

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

(1) TRANSFERRED APPLICATION NO. 3/2013
(WP NO.1536/2004)

(2) TRANSFERRED APPLICATION NO. 4/2013
(WP NO.7549/2007)

&

(3) TRANSFERRED APPLICATION NO. 5/2013
(WP NO.6993/2006)

Jabalpur, this Friday, the 12th day of July, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

(1) TRANSFERRED APPLICATION NO. 3/2013
(WP NO.1536/2004)

1. Ramesh Kumar Vishwakarma, S/o Shri K.L.Vishwakarma, Aged about 39 years, R/o Qr.No.1 'A' Street No.26, Sector-4, Bhilai Nagar, Distt.Durg (Chhattisgarh).

2. Mohammad Khalik S/o Shri Mohammed Moinuddin, Aged about 38 years, R/o Qr.No.8/A Street No.32, Sector-5, Bhilai Nagar, P.O. Bhilai Civic Centre, Distt.Durg (C.G).

3. Mohan Singh S/o Shri Dulare Ram Singh, Aged about 37 years, R/o Tata Line Kohka, P.O.Kohka Bhilai, Distt-Durg (C.G.)

4. Chandrakant Walawalkar S/o Late Shri M.S.Walawalkar, aged about 39 years, R/o Street-09, House No.6, Pragati Nagar, Risali, Bhilai Nagar, Distt.-Durg (Chhattisgarh).

5. Bisheshwar Gajbhiye S/o Shri Gyaniram, aged about 40 years, R/o New Krishna Nagar, Shyam Chowk, Supela Bhilai Nagar, Distt-Durg (Chhattisgarh).

6. Ramesh Kumar Thakur S/o Shri Suddhu Ram Thakur, Aged about 40 years, Village Utai (Hath Khoj Para) Post Utai, Distt.- Durg (C.G.)

7. Ajay Kumar Choubey, S/o Shri L.N.Choubey, Aged about 37 years, Qr.No.12/B, Street No.9, Sector-4, Bhilai Nagar, Distt.- Durg (C.G.).

8. Pramod Kumar S/o Shri Madhukar Rao, Aged about 38 years, R/o Qr.No.4/A, Street No.8, Sector-1, Bhilai Nagar, Distt.- Durg (C.G.).

- 9.** Tukeshwar Prasad S/o Shri Shankar Lal Chandrakar, Aged about 35 years, R/o Murlidhar Chandrakar Building, Deepak Nagar, Durg, Distt.Durg(Chhattisgarh).
- 10.** Shankar Prasad Chakraborty S/o Shri S.Chakraborty, Aged about 37 years, R/o Street No.14, Qr.No.1/A, Sector 4, Bhilai Nagar, P/o Bhilai-490001 Distt.Durg (Chhattisgarh).
- 11.** Sunil Kumar Deshmukh S/o Shri R.K.Deshmukh, Aged about 36 years, R/o 'J' Pocket, 7/A Maroda Sector, Bhilai Nagar, Distt.-Durg (C.G.)-490006.
- 12.** Hiralal Sahu S/o Shri Dwarika Prasad Sahu, Aged about 38 years, R/o Village-Jeora, P.O. Jeora-Sirsa, Distt.Durg (C.G.)-491001
- 13.** Margana Shrinivas Rao S/ Shri Margana Narsinga Rao, Aged about 38 years, R/o Qr.No.EWS-395, Vaishali Nagar, Bhilai-490023, Distt.-Durg(C.G.)
- 14.** Mahendra Prajapati S/o Shri Tej Bahadur Prajapati, Qr.No.418, Near of Swetamber Jain Shanti Nagar, P.O. Supela-Bhilai, Distt-Durg (Chhattisgarh)
- 15.** Abdul Salim Siddique S/o Shri Abdul Rashid Siddique, Aged about 37 years, R/o C/o Munir Buksh, Behind Rao Cottege, Kasaridih, Durg, Distt, Durg (Chhattisgarh) Ph:2326116.
- 16.** Ashok Kumar Shah S/o Shri Pati Ram Shah, Aged about 38 years, Shanti Nagar, St.No.5, H.No.602, Supela-Bhilai, Distt.Durg (Chhattisgarh).
- 17.** K.Kameshwar Rao S/o Shri K.Raghunath, Aged about 36 years, R/o Aashish Nagar (W), Qr.No.613/1, Near Risali Gaon, Behind Church, Bhilai, Distt.Durg (Chhattisgarh).
- 18.** Hemant Kumar Sahu, S/o Shri Kanwal Singh Sahu, Aged about 38 years, R/o C/o Jaswani General Stores, New Market, Hatri Bazar, Durg.Distt.-Durg(C.G.)
- 19.** Daulat Ram S/o Sri Sukhram, Aged about 40 years, Tata Line, Kohka, P.O.Kohka, Bhilai Distt-Durg (C.G.)
- 20.** Sanjay Kumar Dhandare S/o Sri Hari Narayan Dhandare, Aged about 37 years, R/o Room No.15, Blk No.4, St.9, Sect.4, P.O.Bhilai, Distt.Durg (Chhattisgarh).
- 21.** Imran Khan S/o Shri G.M.Khan, Aged about 37 years, Qr.No.10 'D', St.-10, Sec.1, Bhilai, Distt.-Durg (C.G.)
- 22.** Bhadant Kumar S/o Shri Ajab Rao, Aged about 39 years, R/o MIG-II/2974, Industrial Area, M.P.H.B., Bhilai, Distt-Durg (Chhattisgarh).
- 23.** Shambhu Prasad S/o Shri Ganesh Prasad, Aged about 37 years, R/o Brinda Nagar, Camp-I, Supela-Bhilai, C/.Kushwaha Electricals, Distt.-Durg (C.G.).

24. Baldau Kumar Soni S/o Pangu Ram Soni, Aged about 37 years, R/o Baiga Para, Gaura Chowk, Durg Distt.- Durg (Chhattisgarh).
25. Mahendra Kumar Singh S/o Shri B.M.Singh, Aged about 37 years, Qr.No.4/A, Sr.-33, Sec-6, Bhilai, Distt.Durg (Chhattisgarh).
26. Tarsem Singh S/o Shri Prakash Singh, Aged about 35 years, Plot No.534, St.-4, Smriti Nagar, Bhilai, Distt.-Durg (Chhattisgarh).
27. Chandrakant Das, S/o Shri Parshuram Das, Aged about 37 years, R/o MIG-2/385, Hodco-Bhilai, Distt.-Durg (Chhattisgarh).
28. K.Someswar Rao, S/o Late Shri K.Papa Rao, Aged about 37 years, Street No.32, Qr.No.4/G, Post- Khursipar, Zone-II, Dist.-Durg (Chhattisgarh).
29. Bhuneshwar Prasad Verma, S/o Shri Magudas Verma, Aged about 37 years, R/o Sunder Nagar, Kohka, Post-Kohka, Distt-Durg (C.G.), Pin-490028
30. Daya Ram S/o Shri Dhanai, Aged about 37 years, R/o Rajesh Cycle Stores, Camp-I, Steel Nagar, Sector-I, Bhilai, Distt.-Durg (Chhattisgarh).
31. Ramesh Kumar Verma S/o Shri Lal Mani Verma, Aged about 37 years, R/o House No.160, Street No.05, New Shri Ram Marry, Durg (C.G.)-490023, Distt.-Durg (Chhattisgarh).
32. Balram S/o Shri Jivrakhan, Aged about 37 years, R/o 123/E, Risali Sector, Post Civic Centre, Bhilai, Distt.-Durg (C.G).
33. Vishnu Ram S/o Shri Kekchand, Aged about 37 years, Ambedkar School, Maroda Station, Post-Newai, Distt.-Durg (C.G).
34. Ramesh S/o Late Shri Sambaiya, Aged about 39 years, R/o Qr.No.4 'A', Street No.-WMR., Sect.4, Bhilai, Distt.-Durg (Chhattisgarh).
35. Pradeep Kumar Dev S/o Late G.R.Dev, R/o Kamla Kirana Stores, Kosa Nagar, P.O.-Nehru Nagar (East), Bhilai, Distt-Durg (C.G.).
36. Ashish Kumar R/o Shyam Rao Suryavanshi, Aged about 36 years, R/o Naya Amapara, Durg Tah.& Distt.-Durg (Chhattisgarh).
37. Partho Chaudhari S/o N.C.Chaudhari, Aged about 37 years, R/o Adarsh Nagar, Charoda, BMY Bhilai Distt.-Durg (C.G).
38. Achyut Joshi, S/o Late Shri S.V.Joshi, Aged 36 years, Block No.C-3, M.P.H.B., I/E, Bhilai (C.G.)-490026
- APPLICANTS**
- (By Advocate – Shri B.P.Singh)**

Versus

1. Steel Authority of India Limited, Bhilai Steel Plant, Through its Managing Director, Bhilai Steel Plant, Bhilai, Distt.Durg (Chhattisgarh).
2. The Executive Director, Bhilai Steel Plant, ISPAT Bhawan, Bhilai Nagar, Tahsil & District Durg (Chhattisgarh)
3. Manager (Personnel Recruitment) Bhilai Steel Plant, ISPAT Bhawan, Bhilai Nagar, Tahsil & District Durg (Chhattisgarh)
4. District Employment Officer, Durg, Distt.Durg (Chhattisgarh)
5. Arun Chauhan S/o R.V.Chauhan, R/o Shankar Nagar, Durg, Near Ambedkar Chowk, Durg, Distt.Durg (Chhattisgarh).

6. Jaikaran Lal Verma S/o B.R.Verma, R/o 10-D, Street 25, Sec.-4, Bhilai Distt.-Durg (Chhattisgarh) **- RESPONDENTS**
(By Advocate – Shri Vivek Verma for respondents 1 to 4)
(Date of reserving the order:03.12.2018)

(2) TRANSFERRED APPLICATION NO. 4/2013
(WP NO.7549/2007)

1. Ishwar Lal Nirmalkar, S/o Shri Johan Lal, Aged about 39 years, R/o Behind Rungta Rice Mill, Near Mandir, Millpara, Durg, Distt.Durg (C.G.)
2. Bhikham Lal Verma, S/o Shri Jhaduram, Aged about 39 years, R/o Near Subhash Vidya Mandir, In front of Upadhyaya Nivas, Shankar Nagar, Durg Distt.Durg (C.G.)

3. Harihar Vaishnav, S/o Shri Garibdas, Aged about 39 years, R/o Village Khairjhiti, P.O.Dumaridihkhurd, Tehsil and Distt. Rajnandgaon (C.G.)
- APPLICANTS
(By Advocate – Shri Pranjal Shukla proxy counsel of Shri Jitendra Pali)

VERSUS

1. Union of India through Secretary (Steel) Government of India, Ministry of Steel, Shram Shakti Bhawan, New Delhi.
2. Steel Authority of India Ltd, Bhilai Steel Plant, Through Managing Director, Bhilai Steel Plant, PO-Bhilai, Durg (C.G).

3. District Employment Officer, Durg, Distt.Durg (Chhattisgarh)
- RESPONDENTS

(By Advocate – Shri Sandeep Dubey)

(Date of reserving the order:03.12.2018)

(3) TRANSFERRED APPLICATION NO. 5/2013
(WP NO.6993/2006)

Alok Shrivastava, S/o Shri Arvind Kumar Shrivastava, Aged about 39 years, R/o Durga Chowk, Ward No.7, Rajnandgaon, District Rajnandgaon (C.G.)

- APPLICANT

(By Advocate – None)

VERSUS

1. Union of India through Secretary (Steel) Government of India, Ministry of Steel, Shram Shakti Bhawan, New Delhi.

2. Steel Authority of India Ltd, Bhilai Steel Plant, Through Managing Director, Bhilai Steel Plant, PO-Bhilai, Durg (C.G).

3. District Employment Officer, Durg, District-Durg (CG)

-RESPONDENTS

(By Advocate – Dr.S.K.Pande)

(Date of reserving the order:03.12.2018)

COMMON ORDER

By Navin Tandon, AM-

The applicants in these three Transferred Applications are aggrieved by their non-appointment on the post of Plant Attendants consequent to the vacancies notified by the respondent-Bhilai Steel Plant (for brevity 'BSP') in the year 1997. Since the facts of these three cases are identical and the issue involved is common, these cases are being disposed of by this common order.

2. Transferred Application No.3 of 2013 – This case was originally filed before the Hon'ble High Court of Bilaspur and registered as Writ

Petition No.1536 of 2004. However, in terms of the order dated 09.10.2012 passed by the Hon'ble High Court of Bilaspur, this case was transferred to this Tribunal as in the meantime the Government of India notified the Steel Authority of India within the jurisdiction of this Tribunal.

3. In this TA No.3/2013 the applicants have submitted as under:-

3.1 Respondents-BSP notified 200 vacancies of the post of Plant Attendant under Employment Exchange Compulsory Notification of Vacancies Act, 1959-60 to be filled up on provisional basis, and called for the names of unemployed persons from the office of respondent No.4 Divisional Employment Officer, Divisional Employment Exchange, Durg, vide their Notification dated 11.04.1997 (Annexure A-1). In response thereto, the respondent No.4 sent a list of 2400 candidates.

3.2 After verification, the respondent-BSP sent admit cards for appearing in the written examination to all 2400 candidates. The said written examination was held on 13.09.1997 and the respondent-BSP declared the result of said examination on 12.05.1998.

3.3 In the written examination only 517 candidates were declared as passed and they were called for physical test and interview. The physical test was held in June/July,1998. After that the applicants were waiting for their result, but the respondent-BSP was silent. Thereafter, the applicant

made a joint representation and also contacted the Additional District Magistrate.

3.4 The respondent-BSP vide their letter dated 13.08.2001 (Annexure A-6) addressed to the Additional District Magistrate, Durg had intimated that due to increase in the age of superannuation of employees, till March 2003 there should be adjustment of human power in BSP and, therefore, the selection process of Plant Attendant has been stayed.

3.5 However, all of sudden amongst 517 candidates, 194 candidates were called for re-physical examination in the month of June,2002, and after conducting medical test only 74 candidates were selected and appointed. Respondents Nos.5 and 6 are the successful candidates.

3.6 The applicants are waiting for the job because the BSP-management declared that the matter of Plant Attendant is stayed.

3.7 The re-physical test held on 22.06.2002 was against the law and recruitment process because the applicants were not given opportunities to appear in re-physical test, despite the fact that they had qualified the written test.

3.8 On the one hand the BSP management has stated that vacancies are restricted and on the other hand they have created a new post ATC (Attendant-cum-Technician) in the month of March,2003 and appointed

150 candidates from T.A. and T.O.T. without calling the list from Employment Exchange, by making direct recruitment to the post of ATC.

4. The applicants have, therefore, claimed for the following reliefs in this TA:-

“(7.1) That the Hon’ble Court may kindly be pleased to issue notices to the Respondents returnable within early date of hearing.

(7.2) The Hon’ble Court may be pleased to issue appropriate writ or order directing the Respondents No.1 to 3 for providing job to the petitioners within the stipulated time with all consequential benefits regarding scale of pay etc as are available to the regular employee of the B.S.P.

(7.3) The Respondents No.1 to 3 may be directed to providing job to all the present petitioners as like the same as Respondents No.5 to 6 vide dated 18th Sept.2002.

(7.4) The Respondents No.1 to 3 may be directed to pay the back wages from 18th Sept.2002 as like the same as Respondents No.5 to 6 are getting.

(7.5) Any other order/direction/writ which the Hon’ble court deems fit and proper in the circumstances of the case, may also kindly be passed.

(7.6) Costs of these proceedings be saddled on the Respondents and be given to the petitioners.

(7.7) That the re-physical test held on 22.6.2002 and onwards, is against the law and recruitment process because the petitioners were not given opportunities to appear in re-physical test despite qualified in the written test, physical test and interview held in the year 1998 same is against the recruitment rules and the posts which are lying vacant i.e. about 116 in pursuant to notification dtd. 11.4.97. The respondents bound to fill-up the post, a direction be issued to fill-up the vacant post in pursuant to notification dtd.11.4.1999 amongst the earlier successful candidate i.e. 517 and the conduct of the management is a matter of judicial purview of this Hon’ble High Court because claims of the petitioners deliberately ignored just to deprive from their legitimate rights”.

5. The respondent-BSP in their reply have submitted as under:-

5.1 It was clearly mentioned at Point No.7 in the Annexure-I to Notification dated 11.04.1997 (Annexure A-1) that the notified 200 posts were provisional.

5.2 In May 1998, a ban was introduced on recruitment in SAIL in accordance with the memorandum of understanding signed by the SAIL with the Government of India where BSP was required to reduce the manpower as per the restructuring plan approved by Government.

5.3 After the physical test and interview held in 1998, the process was kept in abeyance, as in May 1998 a ban was introduced on recruitment in SAIL. However, in 2002, there was a requirement of Plant Attendants in BSP and BSP decided to meet this requirement from those persons who had taken the Physical Test and Interview for the post of Plant Attendants in June,1998. Since four years had elapsed after the Physical Test held in 1998, it was decided to conduct the physical test again of 200 candidates as per the merit prepared on the basis of earlier Physical Test. The re-physical test was necessary in order to ascertain the physical fitness of these candidates in 2002 for the post of Plant Attendant.

5.4 BSP had clearly communicated the reasons for the re-physical test to all candidates who were called for the same vide letter dated 13.06.2002 (Annexure A-10).

5.5 The applicants failed to qualify in the final selection process and hence they were not appointed. They have no right to challenge the selection process.

6. In compliance with the order dated 03.12.2010 passed by the Hon'ble High Court of Bilaspur, the respondents-BSP filed an affidavit sworn by Shri Surajit Mallick, Dy. Manager (Pers.-Recruitment), BSP on 03.02.2011. In the said affidavit it has been stated as under:-

6.1 In 2002, there was a requirement of Plant Attendants in BSP and the BSP decided to meet this requirement from those persons who had taken the physical test and interview for the post of Plant Assistants in 1998.

6.2 Since four years had elapsed after the physical test held in 1998, it was decided to conduct the physical test again of 200 candidates as per the merit prepared on the basis of the earlier physical test.

6.3 Letters dated 13.06.2002 for the re-physical test were sent to only 200 candidates (including the petitioners No.11,12,20,22 & 32 as apparent from Annexure A-10 to the petition) as per the merit list prepared on the basis of the earlier physical test and not to all the 560 candidates who had appeared for physical test and interview in 1998.

6.4 Out of 200 candidates, 74 candidates were appointed as Plant Attendants Trainees based on the performance in the re-physical test and on being found medically fit for the post.

6.5 The applicants had failed to qualify in the selection process and hence were not appointed.

6.6 There was a requirement of Attendant-cum-Technician in the semi-skilled category in 2002-2003. Therefore, the BSP had appointed 127 candidates from the panel of TOTs prepared in 1997 and also from the TAs who had qualified in the selection process held in 2002-2003. The BSP was earlier considering the AITT passed Trade Apprentices for appointment against the post of TOT without notifying the vacancies for the post of TOT (6 months) to the Employment Exchange. Subsequently, one **Shrilal** had filed a Writ Petition No.258/2003 before Hon'ble High Court challenging the practice of appointing TAs without notifying the vacancies to the Employment Exchange and also the practice of appointing persons from previously empanelled TOTs. The said Writ Petition was disposed of vide order dated 19.01.2004 on the assurance of the BSP that in future no more appointments will be made from amongst the empanelled candidates and that all future vacancies will be advertised at the National level in addition to notifying the Employment Exchange in accordance with the law laid down by the Hon'ble Apex Court in the

case of **Excise Superintendent, Malkapatnam Krishnan Distt.A.P. Vs. K.P.N.Visweshwara Rao and others**, 1997 I LLJ 567=1996 (6) SCALE 676.

7. The learned counsel for the applicants during the course of arguments has vehemently argued that the respondents were bound to fill up all the notified 200 vacancies of Plant Attendant in terms of the panel prepared after the examination held in the year 1998; and further that since the applicants had cleared the examination, they are to be appointed against the notified vacancies.

7.1 In this context the learned counsel for the applicants has placed reliance on the decision of Hon'ble Supreme Court in the matters of **K.Manjusree Vs. State of Andhra Pradesh and another**, (2008) 3 SCC 512, wherein their lordships have held that the selection criterion has to be prescribed in advance and that the rules of game cannot be changed afterwards.

7.2 He has also placed reliance on the decision in the matters of **Madan Mohan Sharma and another Vs. State of Rajasthan and others**, (2008) 3 SCC 724 wherein their lordships have held that once advertisement had been issued on the basis of circular obtaining at that particular time, the effect would be that selection process should continue

on the basis of criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.

7.3 He has further placed reliance on the decisions of Hon'ble Supreme Court in the matters of **State of Bihar and others Vs. Mithilesh Kumar**, (2010) 13 SCC 467, and **Secretary A.P.Public Service Commission Vs. B.Swapna and others**, (2005) 4 SCC 154 for the analogy that norms or rules as existing on date when process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect.

8. On the other hand the learned counsel for the respondents has submitted that since the applicants have failed to qualify in the selection process and hence they were not appointed. He has vehemently denied the contention of the applicant that 517 candidates were successful in the selection process.

8.1 He has placed reliance on the decision of Hon'ble Supreme Court in the matters of **D.Sarojakumari Vs. R.Helen Thilakom and others**, (2017) 9 SCC 478, for the analogy that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

9. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

10. In compliance of the directions of this Tribunal dated 14.07.2016, the respondents-BSP have filed following documents, though MA No.203/00949/2018, which was allowed vide order dated 20.09.2018:—

(i) Result of written test held on 13.09.1997 for the post of Plant Assistant

(ii) Assessment sheets of candidates appeared for interview 1998

(iii) Assessment sheets of candidates called for Physical Ability Test (PAT) 1998.

(iv) List of candidates called for Re-PAT in 2002

(v) Assessment sheets showing the marks of written test, interview and Re-PAT in 2002.

(vi) List of 80 candidates provisionally selected.

(vii) List of 74 candidates offered appointment after pre-employment medical examination.

10.1 We find that though the copies of above documents were duly received by the learned counsel for the applicants, but the applicants have failed to point out any illegality or irregularity in the course of selection made by the respondent-BSP, during the course of final arguments.

11. We further find that the respondent-BSP in their affidavit dated 03.02.2011 has specifically stated that letters dated 13.06.2002 for the re-physical test were sent to 200 candidates (including the applicants Nos.11, 12, 20, 22 & 32). Out of these 200 candidates, only 74 candidates were appointed as Plant Attendants Trainees based on the performance in the re-physical test and on being found medically fit for the post. Since

the applicants had failed to qualify in the selection process and hence were not appointed.

12. In the matters of **D. Sarojakumari (supra)** their lordships have considered the similar issue and have held that the law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection. Relevant paragraphs of the said order read thus:

“(5). In G.Sarana v. University of Lucknow [G.Sarana v. University of Lucknow, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] , the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows: (SCC p. 591, para 15)

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.”

(6). In Madan Lal v. State of J&K [Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , the petitioner laid challenge to the manner and method of conducting viva voce test after they had appeared in the same and were unsuccessful. This Court held as follows: (SCC p. 493, para 9)

“9. ... Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at

the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

(7.) *In Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , this Court held as follows: (SCC p. 584, para 16)*

“16. ... Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] did not commit any error by refusing to entertain the writ petition.”

(8). *In Ramesh Chandra Shah v. Anil Joshi [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309 : (2013) 3 SCC (L&S) 129] the petitioners took part in the process of selection made under the general rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows: (SCC p. 320, para 24)*

“24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge [Anil Joshi v. State of Uttarakhand, 2012 SCC OnLine Utt 521] and the Division Bench [Ravi Shankar Joshi v. Anil Joshi, 2012 SCC OnLine Utt 766] of the High Court committed grave error by entertaining the grievance made by the respondents.”

(9). *The same view has been taken in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462] .*

(10). *The Kerala High Court did not note the abovementioned judgments and ignored the well-settled position of law in rejecting*

the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment”.

13. Since in the instant case the specific stand of the respondents that the applicants did not qualify in the final selection process has not been rebutted by the applicants, we are of the considered view that the case of present applicants is fully governed by the aforesaid decision of the Hon’ble Supreme Court in the matters of **D.Sarojakumari** (supra) and therefore the applicants are estopped from questioning the authority of the respondent-BSP for conducting the re-physical test, and seeking relief.

14. Further, as regards the contention of the applicants in regard to appointments on the post of Attendant-cum-Technician, we find that the said issue was already challenged before the Hon’ble High Court of Bilaspur in the matters of **Shrilal** (supra) and the said matter was disposed of after assurance given by the respondent-BSP. Therefore, we do not find any merit in the said contention of the applicants.

15. As regards the contention of the applicants that the respondents were bound to fill up all the notified 200 vacancies of Plant Attendant, we find that recently the Hon’ble Supreme Court in the matters of **Kerala State Road Transport Corporation and another Vs. Akhilesh V.S. and others**, Civil Appeal No.3346 of 2019 decided on 01.04.2019 has held that the law stands settled that mere existence of vacancies

or empanelment does not create any indefeasible right to appointment. The employer has the discretion not to fill up all requisitioned vacancies, but which has to be for valid and germane reasons not afflicted by arbitrariness. In the instant case we find that the respondent-BSP has specifically stated that in May 1998 a ban was introduced on recruitment in SAIL in accordance with the memorandum of understanding signed by the SAIL with the Govt. of India, where the BSP was required to reduce the manpower as per the restructuring plan approved by the Government. However, in 2002 when there was requirement of Plant Attendants in BSP, only 74 candidates were appointed as against 200 notified vacancies. Therefore, we do not find any arbitrariness in such a decision on the part of the BSP.

16. Having considered all pros and cons of the matter, we are of the considered opinion that the applicants have totally failed to make out their claim for grant of reliefs sought from by them. Accordingly, the Transferred Application No.3/2013 is liable to be dismissed.

17. Transferred Applications Nos.4 & 5 of 2013 – These cases were also originally filed before the Hon'ble High Court of Bilaspur and registered as Writ Petitions Nos.7949 of 2007 and 6993 of 2006. However, in terms of the orders dated 09.10.2012 passed by the Hon'ble High Court of Bilaspur, these cases were also transferred to this Tribunal.

17.1 In these TAs, the applicants' case is also the same as that of the applicants in TA No.3/2013 in as much as their names were also sponsored by the Employment Exchange for consideration of their appointment against aforementioned notified 200 vacancies of the post of Plant Attendant. However, even after their passing the written examination, they were not appointed. Therefore, they have sought a direction to the respondents to declare the final selection list and fill the vacant posts of 120 out of those who passed the written test in 1998. Whereas the respondents' case is that the applicants failed to secure 50% marks in the interview and as per merit they were not eligible to be called for re-physical test held in 2002. Hence they were not called for re-physical test in 2002.

17.2 Since the submissions raised on behalf of the applicants in these TAs are same as that of TA No.3/2013, for the reasons stated above, we are of the opinion that the applicants of these TAs are also not entitled for the relief sought for by them in these TAs. Accordingly, these TAs are also liable to be dismissed.

18. In the result, all these three TAs are dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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