



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 25<sup>TH</sup> DAY OF FEBRUARY, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE M.I.ARUN**

**AND**

**THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

**WRIT PETITION NO. 103815 OF 2024 (S-CAT)**

**BETWEEN:**

1. THE UNION OF INDIA,  
REP. BY ITS GENERAL MANAGER,  
SOUTH WESTERN RAILWAY,  
GADAG ROAD, HUBBALLI.
2. THE PRINCIPAL CHIEF PERSONNEL OFFICER,  
SOUTH WESTERN RAILWAY,  
GADAG ROAD, HUBBALLI,  
PIN-580 020.
3. THE CHAIRMAN,  
RAILWAY RECRUITMENT BOARD,  
GOVT. OF INDIA,  
MINISTRY OF RAILWAYS,  
NO.18 MILLERS ROAD,  
BANGALORE, PIN-560 046.
4. THE DIVISIONAL RAILWAY MANAGER,  
SOUTH WESTERN RAILWAY,  
MYSORE DIVISION, MYSORE,  
PIN-570 001.
5. THE SENIOR DIVISIONAL FINANCE MANAGER,  
SOUTH WESTERN RAILWAY,  
MYSORE DIVISION, MYSURU,  
PIN-570 001.

... PETITIONERS

(BY SRI. MRUTYUNJAYA S.HALLIKERI, ADVOCATE)





**AND:**

THE LOKESH A.J.,  
AGE. 40 YEARS, OCC. SERVICE,  
R/O. ADHIHALI, BAGESHGPURA (POST),  
TQ. ARISIKERI, DIST. HASSAN-573 162.

... RESPONDENT

(BY SRI M. SIDDARAJ, ADVOCATE FOR SOLE RESPONDENT)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT, ORDER OR DIRECTION IN THE NATURE OF CERTIORARI BY QUASHING ORDER PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE BENCH, BENGALURU IN ORIGINAL APPLICATION NO.170/00356/2023 ON 26/02/2024 VIDE ANNEXURE-A, IN THE INTEREST OF JUSTICE AND EQUITY; REJECT THE ORIGINAL APPLICATION NO.170/00356/2023 ON 26/02/2024 ON THE FILE OF CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE BENCH, BENGALURU, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THIS PETITION IS COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE M.I.ARUN  
AND  
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

**ORAL ORDER**

(PER: THE HON'BLE MR. JUSTICE M.I.ARUN)

Aggrieved by the order dated 26.02.2024 passed in Original Application No.170/00356/2023 by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru (for short, 'the CAT'), respondents therein have preferred this writ petition.



2. Respondents therein invited applications from the physically handicapped persons for the post of 'Senior Clerk-cum-Typist and Junior Accounts Assistant' bearing No.03/2015.

3. Respondent herein had the necessary qualification and he applied for the said post. The respondent was placed in the waiting list along with four other persons. The waiting list was issued subject to the following conditions:

*"Candidates with the following Roll numbers have been provisionally selected as STANDBY for the post mentioned below. The roll numbers are in serial order and not in order of merit. It may be noted that the provisional selection as Standby does not in any way entitle the candidate to an appointment in the Railways.*

*The STANDBY candidates will be provisionally recommended to Railways purely on merit and community-wise requirement on account of medical invalidation or rejection on any other grounds of already recommended candidates or for any other reasons in the exigency of the administration."*

The same is issued on 18.12.2017.

4. Thereafter, on 08.11.2018 the Railway Board which was constituted for the aforementioned recruitment stood dissolved.



5. However, for various reasons the candidates who are selected for the said post either did not join or were later found ineligible and were not appointed. Again a fresh notification was issued in the year 2019 by the petitioners for recruiting physically handicapped persons for the same post.

6. At that time, the respondent made a representation to the petitioners stating that, he was placed in the waiting list in the earlier round of recruitment and as the candidates selected did not join the said post, he ought to have been selected for the said post, rather than inviting fresh applications for the same post. However, the request of the respondent was turned down by the petitioners on the ground that he was placed only in the waiting list and it did not create any vested right in favour of the respondent and that the petitioners have a necessary liberty to going for fresh recruitment and that the Railway Board which was constituted to make the necessary requirement for the notification issued in the year 2017 had already expired.

7. Aggrieved by the same, the respondent approached CAT.



8. The CAT in the impugned order has directed the petitioners herein to recruit the respondent. Aggrieved by the same, the present writ petition is filed.

9. The case of the petitioners is that placing a person in the waiting list does not confer any right on that person. Petitioners have the right to go in for a fresh recruitment in order to recruit the best talent available within the specified category. That the term of the Railway Board for making the necessary recruitment as per the notification of the year 2015, having come to an end on 08.11.2018, the question of recruiting someone from the waiting list does not arise. It is further submitted that pursuant to the notification issued in the year 2019, the vacancies have already been filled up and there is no vacancy to employ the respondent herein. It is also submitted that though the request of the respondent was rejected way back in the year 2019 itself, he has approached CAT belatedly in the year 2023. For the said reasons, it is prayed that the impugned order be set aside and the application filed by the respondent before the CAT be dismissed.



10. *Per contra*, the respondent justifies the order passed by the CAT and prays for dismissal of the petition.

11. Similar facts have been examined by the Hon'ble Apex Court in ***State of Karnataka and Others Vs Bharathi S.***, reported in **(2024) 15 SCC 530**. In paragraph Nos.7 to 15 it has been held as under:

*"7. We have heard learned counsel for the parties. At the outset, the Appellant has placed reliance on the Proceedings of the Government of Karnataka dated 11.04.2003, which is essentially a clarification about the life of the Additional List. The relevant portion of the clarification as under:*

*"And for the question of till how long the Additional list is valid?*

*For this, answer is up to 6 months of the announcement of additional list or by filling all the posts which has been already announced, whichever occurs first is to be taken into consideration.*

8. As per the abovereferred clarification, the Additional List (wait list) will subsist for a period of six months from the date of its announcement. In the present case, the selection process which commenced on 23.03.2015, culminated in the issuance of a selection list on 20.01.2016. Thereafter, the Additional List has been notified on 29.02.2016. If the period of six months is calculated from the date of notification of the Additional



*List, the said list would expire by 28.08.2016. The respondent is said to have applied for the post only on 08.09.2016.*

*9. The learned counsel for the Writ Petitioner made an alternate submission that the clarification Proceedings dated 11.04.2003, relied on by the State, is only an executive instruction. It is submitted that the relevant Rules which govern the recruitment are the Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967. These Rules have undergone an amendment and the relevant portion of the amended Rule, being Entry 66 of the Schedule to the Rules, concerning "Primary School Assistant Cadre", relied on is as under:*

*"The Selection authority shall prepare an additional list of candidates not included in the main list not exceeding ten per cent of the vacancies available. The list so prepared shall be published in the Official Gazette and shall cease to be operative from the date of publication of Notification for the subsequent recruitment of Primary School Teachers under these rules or any other rules specifically made for the recruitment of primary school teachers. However, the recruitment shall be limited to the extent of notified vacancies only."*

*(emphasis supplied)*

*Relying on Entry 66, it is submitted on behalf of the respondent that the Additional List would continue to*



*subsist till a subsequent notification for recruitment of primary school teachers is issued.*

*10. It is true that Proceedings dated 11.04.2003 is only an executive instruction and cannot override the application of Rules that govern services. The Rules that govern the services are the Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967 as amended in 2001. On a close reading of the relevant rule applicable to the services i.e. Entry 66, it is clear that there is no obligation on the State to make appointments. Mere publication of the Additional List does not create any right to be appointed. There is no such mandate in the Rule. Entry 66 of the Rules merely provides that the Selection authority shall prepare and publish an Additional List of candidates not exceeding ten percent of the vacancies and the said list shall cease to operate from the date of publication of notification for subsequent recruitments.*

*11. The position of law is also clear. In Subha B. Nair v. State of Kerala, reported in (2008) 7 SCC 210 which has also been relied upon by the State, it has been held that: (SCC pp.213 &215, paras 8-9 and 19)*

*"8. A decision on the part of an employer whether to fill up the existing vacancies or not is within its domain. On this limited ground in the absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matters...*



*9. Similar view has also been expressed by this Court in K. Thulaseedharan v. Kerala State Public Service Commission.*

*19. The question as to whether there existed 7 vacancies or 16 vacancies in the aforementioned situation loses all significance. We would assume that as per the requisition, 9 more vacancies could be filled up but it is trite that if the employer takes a policy decision not to fill up any existing vacancy, only because a person's name is found in the select list, the same by itself would be a ground to compel the Bank to fill them up."*

*12. Further, in Shankarsan Dash v. Union of India, reported in (1991) 3 SCC 47 this Court held that: (SCC pp.50-51, para 7)*

*"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*



HC-KAR

**NC: 2026:KHC-D:2985-DB  
WP No. 103815 of 2024**

*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; Neelima Shangla v. State of Haryana, or Jatinder Kumar v. State of Punjab.”*

*(emphasis supplied)*

13. *The position that emerges from the above decisions is that the duty to fill up vacancies from the Additional List (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the Additional List, is left to the wisdom of the State. We will however add that State cannot act arbitrarily and its action will be subject to judicial review.*

14. *Returning to the facts of the present case, we are of the opinion that the High Court has committed an error in assuming the existence of a right to be appointed on the basis of Entry 66 in the Schedule to the 1967 Rules. We have seen that the Rule by itself does not create any right. Such a position is also not supported by any principle of law. Finally, the conclusion of the High Court that the Respondent was unaware of the resignation of the appointed candidate will have no bearing on the operation of the Rule. The operation of the Additional List, which is to*



*be published in the official Gazette will depend upon the time specified in the Rule and not as per the knowledge of individual candidates.*

*15. In conclusion, we are of the opinion that the High Court committed an error in directing the State to give effect to the Additional List and appoint the respondent within three months from the date of the order. Under these circumstances, the Civil Appeal No. 3062 of 2023 filed by the State of Karnataka stands allowed and the decision of the High Court in Bharathi S. v. State of Karnataka dated 31.01.2020 is set aside."*

12. Reliance is also placed on the decision of the Railway Board dated 15.03.2002, which reads as under:

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

**No. E(RRB)/2001/25/26** **RBE No. 35/2002**  
**New Delhi, dated 15.3.2002**  
**The GMs/OSDs/CAOs,**  
**All Zonal Railways/Production Units etc.**

**Sub: Currency of recruitment panels supplied by RRBs**  
**Ref: Board's letter No.E(NG)63/RR1/35 dated 9/10.7.1964.**

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**Para-18 of Board's letter No.E(NG)63 RR1/35 dated 9/10.7.1964 regarding currency of panel is reproduced as under:**

**"The panel of candidates selected for appointment to Class III posts should be kept current for one year but General Managers have powers to extend them also, whenever considered necessary. This is, however, subject to the condition that as soon as the new results are published, the panels of candidates selected earlier will be treated as**



*lapsed, unless in respect of particular vacancies appointments have been deliberately held up".*

*2. In partial modification of the above, RRCB have decided that the currency of panel should continue to be one year only. The currency of the panel may be extended only by one year with the personal approval of General Managers. Beyond this limit, in case the Railway desires to extend the currency of the panel further, the Railway should make a reference to the Board giving detailed reasons as to why the panel could not be utilized within two years.*

*Receipt of this letter may kindly be acknowledged.*

*Sd/-  
(V.K.Modgal)  
Deputy Director, Estt. (RRB),  
Railway Board"*

13. In the instant case also, as in the case of **State of Karnataka Vs. Bharathi S.**, (*supra*), the notification issued by the petitioners did not confer any right on the candidates, who are placed in the waiting list. Perusal of the notifications, imply that the petitioners reserved their right either to choose from the candidates, who are placed in the waiting list or go for a fresh notification to recruit candidates for the post of 'Senior Clerk-cum-Typist and Junior Accounts Assistant'. Further, admittedly, the Board that was constituted for recruiting candidates in pursuance of the notification of the year 2015 stood expired on 08.11.2018 and the respondent made a request for appointment in the year 2019. Even after the refusal in the year 2019, he did



not approach CAT immediately. He has approached as late as in the year 2023.

14. The CAT has overlooked the aforementioned legal aspects and only on humanitarian grounds has allowed the application filed by the respondent herein.

15. Though, we express our sympathies to the respondent, the judgment of the Hon'ble Apex Court in the case of ***State of Karnataka vs. Bharati S., (supra)*** is staring at him and he is not in a position to overcome the same.

16. For the aforementioned reasons, the writ petition is hereby allowed. The impugned order dated 26.02.2024 passed in Original Application No.170/00356/2023 by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru is hereby set aside and the application filed by the respondent before CAT stands dismissed.

**Sd/-  
(M.I.ARUN)  
JUDGE**

**Sd/-  
(B. MURALIDHARA PAI)  
JUDGE**