

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HONOURABLE SRI JUSTICE P.NAVEEN RAO
AND**

THE HONOURABLE DR. JUSTICE G.RADHA RANI

WRIT PETITION NO: 14800 OF 2019

Between:

1. Union of India, Rep. by Chairman, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager (P), S.C. Railway, 4th Floor, Rail Nilayam, Secunderabad.
3. The Deputy Chief Personnel officer, Railway Recruitment Cell, Rail Nilayam, Secunderabad.
4. The Chairman, Railway Recruitment Cell, C-Block, 1st Floor, Rail Nilayam, Secunderabad.

...PETITIONERS

AND

1. B. Rama Devi and another, Un-employed, D/o. Monadala, R/o.H.No.3-34/8, Karimangar - 505 152.
2. Ms. G.Swathi, D/o. Sairam, Aged about 26 years, Occ. Unemployed, R/o.H.No.15-6-34/8, Edla Bazar, Janda Chettu, Guntur-522 001.

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Certiorari and call for the records and Quash the orders passed in O.A.No.21/974/2014 dated 04-02-2019 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

IA NO: 1 OF 2019

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of operation and effect of the order passed in O.A.No.21/974/2014 dated 04-02-2019 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, pending disposal of the above Writ Petition in the interest of justice.

Counsel for the Petitioners : SRI.PRABHAKAR PERI

Counsel for the Respondents : SRI.G.PAVANA MURTHY

The Court made the following ORDER

**THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SMT Dr. JUSTICE G. RADHA RANI**

WRIT PETITION No.14800 OF 2019

ORDER: (Per Hon'ble Sri Justice P.Naveen Rao)

This writ petition is filed seeking the following relief :

"...to issue a writ of Certiorari and call for the records and quash the orders passed in O.A.No.21/974/2014, dated 04.02.2019 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and pass such order or orders in the interest of justice".

2. Heard learned counsel for the petitioners and Sri G.Pavana Murthy, learned counsel appearing for the respondents.

3. On 15.12.2010, recruitment notification was issued by the petitioners to fill up 8730 vacancies in Group-D cadre. Respondents herein responded to the said notification and participated in the selection process. The selection process involved three levels, namely, Written Test, Physical Efficiency Test and the Medical Test. Both the respondents belong to OBC category and they secured appropriate merit. As per the procedure envisaged by the petitioners, a stand by-list to an extent of 20% of the number of vacancies notified was also drawn up, as a contingent arrangement to obviate disqualification of any of the selected candidates or disinclination of the selected candidates to join service and to ensure that there will not be any shortfall in filling the notified vacancies. The respondents were included in the stand by-list. Vacancies created in the merit list in any of the contingencies were filled by drawing candidates from stand-by-list.

4. According to the respondents though there was shortfall of eligible candidates to the extent of vacancies notified, which could have easily accommodated the respondents, the exercise was aborted and petitioners were resorting to issue fresh recruitment notification causing hardship to the respondents and illegally depriving employment in Railways even though they were otherwise qualified and secured relevant merit. Aggrieved thereby respondents instituted O.A.No.21/974/2014 in the Central Administrative Tribunal, Hyderabad Bench (for short 'the Tribunal').

5. The respondents prayed to set aside Office Letter No.E(NG) - II/2008/RR-1/33, dated 10.01.2014, to direct the petitioners herein to consider the respondents against the vacancies remained unfilled due to non-joining of the candidates under OBC category pursuant to the notification dated 15.12.2010.

6. The claim of the respondents was opposed by the petitioners, firstly, on the ground that merely because respondents were called for verification of certificates, no right accrued to them as they were not in the first merit list and they were only part of 20% standby list; secondly, there is a change in the policy of the petitioners as can be seen from the Circular dated 10.01.2014 dispensing with maintenance of waiting list; thirdly, there were no vacancies left pursuant to 2010 - Notification and therefore the question of accommodating the respondents did not arise; fourthly, it was contended that subsequently fresh recruitments were made and therefore the question of considering the respondents at that stage did not arise.

7. Repelling the said contention and holding that the respondents were illegally denied empanelment and appointment contrary to their own decisions, the Tribunal allowed the O.A. The Tribunal also held that Circular dated 10.01.2014 cannot be applied to the recruitment of the year 2010 and by relying on the said Circular entitlement of the respondents could not have been denied. The objection on the delay in prosecuting the litigation was also rejected holding that the respondents were prosecuting the grievance and the Circular referred to was only issued in 2014 and therefore, the respondents cannot be denied the employment on the ground of delay and laches.

8. Learned counsel for petitioners Sri P. Prabhakar reiterated the submissions made before the Tribunal. He contends that the Tribunal erred in extending the relief to everybody without confining the same only to the applicants. He also contends that the order of the Tribunal results in reviewing the entire selection process and also would have an impact on the subsequent selections. Even assuming that the respondents have made out a case, the Tribunal could not have given a general direction without confining it to the applicants before the Tribunal. It would be opening Pandoras box causing inconvenience to the petitioners. He further submits that the decision of the Supreme Court in **Dinesh Kumar Kashyap and others Vs. South East Central Railway and others** (Civil Appeal Nos.11360-11363 of 2018), cannot be treated as a precedent as the Hon'ble Supreme court clearly confined the directions issued therein only to the appellants before the Supreme Court.

9. Learned counsel for respondents submits that by letter dated 22.10.2013, the Chairman, Railway Recruitment Board, South Central Railway, sought the concurrence of the Executive Director of the Railway Board to consider the claims made by the persons similarly situated to the respondents herein for empanelment and appointment to those vacancies. According to learned counsel from this letter it is clear that by that date several vacancies were available and those vacancies ought to have been filled up by following the guidelines formulated earlier. He submits that the principle considered by the Hon'ble Supreme Court in **Dinesh Kumar Kashyap**, is squarely applicable to the case on hand. It is also concerned with the very same 2010 -Recruitment Notification. Only difference is it was a case concerning the South Eastern Railway as against the South Central Railway herein. He further submits that the defence taken by the petitioners about the change of policy was also not accepted by the Hon'ble Supreme Court and the Hon'ble Supreme Court found fault in not filling up the remaining vacancies by 20% standby candidates and then issued directions. In the instant case also, grave injustice is caused to the respondents depriving them employment. He fairly submits that the respondents are concerned only with the employment to themselves, but not asking general direction to appoint any other person also. He further submits that there were vacancies available and illegally the respondents were denied employment on a wrong understanding of Circular dated 10.01.2014.

10. The petitioners evolved the procedure of selection with an objective of ensuring that a merit list is drawn to the extent of vacancies notified for recruitment and all the notified vacancies are

filled up. This procedure requires the recruiting authority to call 20% more candidates than the number of vacancies notified at the stage of document verification. Though, the Circular clearly envisages that it would not vest any right in the standby candidates, identified to the extent of 20%, over and above the number of candidates called proportionate to the number of vacancies notified, the 20% identified in this manner shall be utilized in the event selected candidates fail to satisfy the mandatory requirements of eligibility with reference to their qualifications and/or do not attend to the certificate verification. In such contingency the recruiting authority utilizes the standby list to obviate the shortfall. A reading of the Circular instructions would also disclose that this procedure is extendable to the situation where an offer of appointment given after verification of the certificates is not accepted by the candidate and does not join in the post.

11. In the 2010 recruitment of the South Central Railway, 20% more candidates were called at the stage of certificate verification. The respondents were included in the stand by-list. After completion of selection process, the respondents herein were not appointed resulting in instituting the instant litigation. Before the Tribunal the petitioners supported their decision on another ground also. According to the Railways, the shortfall was only 465, whereas additional 13 were included in the stand by-list and as there was no requirement, these 13 were not included in the merit list.

12. It is not in dispute that 478 candidates were included in the stand by-list. The Railways have utilised stand by-list to the extent of 465 leaving 13 candidates, including the respondents.

13. On the issue of excess number of candidates included in the stand by-list, the Hon'ble Tribunal looked into the record and found that in fact even stand by-list of 478 candidates was not fulfilling the requirement of 20% and therefore the contention that 13 candidates were in excess was rejected.

14. On all aspects, we are in agreement with the view expressed by the Tribunal.

15. Before the decision of the Railway Board on 10.01.2014, the system of drawing standby list to the extent of 20% of vacancies notified was in vogue. The respondents were included in the 20% stand by-list. As per the procedure in vogue, if the candidates in the merit list opt out, found not having requisite eligibility criteria and did not join the posts, the respondents were entitled to be included in the merit list.

16. The Railways have operated the 20% additional bench strength and included many of them in the merit list, but when it came to the respondents, they were not included on the erroneous ground that more number of candidates were originally called than required. As analysed by the Tribunal, though vacancies were available but illegally respondents were not included in the final merit list and they were illegally denied employment in the Railways.

17. By letter dated 22.10.2013, the Chairman, Railway Recruitment Cell sought concurrence of the Railway Board on whether to accept the claim of remaining candidates included in the stand-by-list for empanelment and appointment. This correspondence discloses that there were vacancies available and therefore, in accordance with the procedure evolved by the Railways, the respondents were entitled to be included in the final selection list and to be appointed.

18. Heavy reliance is placed on the Railway Board instructions dated 10.01.2014 giving up the procedure of calling additional 20% to attend to the contingency as originally envisaged. The claim of respondents is rejected by referring to this decision of the Board. Thus, it appears the reason for not accepting the plea of respondents is referable to the decision of the Railway Board dated 10.01.2014 and not so much on availability of vacancies.

19. The Circular dated 10.1.2014 reads 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 instructions of one month 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-I (Grade Pay: Rs1800) is now done annually in terms of instructions contained in Board's letter No.E/NC/II/2007/RR-1/58 dated 08.12.2011."

20. On the entitlement of this 20% standby panel candidates for inclusion in the merit list and for appointment issue is no more res integra, in view of the decision of the Hon'ble Supreme Court in **Dinesh Kumar Kashyap**. In fact in the said case the Tribunal accepted similar stand of the Railways and dismissed the O.A. Before the Hon'ble Supreme Court also the 10.01.2014 circular was pressed into service to negate the claim of appellants. In paragraph Nos.5 and 10 the Hon'ble Supreme Court 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

¹(1995) Supp.2 SCC 230

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."

21. The Hon'ble Supreme Court further observed that our country is governed by the rule of law and arbitrary action of the State or instrumentalities is anathema to the rule of law. It further goes to hold that when employer invites application for filling up posts, large number of unemployed youth apply, spend time in filling the form, submit applications, spend time to prepare for the examination, spend money to travel across to attend the selection process and when they qualify, wait for employment. Their entitlement cannot be deprived by arbitrary decision of the employer. The Hon'ble Supreme Court observed that *"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"*.

22. The contention that three more recruitment cycles were completed and therefore, 2010 merit list cannot be operated was also rejected by the Hon'ble Supreme Court. The Hon'ble Supreme Court held that because of the illegalities committed by the employer the selected candidate cannot be deprived of his entitlement for appointment.

23. The reason assigned by the Hon'ble Supreme Court and the view taken therein applies in all fours to the facts of this case.

24. Therefore, we do not see any merit in the claim of the petitioners herein warranting interference of the well considered decision of the Tribunal.

25. At this stage, learned counsel for the petitioners contend that the Tribunal erred in giving general directions to all the candidates, even though, they did not apply for empanelment in accordance with their claim not instituted cases before the Tribunal, whereas, implementation of the directions of the Tribunal would result in upsetting the entire selection process and may lead to lot of administrative difficulties.

26. Even according to learned counsel for the respondents, the respondents are only concerned about themselves and they are not asking for a general direction for consideration of any other candidate. The Court is informed that no other candidate has approached the Tribunal. The issue of recruitment relates to the year 2010. The respondents herein have been prosecuting their grievance and in the year 2014 they instituted the O.A. By now, it is more than 11 years and as stated by the Railways several other recruitments were conducted. Therefore, we are inclined to hold that the decision of Tribunal is applicable to the applicants before the Tribunal only. It cannot be seen as a general direction. In **Dinesh Kumar Kashyap** also the Hon'ble Supreme Court, while holding the action of respondents in not following their own circular instructions as illegal, confined the relief to the appellants before the Hon'ble Supreme Court only.

27. Accordingly, the Writ Petition is dismissed. To make things clear we issue the following directions :

- i. The respondents shall be treated as the last selected candidates of the year 2010 recruitment for the purpose of seniority and fixation of pay.
- ii. The respondents are entitled to notional benefits from the date of such deemed appointment for the purpose of pay and seniority;
- iii. On appointment the respondents are not entitled to back wages;
- iv. The petitioners are directed to comply with the orders of the Tribunal, subject to above modification, within two months from the date of receipt of copy of this order.

Pending miscellaneous petitions, if any shall stand closed.

SD/-K.SAILESHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. One CC to SRI.PRABHAKAR PERI, Advocate [OPUC]
2. One CC to SRI.G.PAVANA MURTHY, Advocate [OPUC]
3. Two CD Copies
4. One spare copy

SA
BS

HIGH COURT

DATED:31/01/2022

ORDER

WP.No.14800 of 2019



DISMISSING THE W.P
WITHOUT COSTS.

S. V. Subbarao
24/2/2022