

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1867 OF 2015

1. Union of India, through
The General Manager,
Western Railway,
Churchgate, Mumbai – 400 020.

2. Railway Board
Through Secretary Rail Bhavan,
New Delhi – 110 001.

3. The Divisional Railway Manager
DRM's Office, Western Railway,
Bombay Central, Mumbai – 400 008.

.. Petitioners

Vs.

1. Western Railway Motormen's Association
(Reg.No.ALC/Officer-17/10215) through
its Chairman, Shri K.K. Murty,
having address at :
Secretary WRMA, C/o. Dy. Station
Superintendent, Station Bldg.,
Churchgate, Mumbai 400 020.

2. S. Shiva Kumar,
R/at : 304, Bldg.No.3,
Shri Ram Shankul, Achole Road,
Above HDFC Bank, Nallasopara (East),
Dist. Thane – 401 204.

3. Khawja Moinuddin Shaikh
R/at : 4/652, Brihanmumbai
Municipal Corporation Colony,

Marve Road, Kharodi,
Malad (West), Mumbai 400 095.

4. Prem Narayan Gupta
R/at : A-001, Basuri, Sector – I,
Vasant Nagari, Vasai (E),
Pin – 401 209.

5. S.R. Sengupta,
R/at : B-103, Chandresh Paradise,
Achole Road, Nallasopara (East),
Thane – 401 209.

6. Neeraj Mittal,
R/at : Room No.603/604,
Sector – 5, Bldg.No.4,
Mira Road, Pin – 401 107.

7. Vipin Chandra Sharma,
R/at : B-202, Agarwal Paradise,
Vrindavan Complex,
New Viva College Road,
Virar (West), Pin – 401 303.

8. Rajesh Singh
R/at : F/4, Happy Home Heights
CHS Ltd., Poonam Garden,
Mira Road, Dist. Thane 401 107.

9. Rambeer Yadram Suthwal,
R/at : Flat No.A-603,
Fantasy Tower, Shanti Park,
Mira Road (East), Thane – 401 107.

10. Manoj Ramdas Savale
R/at: 49/14, Railway Colony,
Kandivali (West), Mumbai 400 067.

11. Shashank Sadashiv Abhyankar
R/16 : Manan C.H.S., Behind
Sanskriti C.H.S., Anand Nagar,
Dahisar, Mumbai 400 068.

.. Respondents

.....
Mr. Suresh Kumar, Advocate for the petitioners.

Mr. Rahul Walia i/by Mr. Gurdeep Singh Walia, Advocate for the
respondents No.1 to 4, 6 to 8, 10 and 11.

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CORAM : SMT. V.K. TAHILRAMANI &
M.S.KARNIK, J.J.

Date : 20th NOVEMBER, 2017.

ORDER (PER M.S. KARNIK, J.) :-

The challenge in this petition is to the judgment and order dated 17/10/2014 passed by the Central Administration Tribunal, Bombay Bench, Mumbai (hereinafter referred to as 'the Tribunal'). The Tribunal by the impugned order was pleased to set aside the circular dated 2/5/2014 to a limited extent. The Tribunal directed the petitioners to fill up the vacancies in the post of Chief Loco Inspector which occurred from 2010 to 1/5/2014 meant for filling up from the unmerged/uncombined

category of Motorman in accordance with the selection process which was prevalent in the Western Railway until issuance of the letter No.E/EL/834/7-DCMM Vol. V dated 2/6/2014. (The letter dated 2/6/2014 laid down the modalities for revised channel of promotion from the combined merged categories of Loco Pilot Drivers and Motorman.). The Tribunal, however, directed that it would be open to the petitioners to fill up the 24 posts of Chief Loco Inspector by finalizing the selection as per circular dated 2/5/2014.

2. The respondents approached the Tribunal challenging the Notification dated 2/5/2014 issued by the petitioner No.3 for holding a selection for the post of Chief Loco Inspector Electrical (Main Line and Motorman) in Pay Band Rs.9300 - 34800 + 4600 (GP). The said Notification was challenged on various grounds. The principal challenge is that the vacancies which arose prior to the alleged Notification dated 2/6/2014 are required to be filled according to the old rules and procedure then prevailing. According to the respondents, the

petitioners applied the new rules/circular dated 2/5/2014 retrospectively. The cadre of Motorman and Loco Pilots was merged by a letter dated 2/6/2014.

3. It is not in dispute that the vacancies of the Motorman arose prior to the Notification dated 2/6/2014. The Tribunal relying upon the decisions of the Apex Court in the case of **Y.B. Rangaiah vs. J. Sreenivasa Rao [1983 (3) SCC 284]** was of the opinion that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. Learned Counsel Shri Suresh Kumar for the petitioners assailing the order of the Tribunal relied upon the decision of Apex Court in the case of **State of Tripura and others vs. Nikhil Ranjan Chakraborty and others [(2017) 3 SCC 646]** to contend that a candidate only has right to be considered in light of existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. In his

submission, the approach of the Tribunal is erroneous and the respondents had only a right to be considered in the light of the existing rules viz. the Notification dated 2/5/2014 and the order dated 2/6/2014.

4. Learned Counsel for the petitioners also urged that the respondents are not aggrieved persons and therefore O.A. itself is not maintainable. Learned Counsel for the petitioners however fairly states that this objection is being raised for the first time and the same was not raised before the Tribunal. In para 4.1 of the O.A. the respondents have specifically mentioned that the respondents No.2 to 11 are Motormen who are the aggrieved parties and who seek to challenge the impugned circular/Notification dated 2/5/2014 and the Notification dated 2/6/2014 issued by the petitioners which according to the respondents herein are against their interest and violative of their service conditions. In this view of the matter, the contention of the learned Counsel for the petitioners raised belatedly at this stage is unsustainable.

5. As indicated earlier the main thrust of the argument of the learned Counsel for the petitioners is that the respondents have a right to be considered in light of existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose.

6. In this context it would be pertinent to reproduce para 9 of the decision of the Hon'ble Supreme Court in the case of **State of Tripura** (supra) which reads thus :-

“**Para 9** :- The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in *Deepak Agarwal* in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration.

It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24/11/2011.”

In the said decision the Apex Court has referred to the decision in the case of **Deepak Agarwal vs. State of U.P [(2011) 6 SCC 725]** and **Y.B. Rangaiah** (supra).

7. Learned Counsel for the respondents invited our attention to the Indian Railway Establishment Manual, Volume- I more particularly Clause 216 which reads thus :-

“**Clause 216** :- In regard to selection posts, it is essential that all the selections are conducted annually in a regular manner. However, where holding of the next selection becomes necessary

before a gap of one year on account of the panel getting exhausted, the earlier selection not throwing up adequate number for empanelment/promotion, etc., the same may be held after a minimum time gap of six months from the date of approval of the panel finalised as a result of the first selection. This condition of six months restriction between selections will not, however, apply to general selections which are conducted by calling options from serving employees fulfilling the prescribed eligibility conditions.”

8. Learned Counsel for the respondents relied on the decision of the Apex Court in the case of **Arjun Singh Rathore & Ors. vs. B.N. Chaturvedi & Ors. [2007 (4) SCT 621]**.

9. We have gone through the order of the Tribunal. The Tribunal has observed in para 32, 33, 34 and 45 as under :-

“**32** :- The learned counsel for the applicants has heavily relied on the judgment of the Hon'ble Supreme Court passed in the case of **Y.B. Rangaiah vs. J. Sreenivasa Rao [1983 (3) SCC 284]**. In para 9 of the judgment, the Hon'ble Supreme Court has

held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. The Hon'ble Supreme Court was considering the question of seniority and promotion of the petitioners who were working as LDC in the Department of Registration and Stamps. The Hon'ble Supreme Court held that the delay in preparing the panel for promotion resulted in deprivation in chances of promotion. The respondents, instead of preparing the panel within the time drew up amendment of the rules for promotion. Consequently promotion chances of the eligible LDCs were adversely affected and they were superseded by their juniors in the panel prepared in terms of the amendment. The Hon'ble Supreme Court held that the vacancies which occurred prior to amendment have to be filled up in accordance with the unamended rules. The Hon'ble Supreme Court set aside the panel prepared under the amended rules and directed to prepare a fresh panel under the old rules. Para 9 of the said judgment is set out herein below :-

“Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in

September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

33. In the instant case also we find that the last selection for the post of Chief Loco Inspector was done in the year 2009 according to the prevailing practice of promotion in the posts of Loco Inspector from the cadre of Motorman only. The Loco Pilots were not in the said channel of promotion. It is also admitted position that for five years no selection

took place and in the meantime 19 vacancies occurred for consideration of the Motorman for promotion in the post of Loco Inspectors. The impugned letter dated 2/5/2014 constituting selection board for selection in the post of Loco Inspector for combined category was issued without laying down the modalities of such promotion and/or notifying the merger of these two categories of Loco Pilot and Motorman for the purpose of promotion in the post of Chief Loco Inspector.

34. There may be discussions and deliberations at the Railway Board level in presence of the representatives of recognized Unions but before taking any step for selection in deviation of the prevailing practice to the prejudice of the aspirants for such promotion to the post of Loco Inspector from the separate channel of Motormen category, the authorities ought to have informed the applicants about this fact or merger of two categories as well as the modalities for merger and common channel of promotion for these two categories. Before constituting the Selection Board for promotion in the post of Chief Loco Inspector from combined category of Motorman and Loco Pilot Drivers through a

completely different process of selection so far followed, the policy decision of such change from the long practice at the Board level is also required to be notified to all concerned for their prior knowledge and action and definitely not after one month from the date of issuance of the circular for such selection. Moreover, options were also asked about two months after the circular for selection was issued.

45. Having regard to the facts and law, as stated above, the circular dated 2/5/2014 is set aside to the extent that the respondents shall fill up the vacancies in the post of Chief Loco Inspector which occurred from 2010 to 1/5/2014 means for filling up from the unmerged/uncombined category of Motorman in accordance with the selection process which was prevalent in the Western Railway until issuance of the letter No.E/EL/834/7-DCMM Vol. V dated 2/6/2014 laying down the modalities for revised channel of promotion from the combined merged categories of Loco Pilot Drivers and Motorman. However, it would be open to the petitioners to fill up the remaining 24 posts of Chief Loco Inspector by finalizing the selection undertaken

pursuant to the selection circular dated 2/5/2014.”

10. We find that Clause 216 clearly contemplates that in regard to selection posts, it is essential that all the selections are conducted annually in a regular manner. In fact this Clause itself provides that where holding of the next selection becomes necessary before a gap of one year on account of the panel getting exhausted, the earlier selection not throwing up adequate number for empanelment/promotion, etc., the same may be held after a minimum time gap of six months from the date of approval of the panel finalised as a result of the first selection. No doubt, the Apex Court in the case of **State of Tripura** (supra) has observed that a candidate only has right to be considered in light of existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. The Apex Court, however, has further held that since there was no accrued right nor was there any mandate that vacancies must be filled

invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. The decision of the Apex Court does not aid the petitioners' case. In this view of the matter and in view of Clause 216, the view of the Tribunal cannot be faulted.

11. In the light of the law laid down by the Apex Court in the case of **Y.B. Rangaiah** (supra) we do not find the approach of the Tribunal unreasonable or perverse so as to interfere in the exercise of our extraordinary Writ Jurisdiction under Article 226 and 227 of the Constitution of India.

12. Learned Counsel Shri Suresh Kumar for the petitioners also raised an objection that the respondents having participated in the selection process cannot challenge the very same selection process. The Tribunal has considered the letters of the respondents who participated in the selection wherein they have clearly mentioned that they are taking part in the

written test without prejudice to their right and contentions against the merger.

13. Learned Counsel Shri Suresh Kumar further contended that the decision of the Tribunal would be applicable only to the respondents No.2 to 11 and not to all the members of the respondent No.1 which is the 'Western Railway Motormen Association'. In this regard, we may note that the respondents themselves have come out with the specific case in the O.A. more particularly para 4.1 that the respondent No.1 is a Registered Association of the Motormen working in the Western Railway and looks after the welfare of its members as a Trade Union. A specific averment has been made that the respondents No.2 to 11 are Motormen who are the aggrieved parties and who seek to challenge the impugned circular/Notification dated 2/5/2014 and the Notification dated 2/6/2014 issued by the petitioners which are against their interest and violative of the service conditions. At this juncture, it is not necessary for us to address this issue. It is for the petitioners to implement the order

passed by the Tribunal which has been passed in the facts of the application made.

14. We are, therefore, not inclined to interfere with the well considered order passed by the Tribunal. The petition is accordingly dismissed with no order as to costs.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)