

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2967 of 2016

DATE OF DECISION: FEBRUARY 15, 2016

NAVEEN LOKESH

...PETITIONER

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest?

PRESENT: MR. ASHISH GUPTA, ADVOCATE FOR THE PETITIONER.

M. JEYAPPAUL, J.

1. The writ petitioner applied for the post of Senior Section Engineer (Track Machine) advertised through Centralized Employment Notice No.01/2012. Out of 117 posts of Senior Section Engineer (Track Machine), 8 posts were filled up by the Railway Recruitment Board, Chandigarh. As the petitioner cleared the written test, he was called for interview and document verification on 1.2.2013.

2. It was the contention of the writ petitioner that against the above 8 vacancies, the Railway Recruitment Board, Chandigarh, forwarded the names of 8 persons, but his name was kept in waiting list. He contended that out of 8 candidates, only 7 joined the service. The grievance of the writ petitioner is that instead of filling up the 8th vacancy from the wait listed candidates in terms of Railway Recruitment Board letter dated 6.8.2009, the respondents have issued a fresh advertisement No.02/2014 on 20.9.2014 inviting applications for various posts including that of Senior Section

Engineer (Track Machine).

3. The respondents contended that all the 8 candidates have joined the service. It was further contended that as the writ petitioner participated in the selection process pursuant to the fresh advertisement given on 20.9.2014, he is debarred from challenging the final select list.

4. The Tribunal rejected the plea of the writ petitioner on the grounds that all the 8 vacancies had been filled up from out of the candidates whose names were recommended and that the writ petitioner who participated in the selection process is estopped from challenging the action of the respondents.

5. Heard the submissions made by learned counsel appearing for the writ petitioner. It is a well settled proposition of law that no right vests in a successful candidate for appointment merely on the ground that he was in the merit list/wait list. It is open to the Department to fill up the vacancies. Of course, the Department should come out with plausible explanation as to why the vacancies are not being filled up from the merit list/wait list.

6. In the instant case, only 8 vacancies were to be filled up through selection process conducted by the Railway Recruitment Board, Chandigarh. Annexure P-4, the information under the RTI Act received by the writ petitioner would go to indicate that all the 8 empanelled candidates turned up for appointment as apprentice SSE/TMC. But unfortunately, one of the candidates, out of those 8 candidates, had absconded after attending 10 days of training.

7. It is not a case where a trainee who was undergoing training

informed the Department and left the training. The Department did not receive any information as regards the whereabouts of the absconded candidate. Such a candidate might have been afflicted with some mental illness. He may appear after some time claiming that he could not continue with the training as he was suffering from mental illness. Therefore, the vacancy created by abscondance cannot be counted as an immediate vacancy to be filled up from the wait listed candidate.

8. The decision in *Agam Dayal vs. Union of India and others, WP(C) 2512/2011* decided by Delhi High Court on 20.4.2015 would apply to a situation where an employee who joined training, left the same in the middle after intimating the Department.

9. Therefore, in our considered view, all the 8 candidates had been accommodated by the Department and the candidature of the writ petitioner could not be considered by the Department as nothing was heard from the absconding trainee.

10. As rightly pointed out by learned Tribunal, the writ petitioner cannot challenge the selection process having already participated in the very same process.

11. For all these reasons, we find that there is no merit in the writ petition. Therefore, it stands dismissed.

(M. JEYAPPAUL)
JUDGE

February 15, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE