

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6435 of 2022

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Sudhir Kumar Son of Mathur Saw Resident of Village- Nadwan, Police Station- Dhanarua, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Chief Administrative Officer, Workshop Project, Chamber Bhawan, Judges Court Road, Patna- 800001.
2. The Chief Administrative Officer, Rail Wheel Plant, Ministry of Railway, Bela, District- Saran, Pin Code- 841221 (Bihar).
3. The Principal Financial Advisor and Chief Accounts Officer, Rail Wheel Plant, Bela, District- Saran, Pin Code- 841221 (Bihar).
4. The Deputy Financial Advisor and Chief Accounts Officer, Rail Wheel Plant, Bela, District- Saran, Pin Code- 841221 (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vipin Kumar Singh

For the Respondent/s : Mr.Additional Solicitor General

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-11-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has assailed the order of Tribunal dated 08.03.2019 passed in O.A Nos. 050/00071/19 and 050/00211/2019.

3. Question for consideration is whether selection and appointment to the post of Assistant Financial Advisors in Group-B is required to be filled up to the extent of two posts or one post. If the two posts are filled up, in that event, petitioner would fit into the 2nd post. The selecting authority on the presumption that one of the higher post to the post of Assistant



Financial Advisors in Group-B would be downgraded with reference to proposal to the Railway Board and proceeded to fill up two posts of Assistant Financial Advisors in Group-B. During process of selection it is said that the proposal has been sent to downgrade one of the higher post than the Assistant Financial Advisors in Group-B to the Railway Board and it was not approved despite that there is a provision for downgradation of any higher post to that of lower post. In this regard, on 22.06.2022 the following order was passed:-

“Concerned respondent is hereby directed to file counter affidavit.

Counter affidavit must reveal as to why the advertised post for the post of Assistant Financial Advisors in Group-B has been reduced from 2 to 1, vide notification 01.01.2019.

Re-list this matter on 03.08.2022.”

4. Respondents have filed counter affidavit along with the documents. Perusal of Annexure-1 series, it is evident that selecting authority's proposal to downgrade one of the higher post to the Assistant Financial Advisors in Group-B has been rejected. Even though, there is a provision for downgrading one of the higher post. To fill up two posts of Assistant Financial Advisors in Group-B in terms of the process of selection by the selecting authority.

5. Learned counsel for the petitioner vehemently contended that board's decision in not downgrading one of the



higher post to that of Assistant Financial Advisors in Group-B is arbitrary. In order to fill up Assistant Financial Advisors in Group-B post to the extent of two has been denied and it is arbitrary and illegal. Therefore, the order of the Tribunal and decision of the Railway authorities is required to be set aside and direction shall be given to the Railway authorities to downgrade one of the higher post to that of Assistant Financial Advisors in Group-B and proceed to recruit two posts.

6. *Per Contra*, learned counsel for the respondent resisted the aforesaid contentions and submitted that selecting authority on presumption that he will get necessary approval for downgradation of one of the higher post of Assistant Financial Advisors in Group-B proceeded to advertise two posts of Assistant Financial Advisors in Group-B. During process of selection, the proposal to downgrade one of the higher post has been rejected. Therefore, the process of selection and appointment to the post of Assistant Financial Advisors in Group-B is restricted to only one post in stead of two posts. It is also submitted that it is a policy decision of the Railway authorities as to downgrade the higher post. Therefore, the petitioner has no statutory right to seek any relief to downgrade one of the higher post to that of Assistant Financial Advisors in Group-B so as to accommodate petitioner against second proposed post.



7. Heard learned counsels for the respective parties.

8. Question for consideration in the present petition is whether the petitioner has statutory right to claim to downgrade one of the higher posts to that of Assistant Financial Advisors in Group-B so as to give effect to the selection process to the post of Assistant Financial Advisors in Group-B. To the extent of filling up of two posts in terms of the advertisement or not?

9. The selecting authority on the speculation proceeded to notify two vacancies of Assistant Financial Advisors in Group-B. Even though, only one post was available. His speculation is that to downgrade one of the higher posts to that of Assistant Financial Advisor in Group-B in order to increase the strength of the Assistant Financial Advisors in Group-B. Further, such a proposal sent to the Railway Board/Competent Authority was rejected as is evident from the records. In this backdrop, the petitioner cannot insist in respect of downgradation of one of the higher posts to that of Assistant Financial Advisors in Group-B so as to have the benefit of selection as he is at serial no. 2 to the selection to the post of Assistant Financial Advisors in Group-B. The petitioner's grievance cannot be redressed by the Tribunal or Court in respect of downgrading a particular post and to accommodate the petitioner to the post of Assistant Financial



Advisors in Group-B for the reasons that Apex Court time and again held that it is a policy decision in respect of filling up of any post in any of the Department or organization or institution. In the case of *Pushpa Rani Vs. Union of India* reported in (2008) 9 SCC 243 (Para-37) it is held that Court shall not lay their hands in respect of filling up of any post in a department or organization or Government and it is ultimately decision of the Government or department whether to fill up the post or not? Similarly creation of posts are downgradation and other things relating to service condition of any of the post. Para 37 of the aforementioned decision reads as under:-

“37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to



make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

Recently Apex court in the case of *Satya Dev Bhagaur and Ors. Vs. State of Rajasthan* reported in (2022) 5 SCC 314 it is held that courts should be slow in interfering with State policy matters.

10. In the light of these facts and circumstances the petitioner has not made out a case. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	11.11.2022
Transmission Date	

