IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/974/2014

Date of CAV: 24.01.2019

Date of Pronouncement: 04.02.2019

Between:

1. Ms. B. Ramadevi, Aged 25 years,
Unemployed, D/o. Monadaiah,
R/o. H. No. 3-34/8, Karimnagar – 505152.

2. Ms. G. Swathi, Aged 26 years,
Unemployed, D/o. Sairam,
R/o. H. No. 15-6-34/8, Redla Bazar,
Janda Chettu, Guntur – 522 001.

… Applicants

And

UOI, rep. by its

1. The Chairman,
Railway Board, Rail Bhavan, New Delhi.

2. The General Manager (P),
S. C. Railway, 4th Floor,
Rail Nilayam, Secunderabad.

3. The Deputy Chief Personal Officer,
Railway Recruitment Cell,
Rail Nilayam, Secunderabad.

4. The Chairman,
Railway Recruitment Cell,
C-block, 1st Floor, Rail Nilayam,
Secunderabad.

… Respondents

Counsel for the Applicants … Mr. G. Pavana Murthy
Counsel for the Respondents … Mr. M. Venkateswarlu, SC for Rlys

CORAM:
Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{Per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The applicants through the OA protest against para 2 in letter dt 10.1.2014 issued by the 1st respondent, terming it as illegal and arbitrary.

3. The primal cause for their protest is embedded in the facts of the case. The facts are that the applicants who are OBC candidates applied for Group D posts against notification dt 15.12.2010 issued by the respondents to fill up 8730 vacancies. Applicants appeared and cleared the 3-test levels namely written test, Physical Efficiency test and medical test, in 2012-13. The 1st applicant secured the rank 25097 and the 2nd applicant 24889 as per the OBC merit list furnished as A-4. They were kept in the standby list of 20 % candidates selected over and above the number of vacancies advertised. The excess selection was adopted to take care of the contingency of candidates selected not reporting for duty. As it turned out the said contingency arose and the 4th respondent wrote to the 1st respondent on 22.10.13 to clarify as to whether vacancies arising due to non joining of candidates can be filled up by 20% standby candidates. In response, 1st respondent issued the Impugned order dt 10.1.2014 to all General Managers, that no replacement panels need to be prepared as recruitment in Group D cadre is being done annually. Aggrieved over the same the OA has been filed.

4. The basis for quashing the impugned order as claimed by the applicant is that the Serial Circular 163/2011 (A-8) issued based on Railway Board lr dt.8.12.2011, dealing with the issue did not adduce that replacement panels need not be prepared. Moreover the said circular did indicate that vacancies upto 31.12.2012 have been included in the notification issued in Dec 2010/Jan 2011. Subsequent to 15.12.2010 notification, the 4th respondent has issued another notification on 17.9.2012 to fill up 1250 group D vacancies instead of first

absorbing the 20% standby candidates selected through 2010 notification. Railway board lr. dt 17.6.2012 also reiterates that the vacancies notified for recruitment will be subject to revision to take care of any vacancies not filled in the previous recruitment. In view of the above the impugned order has to be abrogated.

5. Respondents confirm that 8730 Group D vacancies were notified vide 2010 notification. Vacancies earmarked for the physically challenged were 509, leaving 8221 for others. Against these 8221 vacancies, 967 were selected against 20% standby candidates. Candidates who joined were 7756 causing a shortfall of 465. Accordingly 465 candidates from the standby list were empanelled. All the vacancies of 2010 notification were thus filled. Hence, applicants who stand lower in rank to the 465 candidates selected from the 20% standby list could not be absorbed. However, in the list submitted by the respondents to the Tribunal, they have shown 478 standby candidates as selected. Further, respondents contend that Railway Board has ordered vide RBE No.6/2014, dt.10.01.2014 that no replacement panels are to be prepared when selected candidates do not join. The left over vacancies are to be filled by the subsequent notification as per Railway Board lr. dt 25.6.2014. Accordingly, in the notification issued on 17.8.2012 for filling up of 1250 Gr D vacancies the left over vacancies of 2010 notification were included.The same procedure was followed when another notification was issued in 2013. Thereafter a policy change to issue the notification biannually and online was brought about as per Railway Board order issued on 19.9.2014 and 10.12.2014 respectively. Accordingly, a centralised notification was issued on 10.2.2018 wherein 6523 vacancies of S.C.R zone were included. The left over vacancies of 2010,2012,2013 and 2015 have been included in the subsequent notifications. Further, the life of a selected panel lasts

for one year extendable by one more year by the General Manager. Hence the expiry date of the panel prepared on 15.1.2013 is 14.1.2015. Therefore there is no reason to quash the impugned order of the Railway Board dt 10.1.2014.

6. Heard Sri G. Pavana Murthy, ld. counsel for the applicants and Sri M. Venkateswarlu, ld. Counsel for the respondents. We have gone through the additional reply filed by the respondents and the material papers submitted.

7. I) Primarily, in a case of this nature, one needs to ponder is as to whether the standby applicants are entitled to be informed as to why they were not being considered for selection. To this question the respondents line of defence is that the call letter clearly indicates that mere inclusion in the standby list does not entitle them for appointment. It is true that the applicants have no right to be appointed but they have a right to be considered. When they have such a right, the least to be done is to inform them the justifiable reasons for they being not considered. Not doing so fringes on arbitrariness. An action which is arbitrary is against Article 14 of the Constitution. Respondents have not submitted any record to the effect that applicants were informed of the reasons as to why they do not stand a chance. Therefore their action to this extent is arbitrary. We are also sure that respondents are aware that unemployment is a sensitive issue. A sensitive issue requires a humane disposal. More so, when applicants finding a place in the standby list do entertain a hope that some day lady luck will smile on them. When such hopes crash, the least that could be done is to inform them the plausible reasons, so that they could commence search for other greener pastures. Lest, as seen in the present case, candidates would be fondly waiting days on for good to happen. This would be colossal waste of time, which, one would agree, is unwelcome. The observation of the Honourable Supreme Court in R.S. Mittal V U.O.I reported in **1995 SCC,**

Supl. (2) 230 JT 1995 (3) 417 which is extracted herein under, comes to the rescue of the applicants on the above grounds.

> *"12. 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. Murgod 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."*

II) Delving into the case a little further, it is not to be forgotten that the candidates put in a lot of effort, money and time in preparing and clearing the 3 levels of tests prescribed. Equally, the respondents do make similar investments in men, money and material (3Ms) to conduct the recruitment. That exactly, was the reason given by the respondents in their various correspondence submitted, to prepare the 20 % standby list. Having taken a decision on 17.6.2008 to this extant, reversing it on 10.1.2014 by the 1st respondent will have adverse consequences of unnecessary burden on the exchequer in terms of the 3 Ms, by going in for fresh recruitment, when candidates selected are awaiting absorption. The respondents organisation which represents the State need to introspect on the efficacy of the decision. The normal answer we come across is that it is a policy decision precluding the Tribunal to interfere. However, there is innate fatality ingrained in the decision. The respondents decision should not be arbitrary. Every decision has to be weighed in the scale of judiciousness. Here is a case where the respondents changed the decision without considering the

adverse impact of their decision on the selected standby candidates. It needs no reiteration that the 20% stand by list is a win - win situation. Advantageous both to the applicants and the respondents. Respondents to the extent that they need not go through the whole hog of recruitment and in the process save time and curb *infructuous* expenditure. Most crucial being immediate availability of man power which improves organisational efficiency. For the applicants, they can nourish the hope of being selected if main list candidates drop. In the present case there were vacancies but the respondents acted otherwise hurting self interests and that of the standby candidates. To elaborate, power vested in an authority has to be exercised considering the pros and cons of the issue in its entirety. Such balance in exercise of power was evidently absent in the present case. The discretion vested in the competent authority was thus exercised arbitrarily. It is this aspect which is liable to be questioned. Law has to be followed. The Tribunal has not been persuaded on two main grounds namely as to why the applicants were not informed of the reasons of non selection and there being vacancies some standby candidates were selected over and above the shortfall of 475 vacancies, but not the applicants thereby discriminating them in regard to employment, which goes against the spirit of the Articles 14, 16 and 21 of the Constitution. The only point being pressed home by this Tribunal is that the respondents should implement their own policy of considering 20 % standby candidates for reasons stated in regard to 2010 notification

III. In fact, Honourable Supreme Court dealt with a similar case involving the respondents in Dinesh Kumar Kashyap and ors vs South Eastern Railways and ors reported in CA No.11364 of 2018 wherein similar relief sought by the applicants in the present OA has been granted. Learned counsel for the respondents argued that the judgment is not applicable since in the case dealt by

the Honourable Supreme Court, there were vacancies available but standby candidates were not selected. However, in the present case there are no vacancies. This fact was found to be incorrect from the list produced by the respondents wherein they have selected 478 standby candidates against the short fall of 465 vacancies. If there were no vacancies how could the respondents select additionally 13 more candidates. Even in the list furnished, respondents did not indicate the vacancies available on the date when the list was prepared and the number of vacancies which were carried forward to the subsequent notification. Hence, they have not come clear about the vacancies available for reasons best known to them. Consequently the argument of the learned counsel that the cited Supreme Court Judgment does not apply is spineless.

IV. As the case proceeded, in the course of the arguments, the respondents have reaffirmed and taken an unequivocal stand as reflected in their reply statement dt 31.10.2014, stating that

(i) There is no scope to aborb any more candidate from the 20 % standby list.

(ii) Replacement panel cannot be prepared as and when candidates fail to join after selection.

(iii) Exercise of replacement panel cannot be continued for eternity.

Keeping the above in view, when the case was heard on 10.1.2019 the respondents were asked to furnish details of standby candidates selected. The list was produced on the date of final hearing (24.1.2019) wherein, we were surprised to find that 478 candidates were selected against 465 shortfall vacancies. In other words the respondents did exactly the opposite to what they have claimed in the written statement. 13 candidates were additionally selected. How and why of the additional selection of 13 candidates was not explained.

V. a) In the background of the respondents above submission, we ruminated on the details of vacancies and the extent they have been filled up from the standby list. Total number of general vacancies as notified was 8221. Main panel and Standby panel upto 20% vacancies were prepared. Records reflect that standby list was consumed to the extent of 478 vacancies. Though one-fifth of vacancies works out to 1645, respondents confined the standby list to 967. And it is also observed that certain vacancies left over were not filled in and were carried forward for the next recruitment. On a representation made by a few standby list candidates, such carry forward have been resorted to on the basis of an advice from the first respondent who has indicated, by way of circular RBE 06/2014 dt 10.1.2014, stating that there is no need to prepare the replacement panel since the recruitment to Group D grade is being undertaken on an annual basis. This means that the circular of 2014 in effect has been given retrospective effect for filling up vacancies of notification of 2010. This is impermissible. The legal principle in this regard has been laid down by Honourable Supreme Court in **Secy. A.P. Public Service Commission v B. Swapna (2005) 4 SCC 154**, as under:

> "14. The High Court has committed an error in holding that the amended rule was operati**ve**. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grie**v**ance, in case the same is lowered, that he could ha**ve** applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because e**ver**y statute or statutory rule is prospecti**ve** unless it is expressly or by necessary implication made to ha**ve** retrospecti**ve** effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospecti**ve**. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospecti**ve** only. (See P. **Mahendran v. State** of **Karnataka** (1990) 1 SCC 411 and **Gopal Krushna Rath v. M.A.A. Baig** (1999) 1 SCC 544.)

Similarly, in **State of M.P. v. Raghuveer Singh Yadav, (1994) 6 SCC 151** the Apex Court has observed that the amended rules can be applied prospectively. In the case dealt, after the notification, rules were amended which disqualified the appellants and in this context the Apex Court made the above observation.

Unfilled vacancies notified by 2010 notification, ought to have been filled up by drawing from the existing standby list on the basis of merit position instead of carrying them forward to the subsequent notifications.

b) Thus an exercise has to be carried out by the respondents to consider in the order of merit from the standby list to fill up the unfiled vacancies notified by the notification of 2010. If in case they have carried forward them to the subsequent notification, which action is illegal, to that extent vacancies that are to be filled up in the current year or subsequent year notification have to be earmarked and issue offer of appointment subject to fulfilment of other kindred conditions as laid down in the 2010 notification. The time consumed due to the judicial processing should not come in the way of their selection. This direction is implementable, since in every notification issued by the respondents, there is invariably the clause that the vacancies are likely to vary. Therefore there is always the leeway to consider those who have a legitimate right to be considered as per applicable norms. Standby applicants of the 2010 notifications, who come within the merit position upto the number of vacancies, should be considered for such offer of appointment. If they do not come within the aforesaid merit position equal to number of unfilled vacancies, they be suitably advised. It is made clear that subsequent recruitment shall not take into account the unfilled vacancies of the past years prior to issue of board order RBE 06/2014 dt

10.1.2014 as per the legal principle laid by the Honourable Supreme court. Respondents have to process accordingly. The point raised by the respondents that the validity of the panel prepared pursuant to 2010 notification has expired on 14.1.2015, lacks force for two reasons, namely the applicants filed the OA on 11.8.2014 when the panel was valid and for violation of 3 distinct legal principles laid down by the Apex Court.

VI. Three distinct legal principles of the Honourable Supreme Court, elaborated above, which have been overlooked are: not keeping the standby candidates informed that they could not be considered, not considering the standby candidates by transferring the available vacancies to the subsequent notification, applying the Railway Board instructions vide RBE 06/2014 with retrospective effect.

VII. Hence the respondents are directed to act as at para 7 (V) (b) to meet the ends of justice. The OA is accordingly disposed of. Time scheduled for carrying this drill is 4 months from the date of receipt of copy of this order. There shall be no order as to costs.

(B.V. SUDHAKAR) **(JUSTICE R. KANTHA RAO)**
MEMBER (ADMN.) **MEMBER (JUDL.)**

Dated, the 4th day of February, 2019

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