

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No. 20/939/2017 & MA 545/2018**

**Reserved on: 04.09.2018  
Pronounced on: 26.04.2019**

Between:

1. B.Appa Rao, S/o Subba Rao,  
aged 29 years, Occ: Helper-II (Welder),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
2. B.Mohan Rao, S/o Rajeswara Rao,  
aged 27 years, Occ: Helper-II(Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
3. Munnu Kumar, S/o Vijay Sharma,  
aged 27years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
4. Namo Narayanlal, S/o Sash Bhusam Lal,  
aged 31 years, Occ: Helper-II (MW),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
5. Ch.Nagarjuna, S/o Venkateswarlu,  
aged 28 years, Occ: Helper-II (Smith),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
6. B.Jaya Rao, S/o B.Balaraj,  
aged 30 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
7. Y.Siva Lingaiah, S/o Y.Guravaiah,  
aged 34 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.

8. Sameer Ranjan, S/o Ashok Tanti,  
aged 27 years, Occ: Helper-II (Smith),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
9. Dharmendra Kumar, S/o Naresh Prasad Chaudhary,  
aged 31 years, Occ: Helper-II (MW),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
10. Bhupendra Nath Gupta, S/o Prem Nath Sah,  
aged 26 years, Occ: Helper-II(G.Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
11. B.Goutham Krishna, S/o B.Jaya Prasad,  
aged 28 years, Occ: Helper-II (G.Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
12. R.ARavindh, S/o N.Rama Rao,  
aged 34 years, Occ: Helper-II (MW Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
13. B.Rajani Kumar, S/o B.Narasimhulu,  
aged 30 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
14. Kumar Gautham, S/o Chandra Kuben Pathak,  
aged 27 years, Occ: Helper-II (Mechinist),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
15. M.Diwakar, S/o M.Gajendra Rao,  
aged 32 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
16. B.Pothu Raju, S/o B.Ramaiah,  
aged 36 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop, South Central Railway, Tirupati.

17. K.S.S.Santosh Kumar, S/o K.Satyanarayana,  
aged 28 years, Occ: Helper-II (Carpenter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop, South Central Railway, Tirupati.
18. V.Kesava Rao, S/o Bonju Naidu,  
aged 34 years, Occ: Helper-II (Welder),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop, South Central Railway, Tirupati.
19. Y.Hemanth Kumar, S/o Y.Siva Santhosh Rao,  
aged 28 years, Occ: Helper-II (Welder),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
20. T.S.A.Raju, S/o T.Rambabu,  
aged 30 years, Occ: Helper-II (Welder),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
21. P.Vasu, S/o P.Chinnabba,  
aged 38 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
22. Ankaj Kumar, S/o Jageshwar Poddar,  
aged 33 years, Occ: Helper-II (Carpenter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
23. M.Adavi Ramudu, S/o M.Adinarayana,  
aged 35 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
24. Y.Naga Raju, S/o Ramu,  
aged 28 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.
25. M.Murali, S/o M.Narasimhulu,  
aged 31 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop, South Central Railway, Tirupati.

26. P.Dileep Kumar, S/o Y.Guravaiah,  
aged 30 years, Occ: Helper-II (Fitter),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop, South Central Railway, Tirupati.
27. K.Nageswara Rao, S/o K.Appa Rao,  
aged 30 years, Occ: Helper-II (Welder),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop, South Central Railway, Tirupati.
28. T.Appa Rao, S/o T.Sadhu Ram,  
aged 35 years, Occ: Helper-II (Welder),  
O/o The Chief Workshop Manager,  
Carriage Repair Shop,  
South Central Railway, Tirupati.

... Applicants

And

1. Union of India, Rep. by  
The General Manager, Rail Nilayam,  
South Central Railway, Secunderabad.
2. The Chief Workshop Manager,  
South Central Railway, Carriage Repair Shop, Tirupati.
3. The Workshop Personnel Officer,  
South Central Railway, Carriage Repair Shop, Tirupati.

... Respondents

Counsel for the Applicants	...	Mr. K.R.K.V. Prasad
Counsel for the Respondents	...	Mr. V.V.N. Narasimha, SC for Rlys

**CORAM:**

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

**ORDER**

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. OA is filed for cancelling the selection to fill up Tech Grade III post against 25% LDCE quota in mechanical departments of the respondents organisation.

3. Brief facts are that the applicants are working as Khalasis in the respondents organisation who appeared in the 25% Limited Departmental Competitive Exam held on 3.10.2016, in pursuance of the notification dated

21.4.2016 for filling up the post of Technician Grade - III. The selection is based on merit and the applicants qualified in the written exam on 14.11.2016. However, after announcing the results selection was cancelled vide Ir dated 14.7.2017 for the reason that certain posts of Group C category had to be restructured. Applicants represented on 4.8.2017 and there being no response, made informal enquiries and came to know that a fresh notification is likely to be issued. Aggrieved, the instant OA.

4. The contentions of the applicants are that prior to the notification dated 21.4.2016 there were number of vacancies unfilled in the previous years but were not filled up by conducting exams in time. The conduct and result of the written exam happened after the cadre restructuring was notified on 30.9.2016 and after issue of the CPO letter dated 3.10.2016 on the subject. The impugned order does not provide details of matching surrender made trade-wise. The number of posts surrendered as matching savings being only 7, it could be no ground to cancel the selection lock stock and barrel. Clause 4.1 (ii) of the Serial Circular dated 3.10.2016 does provide that the normal vacancies as on 1.9.2016 can be filled up by panels/select lists likely to be formed from the ongoing trade test/suitability. The notification in question had vacancies of the previous years since after 2012 no notification was issued to fill up posts. They have passed the exam and have to be subjected to the subsequent formalities of selection. Respondents do not adhere to the time schedule fixed as per the calendar of exams and notifications are issued belatedly. In the process employees loose promotional opportunities. The cancellation of selection was decided by an incompetent authority.

5. Respondents in the reply statement contend that there is no cause of action to initiate the OA. While announcing the results on 14.11.2016 against the

notification dated 21.4.2016, it was mentioned that mere passing of the exam will not confer a right for empanelment. The Railway Board order dated 30.9.2016 ( RBE 116/2016) was received by the 3<sup>rd</sup> respondent on 25.10.2016 and the serial circular dated 3.10.2016 which communicated the Railway Board order desired that the cadre restructuring has to be effected with effect from 1.9.2016. The notification had to be cancelled because of a change in the number of vacancies to be filled up. Notifications could not be issued annually since there were no eligible candidates to conduct the exam. The panel list for the cited notification was not drawn up on or before 1.9.2016. Fresh notification would be issued to fill up the vacancies.

6. Heard the counsel and went through the documents and the material papers.

7. I. Respondents intended to fill up the posts of Technician grade III through a Limited Departmental Competitive Examination against 25 % quota. Exam was held on 3.10.2016 and applicants passed the exam on 14.11.2016. Thereafter, the procedure involved is to scrutinize the performance/ service records of those who passed the written exam and eligible to be placed in the select list. This exercise was not completed for the applicants and hence the select list was not prepared. Applicants have cited clause 4(ii) of the CPO letter dated 3.10.2016 where in it is stated that selection can proceed as under:

“ From panels/select lists likely to be formed from ongoing trade test/suitability”

In view of this provision, since the applicants have passed the written test, in all fairness, the selection process needs to go forward. However, in the meanwhile, respondents received orders to restructure Group C cadre based on the Railway Board order dated 30.9.2016 (RBE 116/2016) and communicated by

the CPO on 3.10.2016. Consequent to the cadre restructuring the number of posts to be filled up were reduced from 48 to 36. As the posts have been reduced respondents have gone in for fresh notification on 6.7.2018, which was stayed by this Tribunal in MA 414/2018 in this OA, vide orders dated 13.7.2018. 3<sup>rd</sup> respondent claims that the Railway Board order was received as late as 25.10.2016. However, they were in receipt of the CPO letter dated 3.10.2016 which communicated the Railway Board order referred to. Hence the 3<sup>rd</sup> respondent was aware of the cadre restructuring to be done. Even after being aware of this development, going ahead with the exam on 3.10.2016 and announcing the result on 14.11.2016 is incorrect. If restructuring was the reason, the exam result should not have been published. Respondents have thus committed a fatal mistake by doing so. This has resulted in the grievance under examination. Obviously, having passed the exam, which is vital, there will be a fond hope among the employees that their chances of getting selected have brightened. Having kindled the hope, disappointing the applicants because of the mistake of the respondents is unfair to say the least. Respondents should not make the applicants suffer because of their mistakes as has been observed by Hon'ble Supreme Court as under;

*(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287*

*“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”*

*(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427 :*

*36. The respondents herein cannot take advantage of their own mistake.*

(c) The Apex Court has also decided on 14.12.2007 (*Union of India vs. Sadhana Khanna*, C.A. No.8208/01) held that the mistake of the department cannot recoil on employees.

II. It should also be appreciated that the candidates do put their heart and soul in preparing for the exam, since it concerns their future. Similarly respondents would have made elaborate arrangements for conducting the exam by incurring substantial expenditure and engaging manpower to invigilate, evaluate and declare the results. It is a cumbersome exercise which has to be dealt with all the sensitivity it requires. The decision should necessarily be in the interest of the organisation and the employees at large. All these have to be borne in mind before cancelling the selection. Circumstances indicate that it was uppermost in the mind of the respondents that since the vacancies have been reduced they have to go for fresh notification which is understandable. Nevertheless, in the process, they have violated clause 4 (ii) of the CPO circular dated 3.10.2016 enwombing the railway board order dated 30.9.2016. Respondents obviously should not indulge in the luxury of giving a quietus to their own orders. This is not expected from a model employer. Rules are to be followed and they cannot be violated as per Hon'ble Supreme Court directions as under:

*“The Hon'ble Supreme Court observation in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 held that “Action in respect of matters covered by rules should be regulated by rules”.*

III. It is also not out of place to state that by proceeding with the further steps of selection of the applicants, consequent to passing the exam, there shall not be any injustice done to others. Hence a way out has to be found out which



safeguards the interest of the applicants and that of the respondents organisation. This, we believe, could be possible by considering the selection of the applicants from stage of verification of records along with those who qualify in the written exam pursuant to the fresh notification issued by the respondents on 6.7.2018.

IV. Therefore based on the above, as the respondents have acted against rules and law, we direct the respondents, in the interest of justice, as under:

- i) To consider the selection of the applicants from the stage of scrutiny of performance/service records along with those who qualify in the written exam against notification dated 06.7.2018.
- ii) Respondents subject to fulfilling clause (i) can go ahead with the notification dated 6.7.2018.
- iii) Stay order dated 13.7.2018 is accordingly vacated and MA stands disposed.
- iv) Time allowed to implement the judgment is 4 months from the date of receipt of the order since it involves selection.
- v) With the above directions the OA is allowed. No order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)**  
**MEMBER (JUDL.)**

Dated, the 26<sup>th</sup> day of April, 2019

evr