



2024:DHC:9290-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6366/2021**

AKHIL PAHUJA AND ORSPetitioners
Through: Mr. MK Bhardwaj, Ms.
Priyanka M Bhardwaj, Ms. Maria Mugesh
Kannan and Mr. Himanshu Bhardwaj, Advs.

versus

UNION OF INDIA AND ORSRespondents
Through: Ms. Shagun Chugh, Ms. Meera
Chugh and Mr. Utsav Malhotra, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT (ORAL)
28.11.2024

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C. HARI SHANKAR, J.

1. The petitioners were aspirants to the post of Assistant Station Master¹, which falls within the Non-Technical Popular Category² of posts in the Railways.

2. Centralized Employment Notice³ No. 3/2015 was issued by the Railways on 26 December 2015 to fill up vacancies in the NTPC. The petitioners also participated in the selection. They qualified the written examination and were subsequently subjected to psycho and typing

¹ "ASM", hereinafter

² "NTPC", hereinafter



test. Thereafter, in August 2017, a list of short-listed candidates for documents verification was released. The names of the petitioners did not find place in the said list. No waiting list or standby list was issued for the post of ASM.

3. On 27 October 2017, the Railways issued a notice clarifying the reason for not maintaining a standby list for the ASM. The notice deserves to be reproduced in full, thus:

“Notice for Candidates Shortlisted for DV for CEN 03/2015

Some candidates have approached RRBs seeking clarification regarding maintenance of standby list for the post of Assistant Station Master (ASM) or otherwise.

It is clarified that the post of ASM has now been upgraded and re-designated as Station Master as per recommendations of 7th Pay Commission. Accordingly the Grade Pay (GP) for the post stands revised from Rs 2800/- to 4200/-. Para 1.07.02 of CEN 03/2015 specified that there will not be any standby list for the posts i.e. Commercial Apprentice and Traffic Apprentice (having GP of Rs 4200/). With up-gradation of GP for the post of ASM to Rs 4200/- subsequent to the issue of the CEN, the principle of not keeping the standby list for posts having GP of Rs 4200/- stands extended to the post of ASM also. Keeping this in view the candidates were also afforded opportunity to exercise options afresh before declaration of the result of Second Stage CBT itself.

Candidates specific attention is invited to the Para 8.10 of the CEN and Note 1 of the Result for DV published in August 2017 wherein it has been mentioned that calling of around 50% extra candidates over and above the number of modified vacancies for document verification (DV) is primarily to make good any likely shortfall arising due to various reasons during formation of panel. With call of around 50% extra candidates over and above the number of modified vacancies for DV for all the notified posts this aspect has been taken care of. This has ensured that the interest of meritorious candidates is strictly safeguarded while forming the panel.

³ “CEN”, hereinafter



Para 1.07.02 of CEN clearly specifies that RRBs reserve right to utilize the standby list, if required. Whether the standby list will get operated or not depends on several factors including materialization of candidates as well as review of the requirement of the manpower from time to time. There have been several instances in the past wherein the standby lists have not been operated at all.

In the case of multi-post examination having multiple grades as NTPC (Graduate) Exam, a common standby list can be prepared, after sending the main panel, only of categories which have lower grade pay. The reason is that the candidates of standby list would be lower in merit than many candidates in the main panel who are empanelled for lower than 4200 GP posts. Hence, it will be a grave injustice to the candidates who though having a higher merit join on posts of Grade Pay Rs.2800/- or Rs.2000/- and later on candidates further lower in merit from standby list are empanelled for posts of grade pay Rs.4200/-. Moreover, standby candidates have no claim to get empanelled as a matter of right.

Further Para 1.07.03 of CEN specifies that once a candidate has been allotted a category the same will not be reviewed/revised/re-allotted under any circumstances. Thus no sliding is permitted across categories after publication of panel. In view of this, once the panel has been published allotting categories to the candidates, subsequent empanelment of candidates from standby list (who are essentially lower in merit than the empanelled candidates) to the categories for which the GP is higher than the other categories and for which option of higher merit candidates could not materialize at the time of publication of panel will not be correct and will jeopardize the settled principle of merit cum option.

In view of the above, it may please be noted that the standby lists shall be kept by RRBs only for the categories having GP of less than 4200/-.

Date: 27.10.2017

Chairpersons
Railway Recruitment Boards"

4. Aggrieved by the decision of the Railways not to maintain a standby or waiting list for the post of ASM, the petitioners approached the Central Administrative Tribunal⁴ by way of OA 4579/2017⁵,

⁴ "the Tribunal" hereinafter

⁵ **Akhil Pahuja v UOI**



seeking a direction to the Railways to prepare a standby list for the post of ASM as well and to consider the petitioners, who would figure in the said standby list, for the post.

5. The contention of the petitioners before the Tribunal, which has also been reiterated before us, is predicated on Clause 1.07.02 of the CEN, which reads as under:

“1.07.02 Once a candidate has been empanelled as per his/her merit/choice, he/she will forfeit the right to be considered for any other category. *In case of exigencies/shortfall in main panel, RRB⁶ reserves the right to utilize the standby list, if required, as per the merit and preference given by the candidates placed in the standby list. No standby list will be maintained for the post of Commercial Apprentice/Traffic Apprentice.*”

6. The petitioners sought to submit, before the Tribunal, that Clause 1.07.02 of the CEN required the RRB to prepare a standby list and, in the case of any exigency, or of shortfall in the main panel of officers selected for the post, prefer the candidates in the standby list. It was also submitted that, in the past, standby lists had been prepared for the post of ASM.

7. The notice dated 27 October 2017, it was submitted, resulted in the deprivation, of the petitioners, of their right to be selected and appointed as ASMs and was, therefore, *ex facie* illegal.

8. Before the Tribunal, the Railways sought to defend their decision not to maintain a standby list for the post of ASM on the



ground that while, at the time of issuance of the CEN, the grade pay of the post of ASM was ₹ 2800/-, it was subsequently upgraded, consequent on the recommendations of the 7th Central Pay Commission⁷, to ₹ 4200/-, which was earlier available only to the posts of Commercial Apprentice⁸ and Traffic Apprentice⁹. It was pointed out that no standby list was maintained for the post of CA and TA and standby lists were maintained for the remaining posts only because they were fetching the lower grade pay of ₹ 2800/- or ₹ 2000/-. Once the grade pay of the post of ASM stood upgraded to ₹ 4200/-, a decision was taken not to maintain the standby list for the said post as selection of candidates from such a standby list, for the post of ASM which carried a higher grade pay, would result in such candidates stealing a march over the candidates higher in merit, but who were selected for other posts carrying a lower grade pay. Reliance was also placed on Clause 1.16 of the CEN, which read thus:

“1.16. Any subsequent change(s) in the terms and conditions of this Centralised Employment Notice as per extant rules will stand good. RRBs reserve the right to incorporate any subsequent changes/modifications/additions in the terms & conditions to recruitment under this Centralised Employment Notice as necessitated and applicable.”

9. It was therefore contended that the RRB retained the authority to make changes and modifications in the instructions contained in the CEN in the case of policy change.

10. The Tribunal, having considered the submissions of both sides,

⁶ Railway Recruitment Board

⁷ “7th CPC”, hereinafter

⁸ “CA”, hereinafter



observed and held as under:

“8. In view of Ministry of Railways accepting the recommendations of 07th CPC, the ASMs were placed in GP of Rs. 4200/- thus the GP of ASMs became at par with that of TA and CA. This was advised, before the formation of final panel vide notice dated 27.10.2017 on all websites of RRB. This policy change before the formation of final panel, thus did not in any way affect the number of vacancies advertised for ASMs in the selection. This was only in relation to the extension of principle of non maintenance of standby list to the category of ASMs whose GP has become at par with that of CA and TA. The category of post of CA and TA with GP of Rs. 4200/- had no provision of any standby/reserve list. The respondents have also provided a rationale behind this decision. It is submitted that any selection from the reserve panel of a lower merit candidate to a post with higher GP shall result in a candidate of lower merit getting selected in comparison to the other candidates ranking higher and being selected for other posts with lower GP.

9. It is not the case of the applicants that they were part of any final panel of this examination and were kept in the standby or waiting list and subsequently not appointed against any shortfall/vacancy in the main list. The subsequent change of not maintaining a reserve list / standby list for the category of ASM is only akin to the other two categories of posts i.e. of CA and TA having the same GP. The notice dated 27.10.2017 is a policy decision and does not in any way take away the rights of any regularly selected candidate.

10. We do not find any illegality or infirmity in the notice dated 27.10.2017 and the reason given by the respondents for not maintaining reserve/standby list for the post of ASM in terms of the said notification. The claim of the applicants that a waiting list should be prepared despite the duly conveyed clarification and the policy decision of the respondents, is not tenable as it has not, in any way, affected their right for not having been selected in the examination for recruitment. The applicants were not successful in the examination and, therefore, their claim for a standby list cannot be sustained.”

11. Following the above reasoning, the Tribunal dismissed the petitioners’ OA.

⁹ “TA” hereinafter



12. Aggrieved by the aforesaid decision, the petitioners have approached this Court by means of the present writ petition.

13. We have heard Mr. M.K. Bhardwaj, learned Counsel for the petitioners and Ms. Shagun Chugh, learned Counsel for the respondents, at length.

14. Mr. Bhardwaj placed reliance on Clause 1.07.02 of the CEN to contend that the only posts for which it was specified that no standby list would be maintained were the posts of CA and TA. A holistic reading of the said clause, he submits, indicates that the maintenance of a standby list was mandatory for the remaining advertised posts.

15. Mr. Bhardwaj further submits that the Tribunal was in error in observing that the rationale for not maintaining a standby list for the post of ASM was justifiable in law. He submits that, in fact, a fresh notice was subsequently issued by the Railways, inviting further applications for the post of ASM, consequent to the enhancement of the grade pay of ASM to ₹ 4200/-. As such, he submits that the apprehension that, if appointments to the post of ASM were made from a standby list maintained for the post, candidates lower in merit would secure appointment to the post in preference to candidates higher in merit, was unfounded on facts.

16. As against this, Ms. Chugh has placed reliance on Clause 8.10 of the CEN, which reads as under:



“8.10 Based on the performance of candidates in the CBT/online examination and Aptitude Test/Typing Skill Test, wherever applicable, candidates equal to the number of vacancies are called for document verification in the main list. In addition, 50% extra candidates are also called as standby unless otherwise Specified (refer para 1.07.02). However, they are considered for empanelment only if there is shortfall in empanelment from the main list. During document verification, candidates will have to produce their original certificates. No additional time will be given and the candidature of the candidates not producing their original certificates on the date of verification is liable to be forfeited.”

17. Ms. Chugh submits that, consequent to the acceptance of the 7th Central Pay Commission¹⁰ recommendations and the resultant enhancement of the grade pay of the post of ASM to ₹4200/-, instructions had been received from the Railways not to maintain a standby or reserve lists for the post of ASM, so as to avoid the anomalous circumstances already noted hereinbefore. She submits that the power to alter the terms of the CEN, consequent on such a policy change, was saved by Clause 1.16 of the CEN.

18. Ms. Chugh further submits that there was a possibility of all vacancies of ASM having been filled, so that it was not possible, any more, to accommodate the petitioners.

19. Mr. Bhardwaj, in rejoinder, reiterates his original submissions. On the aspect of whether any vacancy survived, Mr. Bhardwaj submits that the number of posts of ASM advertised was far in excess of the number of posts filled. In any event, he is agreeable to a direction for appointment of his clients to the posts of ASM being made subject to the availability of the vacancies of ASM.

¹⁰ CPC



Analysis

20. Right to maintenance of a wait list/standby list

20.1 On the right of candidates to the maintenance of a waitlist/standby list, the Supreme Court has, in its judgment in ***Vallampati Sathish Babu v State of Andhra Pradesh***¹¹, observed as under:

“17. The appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for waiting list as per the statutory provision. *In absence of any specific provision for waiting list and on the contrary, there being a specific provision that there shall not be any waiting list and that the post remaining unfilled on any ground shall have to be carried forward for the next recruitment.* The appellant herein, thus, had no right to claim any appointment to the post which remained unfilled.”

(Emphasis supplied)

20.2 Thus, there is no inherent right, in any candidate, to the maintenance of a waiting list, standby list or reserve panel for appointment to any post in the Government. Where the Rules unequivocally require such a standby list or waiting list to be maintained, the Court would no doubt insist on strict adherence to the requirement. Where such an unequivocal requirement is not to be found in the Rules or applicable instructions, the Court cannot insist on the maintenance of a standby list or a waiting list.

20.3 Though it is true that it is in the interests of administration and

¹¹ (2022) 13 SCC 193



efficient functioning of the Government that all posts are filled and no posts are allowed to remain vacant, where candidates are available, nonetheless, the Court cannot insist on the preparation or maintenance of a waiting list or the standby list, if the law does not so require. **Vallampati Sathish Babu** makes it clear that it is only where there is a positive requirement in the law for maintenance of a waiting list, that the Court can insist on such maintenance.

21. Conjoint reading of Clauses 1.07.02 and 8.10 of CEN

21.1 Having perused Clause 8.10 read with Clause 1.07.02 of the CEN, we are of the considered opinion that read in conjunction, these clauses unequivocally require a standby or waiting list to be maintained, except for the posts of CA and TA. Clause 8.10 states that, while the number of candidates in the main list who are called for document verification would be equal to the number of vacancies, an additional 50% candidates would be called as standby unless otherwise specified. The words “unless otherwise specified” are clarified in the same clause by drawing reference to Clause 1.07.02 of the CEN. The clause goes on to say that candidates in such a standby or waiting list would be considered for empanelment in the event of shortfall in the main list.

21.2 The words “unless otherwise specified”, read with the parenthetical reference immediately thereafter to para 1.07.02, makes it clear that the specification “otherwise” in the CEN is restricted to the posts of CA and TA, as Clause 1.07.02 does not specify any other



posts for which no standby list would be maintained. The inexorable sequitur when one reads Clause 8.10 is that, in addition to the candidates numbering the number of vacancies, a standby/waiting list comprising 50% additional candidates is required to be maintained for all posts, except CA and TA.

21.3 This, in our view, is the clear and unmistakable mandate of Clause 8.10 read with Clause 1.07.02 of the CEN.

21.4 It is an adage as old as the hills that where the law requires a particular act to be done in a particular manner, that act has to be done in that manner alone and not done at all, all other manners of doing the act being necessarily forbidden. This principle dates back to *Taylor v Taylor*¹² and was subsequently reiterated by the Privy Council in *Nazir Ahmed v King -Emperor*¹³ and the Supreme Court in a plethora of decisions including *State of UP v Singhara Singh*¹⁴ being the most often cited, till as late as *UOI v Mahendra Singh*¹⁵.

21.5 This principle when applied to the facts of the present case requires implicit adherence to the discipline of the terms of the CEN which include Clause 8.10 and Clause 1.07.02. It is not open, therefore, to the Railways to deviate from that discipline irrespective of the cause or provocation for such deviation.

22. Clause 1.6 of the CEN

¹² (1875) 1 Ch D 426

¹³ AIR 1936 PC 253

¹⁴ AIR 1964 SC 358

¹⁵ 2022 SCC Online SC 909



22.1 Clause 1.16, on its plain terms, is inapplicable and cannot support the impugned decision of the Railways. The Clause expressly applies to “subsequent change(s) in the terms and conditions of the CEN”. Any such change has also, as per the said clause, to be “as per extant Rules”. The further reservation of the right with RRBs to which the clause alludes is only the right to incorporate changes/modifications/additions in the terms and conditions stipulated in the CEN. There has, in fact, been no such change in the terms and conditions of the CEN. A mere communication, after the process of selection had taken off, to the effect that in view of the certain supervening developments, a decision had been taken not to have a standby list for the post of ASM, cannot constitute lawful exercise of the liberty conferred by Clause 1.16 of the CEN.

22.2 Clause 1.16 cannot, therefore, come to the rescue of the respondents.

23. No change permissible to the rules of the game

The Constitution Bench of the Supreme Court in its recent decision in *Tej Prakash Pathak v Rajasthan High Court*¹⁶ confirmed that the rules of the game cannot be changed once the game has started. Applied to service jurisprudence, this implies that, once the selection process is under way, there can be no change in the Rules which were applicable at the time when the selection process had been initiated.

¹⁶ 2024 SCC Online SC 3184



Even on the basis of this general principle, the decision to exclude the posts of ASMs from the post with respect to which standby/waiting list would be maintained amounts to a material change in Clause 1.07.02, effected during the process of selection and after the process has commenced. This, applying the principle laid down in *Tej Prakash Pathak*, is impermissible.

24. No justifiable rationale for not maintaining standby list

24.1 We are also unable to comprehend the rationale for the decision not to maintain a standby list for the post of ASM, as contained in the Notice dated 27 October 2017. No doubt, consequent to the recommendations of the 7th CPC, the grade pay of the post of ASM may have increased to ₹ 4200/- and brought at par with the grade pay of CA and TA. We do not comprehend as to how this could be a ground to do away with the maintenance of a standby or waiting list for the post of ASM. The reason adduced is that if appointment is made from such a standby or waiting list, it may result in candidates lower in merit securing appointment to higher posts while candidates higher in merit are appointed to lower posts. We fail to understand how such a consequence would result, as the aspirants to the post of ASM would undoubtedly obtain appointment to the post only as per their merit. There is, therefore, no chance of any candidate lower in merit, who aspires to the post of ASM, securing appointment to the post over and above a candidate higher in merit.

25. There can be no qualitative or quantitative comparison between



the candidates who aspire to different posts covered by the advertisement. The mere fact that one post may carry a pay scale which is lower or higher than the other cannot justify such a comparison. Any allegation of discrepant appointment or selection would be justified only if, for the same post, a less meritorious candidate is appointed in place of a more meritorious candidate.

26. We enter the above observations only as an aside, as, in our opinion, in view of the clear mandate of Clause 8.10 read with Clause 1.07.02 of the CEN, the Railways were required to maintain a waitlist/standby list/reserve panel for all posts except the posts of CA and TA – which would include the post of ASM – and to operate the panel to the extent posts remained unfilled.

Conclusion

27. We are unable, therefore, to sustain the impugned judgment of the Tribunal, which is accordingly quashed and set aside.

28. The writ petition, as well as the OA filed by the petitioners before the Tribunal, therefore, stand allowed. The respondents are directed to place the candidates who had applied and sought appointment to the post of ASM but could not be appointed, based on their merit, in a standby list to the extent of 50% of the number of vacancies for the post. If the petitioners figure in the said standby/waiting list they would be appointed as ASM.



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29. The petition is allowed to the aforesaid extent.

C. HARI SHANKAR, J.

GIRISH KATHPALIA, J.

NOVEMBER 28, 2024/ar/yg

Click here to check corrigendum, if any