

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01039/2016
Original Application No. 180/00939/2017
Original Application No. 180/00179/2018

Friday, this the 19th day of July, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. **Original Application No. 180/01039/2016** -
 1. Vineetha V V, aged 27 years, W/o Pratheesh Kumar, Thekke Blayil House, Punithura P.O., Ernakulam District, PIN: 682 038.
 2. Seema P.C, aged 39 years, W/o Biju K.T, Kalluparambil House, Mevada P.O., Puliyannur, Pala, Kottayam District, PIN: 686 573.
 3. Vijoy K, aged 33 years, S/o Pavithran K, Koyambrath House, Kuttikkakam P.O., Edakkad, Kannur District, PIN: 670 663.
 4. Dipin Syam S.D, aged 30 years, S/o Damodaran N.K., Kottaparambath House, Ulliyeri P.O., Quilandy (Via), Calicut District, PIN: 673 620.
 5. Sibi A.J, aged 40 years, D/o Joseph, Arukulasseriyl House, Thiruvankulam, Kadungamangalam P.O., Pin-682 305, Ernakulam Dist.
 6. Manuprasad M.K, aged 23 years, S/o Mohanan T, Kandathil, Near Little Flower Church, Avalookkunnu P.O., Alappuzha-688 006. **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. Cherian 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. Girija K. Gopal)

2. Original Application No. 180/00939/2017 -

1. Athira S, aged 32 years, W/o M. Sanal Kumar, Keezhkodu Mele Veedu, Padapputhottam, Anavoor P.O., Trivnadrum District, PIN: 695 124.
2. Sujatha V.S, aged 38 years, W/o Balraj V, “Bhagya Nivas”, Muthuvila P.O., Kallara, Trivandrum District, PIN: 695 610.
3. Saranya L.K, aged 24 years, W/o Sooraj S.S, “Saranya Bhavan”, Kurakode, Perumkadavila P.O., Neyyattinkara, Trivandrum District, PIN: 695 124.
4. Anil N.S, aged 35 years, S/o K.K. Sukumaran, Niravath House, Manarcad P.O., Kottayam-686 019.
5. Abhayadev S, aged 26 years, S/o Surendran S, Thoppil Veedu, Muthuvila P.O., Kallara, Trivandrum-695 610.
6. Vijayan P, aged 38 years, S/o Sreedharan P (late), Poduvan House, Kannadiparamba P.O., Kannur District, PIN: 670 604
7. Manju V, aged 31 years, W/o Anoop T, “Thulasi”, Uliyakovil Nagar 67-H, Uliyakovil P.O., Kollam-691 019
8. Parvathy P, aged 28 years, W/o Praveen C.P, “Praseetha”, Cherikonam, Kannanalloor P.O., Kollam-691 576
9. Anu C, aged 28 years, D/o Chandra Babu, Vilayil Veedu, Kammalakunnu, Koonthalloor, Chirayinkeezhu, Trivandrum-695 304.
10. Jijin G, aged 26 years, S/o Gangadharan K, Kollenkoden House, Peruvemba P.O., Palakkad-678 531
11. Pradeep P, aged 31 years, S/o Prabhakaran, Anathamkode House, Tathamangalam P.O., Palakkad-678 102
12. Vineetha E.V, aged 35 years, W/o Pradeep Kumar R, “Deeptham”, Panamthodi House, Upasana Nagar, Pirayiri P.O., Palakkad-678 004

13. Sreekanth P.N, aged 29 years, S/o Narayanan, Pandarapattathil, Veluthully Colony, Chandiroor P.O., Alappuzha-688 537
14. Saneesh Babu T, aged 29 years, S/o Babu T.D, Thirunelli Parambu, Aroor P.O., Alappuzha-688 534
15. Nisha Babu, aged 34 years, W/o Sebastian P.J, Palliparambil, Near Muttunkal, Arthunkal P.O., Cherthala-688 530
16. Asida J, aged 32 years, W/o Santhosh K.S, Madhavapurath, Kanichukulangara P.O., Cherthala, Alappuzha-688 544.
17. Aswaraj P.M, aged 31 years, S/o Mohana Pai V, Pallithottunkal, Thycattusser P.O., Cherthala, Alappuzha-688 528
18. Vineetha Purushothaman, aged 36 years, W/o Anilkumar C.P, Kattumpurath House, Thevara, Kochi-682 013
19. Vinod S.G, aged 27 years, S/o Subbayyan, “Sreenandanam”, Neelikunnil, Koliyacode P.O., Trivandrum-695 607
20. Jacob Sam, aged 34 years, S/o K.J. Joseph, Koottungal House, XIV/1104, Nazareth, Kochi-682 002
21. Jijesh P, aged 30 years, S/o K.V. Janardhanan, “Amrutham” House, Vengat, Cheruvathur P.O., Kasargod, Kerala, PIN: 671 313
22. Anoop T.S, aged 32 years, S/o Sreedharan T.N, “Sreejith Nilayam”, Puthenkavu, Thirumalabhagom P.O., Thuravoor, Cherthala, Alappuzha- 688 540
23. Jineesha E.S, aged 30 years, W/o Bijin K.S, Edakkatt House, Cherai P.O., Ernakulam, PIN: 683 514
24. Dinesh K, aged 33 years, S/o Bhaskaran K, “Nandanam” House, Ambalathazham, Perumanna P.O., Kozhikode-673 019
25. Joicy P.J, aged 33 years, W/o Jeejo C.D, C-10, Galaxy Wingate, Aryapadam Lane, L.F.C. Road, Kaloor, Kochi-682 017
26. Sandeep T, aged 29 years, S/o Sethumadhavan T, Thazhathethil House, Near United Club, Kovilakathumuri, Nilambur P.O., Malappuram District, PIN: 679 329
27. Muneer P, aged 27 years, S/o Abdul Rahiman, Padikkal House, Kalathin Kadavu, Nilambur P.O., Malappuram District, PIN: 679 329
28. Vijeesh M, aged 27 years, S/o Murukan (late), Thottipadam House, Vattekkad P.O., Kollengode, Palakkad District, PIN: 678 506

29. Ramya S, aged 35 years, W/o Ashmon P.S, Pulikkaparambil, Pachalam P.O., Ernakulam, Kochi-682 012
30. Riyas N, aged 28 years, S/o Nijavudeen, Nandankizhaya, Anamari P.O., Palakkad District, PIN: 678 506
31. Byju C, aged 33 years, S/o C.P. Narayanan, Alappetty House, Kuttiattoor P.O., Kannur District, PIN: 670 602
32. Preetha Omana, aged 39 years, D/o Mani Lal, Manpuzha Vadakkethil, Prakulam P.O., Kollam, PIN: 691 602
33. Rajani T, aged 34 years, W/o Satheesh K, Koyivilapurathu Veedu, Murunthal, Perinad P.O., Kollam-691 601. **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. Cherian 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 : Mr. Sunil Jacob Jose)

3. **Original Application No. 180/00179/2018 -**
1. Sangeetha M, D/o Manickan M., W/o Murughan K., aged 27 years, Thamanakulam, Vilayodi P.O., Chittur, Palakkad, Pin - 678 103. Phone: 9447971567
2. Binehushe P Chandran, S/o. Chandrakumar, aged 32 years, Laly Bhavanam, Edeyam, Edeyam P.O., Valakom, Kottarakkara, Kollam District, Pin- 691 545, Ph: 9567616125,

3. Reshma Raj S., D/o Raju S,
aged 32 years, Thottummukkathu,
Kanjavely P.O., Kollam, Pin- 691 602. Phone: 9496870788.
4. Maya V. D/o Babu Pillai C,
aged 31, Keerthana Bhavan,
Kandachira, Perinad P.O., Kollam, Pin - 691 601.,
Phone: 9544536647.
5. Akhila Prasad L., D/o R. Siva Prasad,
aged 26 years, Ratheesh Bhavan,
Pallappil, Prakkulam P.O.
Pin- 691 602. Phone: 8129275824.
6. Jamuna C.R., D/o P. Chandran Pillai,
aged 36 years, Thannikkal Melathil,
Chathinamkulam, Chandanathope P.O.,
Kollam - 691 014. Phone: 9495059717.
7. Vidya S. Nair, D/o Unnikrishnan Nair,
aged 31 years, Valiyavellickal House,
Pollethai P.O., Valavanadu,
Pin-688 522., Phone: 9605712346.
8. Sreeja S. Kumar, D/o Sreekumar (late),
aged 36 years, Sreeja Nivas,
S.N. Puram P.O., Chalamangalam,
Pin- 688 582. Phone: 9497338365.
9. Pravitha R, D/o Purushan R.
aged 35 years, Mannumme Veli,
Varanad P.O., Cherthala,Pin -688 552,
Phone:9605046716 .
10. Kumari Saritha J.S., D/o K. Sasidharan,
aged 34 years, R.S. Bhavan, Adumancadu,
Parasuvaickal P.O.,
Pin- 695 508, Phone: 9567553055.
11. Fathima P. D/o Ahammed P.,
aged 36 years, Dilber Manzil,
Naidanath Paramba,
P.O. Kommai, Calicut - 673 007.
12. Beena S. D/o Sanmughan,
aged 34 years, Parakkal House,
Madampara, Kunissery P.O., Pin - 678 681,
Palakkad District. Phone: 9544452087.

13. Surendharidevi C. D/o Chandran K., W/o Raghu, aged 36 years, Pulumbankad House, Kunisserry P.O., Palakkad District- 678 681. Phone: 9526977232.
14. Sameena S D/o T.B Showkkathali, aged 28 years, Bismi House, Madampara, Kunisserry P.O., Palakkad District- 678 681. Phone: 9074242157.
15. Gireesh K, S/o Vellankutty, aged 39 years, Kudilattu House, Parannur P.O., Narikkuni via, Pin- 673 585, Phone: 9947758325.
16. Suja S. D/o Chandran K., aged 29 years, Suja Bhavan, Kadavoor, Perinad P.O., Kollam - 691 601. Phone: 9496779330.
17. Asya A D/o Muhammed, aged 31 years, Mannarayil House, Arivallur P.O., Malappuram District Pin - 676 312. Phone: 8086225794.
18. Preethanath C.V., D/o Viswanathan, aged 37 years, Chaluvila Veedu, Cheriyela, Alumoodu P.O., Thrikkovilvattom, Kollam, Pin- 691 577, Phone: 9744958665
19. Sudheer Y, S/o. Yoosuf Kunju, aged 28 years, Kannimmel Veedu, 12 Muri Nagar - 114, Thattanat P.O., Kollam, Pin - 691020, Ph: 9562113823.
20. Sheeja K, D/o Kumaran R., W/o Manikandan K., Vadakkottil House, Vilayodi P.O., Chittur, Palakkad District, Pin-678 103.
21. Asharaf A, S/o Abdul Jabbar, aged 29 years, Chuttichira House, Nenmeni Post, Kollengode, Palakkad District, Pin - 678 506, Phone: 9846349461.
22. Shabu T, S/o Thulaseedharan R., aged 36years, T.L. Mandiram, Chakkakadu, Vellumannadi P.O., Venjaramoodu, Thiruvananthapuram,

Pin - 695 607. Phone: 9995613438.

23. Sooraj B. Murali S/o B. Muraleedharan, aged 27 years, Pallelethuthara, North East Thazhava, Manappally P.O., Karunagappally, Kollam, Pin - 690 574.
24. Sreekumar S.S. S/o G. Sukumaran, aged 27 years, Sreeprasad, Thathiyoor, Aruvikkara, Marayamuttom P.O., Thiruvananthapuram, Pin - 695 124. Phone: 9526672621.
25. Dhanesh M S/o. Manikkan, aged 25 years, Kundiliduvu House, Thiruvazhiyad Post, Palakkad - 678 510. Phone: 9847394652.
26. Monisha M D/o Mohanan A., aged 26 years, Palappallam House, Manchira, Chittur P.O., Palakkad District, Pin - 678 101. Phone: 9497166844.
27. Pushpalatha K W/o M. Sreekumar, 14/200, Thelungu Street, Chittur P.O., Palakkad District, Pin-678 101
28. Nisha R W/o Ramesh, aged 34 years, Pilapully House, Verkoli P.O., Palakkad District, Pin - 678 552. Phone: 9747617427.
29. Jayasree A S/o. Suresh K., aged 28 years, Padath House, Akathethara P.O., Palakkad District, Pin-678 008. Phone: 9744693774.
30. Sudharshiny R. D/o Ramakrishnan, aged 36 years, Parvathi Nivas, Chankparambu, Anicode, Chittur P.O., Pin- 678 101, Phone: 7293507250.
31. Lalima K.V. aged 29 years, W/o Prasanth N.R., Sree Silam, Njaravila, Thachottukavu, Malayinkeezhu P.O., Trivandrum - 695 571.
32. Ashapriya S.G. aged 27 years, W/o Chinthu M.V. G.S. Bhavan, Tanayamperayam P.O., Pacha Pallode, Pin 695 562.

33. Sindhu M. aged 34 years,
W/o Ajayan K., Sivaganga, Near Krishi Office,
Vellanadu P.O., Pin- 695 543.

34. Sminu P.R. aged 27 years,
W/o Praveen V. Prakash, D/o Remesan P.K.,
Pongalayil House, Udayamperoor P.O.,
Udayamperoor, Ernakulam, Pin-682 307, Phone: 9400938468.

35. Fathima Geegum I, aged 36 years,
W/o Ashraf K.S., D/o Illias, Pathalupurayidathil House,
Kannimala P.O., Thumarampara,
Pin - 686 509, Kottayam District. Phone: 9947197994.

36. Chithra Chandran.C.L, W/o Unnikrishna Pillai, Krishna,
Manappally.P.O,N.E.Thazhava,Karunagapally,
Kollam. 690574 **Applicants**

(By Advocate : Mr. R.S. Sarat)

V e r s u s

1. Union of India, rep. 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. Cherian 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 : Mr. Sunil Jacob Jose)

These applications having been heard on 11.07.2019 and 17.07.2019,
the Tribunal on 19.07.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-1039-2016, 180-939-2017 and 180-179-2018 have

common points of fact and law involved and hence are being disposed of through this common order.

2. The applicants who belongs to different 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 despite having been qualified in written examination as well as physical efficiency test.

3. The relief claimed by the applicants are as under:

OA No. 180-1039-2016 -

“(i) Declare that the non-feasance on the part of the respondents to include the names of the applicants at the appropriate place in A17 after making due adjustments in A16 and A17 is arbitrary, discriminatory and unconstitutional;

(ii) Direct the respondents to place the applicants at the appropriate place in A17 and direct further to consider and appoint them against one of the Group D vacancies notified in A1 with all consequential benefits arising therefrom;

(iii) Direct the respondents to consider the applicants against one of the non-joining vacancies as provided for in the Railway Board orders in vogue at the material time and direct further to consider and appoint the applicants against such vacancies notified in A1 and direct further to grant all the consequential benefits emanating there from;

(iv) Award costs of and incidental to this applicant;

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

OA No. 180-939-2017 -

“(i) Declare that the non-feasance on the part of the respondents to consider and appoint the applicants against the vacancies left unfilled on account of the non-joining of persons for whom offers of appointment/appointment orders were issued is arbitrary, discriminatory and unconstitutional, and direct the respondents to consider and appoint the applicants against these vacancies for which recruitment process was initiated;

- (ii) Direct the respondents to prepare a separate panel for each of the categories like general category, OBC, SC, ST, Ex-servicemen etc. category wise, i.e. for each of the categories like Sweepers, Sweeper-cum-Porters, Trackmen etc. as notified in Annexure A1;
- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

OA No. 180-179-2018 -

- “i. declare that the non-feasance on the part of the respondents to consider and appoint the applicants against the vacancies left unfilled on account of the non-joining of persons for whom offers of appointment/appointment orders were issued is arbitrary, discriminatory and unconstitutional, and direct the respondents to consider and appoint the applicants against these vacancies for which recruitment process was initiated;
- ii. direct the respondents to prepare a separate panel for each of the categories like general category, OBC, SC, ST, Ex-servicemen etc. category wise, i.e. for each of the categories like Sweepers, Sweeper-cum-Porters, Trackmen etc. as notified in Annexure A1;
- iii. direct the respondents to appoint the applicants in the existing vacancies of Group-D staff in various divisions of southern railway.
- iv. Direct the respondents to make appointment essentially following the rules of communal rotation.
- v. Award cots of and incidental to this application.
- vi. grant such other relief this Hon'ble Tribunal may deem fit in the facts and circumstance of case.”

4. The brief facts of the case are : the railways published an Employment Notice No. RRC 02/2013, dated 21.09.2013 inviting applications for 5,450 vacancies of the erstwhile Group D category. The notification specified that number of vacancies can be revised and examination was held in the month of November, 2014 and applicants have got qualified the same. But they were not called for documents verification. However, respondent did not publish the final select list for subsequent process of selection.

5. It is further submitted that about 12,000 candidates were empanelled against 5,450 notified vacancies and there were candidates who despite issuance of appointment order did not join and large number of vacancies were unfilled due to non-joining of selected candidates. The applicants should have been considered against these non-joining vacancies and non-considering them amounts to discrimination and violative of Articles 14 and 16 of the Constitution of India which has guaranteed equal treatment to all the citizens of India. Feeling aggrieved by non-selection to the said posts, applicants approached this Tribunal for redressal of their grievance.

6. Notices were issued to the respondents. Respondents entered appearance through learned counsel Smt. Girija K. Gopal in OA No. 180-1039-2016 and Shri Sunil Jacob Jose, learned counsel appearing for respondents in OAs Nos. 180-939-2017 and 180-179-2018. In their reply statement the respondents contend that they have received 16,94,717 applications. The recruitment process consisted of written examination, followed by physical efficiency test, document verification and medical test. 11,26,393 applications were found eligible on scrutiny. The number of vacancies were later enhanced to 12,265 for Southern Railway. The merit list was published on the notice board and in the website for 11,847 meritorious non-PWD candidates who were called for document verification plus 368 candidates with disability, purely on the basis of merit list. It is further submitted that 1,463 additional candidates were also called for against candidates who have not cleared in document verification or medical examination. The applicants in the OA could not find place in the

final list of candidates as their marks were below the cutoff. The cutoff marks for UR was 63.667, OBC - 59.570, SC - 52.363 and for ST - 47.135. The vacancies were filled purely on merit with transparency and there is no scope for interference by this Tribunal in these matters and the OAs are liable to be dismissed.

7. Heard Shri T.C. Govindaswamy, learned counsel appearing for the applicants in OAs Nos. 180-1039-2016 and 180-939-2017, Shri R.S. Sarat, learned counsel for the applicants in OA No. 180-179-2018, Smt. Girija K. Gopal, learned counsel for the respondents in OA No. 180-1039-2016 and Shri Sunil Jacob Jose, learned counsel appearing for respondents in OAs Nos. 180-939-2017 and 180-179-2018 at length and perused the records and appreciated the legal position.

8. The learned counsel for the applicants submitted that the selection was made in violation of Rules 7.4, 7.8, 7.9, 7.10 and 7.11 of RBE No. 121/2005 which provides for procedure for appointment of Group-D staff which prescribed pass mark as 40% for general candidates and 30% for reserved candidates. The medical examination and physical efficiency test should be done prior to empanelment.

9. We find that the RBE guidelines for selection to the post has given criterion for pass mark for the general candidates as 40% and for reserved candidates as 30% and the same has not been violated by the respondents as they declared the list of candidates who were having marks above the

prescribed marks in the competitive examination. The candidates were offered appointment on the basis of the marks obtained in the examination to restrict the number of candidates vis-a-vis the number of vacancies. Therefore, there is nothing wrong in it. The cutoff marks were prescribed to limit the offer to be made to the selected candidates which can be lower if prescribed number of candidates are not found. There is nothing wrong in the procedure for selection. Thus there is no force in the contention of the applicants.

10. Learned counsel for the applicants further submitted that as per Annexure A9 order dated 17.6.2009 it is provided as under:

“The issue has been examined and it is now decided by the board that the number of candidates called for document verification shall be 20% over and above the number of vacancies.”

The applicants who falls within 20% vacancies in the merit list should have been called for document verification and subsequent process. In support of his argument Mr. T.C. Govindasamy has relied upon the apex court decision in the mater of **Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Ors.** in SLP No.6165/2018 and the decision of this Tribunal in OA No. 712 of 2016. The apex court in **Dinesh Kumar Kashyap**'s case (*supra*) held as under:

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.

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 9 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.

11. Contrary to the above learned counsel for the respondents Shri Sunil Jacob Jose relied on the Railway Board order dated 10.1.2014 (Annexure A10) which is issued well in beginning of the selection process itself. It provides as under:

“In partial modification to instructions contained in Board's letter of even number dated 29.5.2013 (RBE No. 53/2013) and 19.8.2013 (RBE No. 85/2013), it is directed that henceforth, call letter be issued to successful candidates in written examination for appearing in PET (Physical Efficiency Test), three weeks, prior to date of commencement of PET under “Business Post” instead of earlier instruction of one months prior to date of conduct of examination.

2. It is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in Pay Band-1 (Grade Pay : 1,800/-) is now done annually in terms of instructions contained in Board's letter No. E(NG)II/2007/RR-1/58 dated 8.12.2011.”

12. Thus, no replacement panel are to be given against the non-joining candidates. More so even the notification No. 3/2013 also not stipulated that the 20% replacement panel will be made for non-joining selected candidates. Therefore, the applicants herein cannot rely upon the superseded guidelines issued by RRB on 17.6.2008. The advertisement clearly states the process of selection to be followed. We are in agreement with this contention of the respondents because it had not been part of the advertisement as has been done previously by the Railway which was the subject matter considered by the apex court in ***Dinesh Kumar Kashyap***'s case (*supra*). In the present case rules of selection does provides for 20% replacement panel against the non-joining candidates. The terms and conditions on which the

selection would govern for the post offered is made clear in the advertisement.

13. Hence, the contention of the learned counsel for the applicants that the applicants are entitled for empanelment against the non-joining vacancy is not standing on its legs. The apex court in ***Dinesh Kumar Kashyap***'s case (*supra*) decided the issue therein on the basis of terms and conditions stipulated in the notification 05/2010 where provision of replacement for non-joining candidates was there which gave the petitioners right to be considered for the said selection which is not available in the present case because there is no provision in the present notification. We are in total agreement that these two notifications for the vacancies are distinct governed by its own terms and conditions. Thus, the judgment in ***Dinesh Kumar Kashyap***'s case (*supra*) is not applicable to the present case.

14. In view of the discussion on legal submission, we are of the considered opinion that the present applications fail on merit. Hence, they are liable to be dismissed. Accordingly, the Original Applications are dismissed. Parties shall bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/01039/2016**APPLICANTS' ANNEXURES**

Annexure A1: A true copy of Employment Notification bearing No. RRC 05/2010 dated 15.12.2010

Annexure A2: A true copy of letter bearing No.RRC/E.N.05/2010/PET dated 17.12.2012 issued by the 2nd respondent in favour of the 26th applicant.

Annexure A3: A true copy of part select list consisting of 731 candidates with their roll numbers published under a communication bearing No. Nil dated 23.01.2013 issued by the 2nd respondent

Annexure A4: True copy of second part select list consisting of 1702 candidates published by the 2nd respondent under No. nil dated 15.03.2013

Annexure A5: True copy of Railway Board Order bearing RBE No.121/2005 dated 18.07.2005

Annexure A6: True copy of Railway Board Order bearing RBE No.166/2005 dated 29.09.2005

Annexure A7: True copy of information collected under the Right to Information Act

Annexure A8: True copy of Chart showing brief details material for adjudication of the issues involved in the OA

Annexure A9: True copy of order dated 24.11.2014 in OA No.175/2014 rendered by this Hon'ble Tribunal

Annexure A10: True copy of Railway Board Order bearing RBE No.166/2005 dated 29.09.2005 (produced as R2 in OA No.175/2014)

Annexure A11: True copy of Railway Board Order bearing RBE No.73/2008 dated 17.06.2008 (produced as R3 in OA No.175/2014)

Annexure A12: True copy of Railway Board Order bearing RBE No.6/2014 dated 10.01.2014 (produced as R4 in OA No.175/2014)

Annexure A13: True copy of counter affidavit filed by the respondents producing R2(1) a consolidated merit order list (final) dated 29.01.2015 for EN No.5/2010 – less R(2).

Annexure A14: True copy of merit list of panel of recommended candidates EN No.05/2010 (R.2(2) produced by the respondents along with the counter affidavit.

Annexure A15: True copy of judgment in OP(CAT) No.78/2015 dated 09.03.2016 rendered by the Hon'ble High Court

Annexure A16: True copy of list for UR category

Annexure A17: True copy of list for OBC category

Annexure A18: True copy of list for SC category

Annexure A19: True copy of list for ST category

Annexure A20: True copy of list for PWD category

Annexure A21: True copy of RTI request registration number SORLY/R/2018/50176

Annexure A22: True copy of 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.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the order of the Hon'ble Tribunal/Ernakulam Bench dated 24.11.2014 in OA No. 176/2014.

Annexure R2 – True copy of the order of the Hon'ble Tribunal/Ernakulam Bench dated 24.11.2014 in OA No. 245/2014.

Annexure R3 – True copy of Railway Board's letter dated 17.6.2008.

Annexure R4 – True copy of Railway Board's letter dated 10.1.2014.

Original Application No. 180/00939/2017

APPLICANTS' ANNEXURES

Annexure A1: A true copy of Employment Notification bearing No. RRC 02/2013 dated 21.09.2013

Annexure A2: A true copy of Hall ticket issued by the 2nd respondent in favour of the 3rd applicant.

Annexure A3: A true copy of Chart showing the roll numbers of each of the applicants for the written examination and other details.

Annexure A4: True copy of consolidated list of different panels uploaded from the website of the respondents.

Annexure A5: True copy of Railway Board Order bearing RBE No.121/2005 dated 18.07.2005

Annexure A6: True copy of Railway Board Order bearing RBE No.166/2005 dated 29.09.2005

Annexure A7: True copy of request dated 10.05.2017 for information under the RTI Act addressed to the Public Information Officer/Railway Recruitment Cell.

Annexure A8 series: True copy of the replies received in response to A7

Annexure A8(a) Series: True copies of more information received under the RTI.

Annexure A9: True copy of Railway Board Order bearing RBE No.73/2008 dated 17.06.2008 (produced as R3 in OA No.175/2014)

Annexure A10: True copy of Railway Board Order bearing RBE No.6/2014 dated 10.01.2014 (produced as R4 in OA No.175/2014)

Annexure A11: True copy of judgment in OP(CAT) No.78/2015 dated 09.03.2016 rendered by the Hon'ble High Court

Annexure A12: A true copy of 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.

Annexure A13: A true copy of the office order bearing No. V/P.721/SWLI/Re-engagement dated 27 November 2017, issued by the Senior Divisional Personnel Officer on behalf of Divisional Railway Manager, Southern Railway, Trivandrum.

Annexure A14: A true copy of order bearing No. T/P.269/I/EA/Re-employment dated 3.11.2017.

Annexure A15: True copy of order bearing No. P,721/Re-employment dated 10.11.2017.

Annexure A16: True copy of 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.

Annexure A17: True copy of the online RTI request form numbered S RSLD/R/2017 sent to Southern Railway, Salem Division.

Annexure A18: 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.

Annexure A19: True copy of the online RTI request form numbered SRPKD/R/2017 sent to Southern Railway, Palakkad Division is produced.

Annexure A20: 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.

Annexure A21: True copy of Railway Board order bearing No. E(NG)-II/2009/RR-1/10/Pt(7525) [RBE No. 103/2014] dated 19.9.2014.

Annexure A22: True copy of Railway Board Order bearing No. E(NG)-II/2009/RR-1/10/Pt(7525) [RBE No. 62/2015] dated 12.6.2015.

Annexure A23: True copy of centralised employment notice bearing number (CEN) No. 02/2018 dated 10.2.2018.

Annexure A24 : 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.

Annexure A25 : True copy of the letter bearing No. E(NG)-II/2013/RR-1/12 dated 20.10.2014 issued by the Railway Board.

Annexure A26 : True copy of the Railway Board order bearing RBE No. 138/2014 dated 10.12.2014.

Annexure A27: True copy of affidavits dated 22nd March, 2018 and 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.

Annexure A28: True copy of letter bearing No. PB/RTI/146/2526 dated 9.10.2018 received from the Public Information Officer in the office of the Principal Chief Personnel Officer, ICF, under the RTI Act.

RESPONDENTS' ANNEXURES

Annexure R1 – Extract of Manual for Railway Recruitment Boards, 2007.

Annexure R2 – Breakup for the enhanced 12,000 vacancies (categorywise/communitywise) of Southern Railway.

Annexure R3 – Advertisement indicating that the Written Examination results have been published on 4.1.2015 and indicating the dates for Physical Efficiency Test (PET).

Annexure R4 – Railway Board's orders RBE 138/2014 dated 10.12.2014.

Annexure R5 – Advertisement indicating that the shortlisted candidates can check the schedule for verification in the website of RRC.

Annexure R6 – Final Panel for empanelled candidates dt. 6.7.2017.

Annexure R7 – Specimen copy of the letter offering appointment.

Annexure R8(1) – Letter No. P(RT) 563/RRC/Gr.D/2014-15 dated 11.12.2014 addressed to Railway Board.

Annexure R8(2) – Letter No. P(RT)563/RRC/Gr.D/2014-15 dated 17.12.2014 addressed to Railway Board.

Annexure R8(3) – Letter No. P563/E/O/II(Pilot) dated 3.12.2014 addressed by Financial Advisor & Chief Accounts Officer to Chief Personnel Officer.

Annexure R9 – Railway Board's Letter No. E(NG)-II/2013/RR-1/12 dated

31.12.2014.

Original Application No. 180/00179/2018

APPLICANT'S ANNEXURES

Annexure A1 – True copy of the said notification bearing No. RRC 2/2013 dated 21.9.2013 downloaded from the website of the respondents.

Annexure A2 – True copy of the hall ticket issued by the 2nd respondent in respect of the 3rd respondent.

Annexure A3 – True copy of the chart showing the roll numbers of each of the applicants for the written examination and other details.

Annexure A4 – True copy of the consolidated list of different panels uploaded from the website of the respondents.

Annexure A5 – True copy of the Railway Board orders bearing RBE No. 121/2005 dated 18.7.2005.

Annexure A6 – True copy of the Railway Board orders bearing RBE No. 166/2005 and 29.9.2005.

Annexure A7 – True copy of the request dated 10.5.2017 sent by one of the applicant's mother.

Annexure A8 – True copy of the replies received in response to A7.

Annexure A8A series – True copy of the more information received under RTI.

Annexure A9 – True copy of Railway Board order bearing RBE No. 73/2008 dated 17.6.2008 (produced as R3 in OA No. 175/2014).

Annexure A10 – True copy of Railway Board order bearing RBE No. 6/2014 dated 10.1.2014 (produced as R4 in OA No. 175/2014).

Annexure A11 – True copy of the judgment in OP (CAT) No. 78/2015 and connected cases dated 9.3.2016 rendered by the Hon'ble High Court.

Annexure A12 – True copy of order No. E(NG).11/2010/RC-4/6, dated 14.9.2017.

Annexure A13 – True copy of notification No. SA/p.135/Rtd.staff/Re-Eng/CO.Ord, dated 9.1.2018.

Annexure A14 – True copy of notification No. J/P/135/Re-engagement dated 27.12.2017.

Annexure A15 – True copy of Lr. No. E(NG)II2007/RR-1/58 dated 8.12.2011.

Annexure A16 – True copy of the order No. E(NG)II/2009/RR-1/10/Pt(7525) dated 10.12.2014.

Annexure A17 – True copy of the order No. E(NG)II2013/RR-1/12 dated 20.10.2014.

Annexure A18 – True copy of detailed centralized employment notification bearing No. CEN 02/2018 dated 10.2.2018.

RESPONDENTS' ANNEXURES

Annexure R1 – Extract of Manual for Railway Recruitment Boards, 2007.

Annexure R2 – Breakup for the enhanced 12,000 vacancies, (categorwise/communitywise) of Southern Railway.

Annexure R3 – Advertisement indicating that the written examination results have been published on 4.1.2015 and indicating the dates for physical efficiency test (PET).

Annexure R4 – Railway Board's Orders RBE 138/2014 dated 10.12.2014.

Annexure R5 – Advertisement indicating that the shortlisted candidates can check the schedule for verification in the website of RRC.

Annexure R6 – Specimen copy of the letter offering appointment.

Annexure R7 – Railway Board's orders RBE No. 150/2017 dated 16.10.2017.

Annexure R8(1) –Letter No. P(RT)563/RRC/Gr D/2014-15 dated 11.2.2014 addressed to Railway Board.

Annexure R8(2) –Letter No. P(RT)563/RRC/Gr D/2014-15 dated 17.12.2014 addressed to Railway Board.

Annexure R8(3)- Letter No. P 563/E/O/II(Pilot) dated 3.12.2014 addressed by Financial Advisor & Chief Accounts Officer to Chief Personnel Officer.

Annexure R9- Railway Board's letter No. E(NG)-II/2013/RR-1/12 dated 31.12.2014.