



W.P.No.5475 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.07.2024

Pronounced on : 30.10.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.5475 of 2021

and

W.M.P.Nos.6079, 8881 and 8882 of 2021

1. P.Chellapandi
2. D.R.Neethikumar
3. V.Kalaiselvan
4. A.Prakash
5. M.Shankar
6. R.Jagannathan
7. L.Bharathan
8. K.Baskaran
9. L.Gothandaraman
10. S.Sundar
11. N.Jeevanantham
12. D.Appathurai
13. C.Ayyalraj
14. M.R.Saminathan
15. M.Dhanabal
16. M.Gopinath
17. A.Navaneetham
18. K.Ramar
19. S.Srinivasan
20. R.Mahadevan
21. G.Sekar
22. V.Gunasekaran

... Petitioners

Vs.



1. The Director General,
Railway Protection Force,
Railway Board, Rail Bhavan,
New Delhi – 110 001.
2. Ministry of Railways,
Represented by the Joint Director, Estt (Res.),
Railway Board, Rail Bhavan,
New Delhi – 110 001.
3. The Principal Chief Security Commissioner,
Railway Protection Force,
Southern Railway, 6th Floor,
Moore Market Complex,
Park Town, Chennai – 600 003.
4. The Principal Chief Personal Officer,
General Manager Building,
Southern Railway, Park Town,
Chennai – 600 003.
5. The Divisional Security Commissioner/ RPF & Chairman of DPC,
Ranchi Division, South Eastern Railway,
Ranchi – 834 003, Jharkhand.
6. K.Ramesh
7. T.M.Prakasan
8. G.Prasad
9. S.Massodvali
10. S.Srinivasan
11. J.Raju
12. P.Robert Amirtharaj



13. G.Vinkatesulu
14. M.Sakthi Ganesan
15. C.Kalyana Kumar
16. T.Karunakaran
17. C.Ramakrishnan
18. J.Michael Raj
19. S.Sridharan
20. S.Arunchalam
21. M.Jacob
22. M.Sundar
23. V.Karthikeyan
24. G.Ashokkumar
25. M.H.Syed Zainulabideen
26. D.Ravanan
27. K.Velraja

... Respondents

[R6 to R27 impleaded vide order dated 10.10.2022
made in W.M.P.No.8870 of 2021]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the selection list by Memorandum dated 20.02.2021 having Ref.No.X/P/535/ASIPF/Selection issued by the third respondent and quash the same insofar as the selection list includes name of the respondents 6 to 27 to the post of Assistant Sub-Inspector Protection Force, (ASIPF) (Executive) and consequently direct the respondents 1 to 5 to include the petitioners, who are now working as Head Constables since 2008 – 2010 in the panel for promotion to the post of 'Assistant Sub-Inspector Protection Force (ASIPF) (Executive) based on their seniority in the post of Head



W.P.No.5475 of

Constable Railway Protection Force and based on the result of the departmental promotion computer based exam held on 12.12.2020 by the 5th respondent in the place of respondents 6 to 27.

(Prayer amended vide order dated 10.10.2022 made in W.M.P.No.8879 of 2021)

For Petitioner : Mrs.Nalini Chidambaram,
Senior Counsel for M/s.C.Uma

For R1 to R5 : Mr.V.Radhakrishnan,
Senior Counsel assisted by
Mr.M.Vijay Anand

For R6 to R27 : No appearance

ORDER

The brief facts that are relevant for disposal of the writ petition are as under:-

All the petitioners herein have been working as 'Head Constables' in the Railway Protection Force since the years 2008/ 2010. While so, the Respondent No.3 herein, initiated centralized selection process for promotion from the rank of 'Head Constable' to 'Assistant Sub-Inspector of Police Force (Executive)' (hereinafter referred to as 'ASIPF' for short) in all Zonal Railways/ RPF under Rule 70 of Railway Protection Force Rules, 1987 in pay matrix Level-5 through proceedings bearing No.X/P 535/ASIPF Selection dated 09.07.2020, proposing to fill up 169 vacancies of ASIPF. Out



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of the said 169 vacancies, 142 vacancies are unreserved, 25 vacancies were earmarked for Scheduled Caste and 2 posts were earmarked for Scheduled Tribe. A list of eligible Head Constable (Executive) who are within the zone of consideration to appear for selection to the rank of ASIPF is also enclosed to the said proceedings dated 09.07.2020. In the said proceedings dated 09.07.2020, a specific reference was made to the Railway Board's Letter No.2018/Sec(E)/PM-3/11 dated 21.01.2019 and also stated that the candidates of reserved categories shall be considered for promotion only against the vacancies of the reserved categories.

2. Further, the said proceedings dated 09.07.2020 also provides for obtaining unconditional willingness or unwillingness of the eligible Head Constables to participate in the said selection process. It is pursuant to the said proceedings dated 09.07.2020, the selection process took place and all the petitioners herein have participated in the said selection process and all of them emerged as qualifying candidates for consideration of their cases for promotion. All the petitioners herein belongs to the Scheduled Caste category. However, the names of the petitioners were not found in the list of



selected candidates for filling up of 169 posts of ASIPF issued through Memorandum bearing Ref.No.X/P 535/ASIPF/Selection dated 20.02.2021 issued by the Respondent No.3.

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3. Though, initially the writ petition was filed seeking a direction to include the names of the petitioners in the panel for promotion to the post of ASIPF, based on their seniority in the post of 'Head Constable, Railway Protection Force' and also based on the result of the Departmental promotion computer based examination that was held on 12.12.2020, subsequently, the prayer was amended, questioning the memorandum Ref.No.X/P 535/ASIPF/Selection dated 20.02.2021 and also impleading the Respondents 6 to 27, who are the candidates selected against the unreserved posts.

4. Heard Mrs.Nalini Chidambaram, learned Senior Counsel for M/s.C.Uma, appearing for the petitioners and Mr.V.Radhakrishnan, learned Senior Counsel assisted by Mr.M.Vijay Anand appearing for the respondents.

5. The selection process in question is in terms of Rule 70 of the



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Railway Protection Force Rules, 1987. The respondents, while undertaking the said selection process, have filled up the vacancies earmarked for unreserved category with the candidates belonging to the unreserved category and the posts earmarked for the reserved category are filled up by the reserved category candidates belonging to the respective categories.

6. According to Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioners, the petitioners herein are seniors than the Respondents 6 to 27 and they are entitled to be selected against the unreserved posts. But their cases were not considered against the unreserved posts, contrary to the settled legal position and the law laid down by the Hon'ble Apex Court in the case of ***“R.K.Sabharwal and others -vs- State of Punjab”*** reported in (1995) 2 SCC 745 and in the case of ***“Rajesh Kumar Daria -vs- Rajasthan Public Service Commission and others”*** reported in (2007) 8 SCC 785. The learned Senior Counsel also placed reliance on a decision of the learned Single Judge of this Court in W.P.No.4267 of 2017 dated 22.02.2023.



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7. On the other hand, Mr.V.Radhakrishnan, learned Senior Counsel appearing for the respondents 1 to 5 contended that the respondents have followed the law laid down by the Hon'ble Apex Court all through and appropriate memorandums were also issued from time to time, including the memorandums dated 10.08.2010 and 01.09.2010 providing for considering the claims of reserved category candidates against the unreserved posts, provided they come up for consideration on their own merit without availing the benefit of relaxation or other concessions provided to the reserved category candidates. However, it is by virtue of the statement made by the Additional Solicitor General of India, on behalf of the respondents, before the Hon'ble Apex Court on 29.09.2016 in Contempt Petition (C) No.314 of 2016 in SLP (C) No.4831 of 2012, stating that the Government would not pass any further order or promotion relying upon the Circulars dated 10.08.2010 and 14.09.2010, the respondents have issued a Circular bearing No.2016-E(SCT)I/25/8 dated 30.09.2016 keeping the above said 2 circulars dated 10.08.2010 and 14.09.2010 in abeyance and further promotions of reserved category persons to unreserved posts will now be made ignoring the Railway Board's RBE/No.126/2010 dated 01.09.2010.



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8. Thus, it is contended that, it is by virtue of the said circular dated 30.09.2016, the respondents, while initiating the selection process through proceedings dated 09.07.2020, have categorically mentioned that the candidates of reserved category shall be considered for promotion only against the vacancies earmarked reserved categories in terms of Railway Board's Letter No.2018/Sec(E)/PM-3/11 dated 21.01.2019. It is also further submitted that all the petitioners herein have issued willingness letters expressing their willingness to participate in the selection process under proceedings dated 09.07.2020 and accordingly, they have participated in the selection process and after having failed to succeed in the same, the petitioners have approached this Court by filing the present Writ Petition, as an after thought and therefore, the petitioners are *estopped* from questioning the selection list pursuant to the proceedings dated 09.07.2020.

9. The learned Senior Counsel appearing for the respondents also placed reliance on a decision of the Hon'ble Apex Court in case of “**Tajvir Singh Sodhi & Others -vs- the State of Jammu and Kashmir and others**”



reported in **2023 LiveLaw (SC) 253**. He also placed reliance on a decision of the Hon'ble Madhya Pradesh High Court in W.P.No.1647 of 2017 dated 26.04.2017, which is stated to have been confirmed by the Hon'ble Apex Court in SLP (C) No.24534 of 2017 by order dated 16.07.2024 and another decision of the Hon'ble Apex Court in the case of ***“Deepa E.V -vs- Union of India and others”*** reported in **(2017) 12 SCC 680**.

10. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

11. The following questions would arise for consideration:-

1. Whether the Respondent No.3 is justified in not considering the claim of the persons belonging to the reserved category for promotion against the unreserved posts of 'ASIPF' in question as per their seniority, basing upon the Circular No.2016-E(SCT)I/25/8 dated 30.09.2016 issued by the Railway Board; and



WEB COPY

W.P.No.5475 of



2. Whether the petitioners, having participated in the selection process pursuant to the proceedings/ Notification dated 09.07.2020, are entitled to challenge the procedure provided for selection after emerging as unsuccessful candidates.

12. Question No.1

12.1. The law as to whether the reserved category candidates are entitled for considering their cases against the unreserved/ open category posts on their own seniority without claiming any relaxation or concession available to the reserved category is well settled by now and there cannot be any controversy in this regard.

12.2. The Hon'ble Apex Court in the case of ***“R.K.Sanbharwal & others -vs- State of Punjab & Others”*** reported in (1995) 2 SCC 745 held as under:-

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that



WEB COPY

W.P.No.5475 of



the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services.”

12.3. Similarly, in the case of “**Rajesh Kumar Daria -vs- Rajasthan Public Service Commission and others**” reported in (2007) 8 SCC 785, the Hon'ble Apex Court held as under:-

“9. The second relates to the difference



WEB COPY

W.P.No.5475 of



between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are “vertical reservations”. Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are “horizontal reservations”. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , Union



WEB COPY

W.P.No.5475 of



of India v. Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and Ritesh R. Sah v. Dr. Y.L. Yamul [(1996) 3 SCC 253] .)”

12.4. The Circulars dated 10.08.2010 and 01.09.2010 issued by the Ministry of the Railways are also in tune with the law laid down by the Hon'ble Apex Court, as noted herein above. However, by virtue of Circular No.2016-E(SCT)I/25/8 dated 30.09.2016 issued by the Ministry of the Railways, the above said two circulars were kept in abeyance, basing upon the statement, said to have been made by the Additional Solicitor General of India before the Hon'ble Apex Court.

12.5. The Circular dated 30.09.2016 reads as under:-

“ In view of the above assurance received from the Ld.Solicitor General of India, it is advised that Railway Board's RBE No.126/2010 dated 01.09.2010 is held in abeyance with immediate effect till further advice, and all further promotions of reserved category persons to unreserved posts will now be made by ignoring Railway Board's RBE No.126/2010 dated 01.09.2010 which in turn was



WEB COPY

W.P.No.5475 of



based upon the DOP&T's OM dated 10.08.2010 and under Reference No.(i) & (ii) above. However, all promotions order henceforth shall be subject to outcome of the main SLPs and the above mentioned contempt petition which are still pending.”

From the above, it is noticed that the respondents, though issued the said Circular dated 30.09.2016, keeping in abeyance the Railway Board's RBE No.126/2010 dated 01.09.2010, directed all further promotions of the reserved category persons to unreserved posts shall be made by ignoring the said circular dated 01.09.2010, which in turn was issued based on DOP&T's OM dated 10.08.2010.

12.6. Further, it has also subjected all promotions ordered thereafter, subject to the outcome of the main SLPs and Contempt Petition. The said SLP and Contempt Petition are stated to be still pending. By virtue of the said circular dated 30.09.2016, it is only the circular dated 01.09.2010 was kept in abeyance. Even if the said circular was kept in abeyance, the respondents are under obligation to follow the law of the land, as declared by the Hon'ble Apex Court.



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12.7. As already noted above, the law in this regard is well settled and the reserved category candidates are very much entitled to compete for the unreserved posts on their own merit without availing the concession or exemption provided in favour of the reserved category candidates. Therefore, even if the said circulars dated 10.08.2010, 14.09.2010 and 01.09.2010 are not given effect to, the respondents cannot deny the right of the petitioners belonging to a reserved category to compete against the unreserved posts on their own seniority. But, in the instant case, the respondents have arbitrarily issued the proceedings dated 09.07.2020, proposing to fill up 169 vacancies of AISPF, contrary to the law laid down by the Hon'ble Apex Court, which is very much binding on the respondents, thereby violating right of the petitioners guaranteed under Article 16(4) of the Constitution of India.

12.8. In the light of the above, the Question No.1 is answered in Negative.

13. Question No.2:

13.1. Though, initially there was a controversy on the issue, as to



whether the petitioners herein have submitted their willingness letters expressing their willingness to participate in the selection process pursuant to the Notification dated 09.07.2020 and denied by the petitioners, the respondents have placed before this Court one such willingness letter submitted by the 1st petitioner and also made a categorical statement in the counter-affidavit that all the remaining petitioners also have submitted such letters. The petitioners, having filed a reply affidavit, taken a stand that even in case if the petitioners have submitted such willingness letters, the same would not operate as an *estoppel* against law, but not seriously disputed about the submission of such willingness letters.

13.2. Thus, the petitioners, having submitted such willingness letters, accepting for the procedure that is intended to be followed in the selection process, have approached this Court without disclosing the same. If the said willingness letters cannot come in the way of the petitioners to agitate their rights in the present Writ Petition and does not operate as an *estoppel*, the petitioners ought to have disclosed the same before this Court and taken an appropriate stand permissible under law. But, for the reasons best known, the



petitioners have suppressed the said fact.

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13.3. Be that as it may, the very notification itself makes a reference to the Railway Board Letter No.2018/Sec(E)/PM-3/11 dated 21.01.2019, as the basis for considering the reserved category candidates for promotion only against the vacancies of the reserved categories. But, the petitioners have neither chosen to question the Notification dated 09.07.2020 nor the said Railway Board Letter No.2018/Sec(E)/PM-3/11 dated 21.01.2019. Thus, it is evident that the petitioners have participated in the selection process with open eyes and having been fully aware that their cases, belonging to reserved category, will not be considered against the unreserved posts, but they have turned around and now approached this Court by questioning the selection process that was adopted by the Respondent No.3.

13.4. The reliance placed by the learned Senior Counsel appearing for the petitioners on a decision of the Hon'ble Apex Court in the case of ***“Krishna Rai and others -vs- Banaras Hindu University and others”*** reported in **(2022) 8 SCC 713** is concerned, in the considered view of this



Court, the said decision has no application to the facts of the case on hand.

The Hon'ble Apex Court, in the said case, while dealing with the principles of *estoppel*, wherein appellants, having appeared for the interview and being unsuccessful, proceeded to challenge the same. But the Hon'ble Apex Court, having taken note of the fact that the learned Division Bench, having approved the reasoning given by the learned Single Judge on the merits of the case, refused to grant relief on the technical plea of *estoppel*. The Hon'ble Apex Court, also having taken note of the fact that the applicants therein were Class IV employees working from 1977 onwards and cannot raise their objections at the stage of interview on the principle of changing the rules of the game. Thus, it was held that the principles of *estoppel* would not operate in the facts and circumstances of the said case. But, here is the case where the petitioners have submitted their willingness letters to participate in the selection process and they have infact participated in the selection process and emerged as unsuccessful candidates. Therefore, the law in this regard, as held by the Hon'ble Apex Court in the recent decision of ***“Tajvir Singh Sodhi & Others -vs- the State of Jammu and Kashmir and others”*** reported in **(2023) LiveLaw SC 253**, has direct application, wherein the Hon'ble Apex



WEB COPY

W.P.No.5475 of



Court held as under:-

“ The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

i) In Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

ii) In Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of



WEB COPY

W.P.No.5475 of



physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, **thKrishna Rai and others -vs- Banaras Hindu University and others** the Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology



WEB COPY

W.P.No.5475 of



adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

iii) Similarly, in Ashok Kumar vs. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90:10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90



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W.P.No.5475 of



and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

"13. The law on the subject has been



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W.P.No.5475 of



crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar (2007) 8 SCC 100, this Court held that: "18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil (1991) 3 SCC 368



WEB COPY

W.P.No.5475 of



and Rashmi Mishra v. M.P. Public Service Commission (2006) 12 SCC 724)".

13.1 It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the



amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

13.2. This Court in Sadananda Halo has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fide or arbitrariness in the selection process and therefore the said exception cannot be invoked. Cancellation of the entire selection process: Whether justified?”

In the light of the above, this Court is of the considered view that the petitioners are *estopped* from questioning the procedure followed in the process of selection, after having participated in the very same selection process. Accordingly, Question No.2 is answered in positive.



WEB COPY

14. In the light of the above, the writ petition is liable to be dismissed and the same is accordingly dismissed. Consequently, the connected miscellaneous petitions, if any, shall stand closed.

30.10.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Director General, Railway Protection Force,
Railway Board, Rail Bhavan, New Delhi – 110 001.
2. Ministry of Railways, Represented by the Joint Director, Estt (Res.),
Railway Board, Rail Bhavan, New Delhi – 110 001.
3. The Principal Chief Security Commissioner,
Railway Protection Force, Southern Railway, 6th Floor,
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4. The Principal Chief Personal Officer,
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5. The Divisional Security Commissioner/ RPF & Chairman of DPC,
Ranchi Division, South Eastern Railway,
Ranchi – 834 003, Jharkhand.



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W.P.No.5475 of



MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.5475 of 2021

30.10.2024