NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5116 of 2023

Order reserved on : 22.08.2024

Order delivered on : 17.10.2024

1 - The Secretary, Railway Board Railway Board, Ministry Of Railway, Rail Bhawan, Raisena Road, Rafi Marg, New Delhi 110001.

2 - Union Of India, Through General Manager, South East Central Railway, New Gm Building, Bilaspur, Chhattisgarh 495004.

3 - Chairman, Railway Recruitment Cell, South East Central Railway, Bilaspur, Chhattisgarh. 495004.

---- **Petitioners**

versus

1 - J Anil S/o. J Malaya, Aged About 39 Years Working As Track Maintainer, R/o. Near Rubandha Sector Block No. 114b Hscl Colony, Bhilai Nagar, District - Durg, 490006

---- **Respondent**

WPS No. 5260 of 2023

1 - The Secretary, Railway Board Ministry Of Railway, Rail Bhawan, Raisena Road, Rafi Marg, New Delhi 110001.

2 - Union Of India Through General Manager, South East Central Railway, New Gm Building, Bilaspur, Chhattigsarh 495004

Digitally signed by RAVI SHANKAR MANDAVI

3 - Chairman, Railway Recruitment Cell, South East Central Railway, Bilaspur, Chhattisgarh 495004.

----**Petitioners**

Versus

1 - Shubham S/o Sri Ramesh Kumar Upadhayay, Aged About 30 Years Working As Track Maintainer, Secr/bsp, R/o Devarikhurd, Ward No. 43,

Bilaspur , District Bilaspur Chhattisgarh. 495004,

2 - Roshan Kumar, S/o Sri Prem Kishore Verma, Aged About 31 Years Working As Assistant Track Machine/secr/ngp, R/o Qtr No. Dt 2341, Besides Water Tank, Dhurwa, District Ranchi (Jharkhand) 834004.

3 - Indrajeet Kumar, S/o Rampukar Sharma, Aged About 30 Years Working As Assistant Track Machine/secr/bsp, R/o Warde No. 4, Baradwar District Janjgir Champa Chhattisgarh. 495687.

4 - Saroj Kumar, S/o Rambilas Mahato, Aged About 31 Years Working As Helper -Ii/secr/bsp, R/o Qtr No. 1511/1 Wireless Colony, Bilaspur, District Bilaspur Chhattisgarh. 495004

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner/s	:	Mr. Ramakant Mishra, Dy. Solicitor General of India and Ms. Sweta Roy, Advocate
For Respondent/s	:	Mr. Shayon Kar, Advocate

Division Bench :

Hon'ble Smt. Justice Rajani Dubey

Hon’ble Shri Justice Amitendra Kishore Prasad

C A V Order

***Per*, Amitendra Kishore Prasad, Judge**

1. This common order is being passed in WPS. No. 5116/2023 and WPS. No. 5260/2023 as common question of law are involved in both these cases as such they are heard together. By way of these petitions, the petitioners i.e. The Secretary, Railway Board, Ministry of Railway and Union of India has challenged the legality and the propriety of order dated 04.05.2023 passed in original application No.203/527/2020 and OA. No203/868/2021, by which the original application of the applicants were allowed by Central Administrative Tribunal (“in short CAT”), Bench Jabalpur, Circuit Sitting at Bilaspur and the respondent authorities i.e. petitioners herein are directed to recast the list of short listed candidates at various stages of selection to the post of Assistant Loco Pilot (“in short ALP”), notified vide notification No.1/2018, without

change of category. Both exercises shall be carried out within a period of 90 days from the date of receipt of certified copy of order dated 04.05.2023. Likewise, in WPS. No.5260/2023 in which same order has been passed in respect of different applicants in Original Application No.203/527/2020 in which by allowing original application same order has been passed. Aggrieved by the aforesaid order dated 04.05.2023, the petitioners have filed two petitions WPS. No. 5116/2023 and WPS. No. 5260/2023, challenging the aforesaid order with the following reliefs :

> (i) This Hon'ble Court may kindly be pleased to call for the entire record of O.A. No.203/868/2021, for its kind perusal
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> (ii) This Hon'ble Court may kindly be pleased to set aside the order dated 04.05.2023 (Annexure P/1) passed by the Tribunal.
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> (iii) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case along with costs of the petition be awarded.

2. It was case of the applicants in original application that respondent issued notification No.1/2018, dated 14.08.2018 and have advertised various posts including 164 posts of ALP, as the applicants of original application were having requisite qualification, they applied as per notification. The selection process was on the basis of computer-based test "in short CBT" and it was to be conducted online. The result of the aforesaid CBT was declared on 31.10.2019 in which about 328 candidates unreserved "in short UR" category were short listed. The aforesaid stated 328 candidates were further undergone computer-based aptitude test "in short CBAT" and the railway authorities were short listed 104 candidates and the said candidates were called for verification of their documents which was scheduled on 05.02.2020. It

was the case of the applicant that after aforesaid procedure, the railway authorities have published a provisional part panel of 135 candidates for the post of ALP. The aforesaid 135 persons were called for medical examination and 3 candidates whose names were not appearing in the panel list dated 05.02.2020 were called for medical examination. The petitioners were aggrieved by the said action of the respondent Railway authorities and they wrote letter dated 13.07.2020 to the concerned authorities. They further made another representation dated 31.08.2020, however, without considering their applications as well as representations, the respondent authorities published cut-off marks for the various categories on 27.07.2020, in which they have intimated that 21 candidates have failed in medical examination and they were declared unfit in A-1 category vide order dated 04.08.2020. An another provisional list was issued for part panel consisting of only 2 candidates on 25.09.2020. It was grievances of the applicants that though they are having requisite qualification, however they have been denied for impanelment for the post of ALP, therefore, they have filed these petitions. The respondent authorities have denied the claims of the applicants and have categorically stated by the respondents i.e. Railways that names of 3 candidates mentioned in the letter 10.07.2020, were called for medical examination for the post of ALP and their documents were verified vide letter dated 05.02.2020. Later on, the South Eastern Central Railway Track Maintainer Association, who is not recognized Association have submitted representation but it was not replied. It has been categorically denied that the applicants are having higher marks than that of cut-off marks and they are illegally denied for their appointment.

It was further submitted that the documents were verified against the notified vacancies as per notice dated 16.01.2020, the applicants of the original application 1, 2 & 4 are unreserved candidates but they have secured below cut-off marks, as such, they were not called for medical examination, so far as applicant No.3 is concerned he has given preference for the post of Technician hence, he was not considered for ALP as also he comes in the merit list of technician grade 3 post. It was submitted that due procedure was followed in the entire process of recruitment and there is no any irregularity or infirmity in the medical examination. The examination was of the 2 folds i.e. CBT and CBAT, those who qualified for CBT were called for next stage i.e. CBAT category, thereafter, after clearing CBAT the verification of documents were held with a ratio 1:15 and thereafter with a ratio of 1:1, they were sent for merit. The panel was made for the candidates who were medically found fit while following reservation rules. The entire petition is bereft of merits and the original application is liable to be dismissed in threshold.

3. Learned Central Administrative Tribunal after considering arguments of the parties and perusal of records passed the order which has been stated in the opening paragraphs of the order.

4. From the bare perusal of the impugned order it is apparent that CAT has passed an order for recast the list of short listed candidates for various posts and selection as per ALP notification No.1/2018 without changing category within 90 days. The aforesaid order has been made impugned by the petitioners i.e. department of railways stating that said order is not in accordance with law and same is liable to be

quashed. The entire process of recruitment is not required to be interfered with.

5. Mr. Ramakant Mishra, learned Deputy Solicitor General of UOI while challenging the order of CAT has categorically submitted that the impugned order passed by the CAT is not in accordance with law and same is passed while making interference, which was not called for. Due procedures were followed while considering notifications issued time to time by the railways, however, without any reason apparent on the face of record the original applications were filed.

The CAT has not considered the order of Hon'ble Supreme Court in the matter of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Others.,** reported in **[2020]11 S.C.R. 281**, it has been decided in paras 37, 38 and 39 which reads as under :

> "37. Having come to the conclusion that the Appellant No.1 and similarly situated candidates had secured more marks than the last candidates selected in "Open/General Category', the logical consequence must be to annul said selection and direct the authorities to do the exercise *de novo* in the light of conclusions arrived at by us. However, considering the facts that those selected candidates have actually undergone training and are presently in employment and that there are adequate number of vacancies available, we mould the relief and direct as under :-
>
> a) All candidates coming from 'OBC Female Category' who had secured more marks than 274.8928, i.e. the marks secured by the last candidate appointed in 'General Category-Female' must be offered employment as Constables in Uttar Pradesh Police.
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> b) Appropriate letters in that behalf shall be sent to the concerned candidates within four weeks.
>
> c) If the concerned candidates exercise their option and accept the offer of employment,

communications in that behalf shall be sent by the concerned candidates within two weeks.

d) On receipt of such acceptance, the codal and other formalities shall be completed within three weeks.

e) Letters of appointment shall thereafter be issued within a week and the concerned candidates shall be given appropriate postings.

f) For all purposes, including seniority, pay fixation and other issues, the employment of such candidates shall be reckoned from the date the appointment orders are issued.

g) The employment of General Category Females with cut off at 274.8928 as indicated by the State Government in its affidavits referred to in paragraphs 5 and 8 hereinabove are not to be affected in any manner merely because of this judgment.

38. Since it has been accepted that none of the candidates coming from 'SC Female Category' had secured more marks than 274.8298, the claims of the Applicant No.2 and all similarly situated candidates are rejected.

39. Miscellaneous Application No. 2641 of 2019 and IA No. 25611 of 2019 are allowed to the aforesaid extent."

6. Further, Hon'ble Supreme Court in the matter of **Sadhana Singh Dangi & Ors. Vs. Pinki Asati & Others** alongwith connected cases reported in **(2022) 12 SCC 401** and has held vide paras 12, 13 and 14 of the order which reads as under :

"12. This Court thus considered two views, one which was taken by the High Courts of Rajasthan, Bombay, Gujarat and Uttarakhand; and, *the second,* which had weighed with the High Courts of Allahabad and Madhya Pradesh. After considering the totality of the circumstances as well as the rival submissions, the view taken by the High Courts of Rajasthan, Bombay, Gujarat and Uttarakhand was accepted to be the correct view and the one which was taken by the High Courts of Allahabad and Madhya Pradesh was not approved.

The decision of this Court in Sourav Yadav had considered all the cases on the point starting from *Indra Sawhney*

(supra) up to *Mamta Bisht (supra)* as well as other decisions. It was finally concluded that the candidates belonging to the category of OBC (Female) or any other reserved category (Female) were entitled as a matter of right to have their candidature considered against the category meant for Unreserved Female Candidates if their merit position demanded so. It was further held that the category of Unreserved (Female) is not a specially allocated or reserved for those candidates who did not belong to any of the categories of SC, ST or OBCs and that by very nature "unreserved category" must mean and include every person who on the strength of merit could be entitled to be considered in that category.

13. In this batch of matters, Mr. P.S. Patwalia, learned Senior Advocate has led the submissions for the candidates who are up in appeals. We have also heard some of the learned Advocates who have supported him and adopted his submissions. We have also heard Mr. Saurabh Mishra, learned AAG for the State of Madhya Pradesh, and Ms. Anuradha Mishra, learned Advocate for MPPSC assisted by Mr. R. Panchbhai, an official of the MPPSC.

On the other hand, the rival view is projected by Dr. Rajeev Dhavan, learned Senior Advocate who appeared on behalf of the writ petitioners who succeeded in the High Court. Dr. Dhavan is supported by the other learned counsel for similarly situated candidates. We have also heard Mr. S.K. Rungta, learned Senior Advocate who presented a slightly different view on behalf of those candidates who were more meritorious than the candidates being represented by Mr. Patwalia.

14. Mr. P.S. Patwalia, learned Senior Advocate submits that the very same controversy had arisen in the matters coming from the High Court of Judicature at Allahabad and the issues in question stand completely concluded by the pronouncement of this Court in *Saurav Yadav (supra)*. It is submitted that on the strength of the law laid down by this Court, the instant appeals deserve to succeed and the revised Select List dated 19.08.2019 as published by the authorities must be accepted in toto and given effect to. It is further submitted that insofar as the candidates that he is representing, nothing further need be done as those candidates are already employed and are rendering service."

7. Further, Hon’ble Supreme Court in the matter of **U.P. Power Corporation Ltd. & Another Vs. Nitin Kumar & 9 Others** in **Special**

Appeal No.310 of 2015 decided on 19.05.2015, which reads as under : -

> "The principle of law has been laid down in the judgment of the Supreme Court in Andhra Pradesh Public Service Commission vs. Baloji Badhavath in the following observations:
>
> > "One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well settled principle of law as has been laid down by this Court in several decisions. (See for example, Union of India v. Satya Prakash', SCC Paras 18 to 20; Ritesh R. Shah v. Dr. Y.L. Yamul", SCR at pp. 700-701 and Rajesh Kumar Daria v. Rajasthan Public Service Commission', SCC para 9.)"
>
> In a decision of a Division Bench of this Court in Sanjeev Kumar Singh vs. State of U.P., the Division Bench held that competition commences only at the stage where all the persons who fulfill the requisite conditions are short-listed. In that context, it was also held that a concession in fee or relaxation in the upper age limit are provisions not concerned with the process of selection. The Division Bench observed in para 53 as follows:
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> > "In a selection which can be termed as open competition with general category candidates, the candidature of the reserved category candidates as well as the general category candidates is to be tested on the same merit and if in that case a reserved category candidate succeeds in the open competition with general category candidates, he would be placed amongst the general category candidates."

8. Further, Hon'ble Supreme Court in the matter of **Ramnaresh @ Rinku Kushwah & Others Vs. State of Madhya Pradesh & Others** reported in **2024 SCC Online SC 2058** in paras 20 which reads as under :

> 20. Undisputedly, the appellants who were meritorious and who could have been admitted against the UR-GS category were denied admission on account of an erroneous application of the methodology in applying the horizontal and vertical reservation. It is also not in dispute that many of the students, who secured much less marks than the appellants, have been admitted against the UR-GS seats. This is totally in contravention of the law laid down by this Court in the cases of Saurav Yadav (supra) and Sadhana Singh Dangi (supra). We therefore find that as held by this Court in the case of S. Krishna Sradha (supra), it will be appropriate to issue directions to the respondents to admit the appellants in the next Academic Session 2024-25 against the UR-GS seats. Vide order dated 12th August 2024, we have already directed 7 seats to be kept vacant in the event the appellants succeed. The appellants can be very well accommodated against the said seats.

9. aforesaid principle was further applied by the Railway Recruitment Board in notification (CEN/01/2018).

> " . .. . .. candidates who are shortlisted for second stage, CBT availing the reservation benefits of a community shall ensure to be considered only against that community for all subsequent stages of recruitment process."

10. The RRB on 18.07.2023 had published another notification for recruitment to the post of Assistant Loco Pilot with 820 vacancies and vide notification dated 20.05.2024, again published a notification for recruitment to the post of ALP with 837 vacancies in the Bilaspur

Division. After the order dated 04.05.2023 passed by learned CAT, in O.A. No.203/868/2021, the Railways again published notification for recruitment for the post of ALP in Bilaspur, Raipur and Nagpur Division with more than, 3000 vacancies.

11. As such, the impugned order has been passed without application of mind and same is liable to quashed.

12. On the other hand Mr. Shayon Kar, learned counsel for the respondent/s has submitted that the petitioner/s authorities have committed gross illegality while ignoring order passed by Hon'ble Supreme Court in the matter of **Deepa EV Vs. Union of India & Others,** reported in **(2017)12 SCC 680**, it has been decided in paras 4 and 6 (ii) & (iii) which reads as under :

> "4. The appellant who has applied under OBC category by availing age relaxation and also attending the interview under "OBC category" cannot claim right to be appointed under the General category.
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> 6. The Department of Personnel and Training had issued proceedings OM No. 36012/13/88-Estt. (SCT), dated 22.5.1989 and OM No. 36011/1/98-Estt. (Res.), dated 1.7.1998 laying down stipulation to be followed by the various Ministries/Department for recruitment to various posts under the Central Government and the reservation for SC/ST/OBC candidates. The proceedings read as under :
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>> "G.L. Dept. of Per. & Trg., OM No. 36012/13/88-Estt. (SCT). dated 22.5.1989 and OM No. 36011/1/98-Estt. (Res.), dated 1.7.1998
>>
>> *Subject*. - Reserved vacancies to be filled up by candidates lower in merit or even by released standards - candidates selected on their own merits not to be adjusted against reserved quota.
>>
>>> As part of measure to increase the representation of SC/ST in the services under

> the Central Government, the Government have reviewed the procedure for implementation of the policy of reservation while filling up reserved share of vacancies for Scheduled Castes and Scheduled Tribes by direct recruitment. The practice presently being followed is to adjust SC/ST candidates selected for direct recruitment without relaxation of b standards against the reserved share of vacancies. The position of such SC and ST candidates in the final select list, however, was determined by their relative merit as assigned to them in the selection process. When sufficient number of suitable Scheduled Caste and Scheduled Tribe candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates were selected by relaxed standards.
>
> 2. It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government, the SC and ST candidates who are selected on their own merit, without relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will d thus comprise SC and ST candidates who are lower in merit than the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary.
>
> 3. All Ministries/Departments will immediately review the various Recruitment Rules/Examination Rules to ensure that if any provision is contrary to the decision contained in previous paragraph exist in such rules, they are immediately suitably modified or deleted.

13. Learned counsel for the respondent further submitted that the respondent/applicant had challenged the selection process of the

Assistant loco Pilots published vide notifications No. 01/2018 dated 14.08.2018. Wherein, in the first stage of selections that is CBT, the OBC and SC candidates have been shortlisted against unreserved category thereby ousting the candidates of unreserved category who had been shortlisted in their respective category excluding the lower category candidates and inclusion of OBC and SC category candidates in their category. In the second stage of the selections i.e. CBAT, the OBC and SC candidates who had been shortlisted against UR category have again been switched to OBC category giving them relaxation of marks, thereby ousting the candidates of OBC and SC category who had been shortlisted in their respective category. In the final panel the OBC candidates have again been considered against the UR category thereby forcing out the UR category candidates who had successfully taken the previous stages of selection. The illegal and arbitrary act of respondent authority has resulted into non-selection of the applicant in the unreserved category and has created backlog vacancies in the OBC category.

14. It is pertinent to mention that being aggrieved by the arbitrary actions of petitioner corporation and after perusal of the cut-off marks, one of the respondents in the subsequent petition filed an RTI application (Annexure A-14) seeking specifically that **"out of those 14 candidates, who has scored more than the unreserved cuts off marks of 55.55234 ?"** As they have been emplaned against the unreserved category." In reply, the petitioner corporation stated that **"out if 14 candidates mentioned in your RTI application, marks**

obtained by only one candidate with role number 180101022375 is above the cut-off marks of 55.55234."

15. Thus, this makes it crystal clear that they have availed the benefit/relaxation of the lower cut-off marks of the OBC/ST category a in the CBAT results and does not deserve to be posted against the unreserved category.

16. It is imperative to note that these circumstances bring out an important question of law i.e. **Whether SC/ST/OBC can be adjusted in Unreserved Quota if they have taken advantage of any relaxation in the early stages of selection in the Recruitment Process ?**

17. To answer such question of law, the respondent would most humbly and respectfully submit that Central Government through Department of Personnel and Training were pleased to issue two notifications in this regard: (1) No. 36012/13/88-Estt. (SCT) dated 22.05.1989 (2) No. 36011/1/98-Estt. (Res.), dated 1.7.1998, laying down stipulation to be followed by various ministries/department for recruitment to various posts under the central government and the reservation for SC/ST/OBC candidates. The later proceeding reads as under : (Annexure A-15)

.....

> 2. "In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relax standard is applied in selecting SC/ST/OBC candidates, for example in the age - limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than

> what is provided for general category candidates, etc., the SC/ST/ OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as an available for consideration against unreserved vacancies." (Annexure A-15).

18. The Hon'ble Apex Court in the matter of **Deepa E.V. Vs. Union of India & Others** affirmed the credibility of aforementioned notifications (1) No. 36012/13/88-Estt.(SCT) dated 22.05.1989 & (2) No. 36011/1/98-Estt.(Res.), dated 1.7.1998 and reiterated that :-

> **"4. The appellant who has applied under OBC category by availing age relaxation and also attending the interview under OBC category cannot claim right to be appointed under the general category."**
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> The judgement of Deepa E.V. has been approved and affirmed by the Hon'ble Apex Court in the matter of **Gaurav Pradhan & Others Vs. State of Rajasthan & Others.**

19. The same principle has also been enumerated by Railway Recruitment Board in Centralised Employment Notification (CEN/01/2018) (Annexure A-13) Para 13.1 that :-

> "..... candidates who are shortlisted for second stage, CBT availing the reservation benefits of a community shall ensure to be considered only against that community for all subsequent stages of recruitment process."

20. Thus the respondents have failed to comply with their own rules and procedures as prescribed by their own department and the Hon'ble Supreme Court of India in catena of judgments.

21. However, it is important to mention that vide order dated 02.02.2022 passed in O.A. No. 527/2020, this Hon'ble Court was kind enough to

pass that "any recruitment in view of notification no. 01/2018 shall be subject to the final outcome of the Original Application and thereafter this court on 04.05.2023, after affirming the arbitrary approach of the contemnors directed the contemnors to recast the list of candidates without category change." But, instead of following the very spirit of the order dated 04.05.2023 passed by this Hon'ble Central Administrative Tribunal in O.A No.203/868/2021, rather the respondents have willfully disobeying the order passed by this Hon'ble Court, promoted all the arbitrarily selected candidates.

22. Moreover, the RRB on 18.07.2023 had published another notification for recruitment to the post of Assistant Loco Pilot with 820 vacancies. Further, vide notification dated 20.05.2024 the respondents have again published a notification for recruitment to the post of ALP with 837 vacancies in the Bilaspur Division.

23. Thereafter, the respondents have also published a notification on 06.05.2024 for recruitment to the post of ALP in the Nagpur Division with 598 vacancies. Also, vide notification dated 04.05.2024 the respondents have published for recruitment to the post of ALP in the Raipur Division with 672 vacancies. Therefore, it is most humbly and respectfully submitted that after the order dated 04.05.2023 passed by this Hon'ble Central Administrative Tribunal in O.A No. 203/868/2021, the petitioner's corporation have published for more than 3,000 vacancies for the post of Assistant Loco Pilot in Bilaspur, Raipur and Nagpur Division. But, have not wilfully remedied the grievances of the applicants, whereas they were directed to do so."

24. Though there was an order of stay passed by this Hon'ble Court vide 04.05.2023, however the railways have committed contempt of the order passed by this Court while willfully disobeying the order passed by this Court and have promoted all the candidates who were illegally chosen. The RRB, ALP even after passing of the order of CAT dated 04.05.2023 are again and again publishing vacancies without due process of law. These petitions are liable to be dismissed.

25. We have heard learned counsel for the parties and perused the record with utmost circumspection.

26. From the impugned order it is apparent that the railways have adopted a process against their own notifications as such, when the process of recruitment was challenged by the petitioners of original applications, the learned CAT has found in paras 9, 12, 13, 14 and 15 as under :

> "**9**. From the pleadings as narrated hereinabove, it would be clear that the candidates are shortlisted for CBT and CBAT as well as document verification according to their merit position category wise and the same cannot be termed as final position of the candidates for empanelment. Further, the panel is being drawn as per merit position of the candidates following reservation rules. The respondents have specifically denied that the applicants had obtained higher marks that the cut off marks, which has not been disputed by the applicants.
>
> **12**.We have carefully gone through the decisions as cited by the learned counsel for the applicants as well as learned counsel for the respondent. In the case of Deepa E V (supra), the Hon'ble Supreme Court has observed that "If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies without availing any

relaxation." Basing upon the above observations, the Hon'ble Supreme Court has been pleased to dismiss the appeal as filed by Deepa E V (supra). The above proposition of law has also been followed by Ernakulam Bench of the Tribunal in O.A. No.190 of 2014 in re. Jithu L Dev vs. Union of India & Others by holding that if a candidate seeks relaxation in form of SC/ST/OBC category, they are not entitled to be considered in the general candidate list.

13. From the plain reading of the order of Hon'ble Supreme Court, it is quite clear that OBC/SC/ST candidates who are selected on merit will be considered against the general/OC candidate select list. They shall not be considered as reserved category candidate list provided that they have not availed any relaxation for their category. They have competed with the general candidate and this is fair and just also. In the case of Gaurav Pradhan & Others vs. State of Rajasthan reported in 2018 SCC 11 352, the ration laid down by Hon'ble Supreme Court in the case of Deepa E.V. has been reiterated. Apart from that, the Railway Recruitment Board in Centralized Employment Notification has mentioned that ".... Candidates who are shortlisted for second stage CBT availing the reservation benefits of a community shall continue to be considered only against that community for all subsequent stages of recruitment process." But despite that, the respondents adopted double yardsticks on the same issue. In the instant case, the respondents have switched the category of candidates in exam to exam (CBT to CBAT) to give undue benefit to the candidates of their own choice by giving relaxation from their particular community.

14. We have also perused the decisions cited by the learned counsel for the respondents and none of them would be applicable in the present set of facts on the simple reason that the latest law of land would prevail on the issue.

15. The applicants sought certain information under Right to Information Act, 2005 to which reply has been given that the reserved category candidates were never evaluated with the minimum cut off marks of the Unreserved category, which was

initially as 55.55234. In view of this matter also, the action of the respondents is not justified."

27. In our considered opinion, the learned CAT has passed a reasoned order while interfering into process of selection for the post of ALP, however, while setting aside order dated 25.09.2020, the learned CAT has directed the respondents to recast the list of short listed candidates for various stages of selections to the post of ALP notified vide notification No. 01/2018 without change of category. The above exercise shall be carried out within a period of 90 days from the date of receipt of certified copy of this order which cannot be said to be illegal or arbitrary order.

28. Learned CAT has considered the entire aspects of the matter and after following dictum of *Deepa E V (supra)* has rightly passed the order, as such, we are of the considered view that both the writ petitions are devoid of merits and same are liable to be dismissed, accordingly, both these petitions dismissed upholding the order dated 04.05.2023 passed by the learned CAT and the respondent railway authorities are directed to comply the order of CAT dated 04.05.2023 within shot span, if any order has been passed against order the dated 04.05.2023, the same shall be governed as per order dated 04.05.2023. With this observation, both these petitions are hereby dismissed.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge

Ravi Mandavi