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MP-4869-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 25th OF FEBRUARY, 2026

MISC. PETITION No. 4869 of 2023

UNION OF INDIA AND OTHERS

Versus

SUNIL SINGH

.....
Appearance:

Shri Sachin Jain - Advocate for the petitioners.

Shri Megh Nath Banarjee and Shri Adeetya Banarjee, Advocates for
the respondent.

.....
WITH

MISC. PETITION No. 4872 of 2023

UNION OF INDIA AND OTHERS

Versus

HARIOM MEENA

.....
Appearance:

Shri Sachin Jain - Advocate for the petitioners.

Shri Megh Nath Banarjee and Shri Adeetya Banarjee, Advocates for
the respondent.

.....
ORDER

Per. Justice Pradeep Mittal

These Miscellaneous petitions are filed under Article 227 of the
Constitution of India by the writ petitioners challenging the order dated
17.05.2023 passed in O.A. No. 200/695/2019 whereby the learned Tribunal



has directed the petitioners to consider the case of respondents for grant of appointment though the respondents are not entitled for the same. As these petitions involve an identical issue, they are heard and decided by this common order.

2. The petitioners issued Employment Notice No. 02/2012 for appointment to Group 'D' posts. The respondent in M.P. No. 4869 of 2023 applied under the OBC category and was issued an Admit Card to appear in the written examination held on 17.11.2013. After qualifying in the written examination, he was called for the Physical Efficiency Test and document verification. The respondent secured 60.28% normalized marks and was placed at Rank 2992 under the OBC category. The last selected candidate under the OBC category secured 60.37% normalized marks with Rank 2953. As the respondent obtained lesser marks than the last selected candidate, he was not offered appointment. All notified posts under Employment Notice No. 02/2012 were filled, and no vacancy remained unfilled. There was no replacement panel. Thereafter, the respondent filed Original Application No. 200/695/2019 before the learned Tribunal seeking appointment, along with an application for condonation of delay, as the Original Application was time-barred. The petitioners filed their replies; however, the learned Tribunal did not decide the issue of limitation. By order dated 17.05.2023, the learned Tribunal directed the petitioners to consider the respondent's claim for appointment pursuant to Notification No. 05/2010 dated 15.10.2010, despite the fact that the respondent had never participated in the said notification. Being aggrieved by the said order dated 17.05.2023, which is



illegal, arbitrary, and unreasonable, the petitioners have filed the present petition. the impugned order dated 17.05.2023 (Annexure P/1) is illegal, arbitrary, and contrary to law, as it has been passed without properly considering the relevant facts and applicable rules.

3. It is submitted by the learned counsel for the petitioners/Union of India that the respondent in M.P. No. 4872 of 2023 was not considered for appointment as he has secured 42.36% marks (normalized) under ST category and have got rank 8724. The last candidate of ST category who got success is Shri Ram Naresh Meena having rank 8404 and secured 42.89 marks (normalized). Thus the respondent has secured less marks in comparison to last selected candidates under ST category. It is further submitted that in the employment notification No. 05/2010, 216 posts were advertised for ST category and 216 candidates were put in the panel. Since the respondent is way behind in the merit list from the last selected candidate therefore, appointment was not offered to him and the name of the respondent was placed in the reserve panel.

4. It is submitted that the learned Tribunal failed to decide the preliminary objection regarding limitation, even though the Original Application was filed after an inordinate delay and was clearly barred by limitation, the cause of action having arisen on 30.06.2014 while the application was filed only on 06.08.2019.

5. That the Tribunal further erred in relying upon the judgment in Dinesh Kumar Kashyap and Others vs. South East Central Railway and Others reported in (2019) 12 SCC 798, which was a judgment in personam



and not applicable to the present respondents. The Tribunal also wrongly directed consideration of the respondents' case (M.P.No. 4869 of 2023) under Notification No. 05/2010, despite the respondent having applied under Notification No. 02/2012, and ignored the fact that the respondents secured fewer marks than the last selected OBC and ST category candidate and were therefore not entitled to selection.

6. It is further submitted that additionally, the Tribunal failed to consider that subsequent recruitment notifications had already been issued and completed, no vacancy remains under Notification No. 02/2012 and 05/2010, and Railway Board instructions prohibit preparation of replacement panels. Thus, the findings of the Tribunal are perverse, contrary to the record and rules, and the impugned order is liable to be set aside.

7. It is also stated that, as per order dated 22.02.2017, all relevant documents pertaining to Notification No. 02/2012 had already been destroyed on 17.02.2017, as they were old and no longer required to be preserved. The petitioners further contended that the Original Application was hopelessly barred by limitation, and it is a settled proposition of law that mere submission of representations does not extend or revive the original cause of action. It is also submitted that the cut-off marks of the last selected candidate under the OBC category were 60.37%, and in ST category 42.89% whereas the respondents who applied under the OBC and ST category respectively, did not secure the minimum required marks and therefore could not be selected. The petitioners further clarified that the contention of the respondents regarding securing 60.28% and 42.89% marks by clubbing



written and PET test marks is incorrect, as each stage of the selection process is required to be qualified separately and there is no provision for combining marks. Accordingly, the petitioners submit that the respondents have no valid case, and the impugned order deserves to be set aside.

8. Per contra, learned counsel appearing for respondents relying on the judgment of the Hon'ble Supreme Court in the case of **Dinesh Kumar Kashyap and Others vs. South East Central Railway and Others** reported in (2019) 12 SCC 798, submits that the Hon'ble Supreme Court ruled that employers cannot arbitrarily refuse to fill vacancies from a select panel or waitlist. It is submitted that the Hon'ble Supreme Court held that when extra candidates are selected (e.g., 20% extra pool) and vacancies exist, failing to appoint them without valid justification is arbitrary, violates Article 14, and mandates using the panel to fill vacancies. They also placed reliance on the orders passed by this court in the case of **Union of India Vs. Jitendra Mukhariya and others** in M.P. No. 2222 of 2020 decided on 21.09.2020 and **Sumit Ahirwar Vs. Union of India and others** in M.P. No.5700 of 2025 and connected matters decided on 12.01.2026 to support their arguments.

9. The contention of the petitioners that in view of the Railway Board's Circular RBE No.6/2014 no right accrues in favour of the respondent/applicants also deserves to be rejected for the reason that Circular RBE 6/2014 is made effective from the future date, this will be evident from the said Circular which is reproduced for ready reference:-



"(GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)

No. E (NG)-II/2008/RR-1/33

RBE No. 06/2014
New Delhi, dated:10/01/2014

The General Manager (P),
All Zonal Railways/Production Units
Sub: Recruitment of staff in Pay Band-I of Rs.5200-20200
(Grade Pay: Rs.1800) on Indian Railways – Mode of
dispatch of call letters to applicants regarding.

In partial modification to instructions contained in Board's letter of even number dated 29/5/2013 (RBE No. 53/2013) and 19/8/2013 (RBE No. 85/2013), it is directed that henceforth, call letter be issued to successful candidates in written examination for appearing in PET (Physical Efficiency Test), three weeks prior to date of commencement of PET under "Business Post" instead of earlier instructions of one months prior to date of conduct of examination.

2. It is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in Pay Band-1 (Grade Pay : Rs.1800) is now done annually in terms of instructions contained in Board's letter No. E(NG)II/2007/RR-1/58 dated 08.12.2011.

Please acknowledge receipt
(Hindi Version will follow)

(Harsha Dass)
Director Estt. (N)-II
Railway Board."

Heard the learned counsel for the parties and perused the record.

10. The Tribunal has held that the applicants, having successfully cleared both the written examination and the PET test, were called for document verification. Although their names appeared in the panel issued on 28.01.2013 pursuant to Notification No. 05/2010, a corrigendum dated 14.02.2013 removed certain candidates without giving the applicants any opportunity of hearing, which was procedurally improper. Considering that 486 posts remained vacant and the Supreme Court's ruling in **Dinesh Kumar Kashyap** (supra) extends benefits to all applicants whose cases were pending before the Tribunal prior to the judgment, the applicants are entitled to



appointment. Accordingly, the Tribunal allowed the applicants' claims and directed the respondents to consider their claims for Group 'D' posts.

11. The respondent in M.P. No. 4869 of 2023 belongs to the OBC category whereas the respondent- Hariom Meena in M.P. No. 4872 of 2023 belongs to the ST category. By Notification Nos. 02/2012 dated 22.08.2012 and 05/2010 dated 15.12.2010 respectively issued by the Government of India, Ministry of Railways, Railway Recruitment Cell, West Central Railway, RBIT/422/1-2, Nehru Railway Colony, Howbagh, Jabalpur (M.P.) – 482001, 231 posts of Group "D" employees were notified for the OBC category. The last cut-off mark for the OBC category (including 20% extra candidates called for verification) was 58.60%, whereas the respondent secured 60.28% marks. The respondent – Hariom Meena in M.P. No. 4872 of 2023, 216 posts of Group "D" employees were notified for the ST category. The last cut-off mark for the ST category (including 20% extra candidates called for verification) was 42.89%, whereas the respondent secured 42.36% marks. On this basis, the respondents are claiming their candidature for the post of Group "D" employee.

12. The petitioners/Union of India have clarified that 20% more candidates than the notified vacancies were called for verification; therefore, the cut-off mark for verification was in the OBC category was 58.60%. However, the cut-off mark of the last selected candidate in the OBC category was 60.37%, which was higher than the marks obtained by the respondent. Therefore, he is not entitled to appointment. Whereas in the case of respondent Hariom Meena under the ST Category, the cut-off mark for



verification was 42.89%. However, the cut-off mark of the last selected candidate in the ST category was 42.36%, which was higher than the marks obtained by the respondent. Therefore, they are not entitled to appointment. The Tribunal has confused and misinterpreted the facts.

13. The respondent obtained information under the RTI Act, wherein the department stated that 31 candidates were absent during the verification process. On that basis, the respondent is attempting to contend that 31 posts in the OBC category remained vacant during the recruitment process. However, since the cut-off mark of the last selected candidate in the OBC category was 60.37%, it clearly shows that all OBC category posts were filled.

14. The respondent has further submitted before the Court that Group “D” posts are presently available. However, this does not mean that those posts have remained vacant since the 2012 recruitment process. Secondly, for the respondent to claim appointment, it must be established that OBC category posts from the 2012 recruitment remained vacant since that recruitment process, which has not been proved.

15. First, the respondent must prove that, during the recruitment process for 231 OBC category posts, the vacancies remained unfilled and have been lying vacant since 2012 due to the non-availability of suitable candidates. Secondly, the respondent was placed at serial number 07 in the merit list, which clearly shows that the six candidates ranked above him had already been adjusted against the available posts. Therefore, the respondent’s contention that he secured more marks than the last selected candidate is not



acceptable. Accordingly, the claim of the respondent does not survive. The respondent in M.P. No. 4872 of 2023, Hariom Meena obtained information under the RTI Act, wherein the Department stated that no appointment had been made from the reserve panel under Notification No. 05/2010. However, since the cut-off mark of the last selected candidate in the ST category was 42.36%, it clearly shows that all ST category posts were filled. A total of 1,451 candidates were called for verification. Only 216 posts were notified for the ST category, and there is nothing on record to show that all ST category posts were not filled during the recruitment process.

16. The respondent has further submitted before the Court that Group “D” posts are presently available. However, this does not mean that those posts have remained vacant since the 2012 recruitment process. Secondly, for the respondent to claim appointment, it must be established that ST category posts from the 2012 recruitment remained vacant since that recruitment process, which has not been proved.

17. First, the respondent must prove that, during the recruitment process for 216 ST category posts, the vacancies remained unfilled and have been lying vacant since 2012 due to the non-availability of suitable candidates. Secondly, the respondent was placed at serial number 11 in the reserve panel, which clearly shows that the candidates ranked above him had already been adjusted against the available posts. Therefore, the respondent’s contention that he secured more marks than the last selected candidate is not acceptable. Accordingly, the claim of the respondent does not survive.

18. The learned Tribunal committed an error in allowing the



respondent's claim by relying on the judgment of the Hon'ble Supreme Court in the case of **Dinesh Kumar Kashyap**, (supra) as the said judgment does not apply to the facts of the present case, since the Group "D" posts for ST and OBC candidates have not remained vacant since the 2012 recruitment process. Further, the judgments of this Court in the cases of **Jitendra Mukhariya** and **Sumit Ahirwar** (supra) are distinguishable on facts and are not applicable to the present case.

19. The contention of the respondents that, in view of Railway Board Circular RBE No. 6/2014, a right has accrued in his favour to be appointed is misconceived. The said circular would apply only if the OBC and ST category posts remained vacant after the completion of the main selection process notified under Notification No. 02/2012 and 5/2010, and such vacancies continued due to the non-availability of suitable candidates. In the present case, the respondents were not a selected candidate in the main selection list; rather, he was placed at serial number 07 under OBC category in the waiting list and respondent Hariom Meena was placed in the reserve panel at serial No.11. The waiting list comes into operation only after the main selection list is exhausted. Since the OBC and ST quota posts were already filled during the main selection process, the said circular does not apply to the respondents, and they cannot claim appointment on that basis.

20. In view of the above, we are of the considered opinion that the learned Tribunal has committed an error in passing the impugned order. Therefore, both the petitions are allowed, and the impugned order dated 17.05.2023 passed in O.A. Nos. 200/695/2019 and 200/722/2021



respectively by the Central Administrative Tribunal, Jabalpur Bench, is hereby set aside. There shall be no order as to costs.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

MSP