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W.P.No. 34288 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2023

DELIVERED ON : 18.03.2024

CORAM :

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**and**

**THE HON'BLE MR.JUSTICE P. DHANABAL**

**W.P.No. 34288 of 2018**

**and WMP.No. 39858 of 2018**

1. Union of India  
Rep. By the Divisional Personnel Officer,  
Southern Railway, Salem.

2.The Chief Personnel Officer,  
Southern Railway,  
Chennai -600003.

3.The General Manager,  
Southern Railway,  
Chennai-600003.

..Petitioners

Vs

1.K.Ganesan  
2.The Registrar  
Central Administrative Tribunal,  
Madras Bench, Chennai.

3.K.Elangovan  
(R3 suo-motu impleaded as per the  
order of this Court dated 14.08.2019)

..Respondents



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**Prayer:** Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorari, calling for the records relating to the order dated 24.07.2018 made in O.A.No. 1224 of 2016 on the file of the 2<sup>nd</sup> respondent/Tribunal.

For petitioners : Mr.V.Radhakrishnan, Standing Counsel

For Mr.M.Vijayanand

For Respondents : Mr.R.Singaravelan, Senior Counsel

For Mr. P.Ulaganathan – R1

R2 – Tribunal

R3 – No Appearance.

### **ORDER**

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order passed by the Central Administrative Tribunal/2<sup>nd</sup> respondent in O.A.No. 1224 of 2016, dated 24.07.2018, the present writ petition is filed.

#### **Facts in brief:**

2. The 1<sup>st</sup> respondent was appointed as Casual Labour in the year 1982 as temporary Gang Man and subsequently promoted to the post of Commercial Clerk in the year 2007. The 1<sup>st</sup> respondent had participated in the recruitment process conducted by the department on two occasions



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in the year 2012 & 2013, but he was not selected. According the 1<sup>st</sup> respondent/employee, he ought to have been placed in the vacancy of one K.Elangovan, who was selected in the recruitment process and subsequently submitted his unwillingness for the said post, but the said request was rejected by the petitioners-department. Challenging the same, the 1<sup>st</sup> respondent has approached the tribunal and the tribunal has directed the department to give promotion to the 1<sup>st</sup> respondent. Aggrieved by the said order of the tribunal, the present writ petition has been filed by the department.

3. The learned standing counsel for the petitioners-department has submitted that the 1<sup>st</sup> respondent took part in the selection against 60% promotion quota on 22.12.2012, but due to indulging in malpractice in the examination, his papers were not sent for valuation. The 1<sup>st</sup> respondent again participated in the selection process against the same promotion quota held on 11.10.2013 for filling up 28 vacancies. The learned standing counsel further submitted that out of 123 employees who applied, 110 appeared and only 42 qualified in the written examination including the 1<sup>st</sup> respondent, who secured 69 marks, above the minimum prescribed marks



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of 60 marks out of 100 marks and he was included in the list of qualified candidates dated 30.10.2013.

4. The learned standing counsel has further submitted that all the qualified employees except those who submitted unwillingness for the post of Goods Guard and those who were already in Aye Two medical classification were directed for medical examination in Aye Two category on 30.10.2013. Pending medical fitness report, in the interest of employees, a provisional panel of 27 employees arranged in the order of merit by keeping 1 ST vacancy (unfilled due to non-availability of suitable ST candidates) was published on 31.10.2013. The petitioners-department has published the provisional list subject to the condition that if any of the employees placed in the provisional panel is found unfit in Aye Two medical classification, their names will be deleted and final panel will be published accordingly. Subsequently, after careful consideration and approval by the competent authority viz., Additional Railway Manager, Salem, the Committee recommended 26 persons (21-UR, 4 -SC & 1-ST), keeping 1 SC and 1 ST vacancy unfilled due to non availability of SC & ST employees. The list was prepared based on the marks fixed as 73 for



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Un-reserved category and 61 marks and 60 marks for SC & ST candidates respectively and notification dated 30.05.2014 was issued. Since the 1<sup>st</sup> respondent comes under Unreserved category and secured only 69 marks in the written examination and 55.5 marks in aggregate, his name was not included in the final list. Further, one A.Vignesh Kumar, who secured 71 marks was also not included in the final panel.

5. The learned standing counsel has further submitted that two employees namely R.Kandasekaran and T.Govindarajan were found unfit in Aye Two medical classification and hence they were not considered for Good Guard selection. Against the above vacancies K.Elangovan and M.T.Venkatachalam who had secured 74 & 73 marks respectively have been placed in the final panel. Though the said T.Venkatachalam belongs to SC community and secured 73 marks, he was considered against Unreserved vacancies in the final panel. After publication of final panel on 30.05.2014, the said K.Elangovan has submitted his unwillingness for promotion vide letter dated 18.06.2014. The 1<sup>st</sup> respondent has sought for inclusion of his name in the panel in the place of K.Elangovan. In terms of para 219 (i) of IREM Vol.I, once the panel has been approved by the



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competent authority and the selection has attained finality, inclusion in the final panel cannot be done.

6. The learned standing counsel has further submitted that the tribunal without considering the method of recruitment prescribed in para 219 (i) of Indian Railway Establishment Manual Volume -I, and without considering the fact that the petitioners-department has published the final panel dated 30.05.2014 as per the merit order based on marks obtained by the employees in the written examination and the marks of aggregate, has wrongly allowed the application filed by the 1<sup>st</sup> respondent and directed the petitioners-department to consider the case of the 1<sup>st</sup> respondent and grant promotion in the place of K.Elangovan. Therefore, the impugned order passed by the tribunal is liable to be set aside and the writ petition has to be allowed.

7. On the other hand, the learned senior counsel appearing for the 1<sup>st</sup> respondent/employee while strongly opposing the submissions made by the learned standing counsel for the petitioners-department, has submitted that the petitioners-department has filed a merit list dated 23.04.2014 from



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pages 82 to 84 in the typed set of papers as if the same was filed by the 1<sup>st</sup> respondent before the tribunal. The said list was never filed by the 1<sup>st</sup> respondent before the tribunal and the petitioners-department never circulated the said list among the selected candidates including the 1<sup>st</sup> respondent. Therefore, the tribunal did not consider the said merit list while in the impugned order.

8. The learned senior counsel would further submit that out of 42 employees, a provisional list dated 31.10.2013 containing 27 qualified employees was issued. The list contained the names of Kandasekaran and Raja were subsequently found unfit, which results in shortfall two vacancies against 21 earmarked Unreserved vacancies. In the said vacancies one Elangovan who had already expressed his unwillingness was included and also M.T.Venkatachalam who was earlier shown against SC vacancy was shown against UR vacancy in the final list. The inclusion of Elangovan at serial no.20 was only to prevent the 1<sup>st</sup> respondent from being empaneled from the promotion year 2013. Another employee, namely Govindarajan was also found medically unfit. Despite these vacancies, the 1<sup>st</sup> respondent's name was not included in the provisional



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and the final list notified on 30.10.2013 and 31.10.2013. Since the representation seeking inclusion of his name in final list was not considered by the department, the 1<sup>st</sup> respondent had preferred an application in O.A.No.1177 of 2015 before the tribunal, wherein the tribunal by order dated 25.08.2015 directed the department to consider his claim and pass reasoned order as per rules and in accordance with law. However, the 2<sup>nd</sup> petitioners /department has rejected the claim by order dated 12.11.2015. Challenging the same, the 1<sup>st</sup> respondent had preferred another application in O.A.NO.1224 of 2016. The tribunal after detailed consideration, had remanded the matter to the competent authority, i.e the authority higher than the one that approved the panel and directed to grant promotion in light of para 219(I) of IREM Vol.I . Therefore, the impugned order of the tribunal is perfectly valid in law and does not require any interference by this Court.

9. Heard Mr.V.Radhakrishnan, learned Standing Counsel appearing for the petitioners and Mr.R.Singaravelan, learned Senior Counsel appearing for the 1<sup>st</sup> respondent and perused the materials available on



10. Upon hearing the elaborate and rival submissions made by the learned counsels appearing for the parties concerned, this Court is tasked with addressing the following points:

*I. Whether the petitioners' department followed the prescribed rules and provisions in force while publishing the provisional list on 31.10.2013 and the final list on 30.05.2014.*

*II. Whether there is any provision under the rules for the inclusion of candidates either by merit or in place of candidates who express unwillingness after the completion of the selection process, as claimed by the 1st respondent.*

*III. If such provisions exist, whether the impugned order of the tribunal directing the petitioners' department to include the 1st respondent in the final panel in place of one Elangovan under the unreserved category is valid or not.*

## **11. Procedural irregularities**



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Admittedly, the 1st respondent participated in the selection process for promotion to the post of Goods Guard under the 60% quota conducted by the petitioners- department on 11.10.2013 to fill 28 vacancies. Out of the 123 employees who applied, 110 appeared, and only 42 qualified in the written examination, including the 1st respondent, who scored 69 marks, exceeding the minimum prescribed marks of 60 out of 100. He was included in the list of qualified candidates in the written examination, which was published on 30.10.2013. However, his name did not find a place in the subsequent provisional list or the final list published on 31.10.2013 and 30.05.2014, respectively.

11.2 The main arguments put forth by the 1<sup>st</sup> respondent are that the petitioners-department had published the list of qualified candidates in alphabetical order on 30.10.2013 and thereafter on the next day i.e. 31.10.2013 published the revised list of 27 candidates arranged in the order of merit and published the final list of 26 candidates on 30.05.2014. According to the 1<sup>st</sup> respondent, the petitioners-department ought to have published the provisional list after completion of entire process i.e. calling for unwillingness from successful candidates and medical fitness,



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therefore the successful candidates would be in a position to know of their likely position in the final panel and accordingly would decide as to whether they should express unwillingness for promotion or not. If this procedure has been followed by the petitioners-department, the 1<sup>st</sup> respondent would automatically got selected. Therefore, there is clear irregularity in the procedure adopted by the petitioners-department. Hence, the Tribunal has rightly referred to Para 219(i) of IREM Vol.I, which provides for changing or alteration of the final panel in case of irregularities noticed in the panel, with the approval of the authority higher than the one who approved the original panel.

11.3 We have perused the Indian Railway Establishment Manual (IREM) Volume -I. Paragraph 124 of the Manual deals with the method and qualification for the post of Goods Guards and paragraph 219 prescribes the procedure to be adopted by Selection Board. Since the 1<sup>st</sup> respondent mainly contends on the ground of irregularities and procedural lapses in the said selection procedure, we have gone through relevant clauses of paragraph 219 adopted by the petitioners-department in the aforesaid selection process.



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11.4. Paragraph 219(i)(iii) of IREM, Vol.I provides that final panel should be drawn up in the order of merit based on an aggregate marks of professional ability and record of service. Para 219 (j) prescribes the qualifying marks for the eligibility of the said post, para 219 (k) states that the list should be approved by Competent Authority when he accepts recommendation of selection committee. Para 219 (L) states that after the Competent Authority had accepted recommendation of the Selection Board and approved the panel, it cannot be cancelled or amended thereafter.

11.5 It seen from the records, as per provisions contained in para 219 IREM Vol.I written test was conducted on 11.10.2013 for the post of Goods Guard and 110 candidates appeared for the written examination. As per provisions of para 219(j), a list of 42 successful candidates including the 1<sup>st</sup> respondent, who have secured 60% marks in the written test and 60% in the records of services besides 60% marks altogether as qualifying marks for total marks of 80 was published on 30.10.2013. Further, as per



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para 219 (k) which states that the list should be approved by Competent Authority when he accepts recommendation of selection committee. Here the competent authority is ADRM/SA, who had initially approved the provisional list of 27 candidates on 31.10.2013 as recommended by the Selection Committee, subject to the medical fitness in Aye two medical category and subject to the final outcome of O.A.No.1119 of 2019 filed before the tribunal. After shortlisting the medically unfit candidates and unwillingness candidates, the final panel of 26 candidates has been approved by the competent authority on 28.05.2014 and the same was published on 30.05.2014. Further, as Para 219 (L), the said final panel of 26 candidates approved by the competent authority viz., ADRM/SA has become final and it cannot be cancelled or amended thereafter. In view of clear application of procedure as prescribed under IREM Vol.I in the entire selection process conducted by the petitioners-department, this Court finds no irregularity or procedural lapse in the selection process.

12. As regards the other contention of the 1<sup>st</sup> respondent with regard to the list published on 30.10.2013 in alphabetical order, the learned counsel for the petitioners has brought to the notice of this Court the



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communication of the Railway Board issued in RBE No.102/2013, dated 08.10.2013 regarding restructure of Group 'C' cadres which included the post of Goods Guard. Para 4.1 of the said communication is extracted hereunder;

*“4(1) Normal vacancies existing on 01.11.2013 (except DR quota) and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:*

*i) From panels approved on or before 01.11.2013 and current on that date;*

*ii) and the balance in the manner indicated in para 4 above.*

*4.2 Such selections which have not been finalised by 31.10.2013 should be cancelled/abandoned,”*

15. In view of the above communication, this Court acknowledges the submissions made by the learned counsel for the petitioners. Due to the urgency arising from the impending restructuring of Group 'C' posts effective from 01.11.2013 and the risk of canceling the entire selection process if not finalised before that date, the department was constrained to initially draw up the panel in alphabetical order in the interest of



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candidates and the same was published on 30.10.2013. Subsequently, the provisional panel was published on 31.10.2013, subject to conditions of medical fitness, and the final panel was published on 30.05.2014.

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16. Having discussed in detail with regard to the procedure adopted by the petitioners-department in the selection process in the preceding paragraphs and having concluded that there were no irregularities or procedural lapses on the part of the petitioners department, this Court does not intend to delve into the merits of the 1st respondent's contention regarding the panel published in alphabetical order. This is because it was substantiated in the subsequent procedure of the selection process. Therefore, Point No. I is answered accordingly.

**17. As regards Point No.II – Inclusion of 1<sup>st</sup> respondent's name in the vacancy arose due to unwillingness submitted by a selected candidate:**

17.1 Since this Court has concluded in the preceding paragraphs (while addressing point no. I) that there were no procedural irregularities in the selection process, to address point no. II, it is necessary for this Court to go through the records concerning the eligibility of the 1st respondent and Elangovan based on merit.



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17.2 Para 219 (j)(iii) of IREM Vol.I prescribes that every candidate is required to secure a minimum 60% of marks in aggregate in the written test and records of service. The said provision is extracted hereunder;

*“(j)(iii). The final panel should be drawn up in order of seniorty from amongs those who secure a minimum of 60% marks in the professional ability and 60% marks in the aggrergate, provided that those securing a total of 80% or more marks will be classed as outstanding and placed at the top of the panel in order of seniority”*

17.3 Records reveals that after publication of the provisional panel, medical examination was held for those whose names found in the panel. Out of the same, two persons viz., Kandasekaran, who scored 67 aggregate marks, was found medically unfit and V.Raja, who scored 66.5 aggregate marks, who had expressed unwillingness, were removed from the list. Hence, next meritorious person namely T.Govindarajan, who scored aggregate marks of 60 was considered but he was found medically unfit, therefore the next meritorious person namely, K.Elangovan, who secured 56 marks, was included under UR quota at Sl.No. 20 (subsequently expressed his unwillingness). Likewise, the next meritorious candidate M.T.Venkatachalam who secured 55.5 marks in aggregate was included in



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the final panel. The 1<sup>st</sup> respondent has scored only 54 marks. The said panel was approved by the competent authority as per provisions of para 219(k) of IREM Vol.I and the same was published as final panel on 30.05.2014. This Court finds no fault, illegality, or violation of any statutory provisions in the preparation of the final panel by the competent authority in including the said Elangovan at Sl. No. 20 under Unreserved quota, based on the marks.

18. As regards shifting of M.T.Venkatachalam from SC category to Unreserved category on own merits, the learned senior counsel appearing for the 1<sup>st</sup> respondent reiterated the findings of the tribunal and submitted that the promotion of M.T.Venkatachalam in the unreserved category on his own merit is unsustainable in view of the decision of the Hon'ble Supreme Court in ***Jarnail Singh & Others*** . In the said case, in order to preclude any interim order in a contempt case filed, the learned Solicitor General had given an undertaking before the Hon'ble Supreme Court that till such time the main matter along with the contempt petition is decided, no further promotions of reserved category persons to unreserved posts will be made based on the DoPT OM dated 10.08.2010 and Railway Board



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Circular dated 14.09.2010. Accordingly, the DOPT through their OM dated 30.09.2016 instructed all concerned to abide by the said undertaking.

Subsequently, the said **Jarnail Singh's** case attained finality, vide order dated 26.09.2019, by validating the requirement of quantifiable date for adequacy of representation at the cadre level and the application of the creamy layer concept was extended even for reservation in SC/ST.

19. The contention of the learned senior counsel for the 1<sup>st</sup> respondent is that even after the decision the Hon'ble Supreme Court in **Jarnail Singh** case and without taking note of the fact that the communication of DoPT OM dated 10.08.2010 had been set aside, the petitioners-department had not applied the principles and shifted the said M.T.Venkatachalam from SC vacancy to Unreserved vacancy on own merit basis. Therefore, the impugned order of the tribunal on this aspect is also perfectly valid. On this ground also the 1<sup>st</sup> respondent claim for inclusion of his name in the final panel published by the petitioners department.



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20. During the course of arguments, the learned standing counsel for the petitioners-department has placed the Judgment of ***a three Judges Bench of the Hon'ble Supreme Court in the case of Prabhat Ranjan Singh and another Vs. R.K.Kushwaha and others, dated 07.09.2018 (reported in (2018) 18 SCC 1)***, wherein it was held that “Railway is specifically excluded from ambit and scope of business allocated to DoPT and as such DoPT cannot issue binding circulars upon Railways and the Railways is empowered to framed its own Rules. Further held, IREM has statutory force since it is issued in exercise of powers under proviso to Article 309 of the Constitution of India.” The relevant paragraphs are extracted hereunder ;

***“(i) Whether the Railways is bound by the Rules framed by the DoPT or it can frame its own rules and whether the IREM has statutory force?”***

***20. CAT, in its order, held that the Railways are bound by the DoPT circulars. The High Court of Patna has gone further and has come to the conclusion that the Railways have no jurisdiction to frame rules for Group A and B services. The High Court has further held that the IREM Rules are not statutory in nature and are only guidelines having no binding force. On the other hand, the learned Senior Counsel for the Union of India has drawn our attention to the Government of India (Allocation of Business) Rules, 1961 framed under clause (3) of***



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*Article 77 of the Constitution of India. Under these Rules business has been allocated to different departments. As far as the DoPT is concerned the relevant portion reads as under:*

*“I. RECRUITMENT, PROMOTION AND MORALE OF SERVICES*

*1. \*\*\**

*2. General questions relating to recruitment, promotion and seniority pertaining to Central Services except Railway Services and services under the control of the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical Services under the Department of Defence Research and Development.*

*3. \*\*\**

*4. General policy matters regarding classification of posts and grant of gazetted status in relation to services other than Railway Services.*

*5. Recruitment of ministerial staff for the Government of India Secretariat and its attached offices except that for the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics and the Department of Space.*

*6. Appointment of non-Indians to civil posts under the Government of India except posts under the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics and the Department of Space.*

*\*\*\**

*IV. SERVICE CONDITIONS*

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21. *General questions (other than those which have a financial bearing including Conduct Rules relating to All India and Union Public Services except in regard to services under the control of the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics and the Department of Space).*

22. *Conditions of service of Central Government employees (excluding those under the control of the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical personnel under the Department of Defence Research and Development, other than those having a financial bearing and in so far as they raise points of general service interest).*

23.-26. \*\*\*

27. *General policy regarding retrenchment and revision of temporary government servants except those under the Department of Railways.”*

21. *A perusal of the Allocation of Business Rules, 1961, especially the highlighted portion leaves no manner of doubt that the Railways is specifically excluded from the ambit of the scope of business allocated to the DoPT, whether it be for classification of posts, recruitment of ministerial staff, appointment of non-Indians to civil posts, fixing of service conditions, including conduct rules, general policy regarding retrenchment and revision of temporary service of the Railways, etc., and as such the DoPT cannot issue binding circulars upon the Railways. We may make it clear that if the DoPT issues a circular and*



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*the Railways specifically accepts the circular or makes it applicable, then such a circular may apply but if the circular is not made specifically applicable then it has no force so far as the Railways and its employees are concerned.*

*22. In the same Allocation of Business Rules, 1961 while allocating business to the Ministry of Railways power has been given to it to deal with all matters including those relating to revenue and expenditure. Therefore, the Ministry of Railways has the power to lay down conditions of service for its employees.*

*23. The Ministry of Railways has a set of codified rules known as the Indian Railways Establishment Code (IREC). It is not disputed before us that as far as the IREC is concerned the same is notified under the proviso to Article 309 of the Constitution and is statutory in nature. However, it has been urged on behalf of the direct recruits that IREM does not have any statutory force. It would also be pertinent to mention that the DoPT itself has issued an office memorandum dated 16-2-2018 stating that the matters relating to recruitment, promotion and seniority in respect of Ministry of Railways do not fall within the jurisdiction of the DoPT. We need not refer to all the documents referred to because it is apparent from a bare reading of the Allocation of Business Rules, 1961, that the service conditions of the employees of the Railways are governed by the Rules framed by the Railways which will not only include the IREC but also the IREM.*



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*24. Even with regard to the IREM it has been urged by the learned Additional Solicitor General that these Rules and the various modifications/amendments issued from time to time to the IREM are also issued under the proviso to Article 309 of the Constitution and as such they have the statutory force.*

*25. We have gone through the various communications with regard to the IREM and find that all of them make a mention that they have been issued in exercise of powers conferred by the proviso to Article 309 of the Constitution. We may specifically refer to only one document i.e. amendment to IREM Rules 327 to 341 made in pursuance to the judgment delivered by CAT on 3-5-2016 [R.K. Kushwaha v. Railway, Original Application No. 460 of 2015, order dated 3-5-2016 (CAT)] . The relevant portion of the communication reads as follows:*

*“ \*\*\**

*In exercise of the powers conferred by the proviso to Article 309 of the Constitution the President have further decided that principles for inter se seniority of direct recruit Group ‘A’ officers and promotee Group ‘B’ officers inducted into Group ‘A’ Junior Scale effective from the panel year 2012-2013, stands modified/amended as per Annexure I. ...” (emphasis supplied)*

*This leaves no manner of doubt that the Rules under IREM, Vol. 1 are also statutory rules.*



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***26. In view of the above, there can be no manner of doubt that the Railways is not bound by the memorandum issued by the DoPT and are empowered to frame its own rules to lay down the service conditions of its employees. We also hold that the IREM has statutory force and has been issued in exercise of powers vested under the proviso to Article 309 of the Constitution.”***

21. In the above decision, the Hon'ble Supreme Court clearly observed that the service conditions of the Railway employees are governed by the Rules framed by Railways and the IREM has statutory force and has been issued in exercise of powers vested under the proviso to Article 309 of the Constitution. Further, as per para 219 (I) of IREM VOL.I, after the competent authority has accepted the recommendations of the Selection Board and approved the panel, it cannot be cancelled or amended thereafter. In light of the aforesaid decision, which clearly supports the case of the petitioners-department, the judgment of ***Jarnail Singh Case***, decided by a Constitution Bench of 5 Judges relied by the learned senior counsel for the 1st respondent, does not give much weightage to substantiate the case of the first respondent, and the same cannot be considered.



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22. In view of the decision in *Prabhat Ranjan Singh's case*, and since this Court came to the conclusion in the preceding paragraphs that inclusion of Elangovan under Unreserved quota in the final panel is valid and based on the merit as prescribed in the relevant provision of IREM, and there were no procedural irregularities or malafide in the selection process, the impugned order of the tribunal remanding the matter and directing the petitioners department to include the name of the 1<sup>st</sup> respondent is contrary to the statutory provisions and is therefore liable to be set aside. The point No.II is also answered accordingly in favour of the petitioners-department.

*Challenging the selection process after it attains finality is unsustainable in law;*

23.1 It is a trite law that mere appearing the candidate's name in the selection list does not give him a vested right to appointment. Instead, it's a condition of eligibility for appointment. The appointing authority or selection committee has the expertise to decide whether a candidate is fit



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for a particular post as per relevant rules and procedures in force. In this context, it is useful to rely upon the decision of the Hon'ble Supreme Court in the case of ***State of Delhi Vs. Umesh Kumar, reported in [(2020) 10 SCC 448 ]***

*“19. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In Punjab SEB v. Malkiat Singh [Punjab SEB v. Malkiat Singh, (2005) 9 SCC 22 : 2006 SCC (L&S) 235] , this Court held that the mere inclusion of candidates in a selection list does not confer upon them a vested right to appointment. The Court held : (SCC p. 26, para 4)*

*“4. ... the High Court [Malkiat Singh v. Punjab SEB, 1999 SCC OnLine P&H 75 : ILR (1999) 2 P&H 329] committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in Shankarsan Dash v. Union of India [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] which reads : (SCC pp. 50-51)*



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*'7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] , Neelima Shangla v. State of Haryana [Neelima Shangla v. State of Haryana, (1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jatinder Kumar v. State of Punjab [Jatinder Kumar v. State of Punjab, (1985) 1 SCC 122 : 1985 SCC (L&S) 174]*

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*23. For the above reasons, we are of the view that the judgments delivered by the Delhi High Court on 6-12-2018 in Umesh Kumar v. State [Umesh Kumar v. State, 2018 SCC OnLine Del 13351] and on 19-12-2018 in Satyendra Singh v. State [Satyendra Singh v. State, 2018 SCC OnLine Del 13353] do not comport with law. The High Court has been manifestly in error in issuing a mandamus to the appellants to appoint the respondents on the post of Constable (Executive) in Delhi Police. The direction was clearly contrary to law. The respondents have participated in the selection process and upon the declaration of the revised result, it has emerged before the Court that they have failed to obtain marks above the cut-off for the OBC category to which they belong.*

*24. We, accordingly, allow the appeals and set aside the judgments of the High Court dated 6-12-2018 in Umesh Kumar v. State [Umesh Kumar v. State, 2018 SCC OnLine Del 13351] and 19-12-2018 in Satyendra Singh v. State [Satyendra Singh v. State, 2018 SCC OnLine Del 13353] . Both the writ petitions shall stand dismissed. There shall, however, be no order as to costs. Pending application(s), if any, shall stand dismissed.”*

23.2. In the case on hand, the final panel was published on 30.05.2014, the said Elangovan has submitted his unwillingness on 18.06.2014 when he was directed to attend the training at ZRTI/TPJ from 21.06.2014 to 11.08.2014 by communication dated 03.06.2014, thereafter



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the 1<sup>st</sup> respondent had made representation to the petitioners department on 22.01.2015 seeking to include him under Unreserved quota which became unfilled on account of unwillingness submitted by Elangovan and the same was rejected by the petitioners-department vide letter dated 10.02.2015. Again for the same reason, the 1<sup>st</sup> respondent had approached the tribunal and the tribunal without considering the statutory provisions, had directed the petitioners department to include the 1<sup>st</sup> respondent in the final panel under Unreserved quota which became vacant due to unwillingness submitted by Elangovan.

23.3. As discussed in detail, every recruitment and promotions are based on the provisions prescribed in IREM Vol.I, and the petitioners department has also followed the prescribed rules and completed the selection process. Though the 1<sup>st</sup> respondent's name found place in the selection list, he was not selected in the final panel as he had not reached the norms as prescribed for the selection process in IREM. In view of the above judgment, mere inclusion of 1<sup>st</sup> respondent's name in a selection list does not confer upon him a vested right to appointment, therefore the claim made by the 1<sup>st</sup> respondent is unsustainable in law. In view of the



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above decision of the Hon'ble Supreme Court, the tribunal ought not to have entertained the original application filed by the 1<sup>st</sup> respondent seeking inclusion of his name in the final panel after the entire selection process is over. In other words, the 1<sup>st</sup> respondent has challenged the selection process after it attained finality, which is unsustainable and impermissible in law.

#### **24. Law of reservation :**

24.1. As per the law of reservation, if a reserved category candidate secures more marks in order of merit than the last selected general category candidate, his candidature is to be considered as a last candidate in the general category for the merit purpose. This aspect was very well considered by the Hon'ble Supreme Court in the case of ***Vikas Sankhala v. Vikas Kumar Agarwal***, reported in (2017) 1 SCC 350. The relevant paragraphs is extracted hereunder;

*“84.2. Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category*



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*candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.”*

24.2. Admittedly, in the case on hand, as discussed in detail above, M.T.Venkatachalam, SC candidate had secured more marks than the 1<sup>st</sup> respondent, who is general category candidate. Hence as per the law of reservation, the petitioners-department has rightly included the said M.T.Venkatachalam below Elangovan, who secured more marks and last selected general category candidate. In view of the above decision of the Hon'ble Supreme Court, the contention of the 1<sup>st</sup> respondent for shifting of M.T.Venkatachalam from SC category to Unreserved category is baseless and cannot be countenanced.

**25. Vacancy created due to resignation cannot be filled up from the existing list:**

25. 1. The Supreme Court in the case of ***Sudesh Kumar Goyal v. The State of Haryana & Ors., Civil Appeal No. 10861 of 2013*** , dated ***21.09.2023, reported in [(2023) 10 SCC 54]*** has ruled that when a candidate who has qualified in the selection process joins and



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subsequently resigns, the vacancy created must be filled through a fresh selection process and not by selecting from the previous merit list. The Hon'ble Supreme court emphasized that an applicant does not gain an indefeasible right to appointment simply by qualifying in the selection process. The relevant portion of the judgment is extracted hereunder;

*“ 19. This takes us to the second argument that the appellant could have been easily adjusted against the vacancy caused due to resignation of one of the selected candidates. The argument per se is bereft of merit inasmuch as all the vacancies notified stood filled up initially. However, if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process. The Division Bench has rightly dealt with the above contention in the light of the precedent of the various decisions of this Court and we do not feel that any error has been committed in this context.*

*20. This apart, as may be noticed that the procedure for selection of superior/higher judicial service officers by direct recruitment from the Bar was initiated by the Punjab and Haryana High Court way back in the year 2007 and now we are in the year 2023 meaning thereby that 16 years have passed by in between. It would be a travesty of justice to keep open the*



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*selection process for such a long time and to direct at this stage to make any appointment on the basis of a selection process initiated so far back. For this additional reason also, we do not deem it proper to interfere with the impugned judgment and order [Sudesh Kumar Goyal v. State of Haryana, CWP No. 16211 of 2009 sub nom Keshav Kaushik v. State of Haryana, 2010 SCC On Line P&H 5043] of the High Court.”*

25.2. In light of the decisions of the Hon'ble Supreme Court cited supra, the first respondent, having been unsuccessful in the selection process, cannot legitimately claim the place of a successful candidate namely Elangovan, who expressed unwillingness thereafter. Such a challenge, arising after the conclusion of the entire selection process, is legally impermissible, as it disrupts the finality of the process. The tribunal without following the above decisions of the Hon'ble Supreme Court and statutory provisions viz., Para 219 (L) of IREM Vol.I which prescribes that after the Competent Authority had accepted recommendation of the Selection Board and approved the panel, it cannot be cancelled or amended thereafter, issued directions to the department to include the 1<sup>st</sup> respondent in the final panel, which is a clear violation and contrary to the



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principles laid down by the Hon'ble Supreme Court in the decisions cited supra and statutory provisions in force and the same is illegal and unsustainable in law, and is liable to be set aside.

26. In the result, the writ petition is allowed. The impugned order of the tribunal is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

**(D.K.K.J.)**

**(P.D.B.J.)**

**18.03.2024**

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**D.KRISHNAKUMAR, J.**

and

**P. DHANABAL, J.**

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**18.03.2024**