



2025:DHC:9647



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 03.11.2025.

+ W.P.(C) 24/2023, CM APPL. 51/2023 & CM APPL. 52/2023

NEERAJ TYAGI AND ANR

.....Petitioners

Through: Ms. Mamta Sharma, Mr. R.
Gopalakannan and Mr. Rahul
Kumar Choudhary, Advs.

versus

SUPREME COURT OF INDIA AND ANRRespondents

Through: Mr. Rajshekhar Rao, Sr. Adv.
with Ms. Zehra Khan, Ms.
Mansi Sood, Mr. Areeb
Amanullah, Ms. Delphina
Shinglai, Advs. for R-1 with
Mr. Ashutosh Kalia, Asst
Registrar, SCI and Ms. Ankit
Zadoo, Court Assistant, SCI
Ms. Shiva Lakshmi and Mr.
Madhav Bajaj, Advs. for UOI

CORAM:**HON'BLE MR. JUSTICE AVNEESH JHINGAN****AVNEESH JHINGAN, J. (ORAL)**

1. This writ petition is filed for setting aside of the impugned order dated 17.10.2022 rejecting the representation of the petitioner. Directions are sought to the respondent to appoint the petitioner as Chamber Attendant (R) by maintaining seniority in terms of empanelment list dated 19.12.2020.
2. The brief facts are that on 14.03.2018, the respondent no. 1



2025:DHC:9647



(hereinafter referred to as respondent) published an advertisement inviting applications for thirty five vacancies for the post of junior Court Attendant and thirteen vacancies for the post of Chamber Attendant (R). The petitioner applied in general category for the post of Chamber Attendant (R). The selection was on the basis of merit in the written examination and the candidates were required to qualify a skill test. After the written examination and conducting the skill test, on 19.12.2020 the list of candidates empanelled was published in order of merit of the candidates. The petitioner no. 1 & 2 were at serial no. 93 and 108 respectively. The empanelled list was valid for a period of one year w.e.f 26.11.2020. On receiving a representation that marks were not allotted as per the answer key published, the answer sheets of the skill test were revaluated. In revised result the petitioner no. 1 and 2 were at serial no. 98 and 114. The candidates of general category were selected till serial no. 67 of the revised list.

3. Learned counsel for the petitioner submits that the respondent made appointments beyond the validity of the empanelment list. Reliance is placed on the information provided under the Right to Information Act, 2005 to argue that respondent acted arbitrarily by appointing five candidates after 26.11.2021 who had not qualified as per the empanelled list dated 19.12.2020. The submission is that if the panel was acted upon after the validity in that case all the vacancies arising during the validity of the empanelment list should have been filled from the successful candidates.

3.1 The opinion of the Supreme Court in ***R.S. Mittal Vs. Union of India, 1995 Supp. (2) SCC 230*** is relied upon to contend that



2025:DHC:9647



respondent was duty bound to fill from the list of successful candidates, all the vacancies arising during validity of the empanelment list. The decision of Orissa High Court in ***Prasanna Kumar Nayak and others Vs. National Insurance Company and Others 1992 SCC Online Ori 108***, is relied to fortify the arguments that during the validity of the empanelment list, the respondent could not have stopped appointments against available vacancies.

4. As per contra the petitioners were at serial nos. 93 and 108 in the empanelment list dated 19.12.2020, and at serial no. 98 and 114 in the revised result dated 02.12.2021, none of the candidate lower in merits to the petitioners was appointed. It is argued that on date of finalising the selection, the vacancies available i.e. seventy vacancies of Chamber Attendant (R) were filled from the empanelled list. Submission is that on receipt of objections on 06.07.2021 all the answer sheets of skill test were revaluated and the result of the six candidates was changed. Five candidates were higher in merits than the last selected candidate and sixth candidate was at serial no. 106 and had no relevance as last selected candidate in general category was at serial no. 67. The submission is that to give effect to revaluation five more vacancies were filled.

5. It is contended that the validity of the empanelment list was extended by the appointing authority with the condition that the list shall not be extended beyond 02.12.2021 and no appointment except for the five candidates coming higher in merit consequent to the revised result and being higher on merits from the last selected candidate shall be made.



6. Heard learned counsels for the parties at length.
7. The advertisement was for thirteen vacancies for the post of Chamber Attendant (R). The number of vacancies was tentative and subject to change. The petitioner applied in general category and it is admitted fact that in general category the last selected candidate was at serial no. 67 of the revised result.
8. It is trite law that a successful candidate has no vested right for appointment. The Supreme Court in ***Manoj Manu and Another vs. Union of India and Others*** (2013) 12 SCC 171 held that inclusion of name of a candidate in select list does not bestow a vested right for appointment and it is for the government to decide whether to fill all the vacancies or not but for a valid reason. The relevant para of the judgment is quoted:

“12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.”

9. The argument that the action of the respondent in giving appointment to the five unsuccessful candidates as per the revised result is arbitrary exercise of power, lacks merit. On receiving the objections from the candidates, the answer sheets of skill test of all the candidates were revaluated. Five candidates qualified the skill test and



2025:DHC:9647



stood higher in merit than the last selected candidate in the general category. The petitioner failed to establish prejudice caused with the revision of result. No candidate lower in merit to the petitioners in the empanelment list dated 19.12.2020 and revised result dated 02.12.2021 was appointed.

10. The appointment of five candidates beyond 25.11.2021 by extending validity of empanelled list has reasonable bases. The validity was extended to meet the situation where the result of the skill test was revised on receipt of the objections. Consequent to the revaluation of the skill test, five candidates qualified on the basis of the marks secured in the written test and were higher in merit than the last selected candidate of general category. The extension of the validity period was up to 02.12.2021 i.e. the date result of revaluation of skill test and was subject to the restriction that apart from the five candidates no further appointment shall be made. The exercise of power of extending validity of empanelment list was reasonable and fair.

11. It is not the case set up of the petitioner that out of seventy five selected candidates i.e. seventy as vacancies as determined in July, 2021 while finalising the selection and five candidates who qualified consequent to revision of the result any vacancy is vacant as on date. The argument is that till the empanelment list was valid, all vacancies arising till then should have been filled from the successful candidates is noted to be rejected. The argument if taken to the logical end would mean that once an empanelment list is prepared, the candidates in the list shall have a vested right for appointment over all the vacancies



2025:DHC:9647



arising during that period. In other words, that during the validity of empanelment list and till it is exhausted all other eligible candidates are ousted from competing for the vacancies to be filled in course of time. The Supreme Court in ***Union of India vs. Subit Kumar Das*** 2025 SCC OnLine SC 2243 considered the earlier decision in the case of ***Gujarat State Dy. Executive Engineers' Association v. State of Gujarat*** and held that the placing of a candidate in a wait list does not create a vested right for appointment. The list cannot be extended for indefinite period. Para of the judgment is quoted below:

"12. While considering the entitlement of the respondent to any relief on the basis of his placement in the Reserved Panel, it would be necessary to bear in mind the settled position that mere placement in the wait list does not create any vested right for being so appointed. The right to be considered for appointment would spring only in the contingency of a selected candidate not joining on his post. The wait list operates for a limited period. It cannot extend for an indefinite period and in any event after a fresh process of recruitment has commenced. This legal position is well settled and reference can be made to the decision of a three Judge Bench in Gujarat State Dy. Executive Engineers' Association v. State of Gujarat. In paragraph 9, it has been held as under:

"9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the



2025:DHC:9647



waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.

"(emphasis supplied by us).

From the aforesaid, it is clear that any right that the respondent could claim as a waitlisted candidate extinguished when all the selected candidates joined on their respective posts."

In ***State of Orissa and Another vs. Raj Kishore Nanda and Others*** (2010) 6 SCC 777 held that the empanelment does not create an indefeasible right to be appointed. The vacancies are to be filled as per the rules and in consonance with the constitutional mandates. The select list cannot be utilized for filling the vacancy as and when required. On expiry of the select list, no relief is to be granted by the Court to the candidate. The relevant portion of the judgment is as under:

"14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The



2025:DHC:9647



vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Constitution Bench of this Court in Shankarsan Dash v. Union of India held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of the candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (See also Asha Kaul v. State of J&K, Union of India v. S.S. Uppali, Bihar Public Service Commission v. State of Bihar, Simanchal Panda v. State of Orissa, Punjab SEB v. Malkiat Singh, Union of India v. Kali Dass Batishs, Divisional Forest Officer v. M. Ramalinga Reddy, Subha B. Nair v. State of Kerala, Mukul Saikia v. State of Assam and S.S. Balu v. State of Kerala.)

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage.”

In *Kulwinder Pal Singh and Anr. Vs. State of Punjab* (2016)

6 SCC 532 it was reiterated that name of the candidate being in a merit creates no indefeasible right for appointment and such a list cannot be treated as a reserve list for future vacancies.

12. The thirteen vacancies advertised were variable and increased to seventy by the respondent by taking into account the vacancies on the date when the selection was finalised and this created no right in favour of successful candidate to seek directions that all vacancies



2025:DHC:9647



arising thereafter should also be filled from the empanelled list.

13. The reliance upon the decision of the Supreme Court in ***R.S. Mittal Vs. Union of India*** (supra) does not enhance the case of the petitioner. In that case the advertised vacancy for the post of Judicial Member, Income Tax Appellate Tribunal was not filled by the government keeping it vacant for a member who had come on deputation and had not resumed duty on expiry of term and on initiation of the departmental proceedings. It was held that the member on deputation shall be considered against the vacancy the member joined and the advertisement vacancy cannot be kept vacant for that purpose.

14. In ***Prasanna Kumar Nayak and others Vs. National Insurance Company and Others*** (supra) the employer without any reasonable basis decided not to draw names from the panel from a particular date, despite the validity of the panel. In the peculiar facts of that case, the High Court intervened and held the action of the respondent to be arbitrary and unreasonable. Whereas in the case in hand, the vacancies as existing in July 2021 till the finalisation of selection were filled from the empanelled candidates and no appointment was made on vacancies arising thereafter, except for the five candidates qualifying in revised result. The action of the respondent is reasonable and rational.

15. There was no vested right of the petitioner to claim the post on basis of being a successful candidate. No candidate lower in merit to the petitioner either as per the list of 19.12.2020 or the revised result was appointed. No prejudice was caused to the petitioner by



2025:DHC:9647



reevaluation of the skill test. There is no arbitrariness in the action of the respondent. No case is made out in this writ jurisdiction.

16. The petition is dismissed.

17. The pending applications if any are accordingly disposed of.

AVNEESH JHINGAN, J.

November 03, 2025/Pa

Reportable:- Yes