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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00712/2016

Friday, this the 12th day of April, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. Ajith.D.,
S/o.Devadas,
Chemmini Prambu House,
Parli P.O., Palakkad Dt. - 678 612.
2. Kanakalatha.K.C.,
W/o.Sivadas.G.,
Kattupadam House,
Mudalamada P.O., Palakkad Dt. - 678 507.
3. Shiji.R.,
D/o.Rajan K,
Anakkad House,
Pattancherry P.O., Palakkad Dt. - 678 532.
4. Satheesh K.,
S/o.Kaladharan C,
Thonipalam House,
Thekke Desom P.O., Palakkad Dt. - 678 553.
5. Abhilash.C.C.,
S/o.Chandran,
Changanar House, Anamari P.O.,
Kollengode, Palakkad Dt. - 678 506.
6. Sobhana.C.K.,
D/o.Krishnan Kutty,
Chennam Kunnu House, Kizhakkumpuram P.O.,
Mannur, Palakkad Dt. - 678 642.

7. Seejin.M.V,
S/o.Viswananthan,
Muthupparambil House,
Manakulangara P.O., Kodagara, Trichur Dt. - 680 684.
8. Rajesh S.,
S/o.Sundaran,
North Village, Anjumoorthy P.O.,
Palakkad Dt. - 678 682.
9. Vinod V.,
S/o.Vasu.A.,
Munidyan Parambu House,
Anamari P.O., Kollengode, Palakkad Dt. - 678 506.
10. Rajendran.K.N.,
S/o.Chathu.K.N.,
Karimpan Natakka,
Perod Port, Nallapuram (via) – 673 504.
11. Bindhu.K.,
D/o.Damodharan,
Kannambatu, Iringol P.O.,
Calicut, Palakkad Dt. - 673 521.
12. Prasanth.P.,
S/o.Narayanan,
Paloli House, Avadukka P.O.,
Peruvannamuzhi, Calicut Dt. - 673 528.
13. Mohammed Faisal.K.K.,
S/o.Mohammed Abdul Rehman,
Kanakuzhi, Padinjareparambil House,
Valiaparambu P.O., Malappuram – 673 637.
14. Shimna D.R.,
D/o.Damodharan Nair,
Koovale House, Meppayyoor P.O.,
Perambra (via), Calicut Dt. - 673 524.
15. Sha Aniyan,
S/o.Aniyan.K.V. (late),
Madathi Parambil House, Trikkakara P.O.,
Kennedy Mukku, Ernakulam Dt. - 682 021.

16. Vipin Jacob.P.X.,
S/o.Xavier,
Palliparambil House, Arthungal P.O.,
Cherthala, Alappuzha Dt. - 688 530.
17. Shiju.K.,
S/o.Kesavan,
Vadakke Padam, Naram Huzhi,
Chittor P.O., Palakkad Dt. - 678 101.
18. Muniasamy.V.,
S/o.Vadivel.S.,
No.30, Thiruvalluvar Nagar,
Sankaran Kovil, Thirunelveli Dt. - 627 756.
19. Prafullal.A.L.,
S/o.Lalasan,
Anchil House,
Vezhapra P.O., Alappuzha Dt. - 689 595.
20. Muhammed Sadhiqua.M.M.,
S/o.M.P.Moideen,
Mullassery House, Neduvannoor,
Chovara P.O., Ernakulam Dt. - 683 571.
21. Divya Puthan Veettil,
D/o.Raghavan,
Arangathu Meethal, Kalpathur P.O.,
Meppayyur (via), Calicut – 673 524.
22. Prasanth.K.S.,
S/o.Subramanian,
Kandamkakkare, Kattikkunnu,
Chembu P.O., Kottayam – 686 608.
23. Vaheeda.U.,
W/o.Abdu Rahman Aris,
Cheediyedath Poyil House,
Ekarool P.O., Calicut Dt. - 673 574.
24. Mohammed Faisal.K.,
S/o.Ummer,
Tharamannil House, Vajapparappadi,
Manjeri P.O., Malappuram Dt. - 676 121.

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25. Sinesh.K.P., S/o.Prabhakaran.K.,
Kottayil House, Naduvathapara P.O.,
Peringottukurissym, Palakkad Dt. - 678 574.

26. Roshen.A.J., S/o.A.P.Jerom,
Attipetty House, Kuthirapanthy Ward,
Thiruvambady P.O., Alleppey – 688 002.

....Applicants

(By Advocate – Mr.T.C.Govindaswamy)

v e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.

2. The Deputy Chief Personnel Officer/Recruitment,
Southern Railway/Railway Recruitment Cell,
No.5, Dr.P.V.Chерian Crescent Road,
Egmore, Chennai – 600 003.

3. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.

4. The Chairman, Railway Board,
Rail Bhavan, New Delhi – 110 001.

...Respondents

(By Advocate Mrs.K.Girija)

These Original Applications having been heard on 3rd April 2019, the Tribunal on 12th April 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The applicants who belong to Other Backward Communities and having educational qualifications of SSLC and above are aggrieved by the refusal on the part of the respondents to issue them the orders of appointment.

2. The brief facts of the case are : the railways published an Employment Notice No.5/2010 dated 15.12.2010 inviting applications for 3592 vacancies of the erstwhile Group D category. After qualifying in the written exam, that is, Physical Efficiency Test, the applicants were called for document verification and thereafter for medical examination.

3. But the respondents did not published the list of selected candidates nor issued appointment order to the applicants. The applicants filed O.A.No.175/2014 which was dismissed by this Tribunal vide order dated 24.11.2014. The said order was challenged in OP (CAT) No.67/2015 which was also disposed of by judgement dated 9.3.2016 holding that the railways should publish the list category wise. But only combined list published after the order of the Tribunal and the separate list as directed are yet to be published. The right of the petitioners were left open to seek any relief to which they are eligible in accordance with law. As per applicants total number of 2512 candidates join the post. It is also stated that upto Sl.No.83 are persons who had not joined despite issuance of appointment orders and who have been replaced by issuance of appointment orders to persons down below in the rank list. Appointment orders will be issued to those who are in the replacement list. The respondents are relying upon Railway Board Order bearing RBE No.6/2014 dated 10.1.2014 to suggest that no replacement panel would be given against non joining of selected

candidates. The applicants submit that the Railway Board Order is not applicable in the instant case. The first select list was published on 23.1.2013 and the rules that governed the situation, was the one, as it existed at the time of publication of Employment Notice No.5/2010 and hence against the non joining vacancy fresh list should be published from the panel.

4. Respondents in their reply statement submitted that earlier O.A.No.175/2014 filed by the applicants was dismissed by this Tribunal and now they cannot take up the same issue again in the present O.A. All the 884 vacancies available for being recruited under the OBC category was taken note of by the Hon'ble High Court. The liberty so granted by the Hon'ble High Court was limited to that extent of pointing out any mistakes in the ranking given to the applicants. But they cannot be allowed to re-agitate the entire matter by raising new grounds and the applicants cannot claim the post without impleading them as parties which would be bad for non-joinder of the parties. As also the present OA is hit by the principle of resjudicata. Hence the O.A be dismissed in limine. Further they submitted that merely calling 20% candidates over and above the number of vacancies is primarily to avoid shortfall in the panel and mere calling candidates for document verification does not in any way entitle them to an appointment.

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5. Rejoinder thereto has been filed reiterating the averments made in the O.A.

6. Heard learned counsel for the parties at length and perused the records and appreciated the legal position. The issue raised in the present O.A is that the Southern Railway issued advertisement on 15.12.2010 inviting applications to fill up 3087 vacancies in Southern Railway and 505 vacancies in Integral Coach Factory in Pay Band I Rs.5200-20200 with GP Rs.1800. Number of candidates called for document verification 20% over and above the number of vacancies are entitled for selection or not.

7. The applicants falls within 20% surplus candidates (OBC category) who have qualified the exam, documents verified and medical examination done. The candidate who qualified in exams have legitimate expectation to get appointment. Though there is no legal right for selection outside the notified vacancies, the fact remains that the Railway has called 20% more candidates for document verification only for the purpose that in case non joining of selected candidates, the vacancies be filled up for the safety and effective functioning of the railways. Process of selection itself is cumbersome and the Railway Board has permitted the same as per the 2008 instructions. The argument of the learned counsel for the applicants has some force that the select list was published in January 2013 which was

much prior to the subsequent change in the instructions of 2014 which has no application because the rule of game cannot be changed once the process of selection came in force. As per the judgment of the Apex Court in **Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Ors.** in SLP No.6165/2018 it has been held that :

6. The main issue which arises before us is whether the SECR could have ignored the 20% extra panel despite the letter dated 02.07.2008 without giving any cogent reason for the same. No doubt, it is true, that mere selection does not give any vested right to the selected candidate to be appointed. At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. No doubt, it is not incumbent upon the employer to fill all the posts but it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the replacement panel. In this behalf we may make reference to the judgment of this Court in R.S. Mittal vs. Union of India (UOI)¹, wherein it was held as follows:

“10.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

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, nonarbitrary 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.

8. On behalf of the SECR it has been contended that before calling for replacement candidates the CPO was to satisfy himself that the procedure for cancellation of the order of appointment of the original empanelled candidates has been strictly followed. It is urged that since this was not done the appellants could not be appointed. This argument holds no merit. There is no indication in the pleadings that the vacancies were not to be filled up. If an official of the Respondent No. 1 fails to do his duty the appellants cannot suffer for the same. They are not at fault.

9. 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.

10. The fact that three simultaneous selection processes were undertaken, itself proves that the Respondent No. 1 wanted to fill up all the posts and did not want any vacancies to be left unfilled. This negates the plea of the 8 Respondent No. 1 that it was not necessary to fill up the vacant posts. 11. It has been urged before us that the validity of the panel was only for two years and since the last merit list was published for March 2014, validity of the list has expired in March 2016. This submission is only to be rejected. The appellants herein who approached the CAT and the High Court with promptitude cannot suffer only because the matter was pending in Court.

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11. Another submission raised on behalf of the SECR is that the appellants have obtained lower marks than the cutoffs prescribed in the selection processes held in the year 2012 and 2013. This amounts to comparing apples to oranges. Every selection process has a different examination with different level of assessment. By no stretch of imagination can comparison be made between the three different selection processes.

12. Another argument raised is that recruitment policy is an executive decision and the courts should not question the efficacy of such policy. Neither the appellants nor this Court is questioning the efficacy of the policy contained in the letter dated 02.07.2008. All that has been done is to ensure implementation of the policy by the Respondent No. 1, especially when it has failed to give any cogent reason to justify its action of not calling for candidates from the replacement list of extra 20% candidates.

13. In view of the above, the appeals are allowed. The judgment of the High Court and CAT, Jabalpur Bench are set aside. The appellants are entitled to the benefit of the letter dated 02.07.2008. While allowing the appeals we issue the following directions:

(i) The benefit of this judgment shall only be available to those appellants who had approached the CAT;

(ii) The appellants shall not be entitled to any back wages;

(iii) 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;

(iv) 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.

14. The Respondent No. 1 is directed to comply with the judgment and offer appointment to the eligible appellants within a period of 3 months from today.

8. The direction given by the Apex Court in the above judgment is very clear that those who approached the CAT alone are eligible for the selection in respect of 20% of over and above category OBC. The applicants were the part of same examination and also approached the CAT and Hon'ble

High Court. Thus case of the applicants is squarely covered by the judgment and hence they are entitled to be appointed on the said posts. They would be given seniority from the date of joining offices along with those who have joined. However, there would not be any claim for backwages etc.

9. Further, the Railways in their affidavit has stated that though the respondents do not admit the claim made by the applicants, it is submitted before this Hon'ble Tribunal that in respect of Employment Notification No.05/2010 cited as Annexure A-1, out of 884 OBC candidates empanelled and appointed, 32 OBC candidates did not turn up to take up appointment. At any rate, even if replacements were arranged in respect of these 32 candidates by going down the line, only 9 out of the 26 applicants in the O.A would have been eligible and could have found a place in the replacement panel.

10. In view of the aforementioned discussion we are convinced that there is merit on the side of the applicants and hereby directs that :

(i) The benefit of the Apex Court decision shall be available to the present applicants who have approached this Tribunal and assailed the same very notification which is interpreted by the Apex Court.

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(ii) The applicants shall not be entitled to any back wages.

(iii) The respondents are directed to consider the applicants against the non-joining vacancies and to appoint them against such vacancies notified in Annexure A-1.

(iv) The applicants shall be entitled to notional benefits from the date of such deemed appointment only for the purposes of fixation of pay and seniority.

11. The respondents are directed to comply with the aforesaid directions within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 12th day of April 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00712/2016

- 1. Annexure A1** - A true copy of the Employment Notification bearing No.RRC 05/2010 dated 15.12.2010.
- 2. Annexure A2** – A true copy of the letter bearing No.RRC/E.N.05/2010/PET dated 17.12.2012 issued by the 2nd respondent in favour of the 26th applicant.
- 3. Annexure A3** – A true copy of the part select list consisting of 731 candidates with their roll numbers published under a communication bearing No.Nil dated 23.1.2013 issued by the 2nd respondent.
- 4. Annexure A4** - A true copy of the second part select list consisting of 1702 candidates published by the 2nd respondent under No.Nil dated 15.3.2013.
- 5. Annexure A5** - A true copy of the Railway Board Order bearing RBE No.121/2005 dated 18.7.2005.
- 6. Annexure A6** - A true copy of the Railway Board Order bearing RBE No.166/2005 dated 29.9.2005.
- 7. Annexure A7** – A true copy of the information collected under the Right to Information Act.
- 8. Annexure A8** – A true copy of the Chart showing brief details material for adjudication of the issues involved in the O.A.
- 9. Annexure A9** - A true copy of the order dated 24.11.2014 in O.A.No.175/2014 rendered by this Hon'ble Tribunal.
- 10. Annexure A10** - A true copy of the Railway Board Order bearing RBE No.166/2005 dated 29.9.2005 (produced as R2 in O.A.No.175/2014).
- 11. Annexure A11** - A true copy of the Railway Board Order bearing RBE No.73/2008 dated 17.6.2008 (produced as R3 in O.A.No.175/2014).
- 12. Annexure A12** - A true copy of the Railway Board Order bearing RBE No.6/2014 dated 10.1.2014 (produced as R4 in O.A.No.175/2014).
- 13. Annexure A13** - A true copy of the counter affidavit filed by the respondents producing R2(1) a consolidated merit order list (final) dated 29.1.2015 for EN No.5/2010 – less R(2).

- 14. Annexure A14** - A true copy of the merit list of panel of recommended candidates EN No.05/2010 (R.2(2) produced by the respondents along with the counter affidavit.
- 15. Annexure A15** - A true copy of the judgment in OP(CAT) No.67/2015 dated 9.3.2016 rendered by the Hon'ble High Court.
- 16. Annexure A16** - A true copy of the list for UR category.
- 17. Annexure A17** - A true copy of the list for OBC category.
- 18. Annexure A18** - A true copy of the list for SC category.
- 19. Annexure A19** - A true copy of the list for ST category.
- 20. Annexure A20** - A true copy of the list for PWD category.
- 21. Annexure A21** - A true copy of the Railway Board Order (RBE No.150/2017) bearing No.E(NG)-II/2007/RC-4/CORE/1 issued by Director Estt.(N)-II, Railway Board dated 16th October 2017.
- 22. Annexure A22** - A true copy of the Office Order bearing No.V/P.721/SWLI/Re-engagement dated 27th November 2017, issued by the Senior Divisional Personnel Officer on behalf of Divisional Railway Manager, Southern Railway, Trivandrum.
- 23. Annexure A23** - A true copy of the Order bearing No.T/P.269/I/EA/Re-employment dated 3.11.2017.
- 24. Annexure A24** - A true copy of the Order bearing No.P.721/Re-Employment dated 10.11.2017.
- 25. Annexure A25** - A true copy of the Order (RBE No.193/2017) bearing No.E(NG)-II/2007/RC-4/Core/1 dated 12.12.2017 issued by Director Estt.(N)-II, Railway Board.
- 26. Annexure A26** - A true copy of the online RTI request form numbered S RSLD/R/2017 sent to Southern Railway, Salem Division.
- 27. Annexure A27** - A true copy of the reply received from the Public Information Officer and Divisional Personnel Officer/Salem bearing No.SA/P PG/RTI/2017/370 SRSLR/R/2017/50035 dated 10.1.2018.

- 28. Annexure A28** - A true copy of the online RTI request form number SRPKD/R/2017 sent to Southern Railway, Palakkad Division is produced.
- 29. Annexure A29** - A true copy of the reply received from the Senior Divisional Personnel Officer/PGT & PIO/P bearing No.J/P.PG/RTI/2017-18/203 dated 30.11.2017.
- 30. Annexure A30** - A true copy of the Letter bearing No.P(RT)563/RRC/Gr.D/2014-15 dated 6.10.2014, received under the Right to Information Act.
- 31. Annexure A31** - A true copy of the Letter bearing No.E(NG)-II/2013/RR-1/12 dated 20.10.2014 issued by the Railway Board.
- 32. Annexure A32** - A true copy of the Railway Board Order bearing No.138/2014 dated 10.12.2014.
- 33. Annexure A33** - A true copy of the RTI Request Registration Number SORLY/R/2018/50176.
- 34. Annexure A34-** A true copy of the Letter bearing No.PB/RTI/146/2426 dated 26.4.2018 issued by the Public Information Officer in the office of the Principal Chief Personnel Officer/Integral Coach Factory/Chennai.
- 35. Annexure A35** - A true copy of the additional affidavits dated 4th October 2018 filed by the Divisional Personnel Officer, Southern Railway, Palakkad – 678 002 in OP (CAT) No.26/2018 before the Hon'ble High Court of Kerala.
- 36. Annexure R1** - True copy of the Undertaking given by Applicant No.1.
- 37. Annexure R2** - True copy of the Railway Board's letter dated 17.6.2008.
- 38. Annexure R3** - True copy of the Railway Board's letter dated 10.1.2014 No.E(NG)-II/2008/RR-1/33.
- 39. Annexure R4** - True copy of the notification.
- 40. Annexure R5** - True copy of the Railway Board's letter.
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