

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 657 of 2019**

1. Union of India, through - The General Manager, South East Central Railway, Bilaspur Zone Headquarters' Office, Bilaspur, District : Bilaspur, Chhattisgarh
2. The Chairman, Railway Recruitment Cell, South East Central Railway, Annex. Building G.M.'s Office, RTS Colony, Bilaspur, District- Bilaspur - 495004 (Chhattisgarh)
3. The Assistant Personnel Officer, Railway Recruitment Cell, South East Central Railway, Annex. Building G.M.'s Office, RTS Colony, Bilaspur, District – Bilaspur-495004 (Chhattisgarh)
4. The Chief Personnel Officer, South East Central Railway, Bilaspur Zone Headquarters' Office, Bilaspur, District - Bilaspur, Chhattisgarh. Pin - 495004.

---- Petitioners

Versus

1. Gangadhar Sahu, S/o Shri Besakhu Ram Sahu, Aged about 33 years, Unemployed, Residing at Village Kurud Tehsil- Berala, District Bemetara Pin 491335 (C.G.)
2. Gajadhar Prasad Sinha, S/o Late Ramulal Sinha, Aged about 40 years, Unemployed, Residing at Village and Post Kaneri Block Gurur 491227 District Balod (C.G.)
3. Purushottam Lal, S/o Shri Dhanesh Ram, Aged about 25 years, Unemployed, Residing at Village and Post Basin Thana Gurur District Balod 491227 (C.G.)
4. Ashwanlal Shrawan, S/o Shri Ramgural Shrawan, Aged about 32 years, Unemployed, Residing at Village Mujgahan PO Gurur Dt. Balod 491227 (C.G.)
5. Chainlal Sahu, S/o Shri Suk Lal Sahu, Aged about 39 years, Unemployed, Residing at Vill. and Post Machand Via Anda District Durg 491221 (C.G.)

6. Pinesh Kumar, S/o Shri Budharu Ram, Aged about 37 years, Unemployed, Residing At Vill. and Post Dadhari, Tehsil Gurur District Balod (C.G.) 491227

---- Respondents

(Cause-title taken from Case Information System)

For Petitioners : Mr. R.K. Gupta, Advocate.

For Respondents : Mr. B.P. Rao, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Justice N.K. Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

29.11.2021

Heard Mr. R.K. Gupta, learned standing counsel for the Railways, appearing for the petitioners as well as Mr. B.P. Rao, learned counsel for the respondents.

2. This writ petition is directed against an order dated 03.04.2019 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (for short, 'Tribunal') in Original Application No. 203/01123/2017.

3. At the outset, some antecedent facts are required to be taken note of.

4. The South-East Central Railway (for short, 'SECR') issued Employment Notification No. SECR/02/2010 dated 15.02.2010 inviting applications for filling up of 5798 posts in the pay scale of Rs. 5200 - Rs. 20,200 + Grade Pay of Rs. 1800/- in Raipur, Bilaspur and Nagpur Divisions and Workshops.

5. 9 applications were filed before the Tribunal (not by the respondents herein) contending that as per the existing instructions, the select list was prepared with 20% extra candidates and as such, 6995 candidates were declared to be successful and that they fell in the category of extra 20%. The grievance expressed was that the SECR did not make the appointments from these 20% extra candidates, though 624 posts remained unfilled in the general category itself. Accordingly, directions were prayed for to consider their candidature for appointment to 'Group-D' post in respect of notification dated 15.12.2010.

6. All those original applications were dismissed by the Tribunal by an order passed on 13.02.2015.

7. Challenging the said order of dismissal, some writ petitions were filed before this Court which were dismissed by judgment and order dated 05.08.2015. Being aggrieved by the order of dismissal passed in the aforesaid writ petitions, special leave petitions were filed before the Hon'ble Supreme Court).

8. The Hon'ble Supreme Court, by an order dated 27.11.2018 passed in Civil Appeal Nos. 11360-11363 of 2018 (lead case being ***Dinesh Kumar Kashyap & Others etc. v. South East Central Railway & Others etc.***), allowed the said appeals by giving the following directions:

“(i) The benefit of this judgment shall only be available to those appellants who had approached the CAT;

(ii) The appellants shall not be entitled to any back wages;

(iii) The appellants shall, for the purpose of seniority and fixation of pay be placed immediately above the first selected candidates of the selection process which

commenced in the year 2012 and, immediately below the candidates of the selection list of 2010 in order of seniority;

(iv) The appellants shall be entitled to notional benefits from the date of such deemed appointment only for the purposes of fixation of pay and seniority.”

9. Subsequently, in Miscellaneous Application Nos. 439-442/2019 in Civil Appeal Nos. 11360-11363/2018, on 01.03.2019, the Hon’ble Supreme Court passed the following order:

“Having heard learned counsel appearing for the applicants and upon perusal of the application(s) for directions, we clarify our judgment dated 27.11.2018 in Civil Appeal Nos. 11360-11363 of 2018 to the extent that the benefit of the said judgment shall be available to all those persons who had filed petition(s) before the Central Administrative Tribunal (CAT).

The Interlocutory applications stand disposed of accordingly. Miscellaneous applications stand disposed of.”

10. The present respondents had filed Original Application raising the same grievance before the learned Tribunal on 11.12.2017, which was subsequent to the dismissal of the writ petitions on 05.08.2015, but before the decision of the Hon’ble Supreme Court dated 27.11.2018 in the case of *Dinesh Kumar Kashyap* (supra).

11. The Tribunal, relying upon the decision rendered in the case of *Dinesh Kumar Kashyap* (supra) dated 27.11.2018 and as clarified by order dated

01.03.2019 passed in M.A. Nos. 439-442/2019, allowed the application filed by the respondents and directed the petitioners herein to consider the case of the respondents herein (applicants before the Tribunal) in the light of directions as given in the case of *Dinesh Kumar Kashyap* (supra).

12. Mr. R.K. Gupta, learned standing counsel for the Railways submits that the Tribunal committed an error of law in extending the benefit of the decision in the case of *Dinesh Kumar Kashyap* (supra) to the respondents as the benefit of judgment given on 27.11.2018 is to be extended only to the applicants who had approached the Tribunal, but had not either approached the High Court or the Hon'ble Supreme Court, at the first instance. The present respondents having approached the Tribunal much later, the benefit of the said order dated 27.11.2018 read with the order dated 01.03.2019 cannot be extended to them, he submits.

13. Submission of Mr. Gupta is controverted by Mr. Rao. He submits that 171 applicants in all comprised the 9 original applications filed before the Tribunal and that 103 applicants had approached this Court by filing various writ petitions, and only 65 had approached the Hon'ble Supreme Court by filing SLP(C) against the decision rendered by the High Court. He submits that the present respondents had approached the Tribunal when the matter was pending before the Hon'ble Supreme Court and therefore, the case of the present respondents is squarely covered by the subsequent clarification given by the Hon'ble Supreme Court in the order dated 01.03.2019. Accordingly, he submits that no case is made out for interference with the order of the learned Tribunal and the petition is liable to be dismissed.

14. We have considered the submission of the learned counsel for the parties and have perused the materials on record.

15. It appears that not all the applicants who had filed the original 9 applications had pursued their remedy before the High Court after dismissal of their applications. Likewise, all the petitioners who filed writ petitions did not approach the Hon'ble Supreme Court after dismissal of the writ petitions. Perusal of the order dated 27.11.2018 would go to show that the Hon'ble Supreme Court had confined the benefit to be made available to only those appellants who had approached the Tribunal. However, the subsequent order dated 01.03.2019 in M.A. Nos. 439-442/2019 extended the benefit of the judgment dated 27.11.2018 to all those persons who had filed petitions before the Tribunal.

16. When the order dated 01.03.2019 was passed, the original application filed by the respondents was pending consideration before the Tribunal and therefore, we are of the considered opinion that the learned Tribunal was justified in holding that the order dated 01.03.2019 passed by the Hon'ble Supreme Court covers the case of applicants (respondents herein) and in passing the order, which is assailed before us by filing this writ petition.

17. Resultantly, finding no merit, the writ petition is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge