

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.206 of 2021

Bijendra Dhanak Son of Shyamlal Dhanak, Resident of 62 Bina Etawa, Purana Galla Mandi, Bina, District- Sager, Madhya Pradesh-470113

... ... Petitioner/s

Versus

1. The Union of India through Ministry of Railway
2. The East Central Railway Hajipur through its General Manager
3. The Inspector General -cum-Chief Security Commissioner East Central railway, Hajipur
4. The Nodal Officer, Recruitment of Constable (band), East Central Railway, Hajipur

... ... Respondent/s

with
Civil Writ Jurisdiction Case No. 6 of 2021

Suraj Bain Son of Hukum Chand, Resident of House no. 284, Gali no. 9, Sadar Bazar, Jabalpur, Madhya Pradesh - 482001.

... ... Petitioner/s

Versus

1. The Union of India through Ministry of Railway.
2. The East Central Railway, Hajipur through its General Manager
3. The Inspector General-cum-Chief Security Commissioner, East Central Railway, Hajipur.
4. The Nodal Officer, Recruitment of Constable (Band), East Central Railway, Hajipur.

... ... Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 206 of 2021)

For the Petitioner/s : Mrs. Ritika Rai, Adv.

For the UOI : Mr. Kumar Ravish, Adv.

(In Civil Writ Jurisdiction Case No. 6 of 2021)

For the Petitioner/s : Mr. Anjani Kumar Jha, Adv.

For the Respondent (UOI) : Mr. Rajesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 12-11-2024

Heard the parties.



2. The petitioners pray for issuance of writ in the nature of mandamus directing upon the respondents to consider the claim of the petitioners for thier appointment on the post of Constable (Band) in Railway Protection Force/Railway Protection Special Force in terms of the Employment Notice No. 01 of 2016.

3. Learned Advocate for the petitioners contended that in terms of the Employment Notice No. 01 of 2016 issued by the East Central Railway for recruitment of 246 post of Constable (Band), the petitioners, having found themselves eligible, submitted their application form. On receipt of their application forms in terms of the employment notice, the petitioners were called for written test. Upon being qualified in the written test, the petitioners were called for physical efficiency test and the physical measurement test, in which they also qualified. It is also contended that subsequent thereto, the petitioners have also been qualified in trade test. The result of the written test/physical test/trade test has been placed on record as Annexure-2 to 5 to the writ petition. The petitioners, secured good position in the merit list, whereupon they have been called for verification of the documents.

4. Pursuant thereto, the petitioners submitted all the



requisite documents, including the experience certificate as required in terms of the employment notice. Despite possessing required qualification and submission of the requisite documents, including the experience certificate, the name of the petitioners could not find place in the final selected list of the successful candidates.

5. During the pendency of the writ petition, the respondent authorities came out with the order dated 11.11.2020 issued under the signature of the DIG, Recruitment and Training Railway Board, New Delhi by which the application of the petitioner in C.W.J.C. No. 206 of 2021 came to be rejected. The aforesigned order has also been put to challenge by filing an Interlocutory Application bearing I.A. No. 01 of 2023. The petitioners also questioned the appointment of one Lakhan Jatav, who belongs to Scheduled Caste category, but his claim for appointment has been duly considered, nonetheless, the experience certificate produced by him also does not contain any date, similar to the experience certificates produced by the petitioners, but discrimination has been caused in considering the claim of the petitioners. The said Lakhan Jatav impleaded as respondent no. 5 in the present writ petition.

6. The learned Advocate for the petitioners advertising



to the aforesaid fact, has contended that the claim of the petitioners have not found favor, only on account of the fact that there was no date mentioned in the experience certificate. Though the person, who has been proposed to be impleaded as respondent no. 5, whose claim was considered in identical situation on the basis of the experience certificate, containing no date, thus, discrimination is writ large.

7. Drawing the attention of this Court in terms of the Employment Notice No. 01 of 2016, especially the eligibility criteria, learned Advocate for the petitioners further contended that the Clause-D thereof clearly suggests that candidates must have an experience of not less than two years in specified musical instrument. So far the petitioners are concerned, the experience certificate clearly denotes that the petitioners were having requisite experience of two years or more in the musical instrument of different nature. It is next contended that, in fact, the petitioner in C.W.J.C. No. 206 of 2021 was having three years' experience certificate, as one another certificate has also been placed before the respondent authorities, issued by the Anand Bras Band, Beena Sager M.P. i.e. for the period 1st of January, 2015 to 1st of January, 2016, the copy of which has also been placed along with other experience certificates.



Similarly, the petitioner in C.W.J.C. No. 6 of 2021 has also submitted two expereince certificates out of which one issued by Sri Krishna Bras Band certifying experience of about three years; from February 2013 to January 2016. Hence, the non-consideration of the case of the petitioners for their appointment is wholly arbitrary, apart from discriminatory as the person having identically situated, whose experience certificate also does not bear the date, has been considered and subsequently appointed.

8. On the other hand, learned Advocate for the Union of India primarily contended that at the time of the verification of the documents, in both the cases, it has been found that two different experience certificates have been submitted. In C.W.J.C. No. 206 of 2021, one certificate was issued by Vishal Bras, Jabalpur, Madhya Pradesh in which the date of issuance has not been mentioned; however, it certifies that the petitioner was having experience of two years. At the time of document verification, the petitioners produced different experience certificate issued by Anand Bras Band, Beena Sager, Madhya Pradesh, in which his experience shows only for one year. Another certificate of Vishal Bras, Jabalpur, Madhya Pradesh is found different from the earlier certificate, which was submitted



at the time of the submission of the application form.

9. In C.W.J.C. No. 6 of 2021 at the time of submitting application, the petitioner has submitted Training certificate issued by 6th Training Batalion Special Armed Force, Jabalpur (M.P.), in which date of issue is not mentioned, and only three month experience is shown in certificate instead of two years. At the time of Documents Verification, he has produced different experience certificate i.e., Sri Krishna Brass (M.P.) without date of its issuance which was found different from the initial application.

10. It is further contended that the case of the petitioners is quite different from the case of Lakhan Jatav, where the experience certificate only lacks its date of issuance. So far the cases in hand are concerned, the petitioners gave two different certificates at two different times with different content, having no date of issuance. Apart from the aforesaid fact, the employment notice clearly contains that a candidate must have to apply for selection to the post of Constable under the instrument wise vacancy, but so far the experience certificates of the petitioners are concerned, it talks about three and four instruments.

11. The similar issue has also been brought before



this Court in C.W.J.C. No. 10487 of 2020, wherein, the Hon'ble Court vide its order dated 15.07.2022, having found no merit in the claim of the petitioner has dismissed the writ petition, as the application and experience certificate of the petitioner of the said writ petition has been found in violation of the terms of the advertisement.

12. Heard the learned Advocate for the respective parties and also perused the materials available on record, especially the Employment Notice 01 of 2016, it clearly stipulates instrument vise vacancies. Admittedly, the experience certificates of the petitioners, which have been placed on record, demonstrate their experience with respect to the various nature of instruments. Furthermore, the experience certificates submitted at the time of submission of the application form and the certificates which are said to have been submitted at the time of verification, clearly reveal those are also different to the earlier certificates. So far the contention of the petitioners seeking parity to one Lakhan Jatav is concerned, though his experience certificate is also with respect to four of the instruments, but the case of the petitioners is admittedly different to said Lakhan Jatav, inasmuch as, it is not the case that the Lakhan Jatav has submitted two different certificates, whereas, *prima facie*, this Court finds that the petitioners have



submitted two different certificates at two different stages.

13. Suffice it to say that even if this Court finds irregularity in the selection of the Lakhan Jatav, the same cannot be perpetuated by allowing the claim of the petitioners.

14. By now it is settled that guarantee of equality before law is a positive concept and it cannot be enforced in a negative manner. If an illegality or irregularity is committed in favour of any individual or a group of individual or a wrong order has been passed by a judicial power, other cannot invoke the jurisdiction of Higher Court or Superior Court for repealing or multiplying the same irregularity or illegality.

15. On the reasons aforesaid, this Court does not find any merit in the writ petition. Accordingly, the writ petition stands dismissed.

(Harish Kumar, J)

Jyoti Kumari/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2024
Transmission Date	NA

