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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010145082026

+ **W.P.(C) 4723/2026**

LALIT KUMAR

.....Petitioner

Through: Mr. Ramesh Chandra Singh,
Advocate.

versus

AIRPORT AUTHORITY OF INDIA

AND ANOTHER

.....Respondents

Through: Mr. Amit Bardhan Mohanty, Mr.
Vipul Teotia, Mr. Sai Darshan
Patra, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **24.09.2026**

1. This is the petitioner's second writ petition arising out of the recruitment to the Non-Executive Cadre of the Airports Authority of India, Northern Region ["AAI"], pursuant to Advertisement No. 01/2025/NR issued by it. The reliefs sought in this petition are set out below:

"a) Issue a Writ of Mandamus directing the Respondents to operate the waitlist/merit list for the ESM category against the 03 vacancies created by the non-joining/cancellation of the identified candidates.

b) Direct the Respondents to provisionally select and appoint the Petitioners to the post of Senior Assistant (Electronics) if they fall within the zone of merit for the said vacancies.

c) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

2. I have heard Mr. Ramesh Chandra Singh, learned counsel for the petitioner, and Mr. Amit Bardhan Mohanty, learned counsel for the AAI.

3. The petitioner had applied for the post of Senior Assistant



(Electronics) under the said Advertisement, in the Ex-Servicemen [“ESM”] category. He secured 65 marks in the Computer Based Test [“CBT”], but was not shortlisted for document verification, as the cut-off for the ESM category was 66 marks. Aggrieved thereby, he, alongwith two other candidates, filed W.P.(C) 9359/2025 [*Gaurav Verma & Ors. v. Airport Authority of India & Anr.*]¹ before this Court, contending that he ought to have been considered as an Unreserved Category candidate, since his score of 65 marks was higher than the cut-off for the Unreserved Category, i.e. 59 marks.

4. The aforesaid petition was dismissed by a judgment of this Court dated 17.02.2026, principally on the ground that the petitioners therein had availed the benefit of age relaxation available to ESM candidates and, having done so, could not claim consideration against the Unreserved Category. The said judgment was accepted by the petitioners; none of them, including the petitioner herein, assailed the same.

5. During the pendency of the aforesaid writ petition, the petitioner also filed I.A. No. 1998/2026, seeking a direction to the respondents to operate the Wait List or Merit List for the ESM category. A copy of the said application has been handed up by Mr. Mohanty in Court and is taken on record.

6. It was stated therein that seven vacancies in the ESM category had been advertised and that 12 candidates had been called for document verification. According to the petitioner, three of the candidates did not appear for document verification, while four others did not accept the offers. One other candidate did not join the Northern Region and instead

¹ hereinafter, “*Gaurav Verma*”.



joined the Western Region. It was, therefore, contended that three vacancies in the ESM category remained unfilled. The reliefs sought in the application were as follows:

“a) Direct the Respondents to operate the wait list/merit list for the ESM category against the 03 vacancies created by the cancellation of Roll Nos. 252036030004, 251153030096, 251848030052, 252132030002, 252674030003, 251460030040, 251153030028 and 253283030029.

b) Direct the Respondents to provisionally select an appoint the Petitioners to the post of Senior Assistant (Electronics) if they fall within the zone of merit for these vacant seats.

c) Pass any other order(s) as this Hon’ble Court may deem fit.”

7. Mr. Singh submits that no separate order was passed on the said application, and that the application was disposed of by the judgment rendered in W.P.(C) 9359/2025 on 17.02.2026.

8. It is evident from the record that the relief sought in I.A. No. 1998/2026 and that sought in the present writ petition are, in substance, identical. Mr. Mohanty, therefore, submits that the present petition is barred by the principles of constructive *res judicata*. Having sought the same relief by way of an application in the earlier writ petition and having failed therein, the petitioner cannot be permitted to maintain a second substantive writ petition seeking the very same relief.

9. Although Mr. Singh submits that the relief sought in the said application was not independently dealt with, the fact remains that the application formed part of the record of the earlier writ petition, was disposed of by the judgment dated 17.02.2026, and the said judgment has been accepted by the petitioner. The petitioner cannot, therefore, seek to reopen the same issue by instituting a fresh writ petition.

10. In any event, even on merits, the petitioner’s case is covered



against him by the subsequent judgment of a coordinate Bench in *Prashant Tiwari v. Airport Authority of India & Anr.*². The said judgment arose out of the very same recruitment. Although the petitioner therein belonged to the EWS category and sought consideration against unfilled EWS vacancies, the issue before the Court was substantially similar, namely, whether the existence of unfilled vacancies could require AAI to operate or create a wait list so as to bring within the zone of consideration, a candidate who had not crossed the operative category-wise cut-off.

11. The petition was dismissed *vide* order dated 08.05.2026 with, *inter alia*, the following observations:

“10. The first point which needs to be kept clear is the distinction between minimum eligibility to sit in the examination and the operative cut-off for further progression in the recruitment process. The advertisement prescribed minimum pass marks for categories of candidates. That condition merely determined whether a candidate could be treated as having passed the examination. It did not mean that every candidate who crossed that minimum mark acquired a right to be called for document verification or to be appointed. In a competitive recruitment, the effective cut-off is determined by the number of vacancies, the number of candidates called in the permissible ratio, their inter se merit, and the requirements of the recruiting authority.

11. The Petitioner secured 52 marks. The EWS cut-off in the result was 53 marks. The Petitioner was, therefore, below the operative merit line fixed for the EWS category in this recruitment. He was not called for document verification. His name does not appear in the select list. His name also does not appear in the waitlist/select panel. In substance, the relief sought by him would require this Court to direct AAI to bring down the EWS cut-off from 53 to 52 so that he can enter the recruitment stream. That cannot be done in exercise of writ jurisdiction.

12. The Petitioner’s reliance on the mere existence of vacancies does not carry the matter any further. The law is settled that the notification

² W.P.(C) 6236/2026; decided on 08.05.2026 [hereinafter, “*Prashant Tiwari*”].



of vacancies, or even the availability of vacancies after a recruitment process, does not by itself create an enforceable right to appointment. In *Shankarsan Dash v. Union of India*, [(1991) 3 SCC 47], the Constitution Bench held that a recruitment notification ordinarily amounts to an invitation to eligible candidates to apply and that even a candidate whose name appears in a select list does not acquire an indefeasible right to appointment. The State is not under an obligation to fill every notified vacancy unless the governing rules so require. The only limitation is that the decision not to fill the vacancies must be bona fide and must not be arbitrary.

13. That principle squarely applies to the present case because **the Petitioner is neither a selected candidate nor a wait-listed candidate, and was never even called for document verification. His case, therefore, falls outside the approved select and wait-list panel. The mere fact that he obtained marks above the minimum qualifying threshold does not mean that he crossed the operative EWS cut-off for being carried forward in the recruitment process. If even a selected or empanelled candidate cannot claim an appointment as a right, a candidate who remained below the category-wise cut-off for further consideration certainly cannot assert a stronger right merely because some vacancies may have remained unfilled.**

14. The decision in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220], is also apposite. The Supreme Court upheld the decision of the State not to fill all advertised vacancies where the authority chose to maintain a higher standard for appointment. Recruitment to public posts is not a mechanical exercise of filling seats. The employer is entitled to maintain the merit standard considered appropriate for the post, subject always to the constitutional discipline of fairness and non-arbitrariness. A writ court cannot compel the recruiting authority to dilute the merit line or lower the operative cut-off merely because vacancies exist.

15. The Petitioner's argument based on the waitlist/select panel also fails on the record. The Selection Committee report does refer to four waitlisted candidates. However, those four candidates belong to UR/ESM and SC categories. No EWS candidate is shown in the waitlist/select panel. The Petitioner's name is absent. **This Court cannot direct the Respondents to create an EWS waitlist. That would not be "operation" of an existing waitlist. It would amount to expansion of the selection zone and lowering of the cut-off after publication of result.**

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17. The Petitioner secured 52 marks. The operative EWS cut-off was 53. The Petitioner, therefore, remained below the merit line at which



EWS candidates were carried forward in the recruitment process. To accept his submission would require the Court to treat the minimum qualifying marks as the decisive standard and to disregard the actual cut-off generated by the recruitment. There is no service law principle that compels this Court to direct the employer to lower the category-wise cut-off merely because vacancies have remained unfilled after document verification.

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22. The documents relating to other regions of AAI do not create an enforceable right in favour of the Petitioner. Those documents pertain to different advertisements, different posts, different regions, different years and different category-wise cut-offs. They may show that supplementary lists have been issued in some recruitments where the authority considered it administratively appropriate. They do not establish a uniform legal mandate that in every recruitment and in every region AAI must continue lowering the cut-off until every advertised vacancy is filled. Article 14 does not require mechanical repetition of an administrative course adopted in a distinct recruitment. It forbids hostile discrimination, not reasoned administrative variation.

23. There is no allegation that a candidate lower in merit than the Petitioner has been called or appointed. There is no case of pick and choose. There is no pleading of mala fides. The Petitioner's complaint is, at its highest, that vacancies should not be carried forward and should instead be filled by descending below the declared EWS cut-off. Such a direction would place the Court in the position of the recruiting authority. That is not the function of judicial review.

24. The advertisement itself made the vacancies tentative and reserved to AAI the right to modify, restrict, enlarge or cancel the recruitment process. It also made clear that selection was provisional and subject to verification of documents and other requirements. These clauses do not give the employer a licence to act unfairly, but they do reinforce the settled position that a candidate cannot insist that every advertised vacancy must be filled in the same recruitment irrespective of merit cut-off, document verification outcome, panel structure or administrative closure of the process.

25. The Petitioner's submission that unfilled EWS vacancies should not be wasted is attractive at first sight, but it cannot override the discipline of a competitive recruitment. Reservation ensures opportunity in accordance with law. It does not authorise appointment of a candidate who has not crossed the operative cut-off fixed for the category. If vacancies remain unfilled after the recruitment cycle, the Respondents must deal with them in accordance with the applicable



reservation framework and recruitment rules. That may include carrying them forward, if permissible. It does not follow that the Court must compel AAI to call the Petitioner by lowering the cutoff.”³

12. The aforesaid observations directly apply to the petitioner’s case. The petitioner secured 65 marks in the CBT, as against the cut-off of 66 marks for the ESM category. He was, therefore, not called for document verification, and no wait list was prepared for the ESM category.

13. The only distinction sought to be drawn by Mr. Singh is that, unlike EWS reservation, which is vertical in nature, ESM reservation is horizontal. I am unable to accept that this distinction takes the petitioner’s case outside the principle laid down in *Prashant Tiwari*. The fact that ESM reservation is horizontal does not, by itself, confer a right upon a candidate who has not crossed the operative cut-off for the ESM category to require AAI to operate or create a wait list in his favour.

14. Mr. Singh further submits that the petitioner is, in fact, a meritorious candidate, having secured marks higher than the cut-off for the General Category. This contention, however, has already been considered and rejected by this Court in *Gaurav Verma*, to which the petitioner himself was a party. The said judgment specifically dealt with the petitioner’s claim for consideration against the Unreserved Category, notwithstanding his having availed the benefit of age relaxation as an ESM candidate.

15. In view of the aforesaid position, I am unable to come to the assistance of the petitioner. The relief sought in the present petition is substantially the same as the relief sought by him in the earlier proceedings and, having accepted the judgment rendered therein, the

³ Emphasis supplied.



petitioner cannot seek to reagitate the same issue in a fresh writ petition. In any event, the relief sought is also untenable on merits, in view of the principle laid down by the coordinate Bench in *Prashant Tiwari*.

16. The petition, alongwith pending applications, is accordingly, dismissed.

PRATEEK JALAN, J

SEPTEMBER 24, 2026
'B'/SD/