

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6608 of 2014**

1. Pankaj Kumar Das, S/o Shri Palak Dhari Das, Aged About 36 years, R/o Qr. No. 490/2, New Loco Colony, P.S. Sirgitty, Bilaspur District Bilaspur (C.G.).
2. Girish Kumar Kumbhkar, S/o Shri M.L. Kumbhkar, Aged About 41 Years R/o Construction Colony 36/2, Tarbahar P.S. Tarbahar Bilaspur District Bilaspur (C.G.)
3. Dinesh Kumar Rathore, S/o Shri Prabhu Ram Rathore, Aged About 34 Years, R/o Qtr No. W/04 Royal Town, In Front Of Gulab Nagar, Mopka, P.S. Sarkanda Bilaspur District Bilaspur (C.G.)
4. Kanhai Singh S/o Late Shri Anand Ram, Aged About 40 Years, R/o Behind Mata Choura, Devnagar, Birkona Koni, P.S. Koni Bilaspur District Bilaspur (C.G.)

---- Petitioners**Versus**

1. Union of India Through The General Manager South Eastern Central Railway Bilaspur Zone, Headquarters Office Bilaspur 495004 (Chhattisgarh)
2. The Chief Personnel Officer S.E.C. Railway Headquarters Office Personnel Department, Bilaspur (C.G.)
3. The Senior Personnel Officer S.E.C. Railway Headquarters Office, Bilaspur 495004 (C.G.)
4. Bajrang Kumar Dewangan S/o Shri Ramlal Dewangan, Aged About 36 Years Employed As Technician - I (TM) Under Sr. Section Engineer (TM) SEC Railway (C.G.)
5. Mohd. Rafique S/o Mohd. Ismail, Aged About 44 Years, Employed As Technician -I (TM) Under Sr. Section Engineer TM S.E.C. Railway Raipur Dist. Raipur C.G.
6. Shri Lileshwar Ram, S/o Shri Lakhandas Sahu, Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.).

7. Shri Bhupendra Pratap Singh S/o Shri U.S. Singh Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Bilaspur Pin 495004 Dist. Bilaspur (C.G.)
8. Shri K. Krishna Rao S/o Shri K. Sanyasi Rao Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony Bilaspur-495004, Distt. Bilaspur (C.G.)
9. Shri Manoj Kumar Tiwari S/o Shri Vijay Kumar Tiwari Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony, Bilaspur, Pin 495004 Dist. Bilaspur (C.G.)
10. Shri Balaji Dalai S/o Shri Saheb Dalai Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony, Bilaspur Pin 495004 Dist. Bilaspur (C.G.)
11. Shri Mithalesh Kumar Verma S/o Shri Firangilal Verma Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony, Bilaspur Pin 495004 Dist. Bilaspur (C.G.)
12. Mohd. Fareed S/o Mohd. Gani Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur, Distt. Raipur (C.G.)
13. Shri Shanker Dayal Tiwari S/o Shri B. Ramanand Tiwari Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.)
14. Shri Ramesh Kumar Mane S/o Shri M.M. Mane Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway PHO, Motibag Nagpur (M.S.) Pin-440001.
15. Shri Siddharth Kumar S/o Shri Tilak Ram Sahu Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.)
16. Shri Purushottam Dewangan S/o Shri Shiv Prasad Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur, Distt. Raipur (CG) Pin 492001.

17. Shri Umapati S/o Shri D. Dappalawami Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.).
18. Shri Arun Kumar Kaiwarty S/o Shri Ramnath Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony Bilaspur, Distt. Bilaspur Pin 495004.
19. Shri Sahettar Bhatnagar, S/o Shri Kuswa Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway, Barah Kholi, Railway Colony Bilaspur, Distt. Bilaspur (CG) Pin 495004.
20. Shri Swami S/o Shri Kondai Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway PHO, Moti bag, Nagpur (M.S.) 440001

---- Respondents

And

Writ Petition(S) No. 6589 of 2014

1. Pankaj Kumar Das S/o Shri Palak Dhari Das, Aged About 36 years R/o Qr. No. 490/2, New Loco Colony, PS Sirgitti, Bilaspur, District Bilaspur, (CG).
2. Girish Kumar Kumbhar S/o Shri M.L.Kumbhkar, Aged About 41 Years R/o Construction Colony, 36/2, Tarbahar, PS Tarbahar, Bilaspur, District Bilaspur (CG)
3. Dinesh Kumar Rathore S/o Shri Prabhu Ram Rathore, Aged About 34 Years R/o Qr. No. W/04 Royal Town, In Front of Gulab Nagar, Mopka, PS Sarkanda, Bilaspur, District Bilaspur (CG)
4. Kanhai Singh S/o Late Shri Anand Ram, Aged About 40 Years, R/o Behind Mata Choura, Devnagar, Birkona, Koni, PS Koni, Bilaspur, District Bilaspur, (CG).

---- Petitioners

Vs

1. Union of India Through The General Manager, South Eastern Central Railway, Bilaspur Zone, Headquarters Office, Bilaspur 495004 (C.G.)
2. The Chief Personnel Officer, S.E.C. Railway, Headquarters Office, Personnel

Department, Bilaspur 495004 (C.G.)

3. The Senior Personnel Officer S.E.C.Railway, Headquarters Office, Bilaspur 495004 (C.G.)
4. Rajendra Kumar Thakur S/o Shri P.D.Thakur, Aged About 36 Years Employed As Technician-I (TM) Under Sr. Section Engineer (TM) S.E.C. Railway, Raipur Pin 492001 Distt. Raipur (C.G.).
5. Sudesh R. Nandeshwar S/o Shri Ramdas Nandeshwar, Aged About 39 Years Employed As Technician-I (TM) Under Sr. Section Engineer (TM) S.E.C.Railway, Nagpur Pin 440001 Distt Nagpur (M.S.)
6. Shri Lileshwar Ram S/o Shri Lakhandas Sahu, Working As Technician-I Under Sr. Section Engineer (TM) S.E.C.Railway, Engineering Colony, Raipur Pin 492001 Distt Raipur, (CG)
7. Shri Bhupendra Pratap Singh S/o Shri U.S.Singh Working As Technician-I Under Sr. Section Engineer (TM) S.E.C. Railway, Barah Kholi, Railway Colony Bilaspur Pin 495004, Distt Bilaspur (CG)
8. Shri K. Krishna Rao S/o Shri K. Sanyasi Rao Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony Bilaspur-495004, Distt. Bilaspur (C.G.)
9. Shri Manoj Kumar Tiwari S/o Shri Vijay Kumar Tiwari Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony, Bilaspur, Pin 495004 Dist. Bilaspur (C.G.)
10. Shri Balaji Dalai S/o Shri Saheb Dalai Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony, Bilaspur Pin 495004 Dist. Bilaspur (C.G.)
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13. Shri Shanker Dayal Tiwari S/o Shri B. Ramanand Tiwari Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.)
14. Shri Ramesh Kumar Mane S/o Shri M.M. Mane Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway PHO, Motibag Nagpur (M.S.) Pin-440001.
15. Shri Siddharth Kumar S/o Shri Tilak Ram Sahu Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.)
16. Shri Purushottam Dewangan S/o Shri Shiv Prasad Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur, Distt. Raipur (CG) Pin 492001.
17. Shri Umapati S/o Shri D. Dappalawami Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Raipur Pin 492001 Dist. Raipur (C.G.).
18. Shri Arun Kumar Kaiwarty S/o Shri Ramnath Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway Engineering Colony, Barah Kholi, Railway Colony Bilaspur, Distt. Bilaspur Pin 495004.
19. Shri Sahettar Bhatnagar, S/o Shri Kuswa Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway, Barah Kholi, Railway Colony Bilaspur, Distt. Bilaspur (CG) Pin 495004.
20. Shri Swami S/o Shri Kondai Working As Technician - I Under Sr. Section Engineer (TM) S.E.C. Railway PHO, Motibag, Nagpur (M.S.) 440001

---- Respondents

For Petitioners	:	Shri Jitendra Pali, Advocate.
For Respondents No.1 to 3	:	Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates.
For Respondent No. 4 & 5 :	:	Shri B.P. Rao, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

04/08/2015

Per Navin Sinha, Chief Justice.

1. The two writ applications arise from a common order dated 21.11.2014 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit sitting at Bilaspur allowing O.A. Nos. 1042 of 2012 and 1043 of 2012 filed by Respondents No. 4 and 5 respectively, in the two writ petitions.
2. The Tribunal held that the criteria adopted by the Selection Committee for award of 30 marks under the heading "Record of Service" on basis of educational qualifications was contrary to the Rules and Manuals of the Railways. The Respondent Railways should have adopted other appropriate norms related to performance in service if Annual Confidential Reports (ACR) of the candidates was not available. Directions have been issued to recast the merit list either by ignoring the marks given on basis of educational qualifications or by giving uniform marks to all candidates who fulfilled the basic qualifications for selection, also keeping in mind the marks awarded with regard to punishment and awards in service.
3. Since the facts and questions arising for consideration are common, the two Writ Petitions have been heard together and are being disposed by this common order.
4. The Respondent Railways published notification dated 16.09.2011 inviting applications for filling up 19 vacancies of Junior Engineer (Track Machine)

[hereinafter referred to as “JE (TM)”] against the 25% quota from Intermediate apprentices. Candidates having qualification of ITI/Act apprenticeship or 10+2 in Science stream, three years service in skilled (Technician-Track Machine) Grade-III and above with a satisfactory service record defined as application to work, attendance and general conduct were eligible to be considered. The selection process comprised a written examination of 50 marks, followed by scrutiny of service records carrying 30 marks. The Petitioner and the Respondents 4 and 5 inter alia participated. The Selection Committee due to non-availability of ACR of Technician Grade-III and current ACR of many belonging to Technician Grade-I & II, with regard to the award of 30 marks decided to adopt a criteria for marks on basis of educational qualifications, and awards/ punishment in service. It was applied uniformly to all candidates. Resultantly, the Petitioners possessing higher educational qualifications scored higher marks under the heading service record and were declared successful while the Respondents lost out even though they had both cleared the written examination and had secured the minimum 60% marks in professional ability and 60% marks in aggregate.

5. Learned Counsel for the Petitioner submitted that Indian Railways Establishment Manual Vol. 1 – 2009 Para 146 (a) in clause III provides for induction as intermediate apprentices from amongst skilled staff (Technician –TM) having qualification of ITI/Act Apprenticeship on the relevant trade or 10+2 in Science stream with three years service in skilled (Technician – TM) Grade III. In absence of ACR’s, the Selection Committee committed no wrong in devising a uniform criteria with regard to award of 30 marks for service

record and applied it uniformly to all the candidates. It is not the case of the private Respondents that no selection process has been followed. The requirement of application to work, attendance and general conduct was not any selection criteria but only a condition of eligibility. Written examination has been held followed by assessment of service records also by considering awards and punishments including negative marks for the same.

6. If ACR's were not available, the Selection Committee committed no wrong in devising a uniform criterion. There are no allegations of malafides against the Selection Committee. If any irregularity has been committed by the Selection Committee, directions can be issued for considering the candidature of the private Respondents also. The Petitioners who have got promotion against the 25% quota are not at fault in any manner. Pursuant to the said promotion, they have been granted further promotion to the post of Senior Section Engineer. It will be highly unjust and inequitable to set aside their selections as JE (TM) which will virtually amount to reversion. It is not a case where there has been no process of selection and no criteria for award of marks. Reliance was placed on 1985 (4) SCC 417 (Ashok Kumar Yadav and Others Vs. State of Haryana and Others), 1993 (2) SCC 310 (Government of Andhra Pradesh Vs. P. Dilip Kumar and Another), 1996 (4) SCC 319 (Prem Singh and Others Vs. Haryana State Electricity Board & Others), 2001 (3) SCC 328 (Buddhi Nath Chaudhary and Others Vs. Abahi Kumar and Others), 2002 (2) SCC 712 (G.K. Nayak Vs. Goa University and Others), 2002 (7) SCC 29 (Satish Rawat Vs. Union of India and Others), 2007 (3) SCC 720 (Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and

Another) and 2010 (8) SCC 372 (Basavaiah (Dr). Vs. Dr. H.L. Ramesh and Others).

7. Counsel for the Respondent Railways submitted that since the ACRs were not available or written, the Selection Committee devised its own norms in the peculiarity of the situation with regard to award of 30 marks based on higher academic qualifications and grant of awards/punishments. The Railway Manual and Rules permit the Selection Committee to devise its own norms in such situations. The norms so adopted by the Selection Committee have been applied uniformly to all candidates and not selectively. Like submission was made with regard to absence of any allegations/malafides against the Selection Committee.
8. Learned Counsel for the private Respondents, the Original Applicants in the OA, submitted that the selection was to a higher post against 25% quota meant for Intermediate apprentices. They have been in service since earlier. Since they were in service from earlier even if their ACRs were not available, the Respondents Railways or for that matter the Selection Committee could well have devised method of award of 30 marks by assessment of the service records for which there was guideline in the Notification dated 16.9.2011 as application to work, attendance and general conduct. These were not conditions of eligibility as urged on behalf of the Petitioners. It was submitted that the Indian Railways Establishment Manual Vol. I-2009 Para 146 (a) Clause III amply illustrates what satisfactory service record means by elucidating that it has to be with respect to application of work, attendance and general conduct. The word 'Process of Selection' cannot be read in

isolation devoid of these three considerations. If the candidates were working since earlier as intermediate apprentices, prudence dictates that the authorities have had the opportunity to assess their application of work, attendance and general conduct. It is not the case of the Respondents Railways that the performance and works of Intermediate apprentices are not monitored or supervised for efficiency. Reference was also made to para 219 (g) of the Indian Railways Establishment Manual Vol. I – 2009 explaining that record of service included taking into consideration the performance of the employee in essential training school/institutes apart from examining ACRs and other relevant records. Therefore, there were sufficient norms indicated for the Railways even if ACR's were not written or available for award of 30 marks. The mere adoption of a uniform criteria by going behind the service record based on higher educational qualifications possessed by a candidate was a wholly irrelevant and irrational criteria having no nexus to the selection which was to be based on service record. Malafides need not be alleged specifically, and is not a relevant consideration, if on the face of it the Selection Committee exceeded its jurisdiction and acted on criteria beyond the Railway Manuals and Rules.

9. We have considered the submissions on behalf of the parties and are satisfied that the writ applications can be disposed at the stage of admission.
10. Both the Petitioners and the private Respondents fulfilled the criteria otherwise to be considered for promotion against the 25% quota of Intermediate apprentices to the post of "JE (TM)". They qualified in the written examination also. At the next stage of the selection process, while awarding

30 marks under the heading “Record of Service”, due to non-availability of ACRs, the Selection Committee decided to award marks on basis of the educational qualification of Higher Secondary level/ITI, Diploma, Graduation/Engineering degree and Post Graduation. 24 marks were granted for Post Graduate qualification, 22 for Graduate/Engineering Degree, 20 mark for Diploma and 18 marks for Higher Secondary/ITI. As the private Respondents only possessed the qualification of Higher Secondary/ITI, they were allotted 18 marks and were therefore unsuccessful. The marks awarded for awards/ punishment was miniscule at 1,2 or 4.

11. The short question arising for our consideration is whether the term 'Satisfactory Service Record' has been defined or explained in the Railway Manual or Rules. If it has not been explained or defined, what shall be the connotation of the same and the correctness of the procedure followed by the selection committee? Conversely, if it has been defined and explained, could the Selection Committee have adopted a different criterion.
12. A bare perusal of the Indian Railway Establishment Manual-Vol. I-2009, Para-146(a)(iii) reveals that 'Satisfactory Service Record' was to be assessed with respect to the candidates' application to work, attendance and general conduct. It was not merely an eligibility criteria as contended on behalf of the Petitioners. If the candidates were working since earlier as Intermediate apprentices with the Respondent Railways, surely they had enough opportunity and occasion to watch their performance with regard to application of work, attendance and general conduct. Furthermore, under para-219(g) of the Indian Railway Establishment Manual-Vol.-I, 2009, the

performance in essential training schools/institutes and other relevant records could also be taken into consideration even if ACRs were not available.

13. The Railway Manual and Rules do not leave it to the imagination that the award of 30 marks was to be based on performance in service. So long as the selection process adopted criteria within the arena of service performed as Intermediate apprentices, no fault could have been found with it. The Selection committee grossly erred in adopting pre service criteria to assess performance in service. The fact that it may have been applied uniformly to all the candidates will not cure the illegality as it was clearly based on extraneous materials. Unreasonably high marks of 20 to 24 were awarded for academic performance at the higher secondary level, diploma, graduation or Post Graduation level in contradistinction to award of 2 or 4 marks for award and punishments in service which was an index of performance in service. Such procedure fundamentally alters the requirement under the Railway Manual and Rules for assessment of service record.
14. We are therefore in an agreement with the order of the Tribunal that the criteria adopted by the Selection Committee for award of 30 marks was totally foreign and irrational for purpose of assessment of the service record of the candidates and grant of marks. If an illegality has been committed sympathy on basis of that further promotions may have been granted cannot be invoked and the consequences in the law will have to follow. If the Petitioners were not responsible for adoption of wrong criteria to defend their promotions, neither were the private respondents responsible for the wrong done to them.
15. In conclusion, with regard to those whose ACRs may be available the

Respondent-Railways shall proceed on basis of the same. With regard to others, we leave it to the Respondent Railways to lay down the criteria for assessment of service record in accordance with the Rules and Manuals. The order of the Tribunal is modified to the extent that it has given further directions for the manner in which the assessment of service record has to be done.

16. Assessment of service records was an accepted method of consideration for promotion was considered in 1986 Supp SCC 617 (R.S. Dass v. Union of India) observing :-

“29. It was urged that the selection merely based on the appraisal of service record is arbitrary and it is bound to cause injustice as entries in the character roll of members of the State Service depend upon the whims of the recording officer. It is true that the service records contain remarks which sometimes may not be fully justified, but for that reason the scheme contained in the rules and regulations for promotion cannot be characterised unreasonable. There are various methods of selection viz. by competitive examination, written test-cum-viva voce, or by assessment of service records. For the purpose of recruitment to the Indian Administrative Service from amongst the officers of the State Civil Service, latter method namely, selection on the basis of scrutiny of service records has been accepted.....”

17. Even though the question arising for consideration was extremely short, since Learned Counsel for the Petitioners has referred us to more than one citation, in all fairness it will be our duty to deal with each one of them.
18. In Ashok Kumar Yadav (Supra), the issue was with regard to the illegality in the selection of the members of the Public Service Commission, their participation in the selection process while relatives were to be considered and the calling of candidates in excess of twenty times the number of vacancies. Higher marks were given at viva voce stage. The observation that the Court could not sit in judgment over the wisdom of the Selection

Committee came to be made in that background completely distinguishable from the present facts.

19. In Dilip Kumar (Supra), the question related to the meaning of the word 'preference' and in which context, the issue for higher educational qualifications came to be considered. It also has no application to the facts of the present case.
20. In Prem Singh (Supra), the issue related to appointments in excess of advertised posts. In G.K. Nayak (Supra), it was held that it was for the university to decide what kind of research would be adequate to qualify for professorship especially when the selection for the post of Professor was made by experts with specialization in their own field of knowledge.
21. In Satish Rawat (Supra), both the candidates had qualified in the written examination. The controversy related to preference of one over another as a Goalkeeper and Deep Defender. The Appellant was excluded from consideration by failure of the department to produce the relevant records which were subsequently placed before the Court. In those peculiar circumstances, the appointment of the Respondent was not interfered with and directions were given for creation of a supernumerary post.
22. In Buddhi Nath Chaudhary (Supra), the issue related to appointment of Motor Vehicle Inspector. The requirement for possessing a driving licence came to be introduced while the selection process was pending. In the peculiar circumstances, exercising powers under Section 141 of the Constitution of India for doing substantive justice, considering that the persons had already

been appointed and were discharging the duties, it was held that lack of experience, if any, at the time of recruitment had been made good enough. Adjustments were made on equitable considerations, a power which we do not possess under Article 226.

23. In Sanjay Singh (Supra), the issue related to whether the scaling system adopted for recruitment in judicial service was arbitrary or irrational and not adoption of a criteria outside the Rules and Manuals. In Basavaiah (Supra), the issue related to appointment on the post of Reader and interpretation of advertisement which provided for a good academic record with a doctorate degree. The expert committee had carefully examined and scrutinized the qualifications, experience and published works of the Appellant. In those circumstances it was held that it was not the duty of the Court to sit in Appeal over the recommendations of the expert committee.
24. In the result, the writ petitions are held to be devoid of merit and are dismissed. The order of the Tribunal is affirmed with modification.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE