

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12755 of 2021

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Alok Kumar Son of Sri Yogendra Kumar Keshri, EX Senior Section Engineer/Electric/ Drawing, Pfficer (Con),East Central Railway, Mahendrughat, Patna, Resident of Masaurhi, Main Road, Near SBI ATM, District-Patna-804452 (Bihar)

... .. Petitioner/s

Versus

1. The Union of Inida thorough the Chairman, Railway Board, Ministry of Railway, Government of Inida, Rail Bhawan, New -Delhi-110001.
2. The General Manager, East Central Railway,Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, PIn Code-844101 (Bihar)
3. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, District-Vaishali at Hajipur, PIn Code-844101 (Bihar).
4. The Chief Administrative Officer (Con), East Central railway, Mahendrughat, Patna-800004
5. The Deputy Chief Personnel Officer (Construction), East Central Railway, Mahendrughat, Patna-800004
6. The Senior Personner Officer (Construction), East Central Railway, Mahendrughat, Patna-800004

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit (M.P. Dixit), Advocate Mr.S.K.Dixit, Advocate Mr.S.K.Chobey, Advocate Mrs.Swastika, Advocate
For the Respondent/s	:	Mr.Pradeep Kumar, Sr. Panel Counsel Mrs.Priyanka Raj Lakshmi, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-02-2023

In the instant petition, petitioner has prayed for the following reliefs:-

“A. For issuance of Writ in the nature of Certiorari for quashing/setting aside the Orders dated 30.07.2019 passed by the



Learned Central Administrative Tribunal, Patna Bench, Patna herein after CAT in Original Application No.050/00479 of 2019 as contained in Annexure-1 of the writ application whereby and whereunder the prayer of the Petitioner for quashing and setting aside the Orders of termination from service and recovery issued on 04.01.2019 & 26.02.2019 respectively by the Respondent No.6 as contained in Annexure-4 & 5 to the writ application, has been rejected / dismissed illegally without application of judicious mind and facts available on record on the point of discrimination.

B. For issuance of Writ in the nature of Certiorari for quashing / setting aside the Orders dated 25.10.2019 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna herein after CAT in Review Application No.050/00051 of 2019 as contained in Annexure-2 of the writ application whereby and whereunder the prayer of the Petitioner for reviewing the order dated 30.07.2019 as contained in Annexure-1 in the light of order dated 17.09.2019 passed by this Hon'ble Court in CWJC No.19255 of 2019 as contained in Annexure-6 permitting the Petitioner "seeking relief of being permitted to making a representation before the Railway Board which ought to have taken a final decision in the matter" has been rejected / dismissed illegally without application of judicious mind and even without giving any chance of hearing to the Petitioner.

C. For issuance of Writ in the nature of Certiorari for quashing / setting aside the Orders dated 30.01.2020 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna herein after CAT in Misc Application No.050/00422 of 2019 as contained in Annexure-3 of the writ application whereby and whereunder the prayer of the Petitioner for recalling the order



dated 25.10.2019 as contained in Annexure-2 has been rejected without application of judicious mind.

D. For issuance of Writ in the nature of Certiorari for quashing / setting aside the Orders dated 04.01.2019 & 26.02.2019 passed by the Respondent No.6 as contained in Annexure-4 & 5 respectively to the writ application, whereby and whereunder the Petitioner has been terminated from service and recovery of Rs.153354/- respectively has been issued.

E. For issuance of an appropriate writ(s) / order(s) / direction(s) in the nature of Mandamus commanding the Respondents to re-instate the Petitioner in service henceforth alongwith all consequential benefits in the same manner other co-selectees namely Sri Rohit Raj, Narendra Meena, Navneet Kumar and Nawal Kishore Jaiswal are allowing to continue without any G & SR training.

F. That your Lordships may further be pleased to direct command the Respondents to grant all consequential benefits in favour of the Petitioner alongwith arrears of salary, with its arrears and statutory interest thereupon.

G. Any other appropriate relief(s) for which the Petitioner may be entitled to be granted.”

2. Core issue is that whether the petitioner is required to pass any prescribed departmental examination for the post of Senior Section Engineer or not?

3. In this regard, sufficient time had been granted to the respondents to appreciate whether any departmental examination has been prescribed or not?



4. In this regard, it is necessary to re-produce earlier order dated 23.01.2023:-

“Mr. P.K. Goyal Chief Administrative Officer (Construction), Mahendrughat, Patna is present in the Court.

Order dated 15.12.2022 has not been complied with. Therefore, personal affidavit of the Chief Administrative Officer (Construction), Mahendrughat, Patna is hereby directed to be filed along with the relevant documents without confusing this Court by producing a number of documents. Core issue involved in the present petition is whether Sr. Section Engineer/ Elec. /Drawing was required to pass any prescribed departmental examination before completion of his probation or not? This Court is repeatedly asking the concerned respondent, on the other hand, various materials have been placed by means of supplementary affidavit and none of the document are related to prescription of examination for the post of Sr. Section Engineer/ Elec. /Drawing.

Re-list this matter on 06.02.2023 as a last chance, failing which, matter would be decided on the score that respondent-Railway Department have not prescribed any departmental examination for the purpose of completion of probation, who is holding the post of Sr. Section Engineer/ Elec. /Drawing.”

5. It is noticed that prior to previous order respondents have produced Annexure-R/14 relating to Master Circular No. 29.

Para 3 reads as under:-

“3.The qualifying examination at the end of initial training of directly recruited non-



gazetted staff through the Railway Service Commissions (now Railway Recruitment Board) must necessarily be written test.

3.1. The candidates should be warned, at the time of their recruitment that their retention in service will be dependent on their successfully completing the training and passing the requisite test.

3.2. The period of training count towards increments even in the case of those recruits who are sent for training immediately after their appointment, in terms of Board's letter of 04.02.1991.

3.3. Candidates recruited in the Personnel and Accounts Branches should be posted against working posts in their respective Departments for at least a month to acquire the background of the Railway working before being sent for training."

6. In this backdrop, respondents were directed to provide document to show that departmental examination has been prescribed for Senior Section Engineer. On 02.02.2023 respondents were stated to have filed online personal affidavit. Today, we have perused the personal affidavit from the file of the respondent. Once again in the personal affidavit they are relying on Master Circular in particularly Para 3 cited (supra) and it has been placed on record along with the personal affidavit.

7. In the light of these facts and circumstances it is evident that respondents have not prescribed any departmental examination for the purpose of giving permanent status against the post of Senior Section Engineer.



8. Accordingly, the petitioner has made out a *prima facie* case. In fact, Central Administrative Tribunal has not appreciated to the extent whether any departmental examination is prescribed for the aforementioned post or not?

9. In the light of these facts and circumstances petitioner has made out a *prima facie* case so as to interfere with the order of Central Administrative Tribunal dated 30.07.2019 passed in O.A. No. 050/00479 of 2019 and termination orders dated 04.01.2019 & 26.02.2019 are set aside. In the result O.A. No. 050/00479 of 2019 filed before the Central Administrative Tribunal stands allowed.

10. The concerned respondent is hereby directed to extend all service and monetary benefits which were due to the petitioner within a period of four months from the date of receipt of this order.

11. Accordingly, writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.02.2023
Transmission Date	NA

