



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 950/2024

Reserved on : 07.01.2026
Pronounced on : 22.01.2026

**Hon'ble Mr. Manish Garg, Member (J)
Hon'ble Dr. Anand S. Khati, Member (A)**

1. Jitender Chauhan
S/o N.S. Chauhan
H.No.747, Sector 55
Faridabad, Haryana 121004.
2. Sameer Gaba
S/o Rakesh Gaba
R/o WZ-A 189/1 Krishna Park
Street No.4 Tilak Nagar
New Delhi-110018
3. Harsh Gahlot
S/o Joginder Singh
R/o H.No.19 B, Padarth Panna
Mitaon Village, South West Delhi-110043
4. Rohit Kumar
S/o Raj Kumar
R/o House No. 613/1, Near SBI Bank
Village Mundka, New Delhi-110041
5. Divye Bansal
S/o Sukhbir Singh Bansal
R/o 103-F, Zamrudpur
Greater Kailash- 1, New Delhi
6. Alan Mathews
S/o Mathew
R/o Thengumpallil House
Ayarkunnam PO, Kottayam, Kerala
7. Alok Krishna Mishra
S/o Gyaneshwar Mishra
R/o V&PO Nariyaon, District Deoria
Uttar Pradesh, Pin Code -274602



8. Amit Ashok Dhartarkar
S/o Ashok
R/o Khatkeshwar Nagar
Loni road, Lonar District Buldhana
Maharashtra.
9. Anita Chaudhary
D/o Kesha Ram
R/o D41, Shri Karni Uma Vihar
Gokulpura, Jaipur, Rajasthan.
10. B. Prashant
S/o B.V. Satyadev
R/o Type 2/17, JP Colony, Secl Korba
11. Jatin Bisht
S/o Kishan Singh Bisht
R/o Ward-02, Jeewanwala, Dehradun
Uttarakhand-248140.
12. Manas Paul
S/o Uttam Paul
R/o Barujibi Ramkrishna Pally
Kanaipur, Near New Diganta Club
Hooghly, WB-712250
13. Manvendra
S/o Shivraj Singh
Sehpoot Barhan, Agra
14. Mohit
S/o Satyanarayan
R/o Vill. Jaisinghpura
Post Sultana Ahiran
Teh- Buhana, Distt. Jhunjhunu
Rajasthan (Pin Code-333502)
15. Mudavath Bhardwaj
S/o M. Pandu
R/o Plot No. 380, Vinayaka Hills Road No.7
Hyderabad
16. Muhammed Sarjad VKC
S/o Khader
R/o Puthiyedath Baithulsafa Puthuppanam
(PO) Vatakara, Kozhikode Kerala



17. Naina Kushawah
D/o Gulab Das Kushwaha
R/o Ward No. 10 Rajiv Nagar
Khirkiya Dist. Harda
Madhya Pradesh-461441
18. Nitin Kumar
S/o Ram Bhajan
R/o H/No. 07, Mohalla Mohammad Sayeed
Bhogaon, Distt. Mainpuri, Uttar Pradesh-205262
19. Prashant Mishra
S/o Rakesh Mishra
R/o 45-B Ganga Khera, Krishna Nagar
Lucknow-226023, Uttar Pradesh
20. Pushpendra Singh Tomar
S/o Surendra Singh Tomar
R/o Flat No. 107, Parikalp Terrace 112D
Gandhi nagar, Gwalior, Madhya Pradesh- 474002
21. Rahul Chaudhry
S/o Amardeep
R/o 35/3, Subhash Nagar
Manimajra, Sector-13, Chandigarh-160101
22. Rajat Sharma
S/o Jyoti Parkash
R/o Mohalla Takayia, Village Purkhoo
P/O Domana, Tehsil Bhalwal
District Jammu, J&K
23. Ritvik
S/o Sanjay
R/o Baghpat, U.P
24. Rohit Raj
S/o Gopal Sharma
R/o Near Zenith Petrol Pump
Ramdayalu Nagar, Muzaffarpur
Bihar, Pin-842002.
25. Sagar Ahire
S/o Narayan Ahire
R/o At Post Boris Tal, Distt. Dhule
Maharashtra



26. Satar khan
S/o Husain Khan
R/o V/P Rohili Teh. Barmer Gramin
Distt. Barmer Rajasthan
27. Shailesh Kumar Parit
S/o Brijesh Parit
R/o Village Basgaw Parsauni
Post- Manjhariya, District - West Champaran
State Bihar, Pincode-845106
28. Shankar
S/o Rishi Kumar
R/o Meerut, UP
29. Utkarsh Awasthi
S/o Pradeep Awasthi
R/o 193 Village and Post-Kusumbhi
District-Unnao, Uttar Pradesh
30. Yogesh Yadav
S/o Dalbir Singh
R/o Village – Baganwala, Tehsil - Tosham
District Bhiwani, Haryana-127040
31. Swapnil Yadav
S/o Mahesh Yadav
R/o 125, Babji Nagar
Behind Mahindra Showroom
AB road Indore, Madhya Pradesh.
32. Vikas
S/o Balbir singh
Garhi Sarai Namdar Khan
Gohana Sonipat, Haryana.
33. Vikash Kumar Meena
S/o Hajari Lal Meena
R/o VPO- Dubbi, Tehsil-Rajgarh
Dist - Alwar Rajasthan
34. Vikram
S/o Ajeet singh
R/o Kalwas Teh. Taranagar
Dist. Churu Rajasthan.

... Applicants

(By Advocate : Mr. Namit Saxena with Mr. Awnish Maithani)

**Versus**

1. The Union of India
Through the Comptroller and Auditor General of India
9, Deen Dayal Upadhyaya Marg
New Delhi - 110124.
2. The Secretary
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
North Block, New Delhi-110001.
3. Staff Selection Commission
Represented by its Secretary
5th Floor, Lodhi Rd, CGO Complex
Block-12, New Delhi
Delhi-110003.
4. Principal Director of Audit
Industry and Corporate Affairs
A.G.C.R Building,
I.P. Estate, New Delhi-110002.

.. Respondents

(By Advocates: Dr. Surender Singh Hooda for R-1 and
Mr. Gyanendra Singh with Ms. Khushi Chandra
for R-2 and 3)



ORDER

Hon'ble Dr. Anand S. Khati, Member (A)

By way of the present Original Application (O.A.), the applicants are seeking the following reliefs:-

"(a) Quash the impugned inaction of Respondents being arbitrary, malafide, discriminatory and illegal; and direct the respondents to restore the vacancies which SSC has declared in its FINAL VACANCY List and release the result for the post of AAOs.

b) prayed that the O.A. be allowed and the impugned order of withdrawal of Vacancies for the post of AAO be quashed and the respondents be commanded to proceed ahead with the selection already undertaken and draw a merit list accordingly.

and/or

(c) Direct the respondents to produce all the records of the case along with their reply for perusal by this Hon'ble Tribunal;

(d) Allow the cost of this application to the applicant.

(e) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favour of the applicant and against the respondents."

2. Brief facts of the case, as put forth by the learned counsel for the applicants, are that:

2.1 The respondent No.3 – Staff Selection Commission (SSC) issued Notification dated 03.04.2023 for filling up various Group 'B' and 'C' vacancies in different Ministries and Departments of Central Government through SSC CGL Examination (CGLE), 2023. The CGLE is held in two stages, viz. Tier-1 and Tier-2. Tier-1 is compulsory and qualifying in nature. In Tier-2 Exam, there are Paper I, II and III, out of which Paper-I is compulsory for all posts, Paper-II is for candidates to the post of Junior Statistical Officer



(JSO) and Paper-III is for the post of Assistant Audit Officer/Assistant Accounts Officer (AAO). The marks scored in Tier-2 are considered for final selection for the vacancies announced through the Examination.

2.2 The applicants herein appeared for CGLE 2023 for the post of AAO in hope of seeking appointment and secured very high marks in Tier-1 (Prelims) and Paper-I and Paper-III of Tier-2, and hence, they were sure of getting the post. However, when the result was released on 04.12.2023 (Annexure A-1), to their utter shock, the SSC did not allot the post of AAO to any candidate and it has been mentioned that the user department, i.e. Comptroller and Auditor General of India (CAG), has withdrawn the vacancies.

2.3 He pointed out that the AAO is the only Gazetted post through CGLE and a very high cutoff is required in Tier-1 exam in order to be eligible to appear in Tier-2 for the post of AAO, which is evident from the merit list.

2.4 After conducting the examination for Tier-1, the SSC on 18.08.2023 reported tentative 556 vacancies in the Department of CAG, i.e. 253 for AAO, 153 for Auditor and 150 for Accountant.

2.5 Tier-1 results were declared on 19.09.2023 (Annexure A/4) in which 4377 candidates cleared higher cut off for AAO posts in their respective categories. The merit list of candidates who qualified after securing very high cutoff is as follows:



“List-1 : Candidates shortlisted in Tier-I for appearing in Tier-II [Paper-I and Paper-III {General Studies (Finance & Economics)}] (for the post of Assistant Audit Officer and Assistant Accounts Officer):

Category	Cut-off Marks	Candidates available
SC	154.29292	790
ST	148.98918	382
OBC	166.28763	1483
EWS	167.18331	605
UR	169.67168	914*
OH	147.95269	82
HH	126.86400	60
Others-PWD	109.82718	61
Total		4377

*In addition to the UR candidates shown above, 30-SC, 2-ST, 713-OBC, 369-EWS and 2-OH candidates qualifying at UR cut-off at this stage, have been shown under their respective categories.

Note 1: VH candidates qualifying in their respective vertical categories have not been considered eligible for List-1 as the posts are not identified suitable for VH candidates in the notice of the previous year examination i.e. CGLE 2021.”

2.6 The applicants along with other aspirants appeared in Tier-2 examination conducted on 26.10.2023 & 27.10.2023, for which tentative answer key was released on 30.10.2023.

2.7 On 03.11.2023, the DoP&T issued guidelines with respect to reporting accurate number of vacancies and the departments were directed to re-confirm the vacancies. In compliance thereto, the SSC again confirmed 556 vacancies, i.e. 253 for AAO, 150 for Accountant and 153 for Auditors, in the Department of CAG.



2.8 The SSC asked to fill the post preference form from 18.11.2023 to 23.11.2023, and the applicants filled preference regarding their respective choice of AAO and they were sure of getting the post. The SSC reported the revised final vacancies on 08.12.2023 (Annexure-A6), in which 556 vacancies of CAG were maintained.

2.9 However, when the results of Tier-2 examination of CGL 2023 were declared on 04.12.2023, the SSC did not allot any candidate for the post of AAO, and it has been mentioned therein that CAG has withdrawn the vacancies of AAO without mentioning any reason for such a drastic decision, thereby jeopardising the future of the applicants and similarly situated candidates.

2.10 The SSC declared the revised result on 06.12.2023 but again no post of AAO was allotted to any candidate. Thereafter, final answer key along with marks were released on 16.12.2023.

2.13 Feeling aggrieved, the applicants filed various representations and applications under RTI Act, 2005 to the SSC as well as the DoP&T, however, no satisfactory response was received. The SSC replied that they do not have the reasons of withdrawal of vacancies because it is done by the user department- CAG, whereas the DoP&T vide its reply dated 27.12.2023 stated that the subject matter is *sub judice* before the Honourable CAT Guwahati and as per guidelines of DARPG, *sub judice* cases received through CPGRAMS portal cannot be treated as grievance.



2.11 Being dissatisfied, an appeal was filed before the concerned authorities on 29.12.2023, but no action has been taken thereon till date.

2.12 He also pointed out that in response to RTI application dated 07.12.2023, the CAG vide their letter dated 17.01.2024 replied as under:

“....Requisitions for filling up total of 556 vacancies comprising for the posts of Assistant Audit Officer, Assistant Accountants Officers, Auditor and Accountant through CGLE-2023 have been placed by this office with the Staff Selection Commission. However, the same has been withdrawn due to administrative exigencies.”

and in view of above, the cancellation done in absence of any reasons is impermissible in law.

3. The learned counsel for the applicants has challenged the action of the respondents on the following grounds:

(i) Withdrawal of vacancies at irreversible stage is illegal: As per the SSC notification, the stage of exercising post preference is irreversible in nature. Once the candidates exercise their preferences and the recruitment process attains finality, the vacancies cannot be altered thereafter. He relied upon the Constitution Bench judgment of Hon'ble Supreme Court in **Tej Prakash Pathak vs Rajasthan High Court**, (2013) 4 SCC 540], wherein it has been categorically held that recruitment rules cannot be changed mid-way during recruitment process.



(ii) Violation of doctrine of legitimate expectation: The applicants had a legitimate expectation that the notified vacancies and finally confirmed vacancies on 17.11.2023 through recruitment scheme would be filled. After inducing candidates to participate in the process, meet higher cut-offs, appear in additional examinations, and exercise their final preferences, the respondents cannot defeat such legitimate expectation by unilaterally withdrawing vacancies at a belated stage, without prior intimation to the applicants, and disclosing the absence of vacancies only at the time of publication of the result.

(iii) DoPT guidelines do not permit post-result withdrawal: The respondent's reliance on the DoPT guidelines to justify withdrawal of vacancies is wholly misconceived. The relevant DoPT instructions only permit withdrawal of vacancies "well before the declaration of results". The expression "well before" clearly indicates that such withdrawal must take place at a stage where no vested or accrued rights or irreversible steps have arisen in favor of candidates. In the present case, not only had the examinations already been conducted, but the final vacancies were also notified and post preferences exercised. Therefore, the withdrawal of vacancies is far beyond the stage contemplated under the DoPT guidelines and is *ex facie* illegal.

(iv) Final vacancy list is sacrosanct under SSC scheme: The notification is completely silent on any power to withdraw vacancies after publication of the final vacancy list. To the contrary, the



notification treats the publication of final vacancies as a determinative and sacrosanct stage of the recruitment process. The publication of the final vacancy list dated 17.11.2023 created a binding representation in favor of the candidates. In the absence of any enabling provision permitting post publication withdrawal, the Respondents could not have acted *de hors* the notified recruitment scheme.

(v) Backdating of revised vacancy list and lack of transparency: The letter dated 30.11.2023 issued by Respondent No.1 seeking withdrawal of vacancies proceeds on an incorrect assumption that the Tier-2 examination had not been conducted, which is factually erroneous. The revised vacancy list reflecting the withdrawal of AAO vacancies was uploaded on 07.12.2023 but backdated to 30.11.2023, i.e., prior to the declaration of results. Such backdating is ex facie arbitrary, lacks transparency, and appears to have been done to create a false record in order to justify an otherwise illegal action.

(vi) Violation of Articles 14 and 16 — hostile discrimination: Candidates for the post of AAO were subjected to higher cut-offs and an additional graduation-level Paper-III, unlike candidates for other posts. While the final results for all other posts were declared, the vacancies for AAO alone were withdrawn, thereby subjecting AAO candidates to hostile discrimination.



(vii) Misplaced reliance on interim orders: The Respondents placed reliance on interim orders passed by the CAT Guwahati Bench and the Principal Bench, despite the fact that the same were subsequently vacated.

(viii) Existence of vacancies belies respondent's case: RTI replies obtained by the applicants disclose the existence of 756 vacancies and the creation of supernumerary posts, which completely belies the Respondents' case regarding non-availability of vacancies.

(ix) Administrative inaction cannot prejudice candidates: The delays in promotions, internal cadre management issues or disputes between promotees and the department are purely administrative matters of the CAG. It is settled law that internal administrative failures cannot be cited as a ground to deny recruitment opportunities to candidates, who have participated in a duly notified competitive examination.

4. The learned counsel for the applicants argued that withdrawal of vacancies without any valid reason, after the entire selection process was completed, would amount to changing the rules of the game after the game was played, which is clearly impermissible by applicable rules governing how the game is supposed to be played. In support of his contention, he has placed reliance upon the following case laws:



- (a) Maharashtra State Road Transport Corporation vs Rajendra Bhimrao Mandve, 2001 (10) SCC 51;
- (b) T.N. Computer Science B.Ed. Govt. Welfare Society (1) vs Higher Secondary School Computer Teachers Assn., (2009) 14 SCC 517;
- (c) Hemani Malhotra vs High Court of Delhi, (2008) 7 SCC 11;
- (d) Tej Prakash Pathak vs High Court of Rajasthan, (2013) 4 SCC 540;
- (e) State of Punjab vs V.K. Khanna, (2001) 2 SCC 330;
- (f) DTC vs Mazdoor Congress, 1991 Supp (1) SCC 600;
- (g) Ramchandra Shankar Deodhar vs State of Maharashtra, (1974) 1 SCC 317;
- (h) K. Manjusree vs State of Andhra Pradesh, (2008) 3 SCC 512; and
- (i) N.T. Devin Katti vs Karnataka Public Service Commission, (1990) 3 SCC 157.

5. He adduced that an RTI application was filed on 09.08.2024 with CAG regarding vacancy position in AAO. In response thereto, vide reply dated 08.10.2024 it is stated that total vacancy positions as on 01.07.2024 in Indian Accounts & Audit Department (IA&AD) offices in the cadre of Assistant Audit Officer is 407 and in the cadre of Assistant Accountant Officer is 356. It is also stated that no



requisition has been placed with SSC to fill the vacancy in the cadre of Assistant Audit Officer and Assistant Accountant Officer through CGLE-2024.

6. Opposing the grant of relief, learned counsel for the respondent No.1 - CAG, placing reliance upon the averments made in their counter affidavit, submitted that the applicants appeared as candidates in the CGLE 2023 conducted by the SSC desirous of being appointed as Assistant Audit/Accounts Officers (AAOs). The post of AAO in the IA&AD is a Group 'B' Gazetted Post. Direct recruitment in the cadre of AAOs in various field offices in IA&AD was being done, as per the Medium-Term Recruitment Plan (MTRP) 2021-2025 approved by the Comptroller and Auditor General of India (CAG). As per MTRP 2021-2025, the Deptt. had placed requisition to fill 2910 Vacancies (Assistant Audit Officer-660, Assistant Accounts Officer-102, Divisional Accountant 340, Auditor-1088 and Accountant 720) in various Group 'B' & 'C' posts in IA&AD through CGLE 2022. Vide OM No. 43014/04/2022-Estt-B (Part) dated 30.09.2022 (Annexure R-1), the DoPT decided and directed all Departments to place a central indent on SSC, of the same number as 2022 cycle, for anticipated Direct Recruitment vacancies against projected retirements etc. for recruitment cycle 2023.

6.1 Meanwhile, certain serving members of the IA&AD filed OA No. 291/2023 before the CAT Guwahati Bench challenging the direct recruitment to the post of AAO, wherein vide interim order



dated 11.10.2023 (Annexure R-2), the Tribunal directed not to fill up the vacancies in the cadre of AAO by the mode of direct recruitment without leave of the court till disposal of the OA. Similar challenges were also made before the Principal Bench in OA No. 3634/2023 and vide order dated 23.11.2023 (Annexure R-3), the Principal Bench also directed the respondents not to fill up the posts of AAOs by direct recruitment without the leave of the Tribunal till the next date of hearing.

6.2 He further submitted that the result of CGLE-2022 was published on 13.05.2023 and nominated 1260 Assistant Audit Officers and 202 Assistant Accounts Officers. The dossiers of AAOs were sent to the respective Cadre Controlling Authority (CCA) during the month of August to October, 2023 and the process of allocation of State to the candidates nominated for appointment of AAO was in progress. However, this process was stayed due to the orders passed by the Tribunal.

6.3 Since a large number of candidates, duly qualified and selected, were being deprived of appointment due to operation of stay order, the respondents preferred MA No. 4498/2023 in OA No. 3634/2023 seeking vacation of stay order. The MA came to be allowed vide order dated 19.12.2023 (Annexure R-5) and the following substantive directions were passed;

“10..... i. The respondents shall be at liberty to go ahead with the appointment of the selected candidates pursuant to the CGLE 2021 and CGLE 2022.



ii. The respondents shall keep the post(s) of AAO available for the applicants herein and they shall consider the applicants' claim for their absorption, in accordance with the relevant rules and instructions on the subject, as expeditiously as possible and preferably within six weeks from today by passing appropriate order(s) in this regard. ...”

6.4 Similar MA was filed before the Guwahati Bench, and the Tribunal was also pleased to vacate the order and the dossiers of Auditor and Assistant Audit Officer were sent to the respective Cadre Controlling Authorities on 22.12.2023.

6.5 He referred to the Recruitment Rules for the post of Assistant Audit Officer and Assistant Accounts Officer in IA&AD (Assistant Accounts Officer and Assistant Audit Officer) Recruitment Rules (RRs), 2020 (Annexure R-4) which provide that the method for recruitment for the post of AAOs is “By promotion failing which by deputation or absorption failing both by direct recruitment”.

6.6 He further submitted that to accommodate candidates nominated through CGLE 2022, the Department had to utilize 2537 retirement vacancies upto 31.12.2030 and to accommodate the candidates nominated for appointment to the post of AAO, Auditor and Accountant supernumerary posts were created. Further, in the cadre of AAOs, as on 01.08.2023, there were 1986 SAS passed departmental candidates awaiting regularization/promotion to the post of Assistant Audit Officer/Assistant Accounts Office for want of vacancies in their parent offices. The SAS Exam passed candidates are also eligible for the appointment to the post of Assistant Audit



Officer on permanent absorption basis in terms of the Recruitment Rules.

6.7 Evidently, while allowing the Department to go ahead with the direct recruitment, the Tribunal made it abundantly clear that adequate number of vacancies for candidates who were in line for promotion and deputation or absorption must be kept available since they were to be given first preference in terms of the Recruitment Rules.

6.8 Against the requisition placed through CGLE-2023 to fill 556 vacancies in various Group 'B', & 'C' posts, further supernumerary posts would have to be created to accommodate these nominated candidates as the candidates appearing through CGLE have the last right of appointment being direct recruits, it was therefore impossible to accommodate the candidates to be nominated through CGLE-2023.

6.9 As per Para 5(i) of DoPT OM No. 39020/07/2023-PP(B) dated 03.11.2023 (Ann. R-6), Ministries/Departments may reconfirm the number of vacancies to the recruiting agency well before finalization/declaration of result by them, after reconfirmation of vacancies by Ministries/Departments, it would be their responsibility to accommodate the candidates selected against such vacant posts. Vacancies, finally intimated by the user Ministries/Department cannot be changed/varied after the result of



the examination has been declared. Hence, in terms of provisions of para 5(i) of DoPT OM dated 03.11.2023, the Deptt. requested the SSC to treat requisition of CGLE-2023 as withdrawn. Further, none of the vacancies withdrawn are available as on date in the cadre of AAO.

6.10 The impugned withdrawal order mentions that vacancies were withdrawn before the result was announced. On the date of withdrawal of vacancies, we did not have any vacancies. On the contrary, to accommodate candidates of CGLE-2022 and to promote SAS passed candidates, the respondents had to create supernumerary posts, which is borne out from the Noting Sheet from Pg. 12 to 21 of the original record, submitted for perusal of the Tribunal.

6.11 In reply to an RTI application, it is stated that vacancies exist, however, firstly, these vacancies have arisen after the withdrawal of vacancies of CGLE 2023, and secondly, the vacancies which are arising now will have to be adjusted against the supernumerary posts created so as to ensure that the excess supernumerary posts ultimately get exhaust.

6.12 Further, it is settled law that there can be no vested right of appointment even if a candidate's name appears in the merit list. Reliance in this regard is placed on the decision in the case of



Shankarsan Dash vs Union of India, (1991) 3 SCC 47, wherein it was held as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha”.

6.13 In view of aforesaid submissions, there was no arbitrariness on the part of the respondent No.1, and therefore, it is prayed that the present OA may be dismissed.

7. The respondent Nos.2 and 3 submitted a short reply. The learned counsel for the respective respondents submitted that the SSC is a recruiting agency which makes the recruitment on the basis of indent placed by the user departments. The determination of vacancies is under the exclusive domain of the user department and SSC has no role in the same. As the vacancies were withdrawn by the user department, i.e. CAG, the SSC has no role in the matter as it is only a proforma party in the present case.



8. Heard the learned counsel for the respective parties at length and perused the pleadings/written submissions/judgments placed on record as well as original record produced by the respondents' counsel.
9. On a careful perusal of the record, it is evident that the SSC conducted the CGLE-2023 in accordance with the notified scheme, including Tier-1 and Tier-2 examinations. In Section 3.1 of the Advertisement, it was specifically mentioned that the vacancies are tentative and any change/update in the number of vacancies will be intimated through the website of the Commission. The applicants participated in the selection process with full knowledge of this fact.
10. Further, the DoPT vide O.M. dated 03.11.2023 clearly permits Ministries/Departments to reconfirm or withdraw vacancies well before finalisation or declaration of results. In the present case, the withdrawal of AAO vacancies was effected on 30.11.2023, whereas the result of CGLE-2023 was declared on 04.12.2023. Thus, the withdrawal cannot be said to be post-result or contrary to the governing executive guidelines.
11. Moreover, the explanation given by the respondent-CAG reveals that the decision to withdraw vacancies was taken due to compelling administrative constraints, particularly the obligation to accommodate candidates already selected through CGLE-2022 and to comply with the directions of this Tribunal protecting the rights of



promotees and absorbees in terms of the Recruitment Rules, 2020, as the Department was legally bound to ensure availability of vacancies for those having a superior statutory claim. Hence, they withdrew the vacancies of CGLE-2023 as the vacancies got consumed.

12. Perusal of the original record further reveals that the decision to withdraw the vacancies was taken by the respondent-CAG after due deliberation, in conformity with the prescribed administrative procedure, and with the approval of the Competent Authority.

13. The contention of the applicants that publication of a final vacancy list created a vested or enforceable right, is unsustainable in law. As authoritatively held by the Constitution Bench in **Shankarsan Dash** (supra), already reproduced in para 6.12 above, mere inclusion in a select list or successful completion of a recruitment process does not confer an indefeasible right to appointment. While the State is obliged to act fairly and *bona fide*, it retains discretion not to fill vacancies for valid reasons. In the present case, the reasons disclosed judicial restraints, cadre management compulsions and non-availability of vacancies, are germane, rational and legally permissible. The applicants have no vested or indefeasible right to appointment, merely by participation in the examination or by securing higher marks.



14. Equally, the plea of violation of Articles 14 and 16 also fails, as the withdrawal applied uniformly to all AAO vacancies and was not targeted against any particular individual or class of candidates, when the ultimate decision is driven by cadre-specific administrative necessity. Mere hardship caused to candidates, howsoever unfortunate, cannot substitute proof of arbitrariness or illegality.

15. In view of the foregoing analysis and considering the facts in their entirety, we find no infirmity in the decision taken by the respondents as no discrimination, arbitrariness, mala fides, or violation of statutory rules has been established. The decision of withdrawal of AAO vacancies was taken due to genuine and compelling administrative constraints, including compliance with judicial orders and statutory recruitment priorities. Consequently, we cannot compel the respondents to fill up the withdrawn vacancies or to proceed with appointments contrary to statutory rules and administrative feasibility.

16. The O.A. is accordingly dismissed due to lack of merit. Pending MAs, if any, shall also stand disposed of. There shall be no order as to costs.

17. The original record shall be returned to the respondents through their counsel in a sealed cover.

(Dr. Anand S. Khati)
Member (A)

(Manish Garg)
Member (J)

/jyoti/