

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 4599 of 2017

1. Shiv Chandra Yadav (OBC) Son of Upendra Pd. Yadav, Sr.PWS (Engg. Deptt.) E.C. Railway at Latehar Station, P.O. & P.S- Latehar, Dist- Palamu.
2. Sanjeev Kumar Choudhary (OBC) Son of Kamal Nath Choudhary, Sr. PWS (Engg. Deptt.) E.C. Railway, at Dhanbad Station, P.O & P.S- Dhanbad, Dist- Dhanbad.
3. Md. Jawed Qamer (UR) Son of Md. Quamaruddin, Sr. PWS (Engg. Deptt.) E.C. Railway, at Parasnath Station P.O-& P.S- Parasnath, Dist- Hazaribagh.
4. Ram Charitra Pd. (OBC) Son of Ram Swarup Prasad, Sr. PWS (Engg. Deptt.) E.C. Railway, at Katrasgarh Station, P.O. & P.S- Katrasgarh, Dist-Dhanbad.
5. Shashi KJant Kumar Shashi @ Shashi Kant Kumar Shashi (OBC) Son of Sri Ganesh Pd. Yadav, Sr. PWS (Engg Deptt.) E.C. Railway, at Gomia Station, P.O. & P.S- Gomia, Dist- Dhanbad.
6. Sanjay Kr. Roy (UR) Son of Saryug Pd. Roy, Sr. PWS, (Engg. Deptt.) E.C. Railway, Barkakana Station, P.O. & P.S- Barkakana, Dist- Dhanbad.
7. Krishna Mohan Kumar (UR) Son of Late Nilkanth Singh, Sr. PWS (Engg. Deptt.) E.C. Railway, at Dhanbad Station, P.O.& P.S- Dhanbad, Distt- Dhanbad.
8. Abhay Kumar Sinha (UR), Son of Umesh Pd. Sinha, Sr. PWS (Engg. Deptt.) E.C. Railway, at Latehar Station, P.O. & P.S- Latehar, Dist- Palamu.
9. Sanjay Kumar Mishra (UR), Son of Late Rambaran Mishra Sr. PWS (Engg. Deptt.) E.C. Railway, Tori Station, at PO & P.S- Tori, Dist- Dhanbad.
10. Sanjay Kr. (OBC) Son of Bachu Pd. Yadav, Sr. PWS (Engg. Deptt.) E.C. Railway, at Gujhandi Station, at P.O & P.S- Gujhandi, Dist- Dhanbad.
11. Anjani Kumar (OBC) Son of Late Anil Kumar, Sr. PWS (Engg. Deptt.) E.C. Railway, Renukut Station, Dist- P.O. & P.S Renukut, Dist.-Sonbhadra(UP).

12. Shyam Sundar Pd. Niraj (OBC) Son of Late Ramhari Prasad, Sr. PWS(Engg. Deptt.) E.C. Railway, Sindhauli, P.O & P.S- Sindhauli, Dist- Sindhauli,
13. Dharmendra Kumar (OBC) Son of Late Khelam Prasad Sr. PWS (Engg. Deptt.) E.C. Railway, Obra Station, P.O & P.S- Obra, Dist-Obra. Dist-Sonbhadra (UP).

... .. **Petitioners**

Versus

1. Union of India, through the Zonal Manager, East Central Railway, P.O. & P.S. Hazipur, Dist-Hazipur, Pin no. 844101.
2. The Chief Engineer, E.C. Railway, P.O. & P.S. Hazipur, Dist-Hazipur, Pin no. 844101.
3. Sr. Divisional Personnel Officer, E.C. Railway, Dhanbad Division, P.O. & P.S. Dhanbad, Dist- Dhanbad, Pin no. 826001.
4. Sr. DEN (Div. Engg) Ord/ Dhanbad Division, P.O. & P.S. – Dhanbad, Dist- Dhanbad. 826001.

... .. **Proforma Respondents**

5. Amod Kumar Amar, Son of Sri Ram Sukan Poddar, R/o Village- Taraspur, P.O- Dalsinghsarai, P.S- Dalsinghsarai, Dist- Samasatipur, Bihar..

... .. **Applicant/Respondent**

CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioners	: Mrs. M.M.Pal, Sr. Advocate Mrs. Ruby Pandey, Advocate Mrs. Rukmini Kumar, Advocate
For the Resp. Railway	: Mrs. Bakshi Vibha, CGC
For the Respondent No.5	: Mr. Sanjay Kr. Sinha, Advocate

C.A.V. on 29.02.2024

Pronounced on 14/03/2024

Per Sujit Narayan Prasad, J

1. The instant writ petition under Article 226 of the Constitution of India filed for quashing of the order dated

01.06.2017 passed by learned Central Administrative Tribunal, Circuit Bench at Ranchi in OA-114/2013[R] whereby and whereunder the relief sought for by the applicant, who is Respondent No.5 herein, seeking therein for quashing the entire panel of 27 candidates which was prepared by Senior Division Personnel Officer, East Central Railway, Dhanbad dated 24.07.2012 for the post of Sr. PWS in PB-II or to give the name of the applicant in that final list by way of modification of the said list, has been allowed with a direction upon the respondents to prepare the revised panel for filling up the post of Sr. PWS in PB-II.

Facts

2. The brief facts of the case, as per the pleadings made in the writ petition, which are required to be enumerated read as under:-

The case of the applicant/Respondent No.5 before the learned Central Administrative Tribunal, Circuit Bench at Ranchi is that he was appointed to the post of Trackman and later on he was promoted to the post of Keyman and at present he is Mate. He was promoted to the post of Mate on 03.07.2012.

3. The Respondent No.5 applied for the post of Sr. PWS in PB-II against notification dated 09.06.2011 wherein application was invited from deferent cadres/posts to fill up the 50% PRQ in the Engineering Department for which departmental Exam

was held on 29.06.2012 in which he appeared and result was published and the name of the Respondent No.5 was mentioned as Sl. no. 75. On 24.07.2012 a panel of 27 candidates have been prepared for final selection in which his name was missing. He made representation dated 29.07.2012 before the authority concerned but no response was received.

4. Thereafter, he moved before learned Central Administrative Tribunal, Circuit Bench at Ranchi by filing original application being OA-114/2013[R] and in that OA, these petitioners were made Respondents no. 5 to 20 and the Railway authorities were made Respondents no.1 to 4.

5. The petitioners being respondents in that case filed their written statements wherein it was stated specifically that the panel of 27 candidates is legal, proper & valid and they all have been empanelled after due selection against the notification dated 09.06.2011 wherein vacancies were notified for filling up 29 posts of Sr. PWS in PB-II Rs. 9300 - 34, 800/- + GP Rs. 4200/- through 50% of PRQ in Engineering Department was circulated inviting options from Gangman, Keyman and Mates having qualification of Class-X Board examination and the said selection was based on seniority-cum-suitability through written suitability test.

6. The Respondent Railway also filed written statement stating all the details that in order to fill up the vacancies for the post of Sr. PWS in Pay Band of Rs.9300 -34,800+GP 4200

against 50% PRQ for 29 post (UR-19, SC-05, ST-05) in the Engineering Department, options were called for amongst the eligible candidates like Gangman/ Trackman, Keyman and Mate vide DPO/DHN'S letter dated 09.08.2011 and on scrutiny 210 eligible candidates (UR-155, SC-40, ST-15) were advised to keep themselves in readiness for appearing for the written test on 29.06.2012 / 11.07.2012. Out of 210 candidates, 194 appeared in the exam on 11.07.2012, accordingly result was published on 17.07.2012.

7. The respondent Railway in its written statement has categorically stated that the name of the applicant, Respondent no.5 herein, appeared at Sl. no. 75 amongst the 100 candidates.

8. It has been categorically mentioned in the written statement that the names of the candidates who secured qualifying marks in written examination were arranged in order of seniority position and since the seniority position of the Respondent No.5 amongst the general candidates is 75 and for that reason his name did not appear in the final panel.

9. Learned Central Administrative Tribunal, Circuit Bench at Ranchi, after hearing the parties, has allowed the original application vide order dated 01.06.2017 quashing and setting aside the final panel of 27 candidates prepared vide order dated 24.07.2012 directing the respondents to draw a revised panel of 27 candidates strictly on the basis of seniority of Mates and

then Keyman and then of Gangman/Trackman as per their respective seniority in the Division and the persons wrongly promoted and not finding their place in the new panel may be reverted forthwith to their previous posts forthwith and the exercise be completed within a period of one month as the promotion has considerably delayed due to misinterpretation of seniority of different cadre.

10. Against the aforesaid of learned Central Administrative Tribunal, Circuit Bench at Ranchi dated 01.06.2017, the present writ petition has been filed by the persons who were in the final panel dated 24.07.2012.

11. It is evident from the factual aspect that the applicant while working as Trackman/Gangman, was subsequently promoted as Mate on 03.07.2012. The Department invited application for filling up of the vacancies for the post of Sr. PWS in PB-II through 50% promotional quota.

12. The applicant applied along with the others. As per the process of selection, the applicant along with others had participated in the written examination. The result of 100 successful candidates was published. The applicant was declared successful and his name figures at Sl. No.75 but in highly arbitrary and illegal manner, the panel of 27 candidates was prepared by the authority concerned for final selection but the name of the application was missing from the said list.

13. The applicant has made due representation raising his

grievance and when no action was taken, then the learned Tribunal was approached for redressal of the aforesaid grievance.

14. The learned Tribunal had called upon the concerned private respondents who have also been impleaded as party to the proceeding as also called upon the E.C. Railways who had filed the written statement and based upon the same, the learned Tribunal has passed order that the post of Sr. PWS PB-II since is a selection post which is to be based upon the merit of one or the other candidates, as per the written examination in which the applicant/Respondent No.5 had secured more marks than in comparison to the other candidates but the candidates who have secured lesser marks have been empanelled which has been said to be error in the selection process and hence, the entire list as contained in letter dated 24.07.2012 has been quashed and set aside with a direction to prepare the revised panel.

15. The said order has been assailed by filing this writ petition under Article 226 of the Constitution of India.

Argument advanced on behalf of the petitioners

16. Mrs. M.M.Pal, learned senior counsel, representing the candidates who have been granted promotion as Sr. PWS, has taken the following grounds in assailing the order passed by the learned Tribunal:-

- (i) The learned Tribunal has exceeded its jurisdiction in

not appreciating the fact that 50% quota of the post of Sr. PWS was to be filled up on the basis of seniority-cum-suitability and the petitioners herein who were respondents before the Tribunal, the promotees, have been found to be suitable on the basis of performance made by them in the written examination and in consequence thereof, depending upon their position in the seniority who are senior to the Respondent No.5/applicant, has prepared the list of 27 candidates including these petitioners and they have been granted promotion.

- (ii) The ground has been taken that since the promotion is to be considered on the basis of seniority-cum-suitability and it is not on the basis of merit-cum-suitability, hence, the learned Tribunal by giving go bye to the aforesaid process since has quashed the entire panel by passing the impugned order, the same is not sustainable in the eyes of law.
- (iii) The promotion has been granted on the basis of the principle of seniority-cum-suitability but the learned Tribunal by taking into consideration the submission made on behalf of the Respondent No.5/applicant that the promotion was to be granted on the basis of the selection criteria is nothing but an erroneous finding based upon no recruitment rule to that effect.

- (iv) All these petitioners have subsequently been granted promotion also to the higher post from Sr. PWS and now the right has been created in their favour but even this aspect of the matter has not been considered.

17. Learned senior counsel, based upon the aforesaid ground, has submitted that the impugned order, therefore, is not sustainable in the eyes of law and hence, may be quashed and set aside.

18. Mrs. Bakshi Vibha, learned counsel appearing for the Respondent Railway, by referring to the stand taken in counter affidavit, has taken the following grounds:-

- (i) The ground has been taken that the relevant provision (Paragraph-303) of Indian Railway Establishment Manual, Volume-I stipulates that the seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as per their initial training in the relevant grade in the order of merit obtained in the examination held at the end of training period. In the case of candidates, who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority. In this case, the

applicants were selected by Railway Recruitment Board for the post of Trackman/Gangman. There is no provision of any institutional training for the post of Trackman/Gangman, hence, their seniority will be maintained as per the order of merit decided by Railway Recruitment Board. Accordingly for the selection of Sr. PWS, the seniority fixed as per R.R.B. merit has been taken into account, while making the tabulation sheet of candidates and making list of selected candidates.

- (ii) The further ground has been taken that the selected candidates for the post of Sr. PWS were guided by RRB's initial seniority (merit position) but the learned Tribunal has not agreed with the above submission made by Railway, stating that such facts were not mentioned in the notification inviting option and thus, cannot be introduced after publication of result.
- (iii) It has further been submitted that 19 candidates as per seniority were to be placed against unreserved posts and the Respondent No.5, in spite of securing qualifying marks, could not find place in the panel due to lower seniority position.
- (iv) The learned Central Administrative Tribunal, Ranchi vide order dated 01.06.2017 has quashed the panel

dated 24.07.2012 and directed to draw a revised panel of 27 candidates strictly on the basis of seniority of Mates, and then Keyman and then Gangman/Trackman as per their respective seniority in the division.

- (v) Further submission has been made that while filling the vacancies for the post of Sr. PWS through selection against 50% promotional quota for 29 posts in Engineering Department, both the factors, i.e., seniority and suitability of candidates were considered. The names of candidates, who secured qualifying marks in the written test was arranged in order of seniority.
- (vi) It has been submitted that no separate seniority list of Mates, Keyman & Trackman/Gangman is maintained rather seniority of these category is maintained unit wise.
- (vii) Learned counsel appearing for the respondent Railway, has lastly submitted that in this case one supplementary affidavit has been filed on behalf of the Railway annexing therein the decision taken by the Railway as contained in Letter dated 19/20.05.2021 wherein it has been stated that the Railway has taken decision to implement the order passed by the Central Administrative Tribunal which

is impugned in the present writ petition.

Argument advanced on behalf of the Respondent No.5

19. Mr. Sanjay Kumar Sinha, learned counsel appearing for the Respondent No.5 has taken the following grounds in rebuttal to the argument advanced on behalf of the petitioners:-

- (i) It has been submitted that the post of Sr.PWS is selection post and as per the procedure, the promotion to the selection post is to be given totally on the basis of merit which would be evident from the communication dated 13.08.2004 based upon which the entire process of filling up of post was conducted.
- (ii) The ground has been taken that the moment the post is to be filled up it has been treated to be selection post and the selection post is to be filled up based upon the merit-cum-seniority and not on the basis of seniority.
- (iii) The respondent authorities, without taking into consideration the aforesaid fact even though the applicant/Respondent No.5 has got higher marks in the written test in comparison to that of the petitioners herein, not selected him finally.
- (iv) The learned Tribunal, after taking note of the aforesaid fact, has quashed the entire panel which cannot be said to suffer from an error.

- (v) The contention has been made that the respondent Railway has also subsequently realized the error committed which would be evident from the fact that the respondents had also preferred the writ petition being W.P.(S) No.7633 of 2017 challenging the order passed by the Tribunal which is impugned in this writ petition but the same has been withdrawn which suggests that the Railway has also realized omission committed on their part contrary to their own decision as contained in letter dated 13.08.2004.
- (vi) Learned counsel has demonstrated from the seniority list based upon the marks secured by one or the other candidates in a tabular form which was prepared at the time of tabulation wherein the Respondent No.5 has got higher marks in comparison to the other candidates but even then he has not been selected finally and in that view of the matter if the entire panel has been quashed and set aside, the same cannot be said to suffer from an error.

Analysis

20. This Court, having heard the learned counsel for the parties and considering the ground taken, is now proceeding to examine the order passed by the learned Tribunal on the touchstone of the settled position of law as has been settled by

Hon'ble Apex Court in the case of ***L. Chandra Kumar v. Union of India and Others***, reported in ***(1997) 3 SCC 261*** whereby and whereunder the power of judicial review has been dealt with which is to be exercised by the High Court in exercise of power conferred under Article 227 of the Constitution of India, for ready reference the relevant paragraph of the aforesaid judgment is being quoted and referred hereunder as :-

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in

cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

21. This Court after having discussed the fact as also the legal position is now proceeding to discuss about the scope of judicial review conferred to the High Court under Article 226 of the Constitution of India in showing interference with the award passed by the adjudicator as has been held by the Hon'ble Apex Court in ***Syed Yakoob vs. Radhakrishnan, A.I.R. 1964 SC 477***. Paragraph no.7 of the said judgment is being reproduced as under:-

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact

reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.”

22. In ***Hari Vishnu Kamath vs. Ahmad Ishaque and Ors., AIR 1955 Supreme Court 233***, the Hon'ble Supreme Court has held in paragraph no.21 as under:-

“With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or

fails to exercise it. (2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari.”

23. In *Sawarn Singh and Anr. vs. State of Punjab and Ors.*, (1976) 2 SCC 868 their Lordships, while discussing the power of writ under Article 226 of the Constitution of India for issuance of writ of certiorari, has been pleased to hold at paragraph nos.12 and 13 as hereunder:-

“**12.** Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on

evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

24. In *Heinz India (P) Ltd. and Anr. vs. State of U.P. and Ors., (2012) 5 SCC 443*, their Lordships have been pleased to hold at paragraph nos.66 and 67 as hereunder:-

“**66.** That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in *Thansingh Nathmal* case where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed.”

25. In the case of *West Bengal Central School Service*

Commission & Others Vs. Abdul Halim & Others reported in **(2019) 18 SCC 39**, their Lordships have been laid down pleased to hold at paragraph no. 30 that the power of the judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning, Para-30 of the aforesaid judgment reads as under:-

“**30.** In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the fact of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the fact of the record, as held by this Court in *Satyanarayan Vs. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.”

26. In the case of ***T.C. Basappa Vs. T. Nagappa*** reported in **(1955) 1 SCR 250**, their Lordship hold that the patent error in a decision can be corrected by writ of certiorari, when it is

manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:-

“**10.** An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the fact of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. ...”

27. The power of judicial review has been dealt by the Hon’ble Apex Court in the aforementioned judgments, wherein such power can be exercised, if error on the face of the order impugned, challenged under the Article 226 of Constitution of India, appears to be there.

28. This Court has gathered from the factual aspect and the rival submissions that the issue pertains to the filling up of vacancy of Sr. PWS. The procedure for promotion to fill up the vacancy of P.Way Supervisor has been formulated, as has been referred in the order dated 13.08.2004. The copy of the same was produced by learned Central Government Counsel after having served the same upon the learned counsel for the parties, i.e., learned counsel for the writ petitioners and the Respondent No.5.

29. The procedure as per the aforesaid policy decision reflects that due to formation of ECR (East Central Railway) w.e.f.01.10.2002, avenue of promotion chart of P.Way from

Group 'D' staff has been decided for this Railway, for ready reference, the same is being referred as under:-

“Hajipur

No.ECR/HRD/Union/283/Engg.
SEE/SPJ/MGS/DNR/DHN

Date:13.08.2004

Sub: Procedure/Avenue of Promotion for filling up the vacancy of P.Way Supervisor.

Due to formation of ECR w.e.f. 01.10.2002, Avenue of promotion chart of P.Way from Group 'D' staff decided for this Railway is as under :-

AVG OF P.WAY STAFF

Gangman (2610-3540)	Seniority-Inspector wise (Direct Recruitment)
Trolleyman (2610-3540)	Seniority-Inspector wise (Direct Recruitment)
Gateman (2610-3540)	Seniority-Inspector wise (Direct Recruitment)
Chaukidar (2610-3540)	Seniority-Inspector wise (Direct Recruitment)
↓	
Sr. Gangman(2650-4000)	Seniority-Inspector wise (Seniority cum suitability)
Head Trolleyman(2650-4000)	Seniority-Inspector wise (Seniority cum suitability)
Sr. Gateman(2650-4000)	Seniority-Inspector wise (Seniority cum suitability)
Sr. Chaukidar(2650-4000)	Seniority-Inspector wise (Seniority cum suitability)
↓	
Keyman(2750-4400)(Note-1) Sub Divisional Seniority (Seniority cum suitability)	
↓	
P.Way Mate/Gang Mate (3050-4590)	Divisional Seniority (Selection)
↓	
P.Way Track Superevisor (Note-2) (4500-7000)	Divisional Seniority (Selection)

Note (1) Gateman, Trolleyman, Chaukidar are grouped with Gangman and would be eligible for promotion to the post of Keyman and Mate after they render a minimum of 3 years service of Gangman/Gateman, which disabled and can not work as Gangman, will not be eligible for promotion.

Note (2) 50% departmental quota of P.Way Supervisor of vacancy as exists on date and anticipated vacancy in next one year will be filled up through a positive act of selection comprising of written test amongst Sr. Gangman, Keyman and Gateman who are matriculates and have five years P. way experience. If suitable candidates are not available for promotion, the quota will be filled up by direct recruitment.

This has been issued with the approval of competent authority.”

30. It is evident from the aforesaid policy decision, the post of Gangman, Trolleyman, Gateman and Chaukidar will be the basic cadre post to be filled up through direct recruitment on the basis of seniority-Inspector wise.

31. The post of Sr. Gangman, Head Trolleyman, Sr. Gateman and Sr. Chaukidar are the next hierarchies of the post to be filled up by way of promotion from the post of Gangman, Trolleyman, Gateman and Chaukidar on the basis of seniority-Inspector wise.

32. The post of Keyman is the next hierarchy which is at the Sub Divisional level to be filled up on the basis of seniority-cum-suitability.

33. The post of P.Way Mate/Gang Mate is at the Divisional level and to be based upon Divisional Seniority but the said post has been made to be selection post.

34. The post of P.Way Track Supervisor is also at the Divisional level to be based upon the Divisional Seniority but the said is to be filled up by way of selection making the post to be a selection post.

35. The aforesaid policy decision contained two notes, i.e., Note (1) and Note (2).

36. As per Note(1) Gateman, Trolleyman, Chaukidar are grouped with Gangman and would be eligible for promotion to the post of Keyman and Mate after they render a minimum of 3 years' service of Gangman/Gateman, which disabled and cannot work as Gangman, will not be eligible for promotion.

37. Note (2) is for filling up of 50% departmental quota of P.Way Supervisor of vacancy as exists on date and anticipated vacancy in next one year through a positive act of selection

comprising of written test amongst Sr. Gangman, Keyman and Gateman who are matriculates and have five years P. way experience. If suitable candidates are not available for promotion, the quota will be filled up by direct recruitment.

38. It is, thus, evident that the post of P.Way Supervisor is to be filled up through two modes, i.e., direct recruitment and 50% by way of departmental promotion based upon the selection on the basis of the written test.

39. It further appears from Note (2) that the Sr. Gangman, Keyman and Gateman who are matriculates and have five years' P. way experience are only eligible to be considered for departmental promotion under the quota of 50% of the post of P.Way Supervisor. In case of non-availability of suitable candidates based upon the performance in the written test, the quota is to be filled up by direct recruitment.

40. The aforesaid policy decision thus reflects that the post of P. Way Supervisor is a selection post.

41. The law is well settled that when the post is a selection post, then the same is to be filled up purely on the basis of performance of one or the other candidates in the process of filling up of the posts based upon the written examination or any other parameter fixed by the appointing authority, meaning thereby, if the post is selection post, then the seniority is not to prevail, rather, the merit is to prevail.

42. Herein, as per the policy decision dated 13.08.2004, the

suitability is to be assessed for the purpose of determining the merit of one or the other candidates from amongst in service candidates who are holding the post of Sr. Gangman, Keyman and Gateman.

43. Coming to the facts of the present case, it is not in dispute that the applicant/Respondent No.5 was initially appointed as Trackman/Gangman and subsequently promoted to the post of Mate on 03.07.2012. At the time when the application was filled up, the Respondent No.5 was holding the post of Keyman and thereby he became eligible to participate in the process of selection in view of the policy decision dated 13.08.2004.

44. While on the other hand, the petitioners herein were also eligible to participate in the process of selection since they are in the cadre as per the policy decision dated 13.08.2004 for consideration of the candidature for the post of P.Way Supervisor.

45. The written test was conducted and the merit list was prepared. It is the grievance of the applicant/Respondent No.5 herein that he has secured 65.54% marks and kept at Sl. No.75 in the merit list prepared but the candidates who have obtained lesser marks in comparison to that of the Respondent No.5, have finally been selected by preparing a panel of 27 candidates.

46. The grievance of the Respondent No.5 is that when the post of P.Way Supervisor is a selection post then it is only the

merit which will prevail and not the seniority. But the respondents have treated the suitability to be qualifying in nature and the petitioners who although have been declared to be qualified and basing their position in the seniority list, they have been inducted in the final selection list and thereby the principle of merit for filling up the 50% post which is selection post as per the policy decision dated 13.08.2004 has not been followed.

47. While the case of the petitioners is that there is no infirmity in the panel containing the names of 27 finally selected candidates since the suitability is only to test one or the other candidates to be suitable and once the candidates have been declared to be suitable, then the seniority will prevail and the petitioners since are senior to the Respondent No.5 and, as such, have finally been selected.

48. The learned Tribunal has come to the conclusion based upon the principle of seniority as would be evident from the observation so made in paragraphs 13, 14, 15 and 16 of the order impugned, for ready reference, the same are being referred hereunder as :-

“13. In order to know whether Keyman and Mates are promotional avenues of Gangman or not, we travelled through Indian Railway Establishment Manual, Vol.I, Rule 181, which runs like this -

"181. Civil Engineering Deptt. - Trolley men, gatemen and chowkidars should be grouped with gangmen and be eligible for promotion as keymen and mates. These persons should be

required to render a minimum of three years service as gangmen but it is not necessary that they should work as gangmen in rotation. Gangmen who are disabled and cannot work as Gangmen will, of course, not be eligible for promotion."

14. The above rule will indicate that Keyman is a promotional avenue of Gangman, and as such, a Keyman is to be treated as senior to Gangman for the purpose of promotion to the higher post of Senior PWS in pay band -2. The applicant has also drawn our attention to the promotional order where a keyman is promoted to the post of Mate. Even the Railway Board's circular dated 22.09.2014 has clarified the position of Mate/Keyman and Gangman/Trackman, which runs as follows -

"2. In pursuance to above, Board [ME] have approved duties of such reorganised Trackmen categories under Engineering Department as under-

[i] Categories of Mate and Keyman are re-designated as Track Maintainer Gr.I in Grade Pay of Rs. 2800;

[ii] Categories of Gangman /Trackman/ Gateman/ Trolleyman / P.Way Watchman are re-designated as Track Maintainer Gr.II [GP Rs. 2400]. Track Maintainer Gr.III [GP Rs. 1900] and Track Maintainer Gr.IV [GP Rs. 1800]."

15. Since a Gangman of Rs. 2400 grade pay is much below, the grade pay of Mate and Keymen having Grade Pay of Rs. 2800/-, is bound to be treated as junior in rank. Even under the Right to Information Act, the applicant has brought on record that a Trackman on promotion is made Keyman, and thereafter, he is promoted to the post of Mate. So, in between a Mate and Keyman as regards promotion to the higher post is Mate will have precedence over Keyman. Likewise a Keyman shall have precedence over a Trackman/gangman.

So, once qualified list is published, which has been done in respect of 100 employees, the respondents are duty bound to first fill up the post of Senior Permanent Way Supervisor from Mates who have qualified in the written examination [suitability test] in order of their seniority and if any vacancy is still left out it has to be filled from the cadre of keyman in order of seniority and then the remaining posts are to be filled up by Gangman/Trackman in order of their seniority in the cadre. Since, in the promotional list dated 24.07.2012, Trackmen have been placed above Mate and Keymen prima facie, the entire selection becomes illegal/vicious.

16. In view of the above discussion, it is crystal clear that the respondents are to prepare a final selection list of 27 persons on the basis of seniority of Mates, and thereafter, if any post remains unfilled, it has to be filled from the category of keyman and only thereafter, the residual posts are to be filled up from the cadre of Gangmen/Trackmen in order of their seniority from the eligibility list. Hence ordered.”

49. It is evident from the aforesaid paragraphs that the reference of Rule 181 of Indian Railway Establishment Manual has been taken note. This Court, on consideration of the aforesaid provision, is of the view that the same speaks about the cadre promotion.

50. It further appears from the aforesaid paragraphs that considering the post of P.Way Supervisor to be a cadre post, the learned Tribunal has come to the finding that the Respondent No.5 since was promoted to Keyman and thereafter promoted to the post of Mate, as such, the Mate will have precedence over Keyman and likewise the Keyman will have precedence over

Trachman and Gangman, meaning thereby, the post of P.Way Supervisor is considered to be a cadre post and thereby the provision of Rule 181 of the Indian Railway Establishment Manual has been made applicable.

51. However, the panel of 27 selected candidates has been quashed and set aside with a direction to publish the revised panel on the basis of the observations so made at paragraphs, 13, 14, 15 and 16.

52. The issue which requires consideration is that even though the outcome of the order passed by the learned Tribunal if considered to be correct then on the basis of the finding as recorded in paragraphs 13, 14, 15 and 16 of the impugned order dated 01.06.2017 again the illegality will be crept up for the reason that the post of P. Way Supervisor is not the cadre post to be filled up from the seniority-cum-suitability, rather, the post of P.Way Supervisor is the post of the Divisional level based upon the Divisional Seniority making the same to be a selection post.

53. Therefore, the parameter which is to be followed by the Railway authorities is purely on the basis of the merit and not on seniority and if that would be done then only the spirit of the policy decision dated 13.08.2004 will be said to have achieved the object in its letter and spirit.

54. The fact about the P.Way Supervisor to be selection post has also not been disputed by the learned senior counsel for

the petitioners but her submission is that even then the post of P.Way Supervisor is to be filled upon on the basis of seniority-cum-suitability. But what is the basis to take such ground has not been disclosed by learned senior counsel.

55. This Court has repeatedly asked the learned senior counsel to present the Rule in support of her argument but she had expressed her inability to place the recruitment rule for the purpose of filling up the 50% quota of Sr. P. Way Supervisor.

56. However, the learned Central Government Counsel has placed a communication dated 13.08.2004 then she admitted that as per the said document, the promotion is to be granted to the post of P.Way Supervisor on the basis of suitability-cum-seniority.

57. So far as the applicability of Rule 181 of the Indian Railway Establishment Manual is concerned, the argument of the learned senior counsel appearing for the petitioners is that the same is not applicable in the facts and circumstances since the same speaks with respect to the cadre promotion.

58. This Court is also in agreement with such submission but the question is that if Rule 181 of the Indian Railway Establishment Manual is not applicable then what would be the basis to grant promotion against the 50% quota to the post of Sr. P.Way Supervisor.

59. The aforesaid policy decision dated 13.08.2004 was not produced before the learned Tribunal by either of the parties

and when the Court has passed repeated directions then the policy decision dated 13.08.2004 has been produced before this Court.

60. The said policy decision has been referred in entirety hereinabove and this Court, on consideration of the said policy decision, has come to the conclusion that when the post of P.Way Track Supervisor is a selection post, then the same is to be filled up only through the merit of one or the other candidates based upon the performance in the process of recruitment which has been taken note of in Note (2) of the Police decision dated 13.08.2004.

61. Further, the said post is to be filled up through merit only as would be evident from the word of Note (2), i.e., *"If suitable candidates are not available for promotion, the quota will be filled up by direct recruitment"*, meaning thereby, the candidates on the basis of performance in the written test if not found to be available then the said post is to be filled up through direct recruitment which also suggests that the post is to be filled up only on the basis of merit and furthermore, the post is a selection post.

62. It further appears from the fact that the Gangman, Trolleyman, Gateman and Chaukidar and the post of Sr. Gangman, Head Trolleyman, Sr. Gateman and Sr. Chaukidar and the Keyman are to be considered for promotion to the higher post on the basis of seniority-cum-suitability. But, while

taking policy decision so far as the P.Way Mate/Gang Mate and P.Way Track Supervisor, the same has been referred to be a selection post which also suggest that the distinction has been carved out in between Gangman/ Trolleyman/ Gateman/ Chaukidar/ Sr. Gangman/ Head Trolleyman/ Sr. Gateman/ Sr. Chaukidar/Keyman and the P.Way Mate/ Gang Mate and P.Way Track Supervisor, otherwise there was no reason to reflect the post of P.Way Mate/Gang Mate and P.Way Track Supervisor to be a selection post.

63. Coming back to the facts of the case, it is admitted position that the Respondent No.5 has scored 65.54% marks while the petitioners have secured lesser marks in comparison to that of the Respondent No.5.

64. It has been informed by learned counsel for the Respondent No.5 that even the candidate who has secured 85% marks has not been selected merely because he was below in the list who also has filed application before the Tribunal wherein the same order has been passed.

65. This Court, therefore, is of the view that the basis of coming to the conclusion by setting aside the final selection list of 27 candidates as per the finding recorded at paragraphs 13, 14, 15 and 16 is not sustainable in the eyes of law.

66. Accordingly, the said part of the order is held to be contrary to the rule of promotion, i.e., in the teeth of the policy decision dated 13.08.2004.

67. However, the panel of 27 selected candidates since has been set aside with a direction to prepare a fresh panel, the same is held to be proper but the respondent authorities are required to prepare the panel on the basis of the merit position of one or the other candidates secured by them in the written test then only it could be said that the 50% posts of Sr. PWS has been filled up by way of policy decision dated 13.08.2004.

68. The ground has been taken on behalf of the petitioners that subsequent to the promotion to the post of Sr. PWS, they have also been promoted to the higher post, but according to our considered view, the same cannot be said to have any substance reason being that if there is any illegality committed at its inception, the same cannot be rectified merely because the time has elapsed on the principle that the illegality committed at its inception cannot be allowed to be rectified, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***Ritesh Tewari and Another v. State of Uttar Pradesh and Others [(2010) 10 SCC 677]*** wherein at paragraph 32 the Hon'ble Apex Court has held as under :-

“32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a

law, in violation of which he has obtained the benefits.”

69. In another judgment rendered in ***State of Orissa and Another v. Mamata Mohanty [(2011) 3 SCC 436]***, similar view has been taken by the Hon'ble Apex Court at paragraph 37 which is being quoted hereunder :-

“37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be *non est* and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.”

70. Further, it is the settled position of law that illegality cannot be allowed to be perpetuated and the moment it came to the notice of the State or the competent authority, the same is to be rectified, as has been held by Hon'ble Apex Court in ***Chaman Lal Vs. State of Punjab and Ors., (2014) 15 SCC 715***, wherein the Hon'ble Apex Court taking reference of the case rendered in ***Basawaraj & Anr. Vs. Special Land Acquisition Officer [(2013) 14 SCC 81]*** at paragraph 16, held as under:-

“16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone

inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in *Basawaraj v. Land Acquisition Officer* [(2013) 14 SCC 81] considered this issue and held as under: (SCC p. 85, para 8).

“8.It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”

71. Since we have upheld the outcome of the order passed by the learned Tribunal so far as it relates to the quashing of the order dated 24.07.2012, therefore, this Court is of the view that merely because the petitioners have been granted subsequent promotion, the illegality which has been crept up by not

following the policy decision of promotion will be allowed to be remain.

72. This Court, based upon the aforesaid reason and taking into consideration the power of judicial review as per the judgment rendered by Hon'ble Apex Court in the cases referred hereinabove, is of the view that the impugned order needs to be upheld so far as its outcome is concerned, with a direction upon the respondents to prepare the final panel on the basis of the merit position of one or the other candidates based upon the written test already conducted.

73. Such exercise be completed within the period of three months from the date of receipt of copy of the order.

74. Accordingly, the instant writ petition stands disposed of.

(Sujit Narayan Prasad, J.)

I agree

(Pradeep Kumar Srivastava)

(Pradeep Kumar Srivastava)

Birendra/**A.F.R.**