

LIBR

01. Bijaya Barua, W/o Jayanta Barua, aged about 58 years, at present residing at 10L, Doctor Bagan Lane, Sreerampore, Hoogly, PIN - 712203.
02. Remala Biswas W/o Ashim Mitra, aged about 59 years, at present residing at 13/1/15, Bangal Para, 2nd by Lane, Cherry Road, PIN - Howrah 4.
03. Hashi Mitra W/o , aged about 53 years, at present residing at Centre Hospital, South Eastern Railway, Garden Reach, Kolkata - 43.
04. Uma Chakraborty D/o Late H. N. Rit, aged about 50 years, at present residing at 115/8, Unit-8, Garden Reach, Kolkata - 700 043.
05. Momota Chakraborty, D/o Late S. P. Chakraborty, aged about 49 years, at present residing at 115/8, Unit-8, Garden Reach, Kolkata - 700 043.
06. Sikha Maitra, W/o Dr. A. K. Maitra, aged about 52 years, at present residing at Devi Park, P.O. Rajarhat, Gopalpur, Kolkata - 136.
07. Rina Chakraborty, D/o Late Sakti Sadhan Mukhopadhyay, aged about 51 years, at present residing at Otr. No.11/2, Unit-14, North Colony, South Eastern Railway, Garden Reach, Kolkata - 700 043.
08. Ratna Bhowmik, D/o Subarna Jyoti Lehiri, aged about 52 years, at present residing at Jagache, Mohi Ary Road, Howrah-711112.
09. Arunima Ghorai, D/o Late Provas Chandra Das, aged about 52 years, at present residing at Otr. No. 11/2, Unit-16, North Colony, South Eastern Railway, Garden Reach, Kolkata - 700 043.
10. Rita Sinha, D/o Ranjit Biswas, aged about 54 years, at present residing at 33/1E, Kundu Lane, Kolkata - 700 037.

11. Sabita Pal D/o Late Manoranjan Pal, aged about 52 years, at present residing at 7, Station Pally, P.O. Dankuni, Hooghly, PIN - 712311.

.. Applicants

All the applicants are working as Chief Matron, under Control of Chief Medical Director, S.E. Railway, Garden Reach.

- Vs -

1. Union of India through General Manager,
South Eastern Railway, Garden Reach,
Kolkata - 700 043.
2. Chief Personnel Officer,
South Eastern Railway, Garden Reach,
Kolkata - 700 043.
3. Chief Medical Director,
South Eastern Railway, Garden Reach,
Kolkata - 700 043.
4. Dy. Chief Personnel Officer(Gaz.)
South Eastern Railway, Garden Reach,
Kolkata - 700 043.
5. Medical Director
South Eastern Railway, Garden Reach,
Kolkata - 700 043.
6. Anjana Mondal, Chief Matron
Railway Hospital, South Eastern Railway,
Kharagpur, pin - 721301
7. Satyabhamu Behera, Chief Matron
Railway Hospital, South Eastern Railway,
Chakradharpur - 733102
8. Nirupama Sahu, Chief Matron
Railway Hospital, South Eastern Railway,
Chakradharpur

9. E. Cherwa, Chief Matron
Railway Hospital, South Eastern Railway,
Chakradharpur - 833102
10. Sadhana Das, Chief Matron
Railway Hospital, South Eastern Railway,
Garden Reach, Kolkata - 700 043.
11. Puspa Mala Roy, Chief Matron
Railway Hospital, South Eastern Railway,
Kharagpur - 721301
12. G.P. Sathpathy, Chief Matron
Railway Hospital, South Eastern Railway,
Chakradharpur - 833102
13. Sadhana Roy, Chief Matron
Railway Hospital, South Eastern Railway,
Chakradharpur - 833102
14. Sushila Toppo, Chief Matron
Railway Hospital, South Eastern Railway,
Kharagpur - 721301
15. Tanuku Mani Bhushanam, Chief Matron
Railway Hospital, South Eastern Railway,
Kharagpur - 721301
16. Pritikana Das, Chief Matron
Railway Hospital, South Eastern Railway,
Garden Reach, Kolkata - 700 043.
17. Dipti Sarker, Chief Matron
Railway Hospital, South Eastern Railway,
Garden Reach, Kolkata - 700 043.

.. Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1562/2013

Date of order : 19.12.19

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**BIJAYA BARUA & OTHERS
VS.
UNION OF INDIA & OTHERS
(S.E. Railway)**

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. P. Prasad, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred by 11 applicants to seek the following reliefs:-

- "a) To set aside and quash Impugned letter no.DCPO(G)/CON/ANO/2012 dated 02.05.2012 and letters of even no. dated 1.8.2013, 10.6.2013 issued by Dy. Chief Personnel Officer(Gaz) for Chief Personnel Officer, South Eastern Railway, Garden Reach;
- b) To set aside and quash Impugned letter no.P/Med/ANO/Selection dated 29.07.2013 issued by APO(Med.), South Eastern Railway, Garden Reach circulating a revised list of seniormost willing eligible candidates for the post of selection to ANO from amongst Chief Matron;
- c) To set aside and quash Impugned letter no.DCPO(G)/CON/ANO/2013 dated 08.10.2013 issued by Dy.



B

Chief Personnel Officer(Gaz) for Chief Personnel Officer, South Eastern Railway, Garden Reach;

d) To set aside and quash the written examination held on 19.11.2013 for the post of Assistant Nursing Officer and the entire selection procedure for promotion to ANO;

e) To direct the respondents to hold of fresh selection procedure from amongst eligible Chief Matron coming within the zone of consideration by publishing of a fresh and revised seniority list of Chief Matron and calling unreserved candidates against pinpointed unreserved vacancies;

f) Liberty be granted under Rule 4(5)(a) of C.A.T.(Procedure) Rule 1987 to file and maintain application jointly."

2. The applicants, serving as Chief Matrons in the South Eastern Railway, have claimed that a selection procedure was initiated vide notice dated 02.05.2012 for promotion from Chief Matron to Assistant Nursing Officer(ANO) Group-B, wherein the number of vacancies notified were 04 with a break up of UR-03, SC-01. Though the applicants were eligible as UR candidates, coming within the zone of consideration and had expressed their willingness to appear, they were not called to appear in the written examination, instead excess number of reserved category candidates were called against pinpointed unreserved vacancy.

The willingness of the applicants was forwarded to CPO(Med), S.E. Rly., GRC by Medical Director GRC, in terms of letter dated 06.07/08.2013. A list of seniormost willing candidates of Chief Matron for formation of a panel of Assistant Nursing Officer, was published vide letter dated 03.06.2013(Annexure A/1). A letter dated 08.10.2013 was issued by Dy. Chief Personnel Officer(Gaz) for Chief Personnel Officer, South Eastern Railway, Garden Reach that a written test for formation



3

of panel of Assistant Nursing Officer(Group 'D') would be held on 12.11.2013. Since their name was not included in the list of eligible candidates willing to appear at the written test for promotion to the post of Assistant Nursing Officer that was scheduled to be held on 12.11.2013, the applicants submitted a joint representation dated 12.11.2013 ventilating their grievance in details, pinpointing the lacunae in the selection procedure that excess number of SC candidates were called against pinpointed UR vacancies and 2 ST candidates were called when no reservation for ST candidates was meant, whereas genuine UR candidates were being deprived. On submission of their representation dated 12.11.2013, the written examination that was scheduled to be held on 12.11.2013, was postponed to 19.11.2013 and on 19.11.2013 the scheduled examination was held without disposing of their representation.



The applicants would allege gross irregularity in the selection procedure as no seniority list of Chief Matron was published in the recent past and excess number of SC candidates were called against unreserved vacancy, etc. According to the applicants, the cadre strength of Assistant Nursing Officer being 10 with a clear vacancy against 2 posts, 8 posts were already operating with a break up of 2 UR, 5 SC & 1 ST that is in excess of SC reservation. There was no anticipated vacancy of 2. They submitted further representation dated 28.11.2013 with a prayer for cancellation of selection procedure and written test for the post of Assistant Nursing Officer(Group-B) held on 19.11.2013

B

and have claimed that the result of the written examination held on 19.11.2013 has not yet been published.

Further, that the promotional post of ANO with cadre strength of 10, already 50% of 10 posts is occupied by reserved category candidates and promotion, if effected then reservation would exceed more than 50% which is bad in law. The applicants have submitted that their representation ventilating their grievance was of no avail.

3. Per contra, the respondents have averred as follows:

In order to fill up the posts of ANO, the integrated seniority list of willing Chief Matron(PB 15600-39100+GP 5400) of Medical Deptt., of S.E. Railway as on 01.06.13, who opted for appearing in the selection of ANO, was published vide letter dated 03.06.13 in which the applicants were found not eligible. Such integrated seniority list for selection to the post of ANO, was made as per Estt. Srl. No.15/10. The applicants preferred joint representation dated 09.07.13. On examination, a revised list of senior most willing eligible candidates of Chief Matron(PB Rs.9300-34800+GP 5400) was made in connection with the formation of a panel of Assistant Nursing Officer(Group-B), as per Railway Board's letter dated 29.4.09 circulated vide CPO's Estt. Srl.No.15/2010(R-1). Therefore, the allegations made by the applicants are denied.

They have averred that selection for promotion to Group-B posts of ANO in scale of Rs.7500-12000(Vth CPC) was to be made from amongst Chief Matron in the scale of Rs.7450-11500/- with 2 years service in the grade failing which, Chief Matron with 3 years combined service in the scale Rs.7450-11500 and Rs.6500-10500/- could be considered and the seniority list of Matron and Chief Matron for the promotion of ANO being made as per Estt.



Srl.No.15/10, there was no irregularity or malafide intention on the part of the administration in preparing the seniority list.

They have further averred that the office published a fresh integrated seniority list (Annexure A/4 of the application) in which Srl.No.1 to 9(SC-5, ST-2, UR-2) were treated as UR candidates against 3 UR vacancies and Srl. No.10 to 12(SC-3) was treated as SC candidate against 01 SC post. That, 7 posts out of 10 posts of ANO working in the Railway, 3 existing vacancy and 1 anticipated vacancy(3 UR, 1 SC) i.e. 4(Four) as vetted by the administration and against the 07 posts of ANO, 3 SC, 1 ST and 3 UR are working. Therefore, 3 UR candidates were working as ANO. They have strongly denied that 6 reserved category candidates were working as ANO as alleged by the applicants.

4. Estt. Srl.No.15/2010 stipulates the manner of preparation of integrated seniority list, which is extracted hereunder:-



Estt.Srl.No. 15/2010

RBE No. Nil

No.DCPO(G)/CON/ANO/Policy

Dated: 08.02.2010

Sub: Preparation of integrated seniority list of Group 'C' Staff for selections to Group 'B' post

Ref: S.E.Railway's letter No. DCPO(G)/CON/ANO/ Policy dt.4/12/09

Railway Board's letter No.E(GP)99/2/22 dated 05.01.2010 (RBE No.Nil) is as under :-

With reference to S.E. Railway's aforementioned letter, it is advised that selection for promotion to Group 'B' post of Asstt. Nursing Officer is to be conducted in terms of Board's letter No. E(GP)2004/2/47 dt.3/5/2007. Board's letter No. E(GP)99/2/22 dated 29.04.2009 pertains to preparation of integrated seniority list of Group 'C' staff for 70% Selections to Group 'B' posts in the major departments having organised services.

Copy of S.E.Railway's letter No. DCPO(G)/CON/ANO/Policy
dt.4/12/09

Sub: Preparation of integrated seniority list of
Group 'C' Staff for selections to Group 'B' post

Ref: Bd.'s letter Nos. E(GP)99/2/22 dated 29.04.2009
and E(GP)2004/2/47 dated 03.05.2007

Railway Board vide letter dated 03.05.2007 while issuing the eligibility criteria for the post of Assistant Nursing Officer(Gr.B), have stated that selection for promotion to Group-B posts of Assistant Nursing Officer in Scale Rs. 7500-12000 (V CPC) will be filled up from amongst Chief Matrons in the Scale of Rs. 7450-11500 with 2 years service in the grade, failing which, Chief Matrons with 3 years combined service in the scale of Rs. 7450-11500 and Rs.6500-10500.

Railway Board further in their letter dated 29.04.2009 has stated that Group B selections will be continued as per extant instructions of the Board i.e. on the basis of combined length of non-continuous service in grade Rs 6500-10500 (V CPC) and above ignoring promotions to the grade Rs. 7450-11500 (V CPC).

Since there is prima-facie contradiction in the two instructions one for ANO of 2007 and the 6th PC instructions for all gazetted cadres, a doubt has arisen while preparing the Integrated seniority list for formation of panel of Assistant Nursing Officer (Group-B) which one of the Board's above letter will be followed especially as the latter letter mentions — 'extant provisions'. Board are therefore requested to clarify the above issue as early as possible.

5. By their rejoinder the applicants would allege that in letter dated 01.08.2013 it has been highlighted that for 04 vacancies break up of which is UR-03 and SC-01, the written test for formation of panel of Assistant Nursing Officer(Group-B) would be held very shortly but 08- SC candidates and ST-02 candidates have been called against 01 earmarked SC post. Further, against 03 UR vacancies only 02 UR candidates have been called which is highly irregular whereas in case of selection post for 03 UR posts at least 09 UR candidates should be called to participate in the selection for ANO. It is reiterated that



B

seniority list of Chief Matron has not been published based on which candidates have been called for selection to the post of ANO. It is further stated that the applicants fulfilled all the criteria as prescribed in Estt. Srl. No.15/2010 dated 08.02.2010.

6. The Railway respondents have responded saying that:-

Railway Board vide Para -2 circulated under CP)/S.E. Rly's Estt. Srl. No.50/96 have issued orders that -"The reserve points are to be filled from amongst the members of reserve categories and candidates belonging to General Category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation." Further Railway Board vide Para (ii) of their letter dated 07.08.2002 circulated under CPO/S.E. Railway's Estt. Srl. No.97/02 have issued orders- "If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point."



B

In view of the above, 5 SC and 2 ST candidates were called for against 3 UR posts since they were coming within the zone of consideration according to their seniority.

7. Estt. Srl. 50/96 referred to by the respondents, reads as under:-

"Estt. Srl.No.50/96

No.P/RP/SCT/CC

Dated : 25.4.1996

A copy of the Rly. Board's letter No.95 E(SCT)I/49/5-Pt. dated 4/8.4.96 is published herewith for information, guidance and necessary action. Board's letter No.89-E(SCT)I/49/5(Pt.) dated 16.6.92 was published under Estt. Srl.No.110/92.

While implementing this orders it may be ensured that the instructions contained in para2 & 5 Estt. Srl. No.14/96 are to be followed strictly and carefully.

Railway Board's letter No.95-E(SCT)I/49/5-Pt, dated 4/8.4.96 addressed to G.M. (P)/E. Railway and copy to other Railways.

Eligibility of Scheduled Castes/Scheduled Tribes to seek the promotion against the un-reserved posts as Supreme Court Judgement in R.K. Sabhrwal Vs. State of Punjab AIR 1995 SC 1371.

With reference of R.K. Sabhrwal-Vs-State Punjab Judgement dated 10.2.1995 (AIR 1995 SC 1971) your Railway has raised point whether an Un-Reserved post occupied by any member backward class will revert back to the Member of Un-Reserved community on his remitting post/vacancy inter alia meaning thereby that member of backward class can't seek promotion against Un-Reserved post.

2. In this connection para 4 of Judgment (AIR 1995 SC 1371 at page 1374) may kindly be referred to which reads as under:-

"The reserve points are to be filled from amongst the members of reserve Categories and candidates belonging to General Category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation."

3. The Apex Court Judgement absolutely in confirmatory with Full CAT Bench Hyderabad Judgement advised vide letter No.89-E(SCT)I/49/(Pt.), dated 16.6.92. There is no need to maintain separate seniority lists SCs/STs and UR."

RBE No.128/2002, Estt. Srl. No.97 of 2002 lays down the following:-



Estt. Sri. No:97/2002

RBE No:128/2002

No. P/RP/SCT/Policy

Dated: 22.8.2002

**Reservation in promotion – Treatment of SC/ST
candidates promoted on their own merit.**

Railway Boards letter No.99-E(SCT)I/25/13 dated 07.08.2002 (RBE No.128/2002) is as under :—

The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide their O.M. No.36028/17/2001-Estt.(Res.) dated 11.07.2002 have considered the references from various Ministries regarding adjustment of SC/ST candidates promoted on their own merit in post based reservation rosters and clarified as under :—

- (i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- (ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.
- (iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.
- (iv) 50% limit on reservation will be computed by excluding such reserved category candidates who are appointed/promoted on their own merit.

All the Zonal Railways/Production Units may bring the contents of DOP&T's O.M. dated 11.07.2002 to the notice of all concerned for information and strict compliance.

8. The respondents 6-17 have maintained a stoic silence all along.

They have not filed any reply despite opportunity.

9. We considered the rival contentions and perused the materials on record. In our considered opinion none of the circulars cited by respondents, as extracted supra, suggest or envisage or mandate that SCs and STs can be called to appear at selection against UR vacancies



and be considered in exclusion of eligible UR candidates. We note that the selection was yet to be completed with a final panel.

10. In the selection in question, the respondents ought to have first prepared an integrated seniority list of all eligible Chief Matrons and then consider them as per merit and rules of selection. If any SC would be eligible against unreserved point in terms of his/her merit, such SC would be adjusted against an UR point. But, the manner in which the selection has been held in asking only the SCs to fill up UR vacancies even without calling the eligible URs to appear at the selection, could neither be comprehended nor countenanced. It is not the case of the respondents that the applicants were not eligible to figure in the zone of consideration having not fulfilled the eligibility criteria. Therefore, the manner in which selection has been held defies all logic. It can safely be termed as an act of administrative highhandedness.

11. In our considered opinion, the selection being indubitably and irrefutably held contrary to the established procedure, the rules and therefore, law should be scrapped and held afresh. No panel has been brought to the fore to suggest finalisation of the selection process and even if selected, the selectees have no indefeasible right to be appointed when the selection has been conducted arbitrarily.

12. In **Shankarsan Dash v. Union of India [AIR1991 SC 1612]** it was held that "*ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any*



right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons."

In **Union Territory of Chandigarh v. Dilbag Singh**[AIR 1993 SC 796] a three Judges Bench of the Supreme Court held that when a select list is cancelled the selectees are not entitled to an opportunity of hearing before cancellation. The Court though accepted that the selected candidates have a "legitimate expectation", it held that they have no indefeasible right to be appointed in absence of any rule to that effect. But, the decision/action by executives must be non-arbitrary and *bona fide*.



In **Jai Singh Dalal v. State of Haryana** [1993(1)SLR 422] it was noticed that the selection process initiated by the earlier Government which was nearing completion by the Public Service Commission was scrapped by the new Government as they wanted to revise criteria for selection. The challenge to this decision of the State was negative by a three Judges Bench of the Supreme Court, which made the following observations:

".....it does not matter whether the selection process is arrested by cancelling the earlier notification by another notification or by a mere communication addressed to the HPSC. Even if the HPSC were to complete the process and select candidates, such selection by itself would not confer a right to appointment and the Government may refuse to make the appointment for valid reasons. At best, the Government may be required to justify its action on the touchstone of Article 14 of the Constitution.

13. In the aforesaid backdrop, having noted that even the selected candidates have no legal and indefeasible right, we direct the selection in question to be scrapped altogether and held afresh after publishing eligibility list of Chief Matron etc.

14. O.A. is thus allowed. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

sb

