

Sunil Kumar vs Chairman Railway Recruitment Cell N E ... on 15 May, 2026

Reserved on 06.05.2026

Central Administrative Tribunal, Allahabad Bench, Allahabad
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This the 15 of May, 2026

Hon'ble Mr. Justice Om Prakash VII, Member (J)

Hon'ble Mr. Mohan Pyare, Member (A)

Original Application No. 208 of 2020

1. Sunil Kumar S/o Badri Prasad, R/o Village Maupur Dhedhya, Post Murad Nagar, District Ghaziabad.
2. Shraavan Kumar Yadav S/o Anachh Yadav, R/o Village Lakhai Post Matiaps Barhat, Jamul (Bihar)
3. Amit Kushwaha S/o Sri Preetam Singh, R/o Siddharth Nagar, Near Shanti P.C.O. Izzat Nagar District Bareilly - 243122 U.P.
4. Prem Narayan Yadav S/o Sudarshan Yadav, R/o Village & Post Beekapur, District Ghazipur.

..... APPLICANTS

By Advocate: Shri Vinod Kumar and Shri Shiv Mangal
Prajapati

Versus

1. Union of India through Secretary, Ministry of Railway, Baroda House, Rail Bhawan, New Delhi.
2. The Chairman, Railway Recruitment Cell, North Eastern Railway, Gorakhpur.

.....RESPONDENTS

By Advocate: Shri Manoj Kumar Sharma and Shri K K Ojha

ORDER

(Delivered by Hon'ble Mr. Justice Om Prakash VII, Member (Judicial) Shri Vinod Kumar and Shri Shiv Mangal Prajapati, learned counsel for the applicants and Shri Manoj Kumar Sharma, learned counsel for the respondents, were present at the time of hearing. RITU RAJ SINGH

2. The present original application has been filed seeking following reliefs:

"(i) To issue an order or direction in the suitable nature directing the respondents/ Railway Recruitment Cell Gorakhpur to consider and offer the appointments in favour of the applicants in accordance with the law as laid down by the Hon'ble Apex Court in case of Dinesh Kumar Kashyap as well as in the light of RBE No. 121/2005 and RBE No. 73/2008 issued by the Railway Board.

(ii) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iii) To award the cost of the application to the applicant."

3. The instant original application has been filed by the applicants with the prayer to consider their appointment against several posts which they claim to be lying vacant in lieu of the selection process carried out on the basis of Advertisement dated 06.12.2007 and arrange to appoint the applicants in Group D category and permit them to join in their respective posts on which they have been selected within stipulated time fixed by this Hon'ble Tribunal.

The brief facts of the case are that vide Advertisement No. NER/RRC/D/2007/1 dated 06/12/2007, applications were invited for appointment on Group D Posts in North Eastern Railways to which the applicants applied. The applicants appeared in the physical eligibility test followed by the written examination and subsequent state of medical examination and document verification.

The applicants have contended that many candidates included in the selection list either failed to appear for medical examinations, were declared medically unfit, remained absent, or were debarred for various reasons. Despite this, the respondents retained the names of such candidates in the result list, although they were effectively unqualified and should have been removed. Applicants claim to have learned that many selected candidates from the main list had not joined within the stipulated period, which had already expired and RITU RAJ SINGH therefore, through a representation, they requested reconsideration of these vacancies, especially since some candidates in the panel had failed medical tests or remained absent. However, the respondents did not consider the plea of the applicants.

Further, through the OA, several illegalities and irregularities are alleged to have been committed at the end of the respondents as the applicants have contended that the respondents have changed the terms and conditions of the advertisement midway through the selection process which is not permissible according to law. Allegation has also been made that the entire selection process has been arbitrarily carried out and furthermore the respondents have reduced the number of vacancies midway through the selection process which has inflicted irreparable loss and injury to several candidates and the same is also not permissible according to law. The applicants have also contended that upon non-issuance of the results, the applicants have approached the competent authority of the respondents and got assurance of their selection but no selection has been made.

The OA further contends that earlier, the applicants and other similarly situated candidates had filed O.A. No. 163 of 2013, and the same was decided vide order dated 13.02.2013 in terms of the order passed in another OA No 1669 of 2012 filed by other similarly situated candidates in which the Tribunal directed the respondents to decide their representation of the applicants through a reasoned order and consider their appointment. In response, the respondents stated vide order dated 10.4.2013 and also vide order dated 17.06.2013 that the applicants' merit rank was below the last selected candidate, though future vacancies arising from non-joining or disqualification could be considered according to merit. Despite this assurance, no action followed. The OA also contends

that another OA filed on same facts and circumstances by similarly situated persons viz. OA No 831 of 2013 was dismissed by this Tribunal vide its order dated 27.09.2013 wherein it was held that inclusion in a select list does not RITU RAJ guarantee appointment when no vacancies exist. The applicants / SINGH respondents subsequently challenged the order passed in the all such aforesaid OAs before the Hon'ble High Court of Allahabad through Writ A No 8561 of 2021 (Leading Writ Petition) and connected cases which was decided on 17.05.2024 remanding the case back to the Tribunal to decide it afresh. Furthermore, the facts also reveal that after the order dated 17.06.2013 was passed by the respondents, the applicants again approached before the Tribunal through the instant OA No 208 of 2020 which was decided vide order dated 17.08.2021 directing the respondents to consider the case of the applicants and the aforesaid order was challenged before the Hon'ble High Court by the respondents wherein the OA has been remanded back to the Tribunal for fresh consideration. Applicants have further contended that their case is strongly supported by the RBE No 121 of 2005 and RBE No 73 of 2008 issued by the respondents' department.

Respondents have filed counter dated 10.12.2024 against the OA wherein it has been stated that several posts of Group "D" category were notified vide Advertisement No. NER/RRC/D/2007/1 dated 06/12/2007 in the North Eastern Railway and all the stages of the selection process viz., the physical eligibility test, written test, medical test and document verification have been conducted and carried out in accordance with extant rules and statutory provisions governing the subject matter. The applicants had successfully cleared the various states of the examination / selection process but owing to the fact that their merit was lesser than the merit of the last selected candidate which was mentioned in the select list issued by the respondents, the applicants were not granted appointment. It has also been stated that the applicants qualified the examination only as a 20% extra candidate and there is no mandatory provision to give appointment to such candidates. There is no error in the way the entire selection process was carried out and by way of this misconceived OA, the applicants are agitating unreasonable claims. The respondents have also contended that no terms and conditions of the advertisement were changed during midway of the selection RITU RAJ process and the exercise of reducing / surrendering the vacancies has SINGH been carried out after obtaining the approval of the competent authority and as per the stipulations enumerated in the advertisement itself. Respondents have further contended that the original application is time barred and furthermore the life of the selection panel against which the applicants claim selection or appointment has already ended and no relief is liable to be granted at this stage. Thus, the respondents have contended that there is no illegality in the impugned order.

Rejoinder dated 02.02.2025 has been filed by the applicants refuting the contentions of the Counter by contending that the relief prayed for by them has already been granted to several similarly situated candidates and when they have successfully cleared the examination, it is pertinent on the part of the respondents to grant appointment to them. It has also been stated therein that the applicants case is squarely covered by the Railway Board Circular RBE No. 73/2008 dated 17.06.2008 and also by RBE No. 121/2005 dated 18.07.2005 and also by several judicial pronouncements annexed with the Rejoinder.

Miscellaneous Application dated 18.08.2024 has also been filed by the applicants bringing on record the judgment and order dated 17.05.2024 passed by the Hon'ble High Court of Allahabad in Writ A

No 8561 of 2021 (Leading Writ Petition) through which the OAs filed by the applicants before the Tribunal have been remanded back to the Tribunal for reconsideration.

Supplementary Counter Reply dated 10.11.2025 has been filed by the respondents wherein it has been stated that there is no vacant post under the Advertisement dated 06.12.2007 and furthermore, the vacancy year dates back to the year 2007 and the same has ended and furthermore, several recruitments have taken place after that.

Supplementary Rejoinder Affidavit dated 25.11.2025 has been filed rebutting the Counter dated 10.11.2025 and it has been stated therein that as many as 486 vacancies pertaining to the advertisement under question are lying vacant and the applicants, having RITU RAJ SINGH successfully qualified all the stages of the examination, are liable to be appointed on them.

4. We have heard learned counsel for the parties.

5. Disclosing a brief history of the case, learned counsel for the applicants submitted that the applicants had applied for Group D posts advertised vide Advertisement No. NER/RRC/D/2007/1 dated 06/12/2007 in the North Eastern Railway. The applicants participated in all the stages of the examination viz the physical eligibility test, written exam and subsequently in the medical examination and document verification. It was argued that on the basis of the written examination, a total of 5363 candidates were declared successful against the 4549 advertised posts. Subsequently, call letters were issued to the successful candidates to appear before the respondents for verifications of the testimonials on the prescribed date and time. Initially, out of total number of 4549 vacancies, the result of only 3722 candidates was published on 24.08.2012 with a notification dated 24.08.2012 conveying that result of some of the candidates were withheld on account of certain irregularities and after obtaining the report of the expert, the result will be declared. Thereafter, again a list of 220 candidates was published by the respondents but names of the applicants were not present therein. Learned counsel further argued that upon inquiry through RTI, several similarly situated candidates who are the applicants in other OAs came to know on 06.06.2013 that the demand of posts has not been reduced and in case, the candidates from main lists do not join, the candidates from the waiting list would be picked up. It further came to knowledge that 374 candidates did not know from the main list and the stipulated period of time of joining had already expired. However, the applicants submitted a representation seeking appointment but the applicants' plea was not addressed. The applicants approached before the respondents again and again for the redressal of their grievance but only assurance was given to them that as and when demand is made by any Unit, unfilled vacancies will be filled up. It was argued that the respondents have RITU RAJ surrendered 500 vacancies of Trackman out of the total notified SINGH vacancies. Learned counsel argued that even if the respondents have surrendered 500 vacancies out of the total 4549 vacancies, they should have filled up the remaining 4049 vacancies but instead they have filled up 4087 vacancies and no justification has been given as to how as many as 38 extra vacancies have been filled up and thus there has been arbitrariness on the part of the respondents / selection committee. It is argued that the applicants came to know that about 827 vacancies remained unfilled and thus being aggrieved, some of the applicants approached before this Tribunal through OA No 163 of 2013 which was disposed of at the admission stage vide

order dated 13.02.2013 directing the respondents to reconsider the claim of the applicants. In compliance of the aforesaid order, the applicants preferred representations before the respondents but vide order dated 17.06.2013, their plea was rejected and an assurance was given to them whenever there will be demand from the department. Again, the applicants approached before this Tribunal vide instant original application which was decided on 28.02.2020 in terms of the order passed by the Tribunal in one similar OA No 608 of 2014. Subsequently, the respondents challenged the aforesaid order before the Hon'ble High Court of Allahabad and the Hon'ble High Court decided the issue vide order dated 17.05.2024 passed in Writ A No 8561 of 2021 (Leading Writ Petition) and the matter was remanded back to the Tribunal for fresh consideration. It is further argued that a letter dated 06.08.2021 was issued from the office of the respondents that there is no provision of surrendering the vacancies however, the respondents have surrendered 500 vacancies of Trackman out of the total notified vacancies. Learned counsel argued that even if the respondents have surrendered 500 vacancies out of the total 4549 vacancies, they should have filled up the remaining 4049 vacancies but instead they have filled up 4087 vacancies and no justification has been given as to how as many as 38 extra vacancies have been filled up and thus there has been arbitrariness on the part of the respondents / selection committee. It is further argued that the respondents vide RITU RAJ letter dated 02.08.2013, 10.09.2014, 04.10.2014, 20.01.2015, SINGH 12.01.2016, 15.12.2016 and 14.08.2017 have themselves disclosed that 27, 26, 41, 52, 76, 121 and 35 candidates have not joined in the aforesaid recruitment process and thus it was argued that as many as 378 empanelled candidates have refused to join the post and as per the Railway Board Circular dated 17.06.2008 i.e., RBE No 73/2008 and RBE No 121/2005 dated 18.07.2005, the applicants are liable to be appointed. Learned counsel further argued that in several identical cases, the candidates similarly placed to the applicants have been granted appointment and the applicants of the instant OA are also liable to be treated in the same way.

6. Learned counsel for the applicants further argued that although fresh vacancies in the year 2010 and 2012 were advertised yet the applicants claim for appointment against the unfilled vacancies was legally permissible and the respondents ought to have filled all the advertised vacancies. Learned counsel further argued that in the similar circumstances, for the vacancy year 2010, when unfilled vacancies were not filled up, selected candidates approached before the Tribunal and that matter went up to the Hon'ble Supreme Court of India. The Hon'ble Supreme Court directed the respondents to fill up all the advertised vacancies. In this regard, learned counsel for the applicants has placed reliance upon the judgment passed by the Apex Court in the case of Dinesh Kumar Kashyap and others Vs South East Central Railway and others reported in (2019) 12 SCC 798. Learned counsel argued that although in the case of Dinesh Kumar Kashyap (supra), the Apex Court made a distinction for applicability of the decisions passed in those cases to the extent of candidates who had approached before the Tribunal yet the ratio laid down in the said case is equally applicable to the present case of the applicants also. Referring to the facts disclosed in the counter affidavit as well as the judgment and order passed by the Hon'ble High Court of Allahabad in leading Writ Petition No 8561 of 2021 decided on 17.05.2024 filed against the judgment and order passed in the present OA itself, it was next argued that the plea of the respondents to surrender 500 RITU RAJ vacancies of Trackman is illegal and there is no provision to surrender SINGH the vacancy. If in any case, it is necessitated, it can only be done by the competent authority. Referring to the aforesaid fact, it was also argued that no such order as passed by the competent authority has been brought on

record by the respondents. Thus, respondents can be directed to fill up all the vacancies advertised through Advertisement No. NER/RRC/D/2007/1 dated 06/12/2007. Learned counsel for the applicants also argued that respondents cannot change the terms and conditions of the advertisement during the midway stage of the selection process. It is also argued that selection process is completed after offering appointment to the selected candidates. In this matter, certain vacancies have not been filled up and during selection process, 500 vacancies are said to be surrendered. Thus, action of the respondents is against the settled proposition of law.

7. Learned counsel for the applicants further argued that similar issue came up for consideration before the Hon'ble Chhattisgarh High Court (at Bilaspur) for the vacancies year 2010 and the Hon'ble Court allowed the writ petition affirming the order passed by the Tribunal in light of the judgment passed in the case of Dinesh Kumar Kashyap (supra) by the Apex Court. Thus, argued that the OA be allowed and the respondents be directed to fill up the entire vacancies advertised through Advertisement No. NER/RRC/D/2007/1 dated 06/12/2007 otherwise the applicants shall suffer irreparable loss and injury. It was also argued that already there has been considerable delay in the selection process and by further prolonging, the respondents are discriminating against the applicants by only giving assurance and not granting appointment. All the case laws which have been relied upon by the learned counsel for the applicants to substantiate his case are as follows:

i. Judgment dated 17.05.2024 passed by the Hon'ble High Court of Allahabad in Writ A No 8561 of 2021 (Leading Writ Petition) titled Union of India and 4 others Vs Pappu Kumar and 13 Others, and connected matters.

RITU RAJ SINGH ii. Judgment passed by the Hon'ble Supreme Court of India in the case of Dinesh Kumar Kashyap and others Vs South East Central Railway and others reported in (2019) 12 SCC 798.

iii. Judgment dated 05.12.2025 passed by the Hon'ble High Court of Chhattisgarh at Bilaspur in WPs No 6291 of 2024 titled Union of India Vs Smt R Santoshi and others, And connected matters.

iv. Judgment dated 07.11.2024 passed by the Hon'ble Supreme Court of India in Civil Appeal No 2634 of 2013 titled Tej Prakash Pathak and Others Vs Rajasthan High Court and Others.

Further, the learned counsel for the applicants, through the OA as well as Rejoinder Affidavit has placed reliance upon several letters/OMs/Circulars which are as follows:

i. RBE No 73/2008 dated 17.06.2008 issued by the Railway Board, Ministry of Railways, Government of India vide letter no E(NG)-II/96/RR-1/62/Vol II on the subject of "Recruitment of Group 'D' staff on Indian railways - Calling of candidates for document verification regarding."

Referring to the rejoinder dated 25.11.2025 passed against the Supplementary Counter dated 10.11.2025, learned counsel for the applicants further argued that the case of the applicants is squarely covered by the rules / provisions laid down in the Railway Board Circular dated 18.07.2005 (RBE No.121/2005) and also in view of the Railway Board Circular dated 17.06.2008 (RBE No. 73/2008). It was further argued the applicants are liable to be given appointment as vacancies of the aforesaid notification dated 06.12.2007 are still lying vacant.

8. Learned counsel for the respondents vehemently opposed the averments of the applicants' counsel and referring to the counter affidavit, he argued that after being successful in stages of the RITU RAJ SINGH examination, the applicants could still not be placed in the final merit list because their merit was lower than the merit of the last selected candidate. It was also argued that the applicants was found successful in the examination only in the category of 20% extra candidates as per provision contained in Railway Board's letter dated 17.06.2008 but could not get empanelled due to their low merit. It was also argued that Railway Board's letter dated 18.07.2005 (RBE No. 121/2005) also does not lend any support to the case of the applicants.

9. Learned counsel for the respondents further stated that although the applicants found place in the select list published in the selection process carried out in Advertisement No. NER/RRC/D/2007/1 dated 06/12/2007 (including 20% extra) but due to non-availability of vacancy, they could not be offered the appointment. It is also argued that the applicants merit is lower than the last selected candidate and due to this reason also, the applicants' claim cannot be allowed. It is next argued that in the selection process, employment has been conferred upon 4087 candidates. It is next argued that a list of 341 candidates for the post of Trackman was sent to the Construction Division. Since the Construction Division returned the list disclosing that no post is available in the Construction Division, it was next argued that this fact was raised by the respondents from the very beginning and there is no issue of taking a plea after the appointment. It is also argued that the authority concerned who has returned the list of 341 candidates for the post of Trackman was well competent to return the same. To substantiate this argument, learned counsel for the respondents referred to the original advertisement particularly paragraph no 14.1 and further argued that in the notification itself, it has been clarified that advertised posts may increase or decrease. Learned counsel for the respondents also referred to the advertisement and further argued that in total, 500 posts of Trackman were advertised belonging to the Construction Division which could not be filled up due to abolition of the said RITU RAJ SINGH posts. It is next argued that when Construction Division returned the list, those candidates were adjusted in some other unit(s) and none of the candidates were appointed who were lower in merit than the applicants. It is also argued that judgment rendered by the Hon'ble Supreme Court of India in the case of Dinesh Kumar Kashyap (supra) cannot be applied to the facts and circumstances of the present case as it relates to a different notification and subsequent notifications / advertisements in the year 2012 have been issued and process has been completed. It is also argued that few more candidates were also issued offer of appointment but those were also in the merit list and they are not lower in position than the applicants. It is further argued that judgment relied upon by the learned counsel for the applicants in Smt R Santoshi (supra) and argued that Hon'ble Chattisgarh High Court subsequently observing that the Dinesh Kumar Kashyap (supra) case will not be automatically extended to all categories of

candidates irrespective of chronology or conduct and it would be applicable only for those candidates who had approached the Tribunal within time. It is argued that on the ground of decision in Hon'ble Delhi High Court for the recruitment year 2007, no direction could be given to issue offer of appointment particularly in the facts and circumstances that applicants are included only in replacement panel. Life of the select list/replacement panel has ended. Entire selection process got over in the year 2014 itself and no change in the condition of the advertisement had been made during the selection process. Learned counsel for the respondents also placed reliance upon the following case laws:

i. Judgment dated 16.04.2025 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 10630 of 2018 and CM Appl. 48749/2023 titled Ashish Kumar Vs Union of India and Others.

ii. Judgment dated 05.01.2006 passed by the Hon'ble Supreme Court of India in Civil Appeal No 6663 of 2004 titled Union of RITU RAJ India and Others Vs Kali Dass Batish And Another. SINGH

10. We have considered the rival submissions and gone through the entire records including the OA, counter affidavit as well as rejoinder and also have meticulously perused the case laws relied upon by the contesting parties.

11. Admittedly, the applicants were declared successful in select list prepared on the basis of 20% extra candidates. No offer of appointment has ever been issued in favour of the applicants. Although they have completed PET, written examination as well as document verification. It is also the case of the applicants that in the selection process carried out on the basis of the advertisement dated 06.12.2007, as many as 486 posts are still lying vacant and therefore the applicants are liable to be given appointment in view of the respondents' letter dated 10.04.2013. The records establish that initially some of the applicants approached before this Tribunal through OA No 163 of 2013 which was disposed of at the admission stage vide order dated 13.02.2013 directing the respondents to reconsider the claim of the applicants. In compliance of the aforesaid order, the applicants preferred representations before the respondents but vide order dated 17.06.2013, their plea was rejected and an assurance was given to them whenever there will be demand from the department. Again, the applicants approached before this Tribunal vide instant original application which was decided on 28.02.2020 in terms of the order passed by the Tribunal in one similar OA No 608 of 2014. Subsequently, the respondents challenged the aforesaid order before the Hon'ble High Court of Allahabad and the Hon'ble High Court decided the issue vide order dated 17.05.2024 passed in Writ A No 8561 of 2021 (Leading Writ Petition) and the matter was remanded back to the Tribunal for fresh consideration. The respondents' case is that even if it is assumed that the applicants found place in the replacement panel, no person below the merit of the applicant have been issued offer of appointment. A list of 341 candidates was sent to the Construction Division which was returned by it with the observation that posts were abolished. It is the case of RITU RAJ SINGH the respondents that 341 candidates in the aforesaid list were adjusted in different units. This plea has been taken on behalf of the respondents that on surrender of 341 posts by the Construction Division, no post was available.

12. Before discussing the submissions raised across the Bar, it will be useful to quote the law laid down by the Hon'ble Courts in the case laws relied upon by the parties:

i. Relying upon the judgment passed by the Hon'ble High Court of Allahabad in the case of Pappu Kumar (supra), learned counsel for the applicants has emphasized upon the following portion:

"27. Primarily, the bone of contention between the parties is firstly whether it was open for the NER to resile from the assurance given by them to offer appointment to the selected candidates, secondly, legality of the order of the NER in surrendering of 500 posts while reducing the advertised post from 4549 to 4049. In order to address the said issue, this Court is required to analyse the pleadings set forth by the respective parties before the Tribunal. Pleadings reveal that in paragraph no. 2 of the counter reply of NER a specific pleadings have been made that 500 vacancies of Trackman were surrendered by the Construction Organisation, thus, the number of vacancies remained 4049 instead of 4549 and the number of selected candidates were 4087. In order to substantiate the same 'Annexure CR-1' was filed. In para 5, it was further pleaded that a panel of the 2007 selection was prepared on 20.08.2012 and thereafter a fresh panel was based upon 2010 selection was published on 15.02.2013. In para 6 of the counter affidavit, Railway Circular dated 9/10.07.1964 was also annexed so as to contend that the life of the panel is one year and thus it was claimed that there were no vacancies lying vacant against which the original applicants could have been offered appointment since they rank lower in the merit list. The Tribunal despite the aforesaid specific pleadings came to the conclusion, that, in view of the judgment in the case of Dinesh Kumar Kashyap (supra), it was not open for the NER to have denuded the original applicants, the benefits of selection for being offered appointment in the wake of the fact that assurance has been given by them. Moreover, we find that the Tribunal went on to direct the NER to offer appointment to the original applicants without recording any finding as to whether NER RITU RAJ SINGH was justified in reducing the advertised posts. To put it straight what was required of the Tribunal was to record a specific finding about the legality of the actions of the NER in reducing the advertised posts. In absence of any finding to the said effect, no directions could have been issued for offering appointment to the original applicants, particularly, when it was the consistent case of the NER that there were no posts lying vacant against which the original applicants could have been accommodated.

28. Importantly, also the Tribunal got swayed while observing and holding that there was a specific assurance extended by the NER in the orders dated 09.05.2013 and 17.06.2013 that the original applicants will be offered appointment. A close reading of the said speaking orders reveal that it was not unconditional but the same was conditional and qualified providing that since the original applicants were junior in the rank in reference to the last selected candidates placed on the panel and in the contingency when there shall be a demand from division/unit from posting in place of the candidates who did not join or were found medically unfit or impersonation proved then the original

applicants who were lower in the panel their cases may be considered and follow up actions will be taken. It is a cardinal principle of law that the entire document is to be read as a whole and not in isolation. The Tribunal seems to have overlooked the aforesaid aspect of the matter. Insofar as the reliance placed upon the judgement in the case of Dinesh Kumar Kashyap (supra) is concerned, it has not been disputed before us that the selections in the said case are different from the present one. Pertinently, a categorical finding ought to have been returned by the Tribunal with regard to the applicability of the said judgment in the present case which is seemingly lacking.

29. The argument raised on behalf of the original applicants that the number of vacancies could not have been reduced denuding the original applicants of the benefits and the order is to be judged based on reasons mentioned therein and the same cannot be supplemented by fresh reasons in the shape of the affidavit is concerned, the same is also dependant upon the core and the fundamental issue relatable to the legality and the validity of the decision of surrendering of the post. Pertinently, the Tribunal has not recorded any finding on the said aspect.

30. Interestingly, the Tribunal while disposing of the O.A. No. RITU RAJ 330/000208/2020 on 17.08.2021 relied upon the order dated 03.03.2021 SINGH passed in O.A. No. 608 of 2014 which itself was stayed by this Court in the leading writ petition on 27.09.2021. As regards, connected C2, C3 and C4 writ petitions are concerned, they are, at the instance of original applicants against the orders passed by the Tribunal based upon the plea that the Group 'D' vacancies stood surrendered resulting in reduction of the advertised post, the original applicants could not be offered appointment. Apparently, the issues raised in all the writ petitions are one and the same relatable to the import and the impact of the surrendering of posts resulting in reduction of Group 'D' post in the matter of selection. Probably for the same reasons, the writ petitions were consolidated together.

31. We have, meticulously, scanned the documents available on record and find that the fundamental and the core issues as discussed above which goes to the root of the matter have neither been addressed nor any finding has been recorded in that regard, thus, this Court while exercising the writ jurisdiction is not in a position to delve into the said aspects, particularly, when the Tribunal being the Court of first instance was required to address the said issues while returning the findings in that regard.

32. Accordingly, we are of the firm opinion that the matter needs to be revisited by the Tribunal, consequently, the writ petitions are being decided in the following manner:

(a). The judgement and the order dated 03.03.2021 of the Tribunal in O.A. No. 608 of 2014 (Pappu Kumar and others v. Union of India and others) impugned in the leading writ petition, the order dated 17.08.2021 of the Tribunal in O.A. No. 208 of 2020 (Sunil Kumar and others Vs. Union of India and another) impugned in the connected C1 writ petition, the order dated 02.02.2023 of the Tribunal in O.A. No. 1044 of 2019 (Vijay Kumar Yadav and others Vs. General Manager North Eastern Railway Gorakhpur, District Gorakhpur and others) impugned in the connected C2 writ petition, the order dated 31.10.2018 of the Tribunal in O.A. No. 330/00807 of 2014 (Bhupendra Kumar Yadav and others Vs. Union of India and another)

impugned in the connected C3 writ petition, the order dated 27.09.2013 of the Tribunal in O.A. No. 831 of 2013 impugned in the connected C4 writ petition, are set aside

(b). The original applications stand restored to its original number requiring the Tribunal to decide the controversy afresh.

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33. It is open for the parties to take appropriate proceedings for expeditious disposal of the original applications.

34. Needless to point that passing of the order today may not be construed to be an expression on merits as the order of the Tribunal has been set aside on technical grounds, thus, it is open for the parties to raise legal and factual pleas as available to them.

35. With the aforesaid observations, the writ petitions stand partly allowed."

ii. Relying upon the judgment passed by the Hon'ble High Court of Chhattisgarh at Bilaspur in the case of Smt R Santoshi (supra), learned counsel for the applicants has emphasized upon the following portion:

"42. Fifth, the scope and effect of the Supreme Court's decisions require close examination. The judgment in Dinesh Kumar Kashyap (supra) extended relief to those petitioners who had approached the CAT and directed compliance in a manner that, by its terms, assisted that class; subsequent orders of the Supreme Court clarified and enlarged the scope of relief to certain categories who had filed proceedings in time. The doctrine of "fence-sitters" and the maxim that law aids the vigilant (*vigilantibus non dormientibus jura subveniunt*) are well established; where a litigant slept over his rights and only later sought parity after others had succeeded, courts have declined to grant relief on equitable grounds. But these equitable principles cannot be mechanically applied to deny substantive legal rights where the right to appointment flows from an extant replacement list and available vacancies and where no finding of mala fides or deliberate suppression by an applicant is made on the record. Moreover, where the Supreme Court dismissed interlocutory applications for want of maintainability or on procedural grounds (e.g., by the Registrar), such procedural dismissals do not ipso facto decide the substantive entitlement of the petitioners who were not directly before the Supreme Court for adjudication on merits.

45. Eighth, the competing public interest considerations are salient and must inform the Court's approach. On one side lies the public interest in orderly, predictable and

timely recruitment for public employment and in RITU RAJ preventing undue burden on the public exchequer by reopening long- SINGH closed selections. On the other side is the public interest in ensuring that meritorious candidates who have cleared all stages of a competitive process are not deprived of appointment through administrative inaction or selective appointments of lesser-merit candidates. The Court's task is to achieve balance: to prevent opportunistic litigation and to deter fence-sitting, while at the same time ensuring that genuine legal entitlements are not trampled by technicalities or by administrative indifference.

46. Ninth, having regard to the above, the approach adopted by the CAT, a direction for administrative verification of vacancy position and consequential consideration of eligible candidates on the wait-list, is one that seeks to reconcile these competing considerations. It does not automatically or mechanically order appointments; it requires the respondents to examine the position, to ascertain whether vacancies remain that can legally be filled from the replacement list, and only thereafter to issue offer-letters to those found fit. This process preserves the Railways' managerial discretion and simultaneously protects the legal rights of the petitioners.

47. Tenth and finally, it will now be necessary to adjudicate the following matters with specificity: (i) identify which petitioners (if any) are clearly time-barred or disentitled by conduct (i.e., those who are "fence-sitters"

or who have suppressed material facts); (ii) identify which petitioners have bona fide and subsisting claims arising from vacancies that remain unfilled and who are therefore entitled to consideration under the replacement quota; (iii) determine whether any appointments already made by the Railways in later recruitments have lawfully absorbed the alleged vacancies and, if so, to what extent; and (iv) frame suitable directions to the respondents that are precise, practicable and consonant with law, for instance, a limited, time-bound vacancy audit, medical verification of those on the replacement list, and issuance of appointment letters where legally permissible, subject to usual checks of antecedents and fitness.

48. In Dinesh Kumar Kashyap (supra), the Hon'ble Supreme Court has held as under :-

"5. Aggrieved, the appellants approached the High Court of Chhattisgarh in which they also took another plea that persons from the 20% extra replacement panel had been offered appointment by the Railways in many other zones and it was only in the 3 divisions of RITU RAJ SINGH Bilaspur, Raipur and Nagpur that this was not done. The writ petition was dismissed holding that the appellants herein had no right and also that merely because some appointments have been made in other zones from the replacement panel, it would not create any right in the appellants.

f. The main issue which arises before us is whether the SECR could have ignored the 20% extra panel despite the letter dated 02.07.2008 without giving any cogent reason for the same. No doubt, it is true, that mere selection does not give any vested

right to the selected candidate to be appointed. At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. No doubt, it is not incumbent upon the employer to fill all the posts but it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the In replacement panel. In this behalf we may make reference to the judgment of this Court in R.S. Mittal vs. Union of India (UoI), (1995) Suppl. 2 SCC 230, wherein it was held as follows:-

"12. It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

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54. Accordingly, the writ petitions filed by the Union of India / Railways (including WPS No. 6291 of 2024 and all connected matters being WPS No.4069/2025, WPS No.4127/2025, WPS No.4047/2025, WPS No.4134/2025, WPS No.4024/2025, WPS No.4044/2025, WPS No.4120/2025, WPS No.4330/2025, WPS No.4143/2025, WPS No.10041/2025, WPS No.4119/2025, WPS No.4313/2025, WPS No.7203/2024, WPS No.4039/2025, WPS No.2019/2025, WPS No.7198/2024, WPS No.4020/2025, WPS No.7469/2024, WPS No.23/2025, WPS No.2023/2025, WPS No.2037/2025, WPS No.2027/2025, WPS No.2022/2025, WPS No.2026/2025, WPS No.2016/2025, WPS No.1953/2025, WPS No.2030/2025, WPS No.2158/2025, WPS No.2159/2025, WPS No.2121/2025, WPS No.2892/2025, WPS No.2918/2025, WPS No.2912/2025, WPS No.2915/2025, WPS No.2920/2025, WPS No.2891/2025, WPS No.2929/2025, WPS No.2943/2025, WPS No.2910/2025, WPS No.8558/2024, WPS No.7188/2024, WPS No.7199/2024, WPS No.354/2025, WPS No.3149/2025, WPS No.4975/2025, WPS No.4953/2025, WPS No.4659/2025, WPS No.4607/2025, WPS No.4611/2025, WPS No.4562/2025, WPS No.4587/2025 & WPS No.4597/2025) are dismissed, but without any order as

to costs subject to the following directions which are intended to be precise, practicable and protective of administrative discretion as well as candidates' legal rights:-

- The respondents (Railways/SECR) shall, through an officer not below the rank of Divisional Railway Manager or an officer of equivalent administrative standing assisted by a small team, carry out a focused vacancy audit of Employment Notice No. SECR/02/2010 dated 15.12.2010 (including all part-panels and replacement/wait lists) and the subsequent recruitments in 2018 and 2019 relevant to the posts in question. The audit shall record, with documentary support, (i) posts originally advertised but not finally filled from the 2010 process, (ii) posts subsequently filled in subsequent recruitments and the authority by which they were filled, and (iii) posts that still, on paper and in fact, remain unfilled and are legally capable of being filled from the 2010 replacement list.
- The vacancy audit shall be conducted in a fair, transparent manner and a written vacancy-position report shall be prepared and placed on record before the authority that will consider cases for appointment. The audit RITU RAJ SINGH shall also identify to the extent possible from available records, those specific slots (if any) that remain legally capable of being filled from the 2010 replacement list. The audit must be completed preferably within a period of four months so that meritorious claimants are not indefinitely delayed. (The Railways shall ensure that the audit is completed and the report placed on the file for further action without undue delay.) • If the vacancy audit establishes that one or more vacancies legitimately remain available to be filled from the replacement list arising out of SECR/02/2010, the Railways shall proceed to consider the names of eligible candidates on that replacement list in order of merit, and shall subject each candidate to the usual departmental checks (antecedents, medical fitness, verification of original documents) before issuing any offer letters. No candidate shall be appointed without fulfilling the normal antecedent and medical fitness checks.
- Where the vacancy audit shows that a particular post has already been lawfully absorbed in a subsequent recruitment cycle (for example under CEN 02/2018 or RRC-01/2019), that post shall not be available for fresh appointment from the 2010 replacement list; in such cases the Railways' recorded position of lawful absorption shall prevail subject to proof to the contrary.
- If, during the administrative exercise, it is found that any candidate has suppressed material facts or has engaged in deliberate mala fides (for example, by willful suppression of prior proceedings they instituted and which directly bear on their claim), the Railways may reject such claim after affording the candidate a fair opportunity to be heard. Any such rejection shall be for recorded reasons and shall be subject to usual judicial review.
- The Railways shall furnish, as part of the administrative record, the vacancy-audit report and a short note of action taken by the competent appointing authority in respect of each candidate considered under this exercise. Where offer letters are issued, such letters shall make express reference to the replacement list source and be expressly subject to usual verifications.

- If any aggrieved party considers that the Railways have acted arbitrarily, or contrary to the requirements of the replacement list or the CAT's order, such party shall be entitled to approach the CAT for RITU RAJ SINGH appropriate redress; the remedy of judicial review remains open to prejudiced parties.
- There shall be no award of costs. Given the public importance and mixed factual nature of the issues, each party shall bear its own costs.
- The precise scheduling and time-line for the audit and consequent administrative steps shall be determined by the competent authority having regard to available administrative exigencies and the requirement of fair and thorough inquiry; nothing in this order fetters the discretion of the appointing authority to adopt a structured timetable consistent with these directions.

55. For the foregoing reasons and having regard to the balanced approach mandated by law between the need for orderly public recruitment and the protection of substantive legal rights of meritorious candidates, the writ petitions filed by the Union of India / Railways are dismissed and the CAT's common order dated 06.03.2024 is upheld to the extent that it directs an administrative examination of the vacancy position and consequent consideration of eligible candidates on the replacement list in conformity with law and these directions. Parties will act in accordance with this order."

iii. Relying upon the judgment passed by the Hon'ble Supreme Court of India in the case of Tej Prakash Pathak (supra), learned counsel for the applicants has emphasized upon the following portion:

"42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra).

RITU RAJ SINGH Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ nonarbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list."

iv. Relying upon the judgment passed by the Hon'ble Supreme Court of India in the case of Kali Dass Batish (supra), learned counsel for the respondents has emphasized upon the following portion:

"13. There is merit in the submissions of the Ld. Solicitor General. It appears that the High Court has acted in the matter as if dealing with an appointment made by an executive officer. It must be remembered that, the CAT is a Tribunal constituted under Article 323A of the Constitution and is expected to have the same jurisdiction as that of a High Court. Consequently, Parliament has taken great care to enact, vide Sections 6 and 7 of the Act, that no appointment of a person possessing the qualifications prescribed in the Act as a Member shall be made, except after consultation with the Chief Justice of India. The consultation with the Chief Justice of India is neither a routine matter, nor an idle formality. It must be remembered that, a member of an Administrative Tribunal like the CAT exercises vast judicial powers, and such member must be ensured absolute judicial independence, free from influences of any kind likely to interfere with independent judicial functioning or militate thereagainst. It is for this reason, that a policy decision had been RITU RAJ SINGH taken by the Government of India that while considering members of the Bar for appointment to such a post, their antecedents have to be verified by the IB. The antecedents would include various facts, like association with anti-social elements, unlawful organizations, political affiliations, integrity of conduct and moral uprightness. All these factors have necessarily to be verified before a decision is taken by the appointing authority to appoint a candidate to a sensitive post like Member of the CAT. In Delhi Administration v. Sushil Kumar this Court emphasized that even for the appointment of a Constable in Police Services, verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Even if such candidate was found physically fit, had passed the written test and interview and was provisionally selected, if on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable, the view taken by the appointing authority could not be said to be unwarranted, nor could it be interdicted in judicial review. These are observations made in the case of a Constable, they would apply with

greater vigour in the case of appointment of a Judicial Member of the CAT. It is for this precise reason, that subsection (7) to Section 6 of the Act requires that, the appointment of a Member of the CAT cannot be made "except after consultation with the Chief Justice of India". This consultation should, of course, be an effective consultation after all necessary papers are laid before the Chief Justice of India, and is the virtual guarantee for appointment of absolutely suitable candidates to the post.

14. Unfortunately, the High Court seems to have proceeded on the footing that the appointment was being made on its own by the Central Government and that there was an irregular procedure followed by the Secretary by giving undue importance to the IB report. It was most irregular on the part of the High Court to have sat in appeal over the issues raised in the IB report and attempted to disprove it by taking affidavits and the oral statement of the Advocate General at the Bar. We strongly disapprove of such action on the part of the High Court, particularly when it was pointed out to the High Court that, along with the proposals made by the Government, the Minister of State had specifically directed for submission of the IB report to the Chief Justice of India for seeking his concurrence, and that this was done. We note with regret that the High Court virtually sat in appeal, not only over the RITU RAJ decision taken by the Government of India, but also over the decision SINGH taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the concerned department of the Government of India had not apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this Country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal.

15. In this matter, the approach adopted by the Jharkhand High Court commends itself to us. The Jharkhand High Court approached the matter on the principle that judicial review is not available in such a matter. The Jharkhand High Court also rightly pointed out that mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right.

16. In Shankarsan Dash Vs Union of India, 1991(2) SCT 555 (SC) :

(1991)3 SCC 47 as under:

"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 RITU RAJ this Court, and we do not find any discordant note in the SINGH decisions in *State of Haryana v. Subhash Chander Marwaha*, (1974) 3 SCC 220, *Neelima Shangla v. State of Haryana*, (1986)4 SCC 268 or *Jatinder Kumar v. State of Punjab* (1985)1 SCC 122.

This, in our view is the correct approach to be adopted in dealing with a matter of this nature."

v. Relying upon the judgment passed by the Hon'ble Delhi High Court in the case of *Ashish Kumar* (supra), learned counsel for the respondents has emphasized upon the following portion:

11. The petitioner's contention would imply that no recruitment exercise can be carried out for a particular post until the entire pool of wait listed or reserve candidates is exhausted, regardless of the number of vacancies that were advertised in the advertisement in question. I find no basis for such a suggestion, which is contrary to the settled law that wait listed candidates can be appointed against vacancies for which they apply, in terms of the recruitment notification. Reference may be made, in this connection, to the observations of the Supreme Court in *Mukul Saikia & Ors. v. State of Assam & Ors*³, and *State of Orissa & Anr. v. Rajkishore Nanda & Ors*⁴. In the latter judgment, the Supreme Court has summarised the legal position thus:

"11. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide *State of Bihar. Secretariat Asstt. Successful Examinees Union 1986*⁵, *Prem RITU RAJ Singh v. Haryana SEB*⁶, *Ashok Kumar v. Banking Service SINGH Recruitment Board*⁷,

Surinder Singh v. State of Punjab⁸ and Rakhi Ray v. High Court of Delhi⁹

12. In *State of Punjab v. Raghbir Chand Sharma*¹⁰ this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that the post can be filled up offering the appointment to the next candidate in the select list observing as under : (SCC p. 115, para 4) "4. ... With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

13. In *Mukul Saikia v. State of Assam*¹¹ this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The select list "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of select list had expired as soon as the number of posts advertised were filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies" and the said course is impermissible in law.

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 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*¹² held that appearance of the name of a candidate RITU RAJ in the select list does not give him a right of appointment. Mere SINGH 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*¹³, *Union of India v. S.S. Uppal*¹⁴, *Bihar Public Service Commission v. State of Bihar*¹⁵, *Simanchal Panda v. State of Orissa*¹⁶, *Punjab SEB v. Malkiat Singh*¹⁷, *Union of India v. Kali Dass Batish*¹⁸, *Divisional Forest Officer v. M. Ramalinga Reddy*¹⁹, *Subha B. Nair v. State of Kerala*²⁰, *Mukul Saikia v. State of Assam*²¹ and *S.S. Balu v. State of Kerala*²²).

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. (Vide *J. Ashok Kumar v. State of A.P.*²³, *State of Bihar v. Mohd. Kalimuddin*²⁴, *State of U.P. v. Harish Chandra*²⁵, *Sushma Suri v. Govt. of NCT of Delhi*²⁶ , *State of U.P. v. Ram Swarup Saroj*²⁷, *K. Thulaseedharan v. Kerala State*

Public Service Commission²⁸, Deepa Keyes v. Kerala SEB²⁹ and Subha B. Nair³⁰."

13. In Dinesh Kumar Kashyap (supra) case, Hon'ble Supreme Court of India directed the Union of India to consider the case of the petitioners who had approached the Central Administrative Tribunal and to grant them appointment over and above the first selected candidates of the selection process which commenced in the year 2012 but immediately below the candidates of the 2010 selection process for the purpose of seniority. On the basis of direction given in Dinesh Kumar Kashyap (supra) case, similarly situated candidates of the recruitment year 2010 who had also approached the Tribunal, through OAs were allowed and the order passed in the OAs were challenged before the Hon'ble Chhattisgarh High Court in Writ Petition No 6291 of 2024 and other connected writ petitions. Hon'ble High Court of Chhattisgarh has held that the direction given by the RITU RAJ SINGH Tribunals to audit the vacancies in a fair and transparent manner and a written vacancy position report shall be prepared and placed on record before the authority. Thus, that will be taken into consideration for issuing the offer of appointment. While deciding the aforesaid writ petitions, Hon'ble Chhattisgarh High Court has also held that Hon'ble Supreme Court itself clarified the initial judgment and order passed in the Delhi High Court (supra) case clarifying and enlarging the scope of the relief to certain categories who have approached the Court in time.

14. In the case of Tej Prakash (supra), a Constitution Bench of the Hon'ble Supreme Court dealt with the issue of changing the terms and conditions of the examination midway of the selection process and the paragraph no 42 of the same has already been quoted above. Similarly, the ratio laid down by the respective Courts in the case of Ashish Kumar (supra) and Kali Dass Batish (supra) have also been quoted above, which we are going to discuss in the following paragraph.

15. The first and foremost question for consideration in this matter is as to whether the ratio laid down in the case of Dinesh Kumar Kashyap (supra) is applicable in the facts and circumstances of the present matter also. Admittedly, the decision in Dinesh Kumar Kashyap (supra) case came up for the recruitment year 2010. The present matter is related to the recruitment year 2007. Hon'ble Supreme Court while allowing the prayer made by the petition in Dinesh Kumar Kashyap (supra) case has restricted the relief only to those candidates who had approached the Tribunal. On clarification, the Hon'ble Supreme Court clarified the judgment rendered in the Dinesh Kumar Kashyap (supra) case to be applicable to all the OAs / writ petitions which has been filed till decision in this case. Learned counsel for the applicants has raised that ratio laid down in Dinesh Kumar Kashyap (supra) case is applicable in the present matter also.

16. We have analyzed the submissions raised on behalf of the RITU RAJ parties on this issue and compared the same with the ratio laid down SINGH in Dinesh Kumar Kashyap (case) as well as the Hon'ble Chhattisgarh High Court case. Since in Dinesh Kumar Kashyap (supra) case, prayer of the candidate of the replacement panel of the recruitment year 2010 was under consideration and the Hon'ble Supreme Court of India had restricted the direction given in that it only to the extent of OA / writ petitions filed till the date of judgment in that case. It implies that judgment / directions given in Dinesh Kumar Kashyap (supra) case cannot be applied to other recruitments. This issue also came up for consideration before Hon'ble Chhattisgarh High Court in R Santoshi (supra) case and the Hon'ble Chhattisgarh High Court has also clarified that in para no 52 that judgment of the

Hon'ble Supreme Court in Dinesh Kumar Kashyap (supra) case read with the subsequent miscellaneous orders confers relief upon candidates who had approached the Tribunal within time, it's ratio does not automatically extend to all categories of candidates. If such is the position, we are of the view that judgment of Dinesh Kumar Kashyap (supra) case cannot be applied for the candidates of replacement panel of the recruitment year 2007 which is a different recruitment. Thus, submissions raised on behalf of the applicants in this respect are not acceptable.

17. As far as changing of the conditions of the advertisement midway during the selection process is concerned, a Constitution Bench of the Hon'ble Supreme Court in the case of Tej Prakash (supra) considered all the judgment passed by the Supreme Court as on date and has held that eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process cannot be changed midway during the recruitment process unless the extant rules so permit or the advertisement, which is not contrary to the extant rules, so permit. In this respect, it will be useful to quote the para no 14 of the advertisement under question and the same is as follows:

"14. INSTUCTIONS FOR THE CANDIDATES RITU RAJ SINGH 14.1 The number of vacancies shown is provisional and is liable to be increased or decreased."

Thus, the aforesaid quotation clearly envisages that vacancy advertised through the advertisement can be increased or decreased. Thus, submission raised on behalf of the applicants that by surrendering the vacancies advertised through the advertisement under discussion, the respondents are changing the conditions of the advertisement midway during the selection process, does not sustain. Since specific stipulation in the advertisement for decreasing / increasing the vacancy has been disclosed and the Hon'ble Supreme Court of India in the case of Tej Prakash (supra) has also held that conditions can be changed if the advertisement itself permits and it is not contrary to the extant rules. Thus, it is pertinent to mention here that nothing is brought on record on behalf of the applicants to show that condition stipulated in the advertisement in regard to decreasing / increasing of the vacancies is contrary to the extant rules. It is also noteworthy that applicants have applied and appeared in the selection process accepting the condition stipulated in the advertisement. Thus, it can safely be held that by decreasing the vacancies, the respondents have not committed any fault of the statutory provision.

18. Submissions have also been raised on behalf of the applicants that there is no specific provision for surrendering the vacancies. The respondents themselves have admitted that there is no provision for surrendering the vacancy and a contrary plea has also been taken by the respondents that 500 vacancies advertised in the advertisement pertaining to the Construction Division were surrendered. Learned counsel for the respondents has relied upon RBE No 73/2008, letter dated 20.09.2012 issued by Office of Chief Administrative Officer / Construction, Gorakhpur, North Eastern Railway and the note dated 22.04.2014 whereby utilization of replacement panel for the list of 20% extra candidates of 2007 examination was declined. Learned counsel for the applicants has relied upon RBE No 17/2024 stating RITU RAJ that reduction of notified vacancies or cancellation of indent as well SINGH as enhancement /reduction of notified vacancy cannot be done by HR. He has also argued that in the present matter, the authority who returned the vacancy was not competent to return / surrender the same. Learned counsel for the applicants too, has relied upon RBE No

73/2008 and RBE No 121/2005 and seeks the benefit of appointment of the applicants mainly on the basis of the aforesaid Circulars, however, as already discussed above, no relief is liable to be granted to the applicants in view of the aforesaid RBE Circulars.

19. We have minutely analyzed the submissions raised on behalf of the parties in this respect and we find that RBE No 17/2024 is related to the modification / cancellation of indent placed for GDCE examination and this is issued on 16.02.2024. Since RBE 17/2024 is relating to GDCE examination and has been issued on 16.02.2024, it cannot be applied to issuing offer of appointment for the vacancy year 2007 for the open recruitment. To decide the issue regarding the legality of surrendering of 500 vacancies, it will be useful to refer to the advertised posts of the Trackman in CAO / Con / BO which were the total of 500 posts (UR-252, SC-75, ST-38 and OBC 135) as were given in the advertisement dated 06.12.2007. Thus, in the advertisement itself, at page no 1, in the column 9 Track Man, 500 vacancies had been advertised belonging to the Construction Division (CAO). Notification itself reveals that vacancy advertised may increase or decrease and it is provisional. In that situation, we do not find any illegality in returning / surrendering of the vacancies.

20. Before discussion of the other issues raised on behalf of the applicants, it will also be useful to again refer to the law laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Shankarsan Dash Vs Union of India (supra) which is as follows:

"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 RITU RAJ SINGH 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. Subhash Chander Marwaha, (1974) 3 SCC 220, Neelima Shangla v. State of Haryana, (1986)4 SCC 268 or Jatinder Kumar v. State of Punjab (1985)1 SCC 122.

21. Now, coming to the next point as to whether assurance said to have been given by the respondents to the applicants to issue offer of appointment to the selected candidates is an enforceable legal right. In this respect, the ratio laid down by the Hon'ble Supreme Court in Shankarsan (supra) case can be taken into consideration in which the Apex Court has clearly held that only on the ground that a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed. The Apex Court has also held that unless the relevant recruitment rules so indicate,

the State is under no legal duty to fill up all or any of the vacancies. However, the State is also bound to act reasonably and not arbitrarily. In this matter, correct position is that 500 vacancies have been surrendered / returned by the Construction Division and thus vacancies advertised through Advertisement dated 06.12.2007 were reduced. Applicants' case is that it was assured to them that their claim will be considered as per the merit position and they will be informed through website as well as official letter from the end of the Division / Unit concerned. Although in these letters, it was also mentioned that seniority of the selected candidates through earlier panel was remained protected RITU RAJ SINGH under the established rules enforced from time to time but contents of these letters cannot be taken as assurance to issue offer of appointment mandatorily in favour of the applicants. In view of the law laid down in Shankarsan (supra) case, plea taken by the learned counsel for the applicants is not acceptable. Admittedly, the applicants are placed in replacement panel, a number of posts have been surrendered / returned by the Construction division and many more recruitments have taken place. The respondents have denied the non utilization of the replacement panel in view of the ratio laid down in Dinesh Kumar Kashyap (supra) is not acceptable. No direction in light of judgment of the Apex Court in the case of Dinesh Kumar Kashyap (supra) which was relating to the recruitment year 2010 can be issued in the present matter. Hon'ble Delhi High Court in the case of Ashish Kumar (supra) has held that a select list cannot be treated as a reservoir for the purpose of appointment, that vacancy can be filled up taking up the names from that list as and when it is so required. It was also held that "it is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the select list. Admittedly, in the present matter, the life of the select list has ended.

22. One more question left to be decided is as to whether by reducing the number of vacancies and reason given by the respondents for doing so is being supplemented by fresh reason in the shape of affidavit. In this respect, it is pertinent to mention here that this issue has been taken from the very beginning when a panel of 341 candidates was sent to the Construction Division and the same was returned by them. Thereafter, the candidates were adjusted / accommodated in different units. This plea has also been taken at the time of arguments by the respondents. As has been held hereinabove, reducing / surrendering / returning / abolishing of 500 posts meant for Construction Division was on the basis of a valid ground as those posts are no longer continuing in the department. Thus, submissions raised on behalf of the applicants in this respect are not acceptable. RITU RAJ SINGH

23. Thus, on the basis of the aforesaid discussions and analysis, we are of the considered view that the prayer made in the OA is not liable to be allowed particularly when the life of the select list has come to an end and also no relief can be given to the applicants taking into consideration the fact that the applicants were lower in merit than the candidates who have been given selection and also in view of the case laws discussed in the preceding paragraphs. For the above reason itself, no relief, as prayed the applicants relying upon the Circular RBE No 73/2008 and RBE No 121/2005, can be granted to them. Thus, being devoid of merits, the instant original application is liable to be dismissed as and the same is accordingly dismissed.

24. All associated MAs stand disposed of. No costs.

(Mohan Pyare)
Member (Administrative)

(Justice Om Prakash VII)
Member (Judicial)

(Ritu Raj)

RITU RAJ
SINGH