

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 4925 of 2025

1. Jitesh Kumar, Aged about 47 years, Son of Late Nawal Kishore Singh, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, Muri under Ranchi Division. R/o Karmopur Purana Tola Amer, P.O. & P.S.- Nawanagar, District- Vaishali, Bihar).

2. Md. Nasim Ahmad, Aged about 45 years, Son of Late S.K. Zuman, Pointsman Manager, Grad-A, Under Station South-Eastern Railway, Muri Under Ranchi Division, R/o Muri Railway Colony, P.O. & P.S. Muri, District- Ranchi.

3. Mukesh Kumar Choudhary, Aged about 39 years, Son of Sri Baleshwar Prasad Choudhary, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, Mael Under Ranchi Division, R/o Village & Post- Gorgama, P.S. Amarapur, District-Banka (Bihar).

4. Manoranjan Prasad Gupta, Aged about 53 years, Son of Late V. Gupta, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, BLNG, Under Ranchi Division, R/o Village- Pakriara, P.O. P.S. Pakri, District-Bhojpur (Bihar).

5. Harendra Kumar, Aged about 48 years, Son of Late Rama Kant Singh, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, BLRG, Under Ranchi Division, R/o Village & Post- Gangra, P.S.- Gidhour, District- Jamui, (Bihar).

6. Anup Kumar Singh, Aged about 41 years, Son of Late Ashok Kumar Singh, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, Ranchi, R/o T/34/B Type-2, North Railway Colony, P.O. & P.S.- Chutia, District- Ranchi.

7. Nishant Kumar, Aged about 41 years, Son of Sri C.P. Singh, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, Hatia Under Ranchi Division, R/o Ward No. 7, Nagar Panchayat Koilwar, P.O. & P.S.- Koilwar, District- Bhojpur (Bihar).

8. Sanjay Kumar Tiwari, Aged about 56 years, Son of Sri Mohan Lal Tiwari, Pointsman Grade-A, Under Station Manager, South-Eastern Railway, Hatia Under Ranchi Division, R/o House No. 834 River View Colony, Road No. 5, P.O. & P.S. Hatia, District- Ranchi.

9. Banamali Pramanik, Aged about 53 years, Son of Late Goberdhan Pramanik, Under Station Pointsman Grade-A, Manager, Under South-Eastern Railway, Jhalda, Ranchi Division, R/o Railway Colony, Muri, P.O. & P.S. Muri, District- Ranchi.

...Petitioners

Versus

1.The Union of India Through the General Manager, South Eastern Railway, P.O. & P.S. Garden Reach, Kolkata-700043.

2.The General Manager (P), South Eastern Railway, P.O. & P.S. Garden Reach, Kolkata-700043.

3.The Divisional Railway Manager, South Eastern Railway, P.O Hatia, P.S. Jagganathpur, Ranchi, Pin Code-834101.

4.The Senior Divisional Personnel Officer, South Eastern Railway, P.O.-Hatia, P.S. Jagganathpur, Ranchi, Pin Code-834101.

5.The Senior Divisional Operating Manager, South Eastern Railway, P.O.-Hatia, P.S. Jaganathpur, Ranchi, Pin Code-834101.

6.The Senior Divisional Financial Manager, South Eastern Railway, P.O.-Hatia, P.S. Jagganathpur, Ranchi, Pin Code-834101.

... Respondent

**CORAM: HON'BLEMR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

For the Petitioners : Mr. Bhanu Kumar, Advocate
Mrs. Bharti Kumari, Advocate
For the Respondents : Mr. Prashant Pallav, ASGI
Ms. Shivani Jaluka, Advocate

Order No. 04/Dated: 22nd January, 2026
Per Sujit Narayan Prasad, J.

I.A. 7989 of 2025

1. The instant interlocutory application has been filed for deletion of the name of petitioner no.10 namely, Yogendra Prasad from the cause title.

2. Heard learned counsel for the petitioner.
3. Considering the ground taken in the instant interlocutory application, this Court is of the view that the prayer for deleting the name of the petitioner no.10 namely, Yogendra Prasad from the cause title, requires to be allowed.
4. Accordingly, the prayer made in the instant interlocutory application, is allowed.
5. The name of the petitioner no.10 namely, Yogendra Prasad from the cause title is hereby deleted from the array of the petitioners.
6. In view thereof, I.A. No.7989 of 2025 stands allowed.
7. Office is directed to carry out necessary deletion in the array of petitioners.

Prayer:

8. The instant writ petition, filed under Article 226 of the Constitution of India, is directed against order dated 08.04.2025 passed by learned Central Administrative Tribunal, Patna Bench, Patna in O.A. Nos. 750/19 and analogous cases, for the following reliefs: -

(i) For issuance of an appropriate writ(s) / Order(s) / direction(s) or writ in the nature of certiorari for quashing and setting aside the order dated 08.04.2025 passed in 750 of 2019 by which the prayer of petitioners for

quashing and setting aside order dated 18-03-2019 (Annexure-3) issued by Respondent No. 4 i.e. the Senior Divisional Personnel Officer, South-Eastern Railway, Ranchi cancelling the final select list/panel published on 12-11-2018 (Annexure-2) for the post of Goods Guard and for deputing the petitioners for Guard Promotion Training Course has been rejected and the aforesaid Original Applications have been dismissed by the Hon'ble Central Administrative Tribunal (CAT) Patna Bench, Patna.

(ii) *For issuance of an appropriate writ(s) / Order(s) / direction(s) in the nature of mandamus commanding upon the respondents to depute the successful petitioners whose name find place in the final select list notified on 12-11-2018 (Annexure-2) for Guard Promotional Training Course at Sini.*

(iii) *For issuance of an appropriate writ(s) / Order(s) / direction (s) or writ in the nature of prohibition commanding upon the respondents to keep 10 vacancies for the petitioners for the post of Goods Guard for which the petitioners name find place in the final select list.*

(iv) *For issuance of an appropriate writ(s) / Order(s) / direction (s) in the nature of mandamus commanding upon the respondents to grant all the consequential reliefs including arrears of salary and notional seniority, which petitioners have suffered on account of illegal action on the part of respondent authorities due to*

*cancellation of final select list dated 12-11-2018
(Annexure-2).*

Brief facts of the case:

9. The brief facts of the case, as per the pleading made in the writ petition, needs to be referred herein reads, which reads as under:

10. The Original Applications being O.A. No. 750 of 2019 and analogous cases was filed by the writ petitioners including other similarly situated in-service employees working in Indian Railway for similar relief.

11. The case in brief, is that the petitioners are posted at various places in the state of Jharkhand under South-Eastern Railway Division, Ranchi.

12. While the petitioners were working under the establishment of Ranchi Division, a notification was issued by respondent-Senior Divisional Personnel Officer, South Eastern Railway, Ranchi inviting application for eligible candidates under Departmental Promotion Quota for the post of Goods Guard.

13. Pursuant thereto, the petitioners including other candidates submitted application and accordingly they participated in the process of selection, as conducted by the

respondents-authorities which was conducted in two phases i.e., Phase –I on 11.08.2018 and Phase-II on 18.08.2018.

14. Thereafter, a final select list of successful candidates, including all the petitioners, was published on 12.11.2018 by the order of Divisional Personnel Officer.

15. It is alleged that after approval of the final select list, all the successful candidates were to be deputed for one-month promotional training at Sini for being posted as Goods Guard but in the meantime, the competent authority was transferred and the successor-in-office, allegedly for the reasons best known to him, cancelled the final select list vide notification dated 18.03.2019.

16. Being aggrieved thereof, the petitioners approached before the Tribunal by filing Original Applications, challenging the order of cancellation of final select list as also seeking direction to send them for training for the post of Goods Guard, *inter alia*, on the ground that the basis of cancellation of final select list is the second enquiry report whereas in the first enquiry report no perverse finding was found.

17. It has been contended that no *mal-practice* was found and merely on the basis of anonymous complaint, the enquiry was conducted and based upon that the second enquiry committee has given the report that there are serious irregularities and discrepancies in the selection proceeding,

as such it is not feasible to continue the selection proceeding, accordingly cancelled the whole selection process and directed to conduct fresh selection process.

18. It has been contended that the applicants-writ petitioners since are the in-service employees of railway itself and as such before cancellation of selection process, notice was ought to have been given in compliance of principles of natural justice but in utter violation thereof, the final select list was cancelled that too on the basis of anonymous complaint which was sent with vested interest. Further ground has been taken that with *mala fide* intention the successor-in-office again conducted enquiry and based upon that the select list was cancelled.

19. The learned Tribunal, issued noticed to the respondents who appeared and filed written statement stating *inter alia* that one complaint was received regarding the said examination, for which enquiry was conducted and enquiry officer was appointed who submitted its report and the competent authority having found that there is serious irregularities and discrepancies in the selection proceeding, as such it is not feasible to continue the selection proceeding, accordingly cancelled the whole selection process and directed to conduct fresh selection process. Further ground was taken that principle of fairness and transparency is the soul to fill up the public post and as such when it came to the

notice of the respondents-authorities that serious irregularities and discrepancies in the selection proceeding, the successor-in-office constituted second enquiry committee who submitted report, based upon that the select list was cancelled and direction was issued to conduct to fresh selection process. Ground was also taken that there was no need to issue notice since the principles of natural justice is made applicable only in the case of vested/accrued right. Herein, only the select list was published neither they have joined the said post nor they were even sent for training and at no point of time they were given offer of appointment, as such there is no question of accrual of right and in that view of the matter, the principles of natural justice was not required to be observed.

20. The learned Tribunal, after hearing learned counsel for the parties, has declined to interfere with the decision taken by the respondents-authorities, by dismissing the Original Application(s) vide order dated 08.04.2025, against which instant writ petition has been filed.

Submission on behalf of Petitioner:

21. Mr. Bhanu Kumar, learned counsel for the petitioner has assailed the impugned order reiterating the ground, which has been taken before the tribunal and submitted that the

finding recorded by the Tribunal is perverse, based upon non-consideration of the factual aspect.

22. It has been contended that merely on the basis of the enquiry report, the learned tribunal ought not to have come to the conclusion rather the consideration ought to have been given regarding the issue of finding so recorded said to go into the core of selection process.

23. It has further been contended that even accepting there was some issues, as has been pointed out by the enquiry committee, but that is not so much serious for which a decision could have been taken to cancel the entire selection process.

24. The question of non-issuance of notice to the petitioners has also been raised and submission has been made that before cancelling the final select list, the notice ought to have been given to the candidates who were none other than the employees of the respondents. In this regard, reference has been made to notification dated 11.11.2019 issued by the Railway Board, Government of India whereby directives have been issued to the effect that before cancellation of the selection after declaration of result, due notice must be given to the selected candidates but in utter violation of such directives without issuing any notice the entire selection process has been cancelled.

25. It has been submitted that the respondents have exceeded its jurisdiction in cancelling the entire selection process and as such the order passed by the tribunal suffers from error and hence not sustainable in the eyes of law.

26. In support of his submission, learned counsel for the petitioner has placed reliance upon the judgment rendered by the Hon'ble Apex Court in the case of **Trivedi Himanshu Ghanshyam Bhai Vs. Ahmedabad Municipal Corporation and Ors (2007) 8 SCC 644, Tajvir Singh and Ors. Vs. State of J & K and Ors. (2023) 17 SCC 147** and **Mohinder Singh Gill and another Vs. the Chief Election Commissioner, New Delhi and Ors (1978) 1 SCC 405.**

Submission on behalf of respondents:

27. Per contra, learned counsel for the respondents has defended the order passed by the learned tribunal.

28. It has been submitted that since in the matter of fulfilling the post of public employment, the principle of fairness and transparency is the core to have the trust of the people at large, as such the administrative authority has taken decision to cancel the select list and conduct fresh one on the basis of report of second enquiry committee wherein it has been reported that some irregularities were caused during the selection process.

29. It has been contended that the selection committee has proceeded and after going through the fact in entirety the basis has been found to come to the conclusion for cancellation of the selection process on the ground that the question paper has not been supplied, both Hindi and English. It has also come in the enquiry report that the written examination was conducted in two phases and while assessing, the enquiry committee has found that the standard of question paper in the first phase conducted on 11.08.2018 and the second phase examination conducted on 18.08.2018 were having wide variances.

30. It has also been assessed by the enquiry committee that there is no difficulty in making the standard of question in two phase examination; one even if is simple and another is harder, then the principle of scaling system ought to have been followed but the same was also not followed. Therefore, the enquiry committee has taken decision to cancel the entire selection process and the same has been accepted. Hence, it cannot be said that any error has been committed by the enquiry committee.

31. So far as the issue of observance of principles of natural justice is concerned, learned counsel for the petitioners has taken the ground on the basis of the notification dated 11.11.2019 issued by the Railway Board, Government of India, and submission has been made that the same will not

be applicable retrospectively since the notification was issued on 11.11.2019 whereas the selection process was cancelled vide order dated 12.11.2018 i.e., prior to issuance of said notification.

32. Learned counsel for the respondents has further submitted that since the appointment letters were not issued, as such the writ petitioners has no accrued right said to be indefeasible one so as to warrant interference on the ground of violation of principles of natural justice.

33. Submission has been made that the respondents in the interest of justice and to ensure fairness and sanctity of the exam and to provide the equal opportunity to the candidates has cancelled the selection process and issued direction to conduct fresh examination, which cannot be faulted with.

34. Learned counsel for the respondents based upon the aforesaid ground has submitted that the order passed by the learned tribunal requires no interference.

35. After conclusion of argument of the parties, this Court has posed a question to Mr. Bhanu Kumar, learned counsel for the petitioners that why the enquiry report has not been challenged while filing the Original Application(s) and at this stage the enquiry report has been challenged, whereupon submission has been made that copy of the enquiry report was not supplied to him.

36. In response, learned counsel for the respondents has submitted that it is incorrect on the part of learned counsel for the writ petitioners to take such ground that copy of the enquiry report was not supplied, rather, the copy of enquiry report was well available in the written statement, which was filed before the tribunal and thereby the petitioners had sufficient opportunity to challenge the same but the same was never challenged before the tribunal.

Analysis:

37. We have heard learned counsel for the parties and gone through the finding recorded by the learned tribunal and the impugned order of cancellation of selection process.

38. After hearing learned counsel for the parties, this Court requires to consider as to:

I. *Whether without challenging the enquiry report, which is basis of cancelation of select list, is it available to the writ petitioners to get a relief as has been sought for by making prayer to send them for a training?*

II. *Whether in the matter of fulfilling the post said to be public post what would mean the principles of fairness and transparency and if it will not be followed, will not be in the teeth of Article 14 and 16 of the Constitution of India?*

39. Since both the issues are inter-linked, therefore, this Court proceeds to decide both the issues together.

40. This Court, before considering the aforesaid issues, needs to refer herein the power which is to be exercised by the High Court in exercise of power conferred under Article 226 of the Constitution of India in the matter of order passed by the tribunal, as per the ratio laid down by Hon'ble Apex Court in the case of **L. Chandra Kumar Vs. Union of India & Ors.** reported in **(1997) 3 SCC 261** particularly paragraph 99, wherein it has been held that the High Court is having power of judicial review to look into the legality and propriety of the order of the tribunal to the extent that if the order passed by the tribunal suffers from any perversity or the order is passed without following the principles of natural justice or there is error apparent on the face of order. For ready reference, paragraph 99 of the judgment is quoted as under:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted,

other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

41. The power of judicial review has also been deliberated by the Hon'ble Apex Court, which is to be considered while exercising the said power only to the extent that if any order is being passed found to be having error on the face of the order or without jurisdiction or suffers from perversity. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

42. The Hon'ble Apex Court in the case of **West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39**, has held at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of

the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

“30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137]. ---.”

43. In the case of **T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250**, their Lordship have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

“11. ... An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

44. Thus, on the basis of the aforesaid settled legal position it is evident that the power of judicial review can be exercised, if

error on the face of the order impugned, challenged under the Article 226 of Constitution of India, appears to be there.

45. Further the law is well settled that public employment is to be based upon fairness and transparency and if the selection process had not been conducted with all fairness and suffers from any irregularity then it will be against the public policy and constitutional mandate.

46. It needs to refer herein that a fair and reasonable process is a fundamental requirement of Article 14 of the constitution of India as well. Where the recruitment to public employment stands vitiated as a consequence of systemic irregularities, the entire process becomes illegitimate.

47. Further it is settled position of law that if the situation is so complex in the matter of selection if segregation between irregularity and regularity or fairness and unfairness is not possible then in such situation, it is the bounden duty of the recruiting agency to cancel the entire selection process. However, carving out exception if there is any chance of segregation of fairness and unfairness then the sincere endeavour is to be taken to segregate so that the for the fault committed by any one, the other may not suffer.

48. The Hon'ble Apex Court in the judgment rendered in **Benny T.D. & Ors Vs. Registrar of Cooperative Societies & Anr. [(1998) 5 SCC 269]**, has been pleased to hold by

repelling the contention raised therein that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, the public interest demands annulment of the entire selection. The Hon'ble Apex Court has held that the same could not be done as same tantamount to gross violation of principles of natural justice which cannot be brushed aside on the ground that public interest demands annulments of the entire selection process.

49. It has been held by the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. O. Chakradhar (2002) 3 SCC 146*** that the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

50. It is, thus, evident from the aforesaid settled position of law that where a recourse to irregularity has taken place on a large scale, it may be difficult to segregate the unfairness from the fairness in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process.

51. The judgment of the Hon'ble Supreme Court which requires to be referred to and wherein the applicable principles with respect to in mass cancellation of the selection process have been laid down, is the judgment in the case of ***Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others (2006) 11 SCC 356***. The relevant paragraphs containing the ratio of the ***Inderpreet Singh Kahlon's case (supra)*** have been considered by the Hon'ble Supreme Court in its judgment in the case of ***Joginder Pal and Others Vs. State of Punjab and Others (2014) 6 SCC 644***, wherein it has been observed that an appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity.

52. It is settled connotation of law that if the findings recorded by the Committee were based on facts discovered in course of the inquiry and further no serious attempt was made to challenge the said findings of fact before any forum then a writ Court will be very slow in interfering with the same.

Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of **Hitendra Singh S/o Bhupendra Singh and Others Vs. Punjabrao Deshmukh Krishi Vidyapeeth By Registrar and Others (2014) 8 SCC 369.**

53. Further it needs to refer herein the settled position of law that no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

54. Herein ground has also been taken for issuance of notice to follow the principles of natural justice before cancellation of select list.

55. In the aforesaid context it needs to refer herein that the indefeasible right is the right which is being said to be accrued and if the indefeasible right is accrued then

certainly the cardinal principles of natural justice is mandatorily to be followed.

56. The question is what is the indefeasible right said to be accrued. For the aforesaid purpose, this Court needs to refer herein the interpretation of the word vested right. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights." Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.

57. "Vested right" has been defined by the Hon'ble Apex Court in the case of **MGB Gramin Bank v. Chakrawarti Singh [(2014) 13 SCC 583]** at paragraph 11, 12 and 13, which read hereunder as:--

"11. The word "vested" is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

"Vested.--fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or

prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights'."

12. In Webster's Comprehensive Dictionary (International Edition) at p. 1397, "vested" is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.

58. It is evident that the vested right as has been defined in the aforesaid judgment will be a right which has been accrued in favour of the parties concerned and once the right will be accrued there will not adversely impact on the amendment if incorporated in the statutory provision after the right as has been accrued.

59. There is no dispute that once the indefeasible right has been created said to be vested one upon an individual then certainly without providing adequate opportunity of hearing no adverse decision is to be taken.

60. In the matter of recruitment, the indefeasible right will be said to be created only after issuance of appointment letter. Although herein, it is a case of fulfilling the post amongst the in-service candidate but even then for the posts which are to

be filled up from the in-service candidate, the requirement is to come out with the offer of appointment based upon the merit position of one or the other candidate and it is only then it will be said that an individual has indefeasible right and once the indefeasible right has been created of an individual, then certainly the principles of natural justice is to be followed.

61. This Court is now proceeding to examine the factual aspect on the basis of settled position of law, as has been referred in the cases as referred hereinabove in the preceding paragraphs.

62. The undisputed fact herein is that the writ petitioners, being in-service candidates, along with other in-service candidates participated in the selection process for the post of Goods Guard. The selection process commenced but on receipt on complaint of unfairness and non-transparency in conducting the selection process, the ADRM/OP conducted an enquiry into the said complaint and found on the basis of first enquiry report dated 18.11.2018 that it was not possible to verify the authenticity of the complaint.

63. But the predecessor-in-office, under whose jurisdiction the first committee was constituted when transferred and new incumbent has come in the office, then the successor-in-office constituted another enquiry committee who had

submitted its report on 15.03.2019. The reason has been given why the second enquiry is required, as has been referred in the report of the committee dated 15.03.2019 that the rule has been violated as SRDOM/RNC was not the part of the selection board and was no way involved in the selection process.

- 64.** The Second Committee has found the many irregularities, as has been taken note in the report and recommendations of the Selection Committee regarding goods guard selection examination.
- 65.** The enquiry committee has also come out with the recommendation that in the light of the finding which has been surfaced by the committee the entire selection process is to be cancelled.
- 66.** The said report of the enquiry committee was accepted by the appointing committee and in consequence thereof, the final select list has been cancelled. At that stage, the writ petitioners approached to the tribunal challenging the decision so taken by canceling the entire final select list. The tribunal has refused to interfere with the decision so taken by the administrative authority which is the subject matter of instant writ petition.
- 67.** The first question, which has been agitated on behalf of petitioners, is that there is no infirmity in the process of

selection rather on the flimsy ground the select list has been cancelled.

68. This Court, as has taken note down the argument advanced on behalf of the petitioners, on the question put forth by this Court, as to whether the enquiry report was challenged while filing the Original Application(s), the answer has been given in '*Negative*'. The question is that the cancellation of final select list is the consequence of acceptance of enquiry report.

69. The exhaustive argument has been made by pointing out the various infirmities in the enquiry report but the finding so recorded by the enquiry committee whether it is in supersession to the first finding given by the first enquiry report or the finding pertaining to the infirmity said to be committed in the process of selection has not been challenged before the tribunal.

70. The question is that when the basis is not challenged then how can the consequence be appreciated by the Court of law in coming to the conclusion that final decision which has been taken is per se illegal.

71. However, excuse has been given that the copy of the enquiry report has not been given to the writ petitioners but this Court has not found substance on the same, since the

copy of the enquiry report was part of the written statement filed before the tribunal.

72. It is not the case that the tribunal has no power to grant leave to amend the prayer and pleading since the tribunal has also been conferred with the power under Article 226 of the Constitution of India being the constitutional forum which has been clarified by Hon'ble Apex Court in the case of **L. Chandra Kumar vs Union of India (supra)** but the writ petitioner has taken no endeavour to challenge the enquiry report before the tribunal.

73. However, the tribunal has not taken the aforesaid ground but since specific ground has been taken herein as such this Court deems it fit and proper to answer the same.

74. It has been pointed out on behalf learned counsel for the respondents that supplementary affidavits have been filed bringing certain documents on record but the documents which has been brought by way of filing supplementary affidavit was not before the tribunal.

75. This Court is of the view that basis upon the new documents, this Court cannot arrive at a conclusion that the tribunal has committed error said to give a finding under the power of judicial review. The judicial review if it is being exercised then the court is to give a finding based upon the principle of perversity but the documents which

were not available before the forum i.e., the tribunal then how can it be appreciated by the High Court under Article 226 of the Constitution of India giving a finding that the finding so recorded by the tribunal suffers from perversity.

76. The matter could have been different if this Court would have exercised original jurisdiction as conferred under Article 226 of the Constitution of India, then this Court would have extraordinary jurisdiction to appreciate all the documents as available on record, subject to objection, if any. But this Court herein is not exercising the original jurisdiction rather this Court, on conferment of power, by the judgment rendered by Hon'ble Apex Court in the case of **L. Chandra Kumar vs. Union of India (supra)** is exercising the power of judicial review.

77. This Court, therefore, is of the view that whatever document has been brought on record by way of supplementary affidavit is not worth to be considered for the purpose of giving the finding of perversity even if it is found to be there.

78. The next question which has been raised of violation of principles of natural justice since name of the petitioners after having been figured in the final select list, a right is allegedly accrued said to be indefeasible one. But this Court is not in agreement with such submission, as has been argued on behalf of petitioners, reason being that the writ

petitioners were yet to get their offer of appointment for the purpose of claiming their right for the said post.

79. Since no offer of appointment had been issued in favour of one or the other writ petitioners and as such it cannot be said that one or the other petitioners have any right said to be indefeasible or vested one warranting the observance of principles of natural justice. However, the aid of notification dated 11.11.2019 issued by the Railway Board, Government of India has been taken but the same has been issued subsequent to the impugned order of cancelation of selection list.

80. It is settled position of law that any office order/notification/statute is having no retrospective application if it is not specifically enunciated in the said office order/notification/rules/statute regarding its retrospective applicability. Reference in this regard is made to the judgment rendered by the Hon'ble Apex Court in ***P.Mahendran v. State of Karnataka, (1990) 1 SCC 411*** wherein at paragraph-5, it has been observed as under:

"5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed

as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

- 81.** The Hon'ble Supreme Court in ***Kusumam Hotels Private Limited v. Kerala State Electricity Board, (2008) 13 SCC 213*** has held that all administrative orders ordinarily are to be considered prospective in nature. For giving it a retrospective effect, it must be stated so expressly or by necessary implication.
- 82.** The foremost issue which has been raised that the finding recorded by the selection committee ought not to have been accepted by the learned tribunal and even accepting the same that there is some irregularity that was not so serious warranting cancelation of the entire selection process including the final select list.

83. This Court is conscious, as has been referred hereinabove in the preceding paragraph that in which circumstance the entire selection process is to be cancelled.

84. Herein, we thought it proper to go through the finding of enquiry committee, as has been taken note by the tribunal also in the impugned order and further the enquiry report has been made part of the paper book, wherein following discrepancies have been found out:

The selection committee went through the exam proceeding and given following observations:

As per RB letter no. Hindi/87/OL-1/10/3 dated 3/11/1988 quoted next, "All the question papers for the written test should be both in Hindi and English. Violation of these instructions is deemed to be a procedural irregularity and the selections are liable to be cancelled". In this exam this, 22 English and 20 Hindi versions were provided for 38 number of candidates in first-phase exam. And there is no document available in the file about supply of question paper for 2nd phase in which 37 candidates appeared. Above quoted.

For the second phase exam on 18/11/18, details regarding question paper like when was it sent, how many questions (English/Hindi) etc. is not attached in the selection file. This is a serious lapse and against procedure.

View of DOM/RNC: for the second phase exam on 18/11/18, myself present in examination hall and Hindi question was distributed to candidates. However, it is not available that how many Hindi question papers have been distributed.

2. Pre selection coaching to two SC/ST candidates, namely Sri Sameer Barla and Sri Yogendra Prasad were not provided Also unwillingness certificates for the same is not available in the file.

View of DOM/RNC: Sri Sameer Barla was long absent from duty hence he did not attend the pre selection coaching.

3.Model question paper was not provided to the examinees as per rules. This is against railway board guidelines and a major lapse.

4.No information regarding relative weight age given to factors like APAR, Service record etc was given in the notification for the exam dated 28/11/17.

View of DOM/RNC: above information was already notified in notification dated 28/11/17 para 3. Comment of committee members-No such information is available in above quoted para in notification.

5.As per RBE272/1999 No. E (NG) 1-98/PM/7 dated 20/10/1999, "the officer of the concerned department, to set the question paper has to be nominated by the authority nominating the selection board from amongst its members". Accordingly, DOM should have been nominated for setting the question paper and DCM for evaluating the answers. However, the above guidelines were violated in this selection and DOM was nominated for evaluation while DCM for setting the question paper. This is a major procedural lapse.

View of DOM/RNC: In same letter it is clearly mentioned that it should be ensured that the answer books are invariably evaluated only by a member officer of the department for which the selection is held, which already nominated by then ADRM/OP/RNC.

6.The exam was taken in two phases on two dates, ie, 11/8/18 and 18/3/18 with different question paper sets. This committee observes that this created an unequal playing field. The toughness of the two question papers cannot be equal. Moreover, there is no statistical scaling of marks. This dual exam for the same selection is against the principles of natural justice.

View of DOM/RNC: Not agreed. As railway was conducting several exams in different phases and it is not possible to conduct exam in one phase.

Comment of committee members- Railway is conducting examinations in phases only in case of online examination, such type of departmental written promotional examinations should not be conducted in phases.

7.Exam was conducted in personnel branch office. To ensure free and fair exam, it should have been conducted in an examination environment and no. in an office setting

View of DOM/RNC: All previous exams were conducted in same office. This exam was conducted in same office. This exam was conducted in DPOs office on office closing day

B. Observations of the committee regarding the anonymous complaint of malpractice

1. The anonymous complaint was received on 16/8/18. As per rules, an anonymous complaint is to be ignored. Accepting authority, the then ADRM/OP/RNC however decided to take cognizance of the complaint and initiated an enquiry.

2.The enquiry was given to the Sr. DOM/RNC who is the branch officer of one of the named officer (DOM/RNC) in there anonymous complaint. According to Para 218(a) of IREM, quoted here, "Co opting of officers or consultation with officers who are not a part of the selection board is not allowed". This rule has been violated at SRDOM/RNC was not a part of the selection board and has compromised the confidentiality of the whole selection process. In view of the above rule, the enquiry report in itself is null and void.

3.This enquiry committee observes that in order to ensure impartiality of the enquiry. an officer other than the Branch officer of the named officer in the complaint should have conducted the enquiry. Moreover, instead of a single member enquiry, it should have been an enquiry by a committee of

officers to ensure impartiality and fairness This enquiry was not according to the principles of natural justice.

4.The enquiry report submitted on 18/11/18 states that it is not possible to verify the authenticity of the complaint. Thus, it does not state that the complaint is false, rather states the inability to verify the correctness of the complaint. The enquiry report has no mention of the officer who has been named in the complaint.

5.The enquiry officer has been again marked by the present accepting authority to enquire against the officer in question. The enquiry officer has noted in the file that the complaint is due to vested interest and is due to the strict administration adopted by the officer in question. However the noting does not mention of any relied upon documents other than a statement of the officer in question.

6.The enquiry report has no mention of the proceedings of the exam, fairness of vital steps of a selection procedure like question paper setting or answer checking. This was despite the complaint which had specifically stated malpractices, in the steps of this selection.

View of DOM/RNC: For Item number D, 1 to 6-1 neither agree nor I can give any remark because It doesn't not come under the purview of the selection committee.

Selection committees inferences and recommendations on the basis of the above observations are:

1.In the interest of fairness and sanctity of the exam procedure and in view of serious allegations against the above exam, the committee has examined the whole exam in detail and has observed numerous lapses.

2. In order to ensure fairness and sanctity of the exam and to provide equal opportunity to the candidates, this committee firmly recommends that this selection exam should be cancelled and a fresh exam should be conducted as per rules.

View of DOM/RNC: All the facts have been given above, ADRM/OP/RNC i.e., chairman selection committee, may decide to ensure fairness and sanctity of the exam.

85. Thus, from the above, it is evident that all the question papers for the written test ought to have been both in Hindi and English. In this exam, 22 English and 20 Hindi versions were provided for 38 number of candidates in first-phase exam and there is no document available in the file about supply of question paper for 2nd phase in which 37 candidates appeared. The setting up of the language paper, as decided to be there, as per the railway policy decision is to provide equal opportunity to the candidates knowing Hindi as also the English. Not setting the question paper in Hindi and only setting the question paper in English itself clarifies the position that the entire selection process is contrary to the railway circular as contained in Hindi/87/OL-1/10/3 dated 3/11/1988. Thus, violation of rules is deemed to be procedural error in conducting the examination.

86. The second infirmity has been found that for the second phase exam conducted on 18.11.2018, details regarding question paper like when was it sent, how many questions (English/Hindi) etc. is not attached in the selection file. The other discrepancy shown is the pre-selection coaching to two SC/ST candidates, namely Sri Sameer Barla and Sri Yogendra Prasad were not provided. Even model question

paper was not provided to the examinees as per rules, which is against the Railway Board guidelines. Furthermore, no information regarding relative weightage given to factors like APAR, Service record etc. was given in the notification for the exam dated 28.11.2017. Further, as per circular dated 20/10/1999, DOM should have been nominated for setting the question paper and DCM for evaluating the answers but the said guideline was violated in this selection and DOM was nominated for evaluation while DCM for setting the question paper.

87. In the enquiry, it has further been found that the exam was taken in two phases on 11.08.2018 and 18.08.2018 with different question paper sets. This committee observes that this created an unequal playing field and there was no statistical scaling of marks.

88. It requires to refer herein that in the case at hand, the finding so recorded by the enquiry committee has remained un-assailed.

89. The cancellation of final select list is the consequence of the infirmity found by the enquiry committee in the process of selection and as per discussion made hereinabove in the preceding paragraphs when any infirmity has been found in the selection process and if there is no possibility to segregate in between the unfairness and fairness, under

that circumstance, the entire selection process is to be cancelled.

90. It is considered view of this Court that wherein irregularity has been caused as per the enquiry report, then the same cannot be given effect to as it would amount to putting premium on gross and systematic irregularities committed in selection process.

91. It is utmost duty to concerned authority to ensure that the recruitment process is fair, impartial and as per the mandate of statutory prescription and equality clause as enshrined under Articles 14 and 16 of the Constitution of India. Any recruitment process to public post should be beyond any suspicion and any irregularities.

92. Further irregularity in public employment would be against the constitutional goal of Equality of status and of opportunity, recruitment has to be fair, transparent and accountable, if there are irregularities in the recruitment process, it would undermine very legitimacy of the recruitment process. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic irregularities, the entire process becomes illegitimate. Large scale irregularities including those which have the effect of denying equal access to

similarly circumstanced candidates would erode credibility of the selection process.

93. It is settled position of law that when an inquiry reveals systemic irregularities that undermine the integrity of the entire selection process, the result should be cancelled in its entirety, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of **Union of India and Others Vs. O. Chakradhar (supra)**.

94. Herein the case is of vitiation of entire selection process, as has been found to be there in the report of the enquiry committee, and if in such circumstances, the selection process has been cancelled, which according to our considered view, cannot be said to suffer from an error.

95. The learned tribunal since has taken the view by declining to interfere with the order passed by the respondents-authorities, which according to our considered view, based upon the discussion made hereinabove, cannot be said to suffer from an error.

96. This Court since is exercising the power of judicial review as such is of the view that it is not a case where the principles of natural justice has been violated or there is any error apparent on the face of the order passed by the tribunal or the order impugned order is perverse warranting interference, therefore, power conferred under Article 226 of

the Constitution of India exercising the power of judicial review is not required to be exercised.

97. Accordingly, the writ petition fails and is dismissed.

98. Pending Interlocutory Application, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

22nd January, 2026

A.F.R./ Alankar