Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 17th day of **August,** 2021

Original Application No. 330/00208/2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Tarun Shridhar, Member (Administrative)

1. Sunil Kumar S/o Badri Prasad, R/o Village Maupur Dhedhya, Post Murad Nagar, District – Ghaziabad.
2. Shravan Kumar Yadav, S/o Anachh Yadav, R/o Village Lakhai Post Matiaps Barhat, Jamul (Bihar).
3. Amit Kushwaha S/o Sri Preetam Singh, R/o Siddharth Nagar, Near Shanti P.C.O. Izzat Nagar, District Bareilly – 243122 U.P.
4. Prem Narayan Yadav S/o Sudarshan Yadav, R/o Village & Post Beekapur, District Ghazipur.

. . .Applicants

By Advocate : Shri Vinod Kumar
Shri Shiv Mangal

V E R S U S

1. Union of India through Secretary, Ministry of Railway, Baroda House, Rail Bhawan, New Delhi.
2. The Chairman Railway Recruitment Cell, North Eastern Railway, Gorakhpur.

. . .Respondents

By Adv: Shri Atul Kumar Shahi

O R D E R

By Hon'ble Mr. Tarun Shridhar, Member (Administrative)

We have joined this Division Bench online through video conferencing.

2. Shri Vinod Kumar and Shri Shiv Mangal, learned counsel for the applicants and Shri Atul Kumar Shahi, learned counsel for the respondents, all are present in Court.

3. Heard learned counsel for the parties and perused the record available in pdf.

4. By this OA the applicants seek the relief for consideration for selection in Group 'D' posts pursuant to the selection conducted by Railway Recruitment Cell, North Eastern Railway, Gorakhpur in the light of RBE No.121/2005 and RBE No.73/2008.

5. At the very outset, learned counsel for the applicants submits that it is only with respect to the applicant No.1 that he is pressing for the relief sought for in this OA and that his case is squarely covered in the judgment rendered by the Tribunal in OA No.608/2014 vide order dated 03.03.2021. In the said OA, this Tribunal had relied upon the assurance given by the respondents to the applicants that they shall be given an offer of appointment against the vacant post of the year for which they have appeared in the selection test and that their seniority shall be accordingly protected. It was on account of the categorical admission of the respondents that this Tribunal has provided a clear relief to the applicants by giving a direction to the respondents to makean offer of appointment to the applicants and protect their seniority in accordance with law and in view of their own assurance.

6. For the sake of clarity, the order passed in the aforesaid OA is reproduced below :

"Reserved on 09.02.2021

Pronounced on 03.03.2021

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

Present:
Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Tarun Shridhar, Member-A

Original Application No. 330/000608/2014

(U/S 19, Administrative Tribunal Act, 1985)

1. Pappu Kumar Roll No. 10706824 S/o Shiv Shankar Prasad R/o Village New Jakkanpur Ram Jatan Singh Lane P.O. G.P.O. Patan P.S. Gardanibagh. District Patan (State of Bihar).
2. Sri Gautam Kumar Roll No. 10717441 S/o Naresh Prasad R/o Village Mandachh post office Dumrawan District Nalanda (Bihar).
3. Kanhaiya Prasad Roll No. 10708244 S/o Baban Prasad Village and Post Nagwan District Buxer (Bihar).
4. Manish Kumar Roll No. 10716731 S/o Lalan Singh R/o Village Fingi post and P.S. Bihia District Bhojpur (Bihar).
5. Uday Kumar Roll No. 10735130 S/o Ram Sagar Sahu R/o Indra Colony Attardah Kachchi Pakki, N.H-28 Lane No.3 post Ramna District Muzaffarpur pin. 842002, (Bihar).
6. Charan Rajak Roll No.10725565 S/o Amiran Rajak R/o Village and post makhdumpur P.S. Fatehpur Gaya District Gaya, (Bihar).
7. Anil Kumar Bharti Roll No. 10761640 S/o Manik Chandra Rajak R/o Main road Hilsa Cinema Post Hilsa Nalanda District Nalanda, (Bihar).
8. Krishna Murari Prasad Roll No. 10737593 S/o Sri Ram Prasad R/o Village Char Ghara post Jhajha Jumai District Jumai, (Bihar).
9. Saroj Kumar Singh Roll No. 10724144 S/o Jwala Singh R/o Village Kusare Post Padura Rampur, Police station Sandesh Bhojpur, District Bhojpur, (Bihar).
10. Kanhaiya Prasad Roll No. 10745259 S/o Brij Kumar Prasad Village Chargara Post Jhajha District Jamai (Bihar).
11. Amit Ranjan Sahai Roll No. 10731266 S/o Navendu Kumar Sahai R/o Village Buxer District Buxer, (Bihar).
12. Awadhesh Kumar Roll No. 10714661 S/o Sukhdeo Prasad R/o Village Chilahari P.S. Dumraon District Buxer, (Bihar).
13. Vikash Kumar Singh Roll No. 10756832 S/o Chandrama Singh R/o Village Kitapur Post Bimwan P.S and District Bhojpur (Bihar).
14. Shakti Bahadur Singh Roll No. 10749330 S/o Ram Lakhan Singh R/o Mohalla Begumpur Chauk (Ara) District Bhojpur (Bihar).

.....Applicants.

By Advocate – Shri R.K Dixit.

V E R S U S

1. *Union of India, through Secretary, Ministry of Railway, Govt. of India, New Delhi.*
2. *General Manager North Eastern Railway, Gorakhpur District Gorakhpur.*
3. *Railway Recruitment Cell through its Chairman/Secretary, North Eastern Railway (NER) Gorakhpur,District Gorakhpur.*
4. *Deputy Personnel Officer/Railway Recruitment Board Cell, North Eastern Railway (NER), Gorakhpur, District Gorakhpur.*
5. *Assistant Personnel Officer, Railway Recruitment Cell CCM, Annex Building Railway Board No. 14, North Eastern Railway (NER) Gorakhpur.*

.....Respondents.

By Advocates : Shri S.K. Pandey.

O R D E R

Delivered By Hon'ble Mr. Tarun Shridhar, A.M. :-

The instant Original Application has been filed by the applicant seeking the following reliefs:-

> ***"(i) It is, therefore, most respectfully prayed, that this Hon'ble Court may graciously be pleased to quash the impugned letters/orders dated 9.5.2013 in respect of applicant No.1 to 10 and letters/orders dated 17.6.2013 in respect of applicant No.11 to 14 passed/issued by Deputy Personnel Officer/Railway Recruitment Cell North Eastern Railway, (NER) Gorakhpur, respondent No. 4 providing the misleading assurance in respect of posting and joining from the panel list of department. (Annexure No. 4 of the O.A) Further a mandamus is also being sought directing the respondents particularly respondent No. 3 to declare present actual position/Rank in the select list/waiting list concerned in respect of petitioners as well as permit them to join in their respective posts on which they have been selected, within some stipulated period of time fixed by this Hon'ble Tribunal.***
>
> ***(ii) Issue any other further writ, order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.***
>
> ***(iii) To award cast of application/petition".***

2. *The impugned order dated 09.05.2013 has been passed in compliance of the direction issued by this Tribunal in OA No. 167 of 2013 titled Saroj Kumar Singh Vs. Union of India & Ors. By virtue of this order the respondents have rejected the claim of the applicants for providing them employment against Group 'D' Posts. The applicants had appeared in the written examination and subsequent to the clearing the examination, they were called for document verification and medical examination. However, pursuant to this they claim that despite having been declared successful,*

they were not given appointment and have been waiting since then. They had approached the respondents on several occasions without any positive response.

3. *Vide the impugned order the respondents authorities have clarified that 4549 Group 'D' Posts were advertised in the year 2007 but a total of 5450 candidates were called for documents verification and medical examination in view of the prevailing instruction on the subject. It is a practice that 20% candidates in excess of the advertised vacancies are called for documents verification and medical certificates so that the requisite number of vacancies would be filled up due to omission of certain candidates on account of either ineligibility or some other ground. Vide the impugned orders (a separate order has been issued in respect of each of the applicants), it has also been made clear that the applicants were lower in the merit to the last selected candidate and hence were not eligible for an offer of appointment. The impugned order further clarifies that the recruitment process for subsequent years has also been since initiated and the candidates may be considered in case selected candidates senior to them do not join or incur disqualification on some other grounds. The impugned orders subsequently mentions that their seniority shall remain protected.*

4. *Although, this order thus gives an assurance of appointment under some circumstances, this assurance has not so far been fullfilled and the candidates have been waiting for an appointment for a period of more than 7 years now.*

5. *Learned counsel for the applicant argues that the applicants were fully qualified and meet all the eligibility criteria for Group 'D' posts. They were successful in all the different stages of selection process right from physical eligibility test to written test to medical examination, and their*

documents were also found in order. At this belated stage, there is no ground before the respondents to withhold the appointment of the applicants.

6. *The learned counsel further vehemently states that the assurance given by the respondents vide the impugned order is misleading and virtually amounts to rejection of the rightful claim of the applicants. In fact the impugned order has prolonged the frustration and agony of the applicants by keeping them hanging in suspense.*

7. *Learned counsel for the respondents' points out that on account of surrender of certain vacancies by the construction unit of the Railways, the number of vacancies got reduced and the applicants being lower in merit could not be considered for appointment. A higher number of candidates were called for medical examination and documents verification in accordance with the existing policy that 20% excess of the number of vacancies will be the number of candidates invited for medical and documents verification; this in itself does not confer any right upon the applicants for appointment.*

8. *We find it a bit strange that after having made a categorical statement in the impugned order that the applicants shall be considered for posting and their seniority will be protected, now the respondents have taken a position that the applicants do not deserve any consideration for offer of appointment. The grounds on which this subsequent position is based are definitely not justifiable. Reduction of the number of vacancies after the recruitment process has been set into motion should not ordinarily be resorted to unless there are overwhelmingly compelling circumstances. The employment notice inevitably mentions the number of vacancies for which*

recruitment is to be made in order to ensure transparency as also to provide an opportunity to the applicants to assess their own chances and position.

9. *Learned counsel for the applicant also draws attention to the order of the Hon'ble Supreme Court in Civil Appeal No. 11364 of 2018 in the case of* ***Dinesh Kumar Kashyap & Ors. ETC. Vs. South East Central Railway & Ors. ETC.*** *wherein in an identical case the Hon'ble Apex Court had allowed the appeal of the candidates and had specifically observed as under:-*

> ***7. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non−arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of the SECR".***

10. *The Hon'ble Apex Court had further observed that after the selection process of the instant applicants two more selection processes were started in the year 2012 and 2013, hence 03 recruitment circles were running concurrently. The issues in the present OA are strikingly similar to the matter adjudicated by the Hon'ble Supreme Court. The Hon'ble Apex Court had further observed that "On behalf of the respondents it was urged before us that after the selection process in question 2 more selection processes were started in 2012 and 2013. Resultantly, three recruitment cycles were running*

concurrently and, therefore, the vacancies were filled up in the subsequent selections. This argument deserves to be rejected since it was not even raised before the Tribunal. Furthermore, the rights of the appellants who had appeared in the selection pursuant to the notification of 2010 could not be taken away by the selection processes started much later. They cannot be made to suffer for the delays on the part of the SECR".

11. *Learned counsel for the respondents rebuts this argument by mentioning that the Hon'ble Apex Court while allowing the appeals had clearly mentioned that:* ***"the benefit of this judgment shall only be available to those appellants who had approached the CAT"****. However, attention needs to be drawn to the following directions to contained in the same judgment that* ***"the appellants shall, for the purpose of seniority and fixation of pay be placed immediately above the first selected candidates of the selection process which commenced in the year 2012 and, immediately below the candidates of the selection list of 2010 in order of seniority;"*** *and further that* ***"the appellants shall be entitled to notional benefits from the date of such deemed appointment only for the purposes of fixation of pay and seniority"****.*

12. *We have heard the learned counsel for the applicants and respondents at length and carefully examined all the documents on record. We are of the considered view that the respondents have unnecessarily kept the matter hanging for long and on the face of it justice has not been met out to the applicants.*

13. *It is by their own admission that the respondents have conceded that the applicants will be considered for appointment to Group 'D' post as and when the post is available and further that their seniority shall be protected.*

Therefore, it defies logic that before considering an offer of appointment to the applicants, the respondents have initiated fresh recruitment cycles. Even if the Hon'ble Supreme Court had given relief only qua those persons who had approached the Central Administrative Tribunal, the facts and circumstances being identical it is expected that the respondents should apply the same principle in the case of the present applicants without forcing them into prolonged litigation.

14. *This OA is, accordingly, disposed of with the direction to the respondents to take a decision on the assurance given to the applicants to offer them appointments against the vacant posts in the impugned order dated 09.05.2013. Since the order clearly mentioned that the seniority of the applicants also stands protected, therefore, the applicants should be given an offer of appointment forthwith in case persons who were selected through later recruitment cycles have been given appointment. Further, since the impugned order also mentions that "you shall be advised of your proposed posting accordingly" this assurance should also be carried out in letter and spirit. We clarify that these directions are given to the respondents squarely in terms of their own assurance contained in their impugned orders and in the light of the Judgment of the Hon'ble Supreme Court referred to above. The respondents particularly respondent No.4 shall ensure that the directions contained in this order are complied with within a period of eight weeks from the date of receipt of this order. No order with respect to the costs."*

7. Accordingly, this OA is disposed of with a direction to respondents to award relief to applicant No.1 viz. Sunil Kumar S/o Badri Prasad, R/o Village Maupur Dhedhya, Post Murad Nagar,

District – Ghaziabad only strictly in terms of directions passed in OA No.608/2014. To obviate the possibility of any ambiguity, it is further clarified that Shri Sunil Kumar shall be given an offer of appointment with respect to the vacancy which accrued in the year for which he appeared in the examination and accordingly his seniority shall be protected in terms of the assurance given by the respondents. No order as to costs.

8. All the MAs pending in this OA also stand disposed of as having become infructuous.

(Tarun Shridhar)
Member(Administrative)

(Justice Vijay Lakshmi)
Member(Judicial)

RKM/