaning that ‘Lohara’ which is already included in the category of Scheduled Tribe is to be affected by this Judgment. We clarify that the quashing of the impugned Notification will be qua ‘Lohar’ community and the Lohara will continue to get the benefit vouchsafed for them under the Presidential Order as amended by the Acts. We direct that the respondent No. 1 shall pay costs in the sum of Rs. 5,00,000/- (Rupees Five Lakhs) which shall be done within a period of one month from today and the respondent shall produce proof of the payment of the costs by production of the



receipt of the same within a period of six weeks from today. As regards the cases against the petitioners, it is for the petitioners to work out the remedies in the appropriate Forum and necessarily, the Courts will take note of the pronouncement which we have made today.”

10. We do not find any infirmity in the reasoning assigned by the Tribunal for rejecting the petitioner's claim taking into account the cut-off-marks and the marks scored by petitioner No. 1 in the process of selection for denying him the relief as claimed before the Tribunal.

11. Further, in view of the law laid down by the Supreme Court in case of ***Sunil Kumar Rai*** (supra), we do not find any merit in this writ application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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