

In the High Court of Judicature at Madras

Reserved on : 02.02.2015

Dated : 12.02.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.633 of 2014
and M.P.No.1 of 2014

- 1.K.Sunil kumar
- 2.P.Rajarathinam
- 3.K.Baskaran
- 4.P.Jeyaseelan
- 5.D.Thirupathy
- 6.S.Maria John
- 7.C.Gopala Krishnan
- 8.P.R.Muraly
- 9.Ramesh Babu.K.
- 10.M.Arumugam
- 11.Sajmon Augustin
- 12.C.Subashchandra kumar
- 13.K.Surendran
- 14.P.S.Iji
- 15.K.Ajith Kumar
- 16.E.Sudalaiyandi
- 17.P.Kannan

... Appellants / Petitioners 1 to 6,
8 to 10, 12 to 19 in WP.No.18175/11
on the file of this Court

Vs.

- 1.Union of India
Ministry of Railways
rep. by Director General, RPF
Rail Bhavan, New Delhi.

- 2.The Chief Security Commissioner,
Office of the Railway Protection Force,
Moor Market Complex,
Southern Railway,
Chennai-3.

- 3.S.Jayakumar
- 4.N.Chidambaram
- 5.S.Rethinavelu
- 6.D.Arun Kumar
- 7.M.Thiyagarajan
- 8.Shaju Thomas
- 9.B.Gomathi

10.Rameshwari Kathiappan
11.K.George Muller
12.K.Prebhakar
13.V.K.Ramesh
14.P.T.Balasubramanian
15.P.Balaiah
16.A.P.Ajith Ashok
17.L.Karthikeyan
18.A.Johnson Jayakumar
19.P.Chitravasan
20.N.Palani
21.S.Balachandran
22.V.Ramesh
23.L.Maria Joseph
24.L.Paul Pandian
25.K.Anil kumar

... Respondents / Respondents 1
to 23 and Petitioners 7, 11 in WP.18175/11
on the file of this Court

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 23.04.2014 and made in W.P.No.18175 of 2011 by the learned Judge of this Court.

WP No.18175/2011: Filed under Article 226 of the constitution of India for the issuance of a writ of certiorarified mandamus, calling for the records relating to the 2nd respondents proceedings vide Ref. No. M/XP.608/ASIPF/40%/11 dt 16.6.2011 and quash the same in so far as 19 vacancies are concerned and consequently direct the 2nd respondent to consider the results obtained by the petitioners in the selection process conducted by the 2nd respondent for promotion to the assistant Sub Inspector Railway Protection Force for the 38 vacancies notified on 2.7.2009 and promote the petitioners in the said 19 vacancies notified in the post of Assistant Sub Inspector in Railway Police Force.

For Appellants : Ms.Kavitha Deenadayalan

For Respondent : Mr.M.Vellaiswamy
Nos.1 & 2 for Mr.V.G.Suresh kumar

For Respondent : Mr.K.Venkatramani, SC
Nos.3 to 25 for M/s.M.Muthappan

J U D G M E N T

M.VENUGOPAL, J.

The Appellants have filed the intra Court Writ Appeal before this Court as against the order dated 23.04.2014 passed by the Learned Single Judge in W.P.No.18175 of 2011.

2.The Learned Single Judge while passing the impugned order on 23.04.2014 in W.P.No.18175 of 2011 in para 13 had observed to the effect that having regard to such misleading statements before

this Court, the complaint of the learned Senior counsel that, at para No.15 of the affidavit also, the petitioners made a false statement to the effect that their representation dated 04.07.2011 requesting the second respondent to club the vacancies was not disposed of, whereas, the representation of the petitioners was duly considered and disposed of by passing rejection orders dated 26.08.2011 and 02.09.2011, cannot be just brushed Assistant Sub-Inspector, RPF" and resultantly, dismissed the Writ Petition. Further, the Learned Single Judge had observed that "R3 to R23/the selectees under the second notification could not assume their postings despite having undergone the necessary training etc.," and directed the officials Respondents to give postings to them as Assistant Sub-Inspector, RPF within a period of one week from the date of receipt of copy of the order. That apart, the costs of Rs.20,000/- was imposed to be payable jointly by the Petitioners/Appellants and out of the said sum, Rs.10,000/- was directed to be paid to the Railways and the balance to the Respondents 2 to 23.

3.The Learned counsel for the Appellants/Petitioners submits that the Learned Single Judge had committed an error in holding that the Appellants had not challenge the previous selection process made in phased-cum-adjustments manner and therefore, they were not legally entitled to question the validity of the notification dated 16.06.2011 and ask for clubbing of vacancies with the one notified earlier.

4.According to the Learned counsel for the Appellants, the averments of the Appellants were that none of the adjustments of vacancies done during previous years is supported by any statute and further, there is no Estoppel on a pure question of law as per the decision of the Hon'ble Supreme Court reported in 1991 (1) SCC page 494 [Isabella Johnson Vs. M.A. Susai] and these vital aspects were not taken into account by the Learned Single Judge at the time of passing of the impugned order in the Writ Petition.

5.The Learned counsel for the Appellants strenuously contends that the Appellants are entitled to question the illegality in the adjustments/allocation of vacancies made without following the Railway Protection Force Rules and in fact, the Appellants had gathered this fact only after the officials Respondents submit the tabular columns comprising of the adjustments of vacancies in the earlier years.

6.The Learned counsel for the Appellants proceed to take a plea to that effect that the Appellants committed an inadvertent typographical error in the affidavit filed by them in W.P.No.18175 of 2011 which was admitted in open Court and also, the same was rectified later in their reply affidavit filed by them to the counter affidavit filed by the Respondents and indeed, the Learned Single Judge should have accepted the said error and further,s ought not to have levied heavy costs.

7.The Learned counsel for the Appellants contends that a notification cannot override the statutory rules governing the condition of service of the employees and in this regard, the Learned Single Judge had failed to appreciate the judgment of the Hon'ble Supreme Court in Union of India Vs. Arun Kumar Roy [1986 (1) SCC at page 675]. Moreover, the Official Respondents must redraw the selection list based on the panel dated 23.06.2011 in such a fashion as to contain so many qualified persons as would be equivalent to 1)existing vacancies on the date of panel 2)the anticipated vacancies for 12 months from 06.01.2010 to 05.01.2011 and 3)+10% of the vacancies. That apart, after redrawing the panel in the said manner, the official Respondents would fill up the post as per Rule 72 of the Railway Protection Force Rules, 1987 as per quota after filling up the vacancies in that way, the balance vacancies would automatically accompanied the private Respondents in the next panel and also, it is learnt that there are large number of vacancies in the post Assistant Sub-Inspector, RPF under 40% quota.

8.Yet another contention advanced on behalf of the Appellants is that the cancellation of selection was challenged by the Appellants along with others in W.P.No.19801/2010 and therefore, the order governing earlier notification had become final in so far selection alone and since the procedure required by statute was not followed, the remedy under Article 226 of the Constitution of India is very much available to the Appellants as per the decision of the Hon'ble Supreme Court in AIR 1965 SC at page 1321.

9.The Learned counsel for the Appellants forcefully submits that the Learned Single Judge in the impugned order of the Writ Petition after extracting the relevant Railway Protection Force Rules namely, 70.2 and 70.4 should have held that since the official Respondents notified another 22 vacancies even before implementation of the order of this Court dated 05.04.2011. The Respondents should have combined 39 vacancies together with 22 vacancies aggregated in all 61 vacancies in the said post and empanelled the top 61 candidates in merit. In this connection, the Learned counsel for the Appellants refers to Rule 70.4 of the Railway Protection Force Rules, 1987 which speaks of "the size of the panel drawn up in accordance with Sub-Rule (2) shall ordinarily be such, as such provided for all existing vacancies and vacancies anticipated within the next 12 months from the date on which Department Promotion Committee is constituted 10%. Contrary to the aforesaid rule, the official Respondents while notifying 39 vacancies initially had failed to note of existing vacancies and vacancies anticipated within next 12 months.

10.The Learned counsel for the Appellants in pith and substance contends that when 22 vacancies were notified on 13.06.2011, which is within one year from the date of notification of 39 vacancies, the official Respondents should have included the said 22 vacancies together with 39 vacancies notified on

11.The Learned counsel for the Appellants invites the attention of this Court to the order dated 05.04.2011 in W.P.No.10650 & 19801 of 2010 and M.P.No.2 of 2010, wherein, this Court while upholding the selection conducted for 39 vacancies in Assistant Sub-Inspector, RPF, among other things in para 56 while issuing directions, as third direction had stated as under:

"3)Select the candidates according to their inter-se merit and rule of reservation, as provided in the notification."

Moreover, para 1 of the notification dated 27.10.2009 issued by the Second Respondent, notifying 39 vacancies in the post of Assistant Sub-Inspector, RPF clearly mentions that the selection process would be conducted based on Rule 72 of the Railway Protection Force Rules, 1987 and as such, the Learned Single Judge should have held that the selection process of 39 vacancies and 22 vacancies can be clubbed together in order to satisfy Rule 70.4 of the Railway Protection Force Rules, 1987.

12.The Learned counsel for the Appellants takes a stand that the Learned Single Judge was not right in accepting the diversion of vacancies existed for the notification in respect of the year 2009 and since such a diversion was actually not sanctioned by any of the Rules 70 and 72 of the Railway Protection Force Rules, 1987. Besides that, in reality, there is no provision in Railway Protection Force Rules, 1987 by which such diversion is possible.

13.Apart from the above, it is the contention of the Learned counsel for the Appellants that the Learned Single Judge had failed to appreciate a very vital aspect that there is justifiable ground for filling up 54 vacancies as per Rule 72 of the Railway Protection Force Rules, 1987 for the year 2009, because of the reason that on account of restructuring of cadre during the year, all the vacancies were filled up simply by promotion under Rule 70 of the Railway Protection Force Rules, 1987 without holding any Departmental Competitive Examination.

14.It is submitted by the Learned counsel for the Appellants that the real grievance of the Appellants in the instant case is that whether Railway Protection Force Rules, 1987 were strictly adhered to or not at the time of notifying the vacancies and drawing the panel and in fact, the decisions of State of Orissa Vs. Raj Kishore Nanda reported in 2010 (6) SCC 777 and Anup Das Vs. State of Assam reported in 2012 (5) SCC 559 are not applicable to the facts of the present case, inasmuch as the said decisions relate to non filling of vacancies based on bona-fide and conscious decision.

15.In response, the Learned counsel for the official Respondents 1 and 2 contends that this Court in W.P.No.10650 of 2010 on 05.04.2011 had directed the official Respondents 1 and 2 to conduct the selection in respect of 39 vacancies as per notification issued on 27.10.2009. Added further, the plea of the Appellants/Writ Petitioners is to club 22 vacancies that had

accrued after the subject selection for 39 vacancies as notified on 02.07.2009 is incorrect as per the Rules.

16.The Learned counsel for the official Respondents 1 and 2 submits that in the Railway Protection Force, constables and Sub-Inspectors are appointed by direct recruitments and in fact, the Second Respondent/Chief Security Commissioner, RPF, Chennai had issued a notification on 27.10.2009 to fill up 39 vacancies of Assistant Sub-Inspector, RPF in the scale of pay of Rs.5200-20200 + GP Rs.2800/-. Besides that, it is also contended that the Departmental Promotion Committee conducted the selection for the post of Assistant Sub Inspector, Railway Protection Force in the scale of pay of Rs.5200-20200 + GP Rs.2800/- (as per Rule 72 of the Railway Protection Force Rules, 1987) at Railway Protection Force Training Centre, Trichy from 17.05.2010 to 21.05.2010 to fill up 39 vacancies and the Departmental Promotion Committee submitted the proceedings for approval of the Second Respondent. In fact, in the said proceedings, it was found that the procedures prescribed in Standing Order No.87 were duly followed. But, while scrutinizing question and answer keys provided for them, it was seen that in respect of Question No.17, the key provided was found to be wrong and the said question carried one mark.

17.The Learned counsel for the official Respondents 1 and 2 brings it to the notice of this Court that Question No.17 states that "in the absence of Executive Magistrate, a Superior Officer of the Force can order "opening of fire" to dispose unlawful assembly" and it was true or false pattern question and the answer given in the 'key' was 'false' whereas, the correct answer ought to have been 'true'.

18.The Learned counsel for the official Respondents 1 and 2 takes a stand that the broad sheets of marks secured by the candidates indicated that several of them had just qualified for viva-vice by scoring the minimum qualifying marks and some others were failed to qualify by just one mark and after consideration, the Second Respondent came to the conclusion that the 'wrong key' could have resulted in some of the ineligible candidates being called for interview and some other could have been left out from the interview process. Moreover, the Second Respondent concluded that re-evaluation of examination paper by the Committee members by considering the correct answer for the question referred above would result in some candidates getting qualified for the interview and some others were interviewed becoming ineligible for interview itself. Therefore, decided to cancel the entire selection process and proceedings thereto with a view to ensure that no candidate was put to disadvantage and indeed, equal opportunity was extended to all the candidates.

19.The Learned counsel for the official Respondents 1 and 2 contends that the Second Respondent/Chief Security Commissioner, RPF, Chennai had not accepted the recommendation of the Committee and in terms of ingredients of Rule 70.7 of the Railway Protection Force Rules, 1987, the Second Respondent referred the matter to the

First Respondent duly regarding the reason for accepting the proceeding and ordered cancellation of the said selection and in this regard, the Second Respondent issued a memorandum dated 02.07.2010. At this stage, it is represented on behalf of the Respondents 1 and 2, being dissatisfied with the cancellation of the said selection, one S.Selvaraj and 48 others projected W.P.No.10650 of 2010 before this Court and prayed for passing of an order in declaring Rules 71(1)(b) and 71(2)(a) and Rule 71(2)(b) of the Railway Protection Force Rules, 1987, as inoperative, void and ultra-vires of the Constitution of India and resultantly, to quash the proceedings of the Second Respondent/Chief Security Commissioner-cum-Inspector General Railway Protection Force, Chennai-3 made in No.X/P.608/Assistant Sub-Inspector, RPF/Selection/Rule 72 (40%)/09, dated 27.10.2009 and for passing of a direction to the Respondents to fix the marks for practical test, personality test and for record of service within 15% and 85% for written examination, as per the Apex Court judgment in Ajaya Hazia and Ashok Kumar Yadav's case. On 05.04.2011, the said Writ Petition was allowed by this Court whereby and where under, direction was issued to the administration to publish a panel as per notified vacancies and order of promotions in accordance with their merits and accordingly, they were empanelled on 23.06.2011. Apart from that, on 13.06.2011, in respect of 22 vacancies another selection notification was issued (which arose after the prior notification for 39 vacancies) and as such, the contrary averments made by the Appellants/Writ Petitioners are incorrect one.

20.The Learned counsel for the official Respondents 1 and 2 submits that the Second Respondent conducted the recruitment for the post of constables and in fact, the First Appellant/First Petitioner was selected for the post of constable and appointed as constable with effect from 01.04.1987 after successful completion of six months initial training and two months practical training. The other Appellants/Petitioners were appointed as constable on different dates after successful completion of initial training of six months and two months practical training. In reality, the Appellants/Petitioners are working as constables and head constables and had completed more than 10 years of service.

21.The prime submission of the Learned counsel for the official Respondents 1 and 2 is that the constables in Railway Protection Force are appointed by direct recruitment and vacancies in the rank of Assistant Sub-Inspector, RPF are filled up by promotion as well as Limited Departmental Competition in the ratio of 60:40. 60% of the vacancies are filled up by promotion by virtue of Rule 70 of the Railway Protection Force Rules, 1987, after ensuring the suitability and service. The balance 40% of vacancies are filled up by conducting Limited Departmental Competitive Examination in accordance with the provisions prescribed in Rule 72 of the Railway Protection Force Rules, 1987, on merits.

22.In this connection, the Learned counsel for the official Respondents 1 and 2 contends that in terms of the said Rules,

staffs in the rank of head constables and constables with 10 years of regular service on the date of notification is eligible for appearing for selection under Rule 72 of the Railway Protection Force Rules, 1987, and a panel would be drawn from among the candidates securing 60% marks or more in the order of merit. However, there are only two chances for an eligible candidate.

23.The Learned counsel for the official Respondents 1 and 2 submits that a total of 472 staffs expressed their willingness to attend the selection for the post of Assistant Sub Inspector and in terms of the Standing Order No.87, the Second Respondent shall arrange for conducting examination within the jurisdiction of his Railway, preferably at a training centre and Departmental Promotion Committee decided to conduct the selection at RPF Training Centre, Trichy, since more than 400 candidates are opted to attend the selection and initial training of 133 Sub Inspector cadets was in the final stage and their passing out parade was originally fixed on 05.06.2010 but posted to 10.05.2010. It was postponed again due to unavoidable reasons and passing out parade was took place on 15.05.2010 and the Committee conducted selection from 17.05.2010 to 21.05.2010 at RPF Training Centre, Trichy.

24.The Learned counsel for the official Respondents 1 and 2 contends that 137 candidates turned up for selection including Petitioners at RPF Training Centre, Trichy from 17.05.2010 to 21.05.2010. But only candidates who secured 60% marks in case of unreserved candidates and 50% marks in case of reserved candidates in the written test and practical test were called for viva-vice on 21.05.2010.

25.The Learned counsel for the Respondents 1 and 2 draws the attention of this Court that since the Second Respondent not accepted the recommendations of the Departmental Promotion Committee and recorded their reasons to that effect, the matter was referred to the First Respondent as per Rule 70.7 of the Railway Protection Force Rules, 1987 and the First Respondent has ordered to cancel the said selection. Accordingly, a memorandum dated 02.07.2010 was issued by the Second Respondent.

26.The Learned counsel for the official Respondents 1 and 2 submits that by complying with the order of this Court in W.P.Nos.10650 & 19801 of 2010 dated 05.04.2011, head constables and constables in PB1 scale Rs.5200-20200/- with GP Rs.2400/- Rs.2000/- who have been selected for promotion to the rank of Assistant Sub Inspector (Executive) in PB1-Rs.5200-20200/- with Grade Pay Rs.2800/- in the selection held at RPF Training Centre, Tiruchirappalli on 17.02.2010 to 21.05.2010 and from 19.05.2011 to 21.05.2011 at Trivandrum are empanelled for the rank of Assistant Sub-Inspector under Rule 72 of Railway Protection Force Rules, 1987, under this office Memorandum No.X/P.608/Assistant Sub-Inspector, RPF/Selection/Rule 72 dated 23.06.2011 and that the notification was issued to fill up the vacancies for the post of Assistant Sub-Inspector under office letter dated 13.06.2011. In that case, the Writ Petitions were disposed of on 05.04.2011,

before issuance of Notification for 22 vacancies for the post of Assistant Sub-Inspector.

27. Furthermore, the Learned counsel for the Respondents 1 and 2 points out that notification was issued on 27.10.2009 in regard to filling up of 39 vacancies vide No.X/P.608/Assistant Sub-Inspector, RPF/Selection/Rule 72(40%)/09 and selection took place at RPF Training Centre, Trichy from 17.05.2010 to 21.10.2010. Owing to certain discrepancies in the selection, Director General, RPF had ordered for cancellation of selection proceedings for the post of Assistant Sub-Inspector, RPF in the scale of pay of Rs.5200-20200 + GP Rs.2800/- under Rule 72 (40% quota) of the Railway Protection Force Rules, 1987 and later, in compliance with the order of this Court in W.P.Nos.10650 and 19801 of 2010 dated 05.04.2011, head constables and constables in PB-1 scale Rs.5200-20200/- with GP Rs.2400/- Rs.2000/- who have been selected for promotion to the rank of Assistant Sub-Inspector under Rule 72 of the Railway Protection Force Rules, 1987, as per office memorandum No.X/P.608/Assistant Sub-Inspector, RPF/Selection/Rule 72, dated 23.06.2011.

28. The Learned counsel for the Respondents 1 and 2 takes a primordial stand that as per the extended rules, there cannot be selected candidates within a notified vacancies and if that during the year 2009 itself, there was short fall of 54 vacancies under Rule 72 in the post of Assistant Sub-Inspector, RPF cadre, which was carried over as a result of cadre-restructuring made during the year 2004. Moreover, out of total assessed vacancies of 56 in Assistant Sub-Inspector, RPF cadre during 2009, under Rule-70 and 72 of the Railway Protection Force Rules, 1987, 70% of vacancies were ear-marked for selection under Rule-72 to make good, the short fall to certain extent and selection for 39 vacancies under Rule 72 and selection for 17 vacancies under Rule 70 were notified. The remaining 15 vacancies under Rule 72 were carried forward.

29. The Learned counsel for the official Respondents 1 and 2 submits that as per letter No.PCIII/2000/CRC/1 (RPF/RPSF) dated 15.09.2004, cadre re-structuring for all the non gazetted executives cadres of Security Department was implemented and it was provided to all non gazetted cadres, one time exception by special dispensation was given in view of the numbers involved, with the objection of expediting the implementation of these orders, to fill up all these vacancies without selection but on seniority-cum-suitability. At this juncture, cadre roster under Rule 70 of the Railway Protection Force Rules, 1987, was extended to accommodate the excess numbers which was adjusted against future vacancies till parity was achieved.

30. The Learned Senior counsel for the Respondents 3 to 25 contends that Appellants/Petitioners having participated in the selection process lost their chances of promotion after the publication of the gazette as per the directions of this Court and therefore, it is not open to them to challenge the selection process on the ground that estimated vacancies were not arrived at

in a proper manner. Also, they had ascribed any valid reasons in the affidavit filed in support of the Writ Petition regarding the estimate of vacancies at previous selection and also that, later 22 vacancies should be added for selection.

31.The Learned Senior counsel for the Respondents 3 to 25 refers to Rule 72.1 of the Railway Protection Force Rules, 1987, to the effect that an eligible candidates who is appearing for Limited Departmental competition shall give consent within 30 days in advance to the proposed date of competition and the Appellants/Petitioners accepted the memorandum and gave consent, but later, withdraw their consent and represented that to fill up the post by requesting the authorities to provide them promotion based on the earlier selection conducted by the Department on 17.05.2010. As a matter of fact, the Second Respondent by his proceedings dated 26.08.2011 had rejected the request for issuance of posting orders based on previous selection dated 17.10.2010 and the said rejection order though it was served to all the individuals has not been challenged. Therefore, it is represented on behalf of the Respondents 1 & 2 that the Appellants have no cause of action to agitate before this Court for subsequent year also.

32.Besides this, the Learned Senior counsel for the Respondents 3 to 25 emphatically projects an argument that the Respondents 3 to 25 have become qualified to participate in the selection only in the later notification dated 14.06.2011 and when they come out successful, then after putting necessary efforts and if subsequent notification is invalid, then they will loose their chance of selection. Besides that, as per Rule 70 of the Railway Protection Force Rules, 1987, a candidate who is participating for promotion, under Limited Departmental promotion, they cannot participate for more than two times and in fact, that most of the Appellants/Petitioners who had questioned the subsequent notification dated 14.06.2011 are ineligible to participate in the process of selection because of the reasons that they had participated twice and had approached this Court only to prevent the Respondents 3 to 25 who had become eligible to participate in the notification dated 14.06.2011. Also that, the Appellants were selected during the year 2011, after undergoing 2 months training period they are awaiting postings.

33.This Court had heard the Learned counsel for the Appellants as well as the Learned counsel for the Respondents 1 and 2 and the Learned Senior counsel for the Respondents 3 to 25.

34.As far as the present case is concerned, it is latently and patently quite evident that as per communication issued by the Second Respondent/Chief Security Commissioner, RPF, Chennai dated 26.08.2011, the staff members in Serial Nos.1 to 9 who made representation dated 16.06.2011 was considered and we informed that the notification for 22 vacancies for the post of Assistant Sub-Inspector, RPF was issued on 13/14.06.2011 vide office letter NO.X/P.606/ASIPf Selection/Rule 72/11 dated 13.06.2011 after the

disposal of W.P.No.10650 of 2010 by order dated 05.04.2011 and they were informed that 22 vacancies arose after the earlier notification dated 27.10.2007 and the present notification dated 13.04.2011 was issued for the present vacancies and 38 vacancies were reserved for accompanying the candidates to comply with the direction of this Court and added further, as per extent order, vacancies arising after selection cannot be included in the earlier notification.

35.Likewise, on 02.09.2011, the communication was issued by the Senior Divisional Security Commissioner, RPF, Chennai reiterating the order of the Southern Railway in regard to the subject of including them in 22 vacancies notified in the official Proceedings dated 16.06.2008.

36.Suffice it for this Court to point out in view of the communication issued by the Respondents namely, Chief Security Commissioner, RPF, Chennai and Senior Divisional Security Commissioner, RPF, Chennai dated 26.08.2011 and 02.09.2011 respectively, it can safely be concluded that the representations of the Appellants were duly considered and suitable orders and rejection orders were passed thereto. Moreover, the Appellants do not have any vested indefeasible right to claim filling up of vacant posts as per the second notification. For fuller and better appreciation of the merits of the controversies involved between the parties, at this juncture, this Court worth extracts the observation of the Learned Single Judge in para 10 of the Writ Petition W.P.No.18175 of 2011 which runs as follows:

"10.To make the issue further clear in that perspective, it is but necessary to extract below the vacant position relating to ASI from 2004 to 2011

S. No.	Particulars	Vacancies in Rule 70	Vacancies in Rule 72			Vacancies filled in under	
			Existing	Accrued	Total	Rule 70	Rule 72
1	During Cadre restructuring in 2004 vacancies existing under Rule 72 was filled under Rule 70	122	98	0	98	220	0
2	Total vacancies during 2006	61	98	19	117	30	50
3	During 2007 Selection	28	67	4	71	15	17

S. No.	Particulars	Vacancies in Rule 70	Vacancies in Rule 72			Vacancies filled in under	
			Existing	Accrued	Total	Rule 70	Rule 72
4	During 2009 Selection	56	54	0	54	17	39
5	During 2011 Selection	50	15	1+4*	20	33	22
posts							* Newly created

The above Chart shows that, in the year 2004, the Department, as an one-time exception, filled all the 220 vacancies under Rule-70 without applying 60:40 ratio. Resultantly, the Department had to make good the loss resulted to the candidates who can be promoted under Rule-72. Again, in 2006, although 98 vacancies were available along with 19 accrued vacancies, in total 117 vacancies, only 50 vacancies were filled under Rule-72 and 67 were carried forward. In the year 2007, 4 more vacancies accrued, therefore, the available vacancies were 67+4=71. In the said year, 17 vacancies were filled leaving 54 vacancies to be carried forward in 2009. However, when there was no accrued vacancy, the Department, by issuing the Notification dated 27.10.2009, notified to fill up 39 vacancies by keeping 15 vacancies to be carried forward for the selection relating to the next year. Consequently, during 2011, those 15 carried forward vacancies came to be notified along with other 7 vacancies including the accrued posts, newly sanctioned posts plus 10% addition in terms of the Rules. The petitioners herein did never challenge any of those previous proceedings issued to fill up the vacancies under Rule-72 in a phased-cum-adjustment manner involving carry forward phenomenon including the previous notification dated 27.10.2009 which means, they were fully aware of the phased manner adjustments done by applying carry forward logic subsequent to the cadre restructuring. ..."

37.Also, the Learned Single Judge in para 10 of the impugned order in W.P.No.18175 of 2011 dated 23.04.2014 among other things had observed that the Writ Petitioners (Appellants) was really aggrieved by the first notification itself, they would have challenged the issuance of the same without being included in the force levied to be carried forward for the next year, rather, they filed the writ petition in W.P.No.19801 of 2010 to publish the results of the examination conducted based on the first notification and consequently, opined that they are not entitled to

question the validity of the second notification dated 16.06.2011 and to claim clubbing of vacancies notified under the earlier notifications which was already implemented.

38.In view of the foregoing qualitative and quantitative discussions and viewing it from any angle and also taking note of the primordial fact that after passing of the order by the Learned Single Judge in W.P.18175 of 2011 dated 23.04.2014, the Respondents 3 to 25 had joined in their respective promotional posts and discharged their duties, the impugned order passed by the Learned Single Judge in W.P.No.18175 of 2011 dated 23.04.2014 is flawless. Consequently, the Writ Appeal fails.

39.In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar
Dated:19.2.15

True Copy

Sub Assistant Registrar

To

- 1.The Director General, RPF,
Union of India
Ministry of Railways
Rail Bhavan, New Delhi.
- 2.The Chief Security Commissioner,
Office of the Railway Protection Force,
Moor Market Complex,
Southern Railway,
Chennai-3.

+1 cc to Mr.M.Muthappan, Advocate,SR.7717

+1 cc to Mr.V.G.Suresh Kumar, Advocate,SR.7947.

jp(Co)
krd 19/2

Judgment made in

W.A.No.633 of 2014