

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24063 of 2019

Prashant Kumar Manish Son of Sri Braj Mohan Pandey Resident of Vill.-
Khairi, P.S.-Pusa in the District of Samastipur.

... .. Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railway, rail, New Delhi.
2. The Chairman, Railway Recruitment Board, Lichi Bagam, Muzaffarpur.
3. The General Manager (Personnel) East Central Railway, Hajipur,
4. The Secretary Railway recruitment Board, Lichi Bagan, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar
For the Respondent/s	:	Mr. Awadhesh Kumar Pandey, Sr. Panel Counsel Mr. Ravindra Kumar Sharma, CGC Ms. Komal Choubey, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has assailed the order dated 01.05.2019/ 03.05.2019 passed in O.A. No. 050 / 00853/2015 by the Central Administrative Tribunal, Patna Bench, Patna.

Petitioner has prayed for following reliefs:-

“1. That this is an application for issuance of an appropriate writ/writs order/orders, direction/directions for the following relief.

(I). For issuance of a writ in the nature of certiorari for quashing the order dated 01/05/19 passed by Hon’ble Central



administrative tribunal Patna Bench, Patna under the order dated 01/05/19 in O.A. No. 50/00853/2015, whereby and where under application of the petitioner for appointment of Technician Signal Grade-II was rejected without any substantive ground.

(II). Also for issuance of appropriate writ for commanding the respondent to appoint the petitioner on the post of Technicians signal Grade-II at par with other co-candidates whose serial No. is below the rank of applicants in the merit list.

(III). Also for commanding the respondent to pay all consequential benefits to the petitioner including arrears of pay, seniority, etc. at par with other selected candidates who are junior to this petitioner according to the merit list.

(IV). Also for commencing the respondent to just after appointment start payment of salary on the post of Technician Signal gr. II in the department of Eastern central railway under Govt. of India.

(V). also for any other relief/reliefs for which petitioner is found entitled in the eye of law.”

3. Respondent- Railway Authorities notified Technical Signal Grade-II posts while classifying vacancies under unreserved category and reserved category on 22.05.2010. The petitioner claimed under unreserved category. He had secured 61.71 %. The last selected candidate under unreserved category has secured 62.1%. In this backdrop, petitioner's contention is that Railway Authorities have manipulated the merit list while shifting 3 OBC candidates to unreserved category. If they remained in OBC category, in that event



chances of selection and appointment of petitioner is bright. The Tribunal after examination of the record has passed following order. Para 7 and 8 of the order of Tribunal reads as under:-

“7. We have gone through the pleadings and heard the learned counsels of both the parties. The main issue here is whether the respondents have selected anyone in the unreserved category (to which the applicant belong) who stands lower in merit than the applicant. The second issue is whether the respondents have filled all the seats in the unreserved category which were notified for the relevant examination. The third related issue, in this context, is whether any person belonging to a reservation category, if he/she secures higher rank in the order of merit, should be counted against the category of reservation or against the unreserved category. We have not included any issue on the basis of the new pleadings raised by the applicant in his last rejoinder (to the reply to the rejoinder) since raising of such new issue, totally unconnected with the initial pleadings in the OA, two years after the OA was filed, amounts to an afterthought and a fishing expedition which cannot be allowed to drag this matter endlessly.

8. We have found from the details given by the respondents in their reply to rejoinder-II (filed on 24.04.2019) that all 55 vacancies of unreserved category have been filled (43, including 3 persons of OBC category who secured higher marks than the last selected general candidate, in the panel sent on 05.03.2012; 9 in the panel sent on 31.05.2012; and, 3 in the panel sent on 31.10.2012). Thus, there are no vacancies left under unreserved category. None of these candidates have a lower rank than the applicant. The last person selected under UR category is Shri Prabhat Kumar whose rank is 107, which is above that of the applicant. Thus, our finding on the first two issues is that



there has been no breach of any kind in not selecting the applicant for the unreserved quota and all the unreserved vacancies have been filled. Regarding the third issue about whether reserved category candidates who secure sufficiently high rank should be included under the unreserved category- the learned counsel for the applicant has cited a case as reported in AIR 2017 SC 1945 to support his case. We have gone through this decision. This decision was specifically in the context of Rule 9 of Export Inspection Agency (Recruitment) Rules, which provided an express bar for candidate belonging to SC/ST/OBC who had availed age relaxation for being considered as general category candidates. The Hon'ble Supreme Court has specifically noted in this case that the appellant had not challenged the constitutional validity of the proceeding read with this Rule-9 of the Export Inspection Agency (Recruitment) Rule. Thus, this case was distinguished from the earlier decision of the Apex Court in Jitendra Kumar Singh and Anr. Vs. State of UP (where the finding of the Apex Court was exactly the opposite of the finding in this case). In Jitendra Kumar Singh's case the Apex Court had found that "if any person belonging to reserved categories is selected on the basis or merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (live relaxation in age limit) available to reserved category". In the OA before us, the respondents have pointed out that as per para 313.3 of RRB Manual, candidates belonging to SC/ST/OBC who have been selected on their own merit along with candidates belonging to other categories will not be adjusted against the quota reserved for SC/ST/OBC category (Annexure-A-V to reply to rejoinder-II). Thus, it is very clear that the RRB has its own rule and the respondents have followed their own instructions correctly.



Since the applicant has not been selected because of his not being high enough in the order of merit to be selected against the unreserved vacancies, his prayer under the OA cannot be granted. The OA is, therefore, dismissed. No order as to costs.”

4. We have noticed the preliminary issue that the petitioner has not impleaded such of those OBC candidates who have been shifted to unreserved category with reference to merit on par with last selected candidate under unreserved category. In other words, 3 OBC candidates have secured more than 62.1%. If the petitioner’s application before the CAT is allowed, 3 OBC candidates’ right would be affected. Apex Court in the case of ***Ranjan Kumar & Ors Vs. State of Bihar & Ors.*** reported in ***(2014) 16 SCC 187*** wherein para 4 to 13 read as under:

“4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in *Prabodh Verma and others v. State of Uttar Pradesh and others* [(1984) 4 SCC 251], wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the



appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. The learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned and those who were vitally concerned, namely, the reserve pool teachers, were not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: -

“28.The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

5. In the case at hand neither any rule nor regulation was challenged.



In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities.

6. In *Indu Shekhar Singh and others v. State of U.P.* it has been held thus:- (SCC p. 151, para 56)

“56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”

7. In *Rashmi Mishra v. M.P. Public Service Commission*, after referring to *Prabodh Verma* (supra) and *Indu Shekhar Singh* (supra), the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

8. In *Tridip Kumar Dingal and others v. State of W. B.*, this Court approved the view expressed by the tribunal which had opined that for



absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

9. In *Public Service Commission, Uttaranchal v. Mamta Bisht and others* [(2010) 12 SCC 204] this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus:

“9....in *Udit Narain Singh Malpaharia v. Board of Revenue* [AIR 1963 SC 786], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 Code of Civil Procedure but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat* [AIR 1965 SC 1153], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [(1974) 2 SCC 706] and *Sarguja Transport Service v. STAT* [(1987) 1 SCC 5])

10. In *J.S. Yadav v. State of*



Uttar Pradesh [(2011) 6 SCC 570] it has been held that:

“31. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.

It was further held that:

“31. ... The litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.

11. In *Vijay Kumar Kaul and Ors. v. Union of India* [(2012) 7 SCC 610] it has been ruled thus:

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the Appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is



difficult to grant.”

12. Recently in *State of Rajasthan v. Uchhab Lal Chhanwal* [(2014) 1 SCC 144], it has been opined that:

“14. ...Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, for once the Respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice.”

13. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

In the light of aforesaid decision of the Apex Court in not impleading such of those persons whose rights are likely to be affected and who have not been arrayed as party on that preliminary issue itself, the petitioner's original application should have been rejected at threshold.

5. Even on merit, it is to be noted that last selected candidate under unreserved category has secured 62.1%



whereas petitioner has secured 61.71 %. It is alleged that 3 OBC candidates whose names are reflected in the merit list while assigning the OBC category at Serial No. 88, 92 and 93 who have secured more marks than the last selected under unreserved category, namely Serial No. 88 has secured 63.11 marks, Serial No. 92 has secured 62.97 % marks and Serial No. 93 has secured 62.97 % marks.

6. In all fairness, their name should have been reflected under unreserved category in the light of judicial pronouncement in the case of *Jitendra Kumar Singh and Anr. Vs. State of UP* reported in (2010) 3 SCC 119. It is only a technical error alleged to have been committed by the Railway Authorities. Even otherwise, petitioner is not more merited candidate under unreserved category as is evident from the marks secured by him.

7. In the light of these factual aspects read with fact that petitioner has not arrayed such of those persons whose rights are likely to be affected on this preliminary issue itself, petitioner has not made out a case. Further even on merit the petitioner has secured lesser marks than the last person under reserved category.

8. In view of these facts and circumstances, no



interference is called for in respect of the order of Central Administrative Tribunal dated 03.05.2019 passed in O.A. No. 050/00853/2015.

9. Accordingly, the present petition stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

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CAV DATE	
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