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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
(Reserved on 19.08.2015)

O.A No. 060/01152/2014

Date of decision - 1.9.2015

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)**

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1. Arshdeep Singh son of Sh. Harvinder Pal Singh resident of Village Godarpur, PO Nishaehra Mazza Singh, Tehsil & District Gurdaspur.
2. Shehzad Khan son of Sh. Gulzar Mohammad, resident of Saroud Road, near Akbari Masjid, Malerkotla, Sangrur.
3. Gurpreet Singh son of Sh. Baljinder Singh, resident of VPO Singhpura, Tehsil Kharar, District Mohali.
4. Harpreet Singh son of Sh. Balwinder Singh resident of village Bulewaal, PO Nishaehra Mazza Singh, Tehsil & District Gurdaspur.
5. Sunny son of Sh. Joginder Singh resident of village Chattha, PO Seeda, Tehsil Batala, District Gurdaspur.

...APPLICANT

BY ADVOCATE: Sh. Gurmohan Singh.

VERSUS

1. Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi-110001.
2. General Manager (Personnel), Rail Coach Factory, Kapurthala.

...RESPONDENTS

BY ADVOCATE: Sh. Lakhinder Bir Singh.

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ORDER

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

By means of the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants seek issuance of direction to the respondents to issue them appointment letter under sports category as they have already been selected pursuant to an advertisement, issued by the authorities published on 18.06.2013.

2. The facts which led to filing of the present case are that respondent no. 2 i.e. GM (P), Rail Coach Factory, Kapurthala issued an advertisement inviting the applications for various posts in various discipline for recruitment under sports quota for 2013-2014. The applicants, being fully eligible, applied and their names were reflected in list of eligible candidates. After completion of selection process, respondent no. 2 issued a final list of candidates on 08.03.2014. When the respondents did not issue any appointment letter, the applicants submitted a representation dated 15.06.2014 requesting for issuing the joining letter to them as they had been selected by the respondents for relevant post but to no avail. Hence, the present O.A.

3. The respondents chose to file a short reply at the first instance and thereafter, filed the status report. In para 2 of the short reply, it is submitted that in terms of the restructuring of the

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cadre by the Railway Coach Factory, Kapurthala, as many as 297 posts have been surrendered and as much as 479 staff working in the Grade pay of Rs. 1800 as on 01.09.2014 is in excess, therefore, it was decided by the competent authority to cancel the entire selection. In support of their stand, as in Para 2, they have spelt out the reasons as annexed as Annexure R-1 dated 19.03.2015 where they have cancelled the selection in question due to administrative reasons.

4. We have heard Sh. Gurmohan Singh, learned counsel for the applicant and Sh. Lakhinder Bir Singh, learned counsel for the respondents.

5. Sh. Gurmohan Singh, learned counsel for the applicants vehemently argued that action of the respondents in cancelling the entire selection/result is nothing but a colourable exercise of power to deprive the applicants of appointment for which they have already been selected. He submitted that once the applicants have already been selected and their names stand included in select list, the respondents cannot cancel the entire selection in an arbitrary manner as the same shows their malafide intention towards the applicants. Therefore, he prayed that the respondents may be directed to issue the appointment letters to the applicants.

6. Sh. Lakhinder Bir Singh, learned counsel for the respondents opposed the prayer of the applicants and submitted that in view of the restructuring of cadre, there are 516 persons more than the

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sanctioned posts and decision has been taken by the competent authority to cancel the selection, therefore, there is no question of malafide, as alleged by the applicant as it is a policy decision. Thus, the present O.A may be dismissed.

7. We have given our thoughtful consideration to the entire matter and perused the pleadings of the parties as available on record with the able assistance of respective counsels.

8. The question for our consideration is as to whether the respondents can cancel the selection after declaration of result or not?

9. This issue came before the Constitutional Bench of the Hon'ble Supreme Court in case of **Shankarsan Dash Vs. Union of India** (1991) 3 SCC 47 wherein their lordship have considered this issue. The relevant observation has been made in para 7, which reads as under:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. 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 licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find

any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899."

10. Thereafter following the same, the Hon'ble Supreme Court has reiterated the same view in case of **East Coast Railway Vs. Mahadev Appa Rao**, 2010(7) SCC 678.

11. In the light of the above, it can safely be concluded that no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the state does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. To the same effect is the decision in case of **U.T. Chandigarh Vs. Dilbagh Singh** (Civil Appeal No. 4649 of 1992 decided on 03.11.1992) where again it has been reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a malafide manner. Therefore, to satisfy ourselves about the cancellation of select list, we directed the respondents to produce the record where the decision has been taken to cancel the selection. Today, Lakhinder Bir Singh, learned counsel for the respondents produce the noting sheet where competent authority

has decided to cancel the selection. The noting portion 'PP-18' reads as under:-

PP-18

"In view of PP-16&17 with regard to vacancy position put up by SPO-I, it is revealed that in Group-D there is excess of 516 against sanctioned strength of 1103, since 1619 are working (Excluding - Safaiwalas & Bungalow Peon) vide S.no.126/1-2.

1. As such there is excess of 516 in Group.-D.(vide S.No.126/1-2). In view of above, for the time being, recruitment, in Group - D (Athletics-01, Football-05 & Hockey-03) Total 09 Group-D, panel can be pended since there is excess of sanction cadre and there is no clear-cut vacancy in this category.
2. As per S.No.129/1-4), there are 19 vacancies in Technician cadre in Mechanical & 06 vacancies in Technician cadre in Electrical i.e. total 25 vacancies against Direct Recruitment Quota in Group-C as on 18.03.2014 i.e. Total vacancies of 25 are available in Group-C, Grade pay -1900/-.

This has been confirmed by SPO-I at PP-17. Since there are 25 vacancies available in Group-C, grade pay-1900/-. Hence it is proposed to fill up Group-C vacancy i.e. Basketball (Men)-01, Hockey (Women) 04 i.e. total 05 sportsperson in Group-C.

3. Further as per Para 8 of Rly. Bd. Letter No.PC-III/2013/CRC/07 dated 14.11.2013 (Sl.No.131) with regard to re-structuring of Group-C cadre, (Adjustment of excess No. of posts) "if prior to issue of these instructions the number of posts existing in any grade in any particular cadre exceeds the number admissible on the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents."

In view of above, it is recommended to release 05 vacancies for recruitment of 05 sportsperson in Group-C, Grade pay Rs.1900/- against Direct Recruitment Quota in Tech-III/Mechanical and Tech-III/Electrical.

This will require approval of G.M.

FA&CAO&HGS/RCFSA

CME & PRESIDENT/RCFSA

CPO

G.M."

12. We have gone through the records and we find no malafide and arbitrary action on behalf of the respondents in cancelling the select panel and it is only for the reason that they have already excess of 516 persons in Group-D against the sanctioned strength of 1103 , which has resulted into consideration of the selection as a whole.

13. In the light of the above, we see no reason to direct the respondents to issue appointment letter when selection has already been cancelled, therefore, O.A shall stand dismissed being devoid of any merit

14. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: 11/9/2015

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