

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1766 of 2020**

1. Parshuram Kumar S/o Shri Ram Kishon Pandit Aged About 37 Years Unemployed, R/o- Village- Meharpur, Po- Ranabigha, District- Nalanda (Bihar) 803103
2. Hari Om Yadav S/o Shri Khem Chandra Yadav Aged About 37 Years Unemployed, R/o- Near Home Guard Training Centre, Ritu Vihar Colony, Gwaltor Road, Jhansi, Uttarpradesh- 284001
3. Chandan Kumar S/o Shri Jitu Prasad Aged About 31 Years Unemployed, R/o Village- Sammaspur-803201, Po- Fatuha, District- Patna, Bihar, District : Patna, Bihar
4. Rakesh Ranjan S/o Shri Sachchida Nand Sinha Aged About 29 Years Unemployed, R/o- Mo-Bairagi Po-R.S. In Front Of Rajbhawan Gaya (Bihar) 823002
5. Binod Mahto S/o Shri Sakaldeo Mehto Aged About 29 Years Unemployed, R/o- At And Po- Bari Aighu, District Begusarai (Bihar) 851129
6. Abdesb Kumar Singh S/o Shri Kripa Ram Dohare Aged About 43 Years Unemployed, R/o- Hn. 699, Near Ram Nagar, Sbi Ajeet Nagar, Etawah (UP) 206001
7. Amresh Kumar S/o Shri Rajaram Mahto Aged About 30 Years Unemployed, R/o-C/o America Prasad, Village- Raslpur, Po- Nagvan, Ps-Kako, District-Jehanabad (Bihar) 804420

---- Petitioners**Versus**

1. Union of India Through- The General Manager, S.E.C. Railway, Bilaspur Zone, Headquarter Office, Bilaspur- 495004, Chhattisgarh
2. The Chief Personnel Officer S.E.C. Railway, Bilaspur Zone, Headquarter's Office Bilaspur- - 495004 (CG)
3. The Chairman Railway Recruitment Cell, GM Office, S.E.C. Railway, Head Quarters, Bilaspur- 495004 (CG)

---- Respondents

For Petitioners	:	Shri B.P. Rao, Advocate.
For Respondents	:	Shri Abhishek Sinha, Standing Counsel.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Order on Board

Per P. R. Ramachandra Menon, Chief Justice

05.02.2021

1. Whether the claim of the Petitioners to be appointed against the vacant posts of Jr. Clerk-cum-Typist as per the Employment Notification issued in the year 2019, without participating in the process of selection but for their placement in the 'waiting list / standby list' of the previous round of selection held in the year 2010 can be entertained, is the point raised in this writ petition.
2. Grievance is against the interference declined by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting : Bilaspur (for short "the Tribunal) by dismissing the O.A. preferred in this regard as per Annexure P/9 order dated 17.09.2019.
3. Shri B.P. Rao, the learned counsel appearing for the Petitioners submits that the Centralized Employment Notification was issued by the 3rd Respondent in February 2010 for filling up various posts including 97 posts of Jr. Clerk-cum-Typist in the SECR (South East Central Railways). The first stage of the Written Test was conducted in September, 2013 and on clearing the same, the Petitioners participated in the Second Stage of Written Test held in January, 2014 and thereafter cleared the Typewriting Skill Test conducted in August, 2014. After the documents verification, the Petitioners were included in the 'waiting list' as additional candidates. Among the 49 additional candidates which include the Petitioners, about 19 candidates were given appointment leaving the remaining 30 candidates in the 'standby list' (which includes the Petitioners) in which it was mentioned that the candidates being lower in the merit could not be considered for appointment due to non-availability of vacancies.

4. It is the case of the Petitioners that later on 30.05.2016, the Respondents issued a replacement panel of five candidates from the standby list for appointment in the Modern Coach Factory at Raebareli while no appointment orders were issued in favour of the remaining candidates. Later, a fresh Recruitment Notification was issued in the year 2019, wherein 4,319 vacancies in the post of Jr. Clerk-cum-Typist were notified to be filled up. According to the Petitioners, the said 4,319 vacancies had not accrued in one financial year but was the total figure including the back log vacancies in the previous years and in the said circumstance, the Petitioners who were already given a placement in the waiting list / standby list of the previous recruitment exercise were to be given the offer of appointment. It is in the said circumstance that they approached the Tribunal with the prayers as given below:

“(8.1) That the Hon'ble Tribunal be pleased to allow the O.A. and by calling entire relevant records from the possession of Respondents for its kind perusal to decide the Applicant's grievance.

(8.2) That the Hon'ble Tribunal be pleased to pass an Order, directing the Respondents to consider the Appointment of Applicants against the vacant posts of Jr. Clerk cum Typist as per Employment Notification No. CEN 01/2019 in the interest of justice.”

5. Reliance was sought to be placed on the verdicts passed by the Apex Court in ***R.S. Mittal Vs. Union of India*, 1995 Supp (2) SCC 230, *A.P. Aggrawal Vs. Govt. of NCT of Delhi*, (2000) 1 SCC 600, *Dir. S.C.T.I for Med.Sci. and Tech. and another Vs. M. Pushkaran*, (2008) 1 SCC 448 and further *State of Rajasthan Vs. Jagdish Chopra*, (2007) 8 SCC 161** to contend that, appointment to a person who is on the select panel cannot be denied and the authority cannot resort to a fresh selection process without a justifiable reason and further that the recruitment cell has to prepare waiting list only to the extent of anticipated vacancies. After a detailed analysis of the facts and figures and the precedents cited, the Tribunal held that the

decisions cited were not applicable to the case in hand and observing that the Original Application was devoid of any merit, it was dismissed in *limine*.

6. Shri B.P. Rao, the learned counsel for the Petitioners virtually reiterates the submissions which were raised before the Tribunal and also cited the very same rulings in support of the contentions that the Petitioners are having a right to be appointed, having already placed in the select list but, could not be offered appointment earlier.
7. Shri Abhishek Sinha, the learned Standing Counsel appearing for the Respondents – Railways submits that there is absolutely no merit in the case projected by the Petitioners and they admittedly did not take part in the selection process pursuant to the advertisement issued in the year 2019. As such, there is no basis for the prayer sought for to appoint them against the vacancies available in the 2019 selection process. The learned counsel also submits that the vacancies were notified in the previous selection held in the year 2010 and the 'select list / waiting list' was prepared in accordance with the relevant provisions of law and that the candidates were being advised for appointment on the basis of their rank / merit as and when the vacancies arose.
8. The learned counsel further points out that there was absolutely no grievance for the Petitioners any time before, when the earlier select list was subsisting and they do not have any case that they have been superseded in any manner or any person who is standing lower in merit was given appointment. It was only after initiating new recruitment process in the year 2019 for filling up the vacant posts, that the Petitioners sought to move the Tribunal by filing an O.A. with a 'strange prayer' to fill up the vacancies notified as per Original Notification 2019 with the candidates who were included in the 'waiting list / standby list' of the previous round of selection

held in the year 2010. It is also pointed out by the learned counsel that the 2019 process of selection is complete and the vacancies have been filled up by issuing appointment letters to the eligible candidates. The said process of selection is not under challenge and no person appointed in the said exercise has been made a party to the proceedings.

9. After hearing both the sides, we find that the prayer raised by the Petitioners to fill up the vacancies under the 2019 Notification by considering the applicants who have not participated in the said process of selection, but for the earlier exercise pursued in the year 2010, is not correct or sustainable. The rulings cited are the very same decisions which were cited before the Tribunal. The Tribunal has dealt with the said decisions in paragraph 8, holding that they are not applicable to the case in hand. We do not find any reason to disagree. That apart, merely for the reason that a person has been included in the select list it does not get any indefeasible right to be appointed as per the law declared by the Constitution Bench of the Apex Court in ***Shankarsan Dash vs Union of India : AIR 1991 SC 1612***. Considering the nature and scope of the jurisdiction of this Court under Article 227 of Constitution of India, we hold that Annexure A/9 verdict passed by the Tribunal is perfectly within the four walls of law and it is not assailable under any circumstances.

The writ petition is devoid of any merit. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge