

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3992 OF 2017

Union of India and others ... Petitioners

Versus

J. Velmurugan and others ... Respondents

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Mr. Suresh Kumar for the Petitioners.

Mr. Dattatray N. Karande for the Respondents.

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

DATE : 14th DECEMBER, 2017.

ORDER : [PER M. S. KARNIK, J.]

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. The petitioners – Union of India, by this petition, challenge the order dated 23/12/2015 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as 'the Tribunal' for short) in Original Application No. 799 of 2013, thereby allowing the OA filed by the respondents and directing the petitioners to issue appointment orders to those respondents who

qualify and are selected in compliance of the screening process, as if the vacancies existed.

3. The Tribunal, while allowing the application, held that though the respondents have not acquired the right to be appointed was of the opinion that as the cancellation of the selection process was an arbitrary action, the same cannot have effect of nullifying the vacancies and the right of the respondents to be considered for selection against the notified vacancies in continuation from where the selection process was abandoned cannot be extinguished.

4. The respondents approached the Tribunal with the case that they are working in various Group-D posts which were feeder cadre for the promotional post of Senior Path Way Supervisor ('Sr. PWS' for short). The respondents appeared in the examination for the promotional post of Sr.PWS under 25% Limited Departmental Competitive Examination ('said exams' for short). Eleven vacancies were notified, amongst which three for General Category, two for SC Category and six for ST Category were reserved. The respondents were allowed to appear for the

said exams under the 25% quota for eleven posts of Sr. PWS. The examinations were conducted on 25/05/2013 and respondents were declared successful on 14/08/2013.

5. The petitioners viz. The Ministry of Railways vide order dated 03/07/2013 merged the post of Sr.PWS with Junior Engineer/P.Way. By the said merger the Grade Pay of Sr.PWS at Rs. 4200/- was upgraded to Rs. 4600/- in the same PB-2 scale. This order was made effective from the date of notification. The petitioners cancelled the results of the said exams and so also the entire selection process vide impugned orders dated 06/09/2013 and 03/10/2013.

6. Learned counsel for the petitioners assailing the order of the Tribunal has relied upon the decision of the Apex Court in the case of *State of Tripura and others Vs. Nikhil Ranjan Chakraborty and others* reported in (2017) 3 SCC 646 and in the case of *All India SC & ST Employees' Association and another Vs. A. Arthur Jeen and others* reported in (2001) 6 SCC 380.

7. It is contended by the learned counsel for the petitioners that the respondents cannot be said to have any vested right for promotion under the rules in force at a particular point of time. In his submission, inclusion of the respondents in the panel of selected candidates does not confer any indefeasible right even for existing vacancies and that the petitioners were not under any obligation for filling of any other vacancies.

8. Learned counsel submitted that the advertisement was issued on 07/02/2013, pursuant to which the respondents appeared in the said exams for the promotional post of Sr.PWS. The written test was held on 25/05/2013. Thereafter, by order dated 03/07/2013 the Ministry of Railways merged the posts of Sr.PWS with Jr. Engineer/P.Way and this order was made effective from the date of notification.

9. The result of the exams pursuant to the advertisement dated 07/02/2013 were declared on 14/08/2013. On 06/09/2013 the Ministry of Railways took a decision that the ongoing selection etc. for filling up the posts of Sr.PWS against the LDCE/Seniority-cum-suitability quota if not finalised till the date of issue of order

dated 06/09/2013, the same should also be cancelled or abandoned.

10. Mr. Suresh Kumar, learned counsel for the petitioners also invited our attention to the Railway Board order bearing R.B.E.No.102/2013 dated 08/10/2013, which mentions thus;

“4.1 Normal vacancies existing on 1.11.2013 (except direct recruitment quota) and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

- (i) From panels approved on or before 1.11.2013 and current on that date;*
- (ii) and the balance in the manner indicated in para 4 above.*

4.2 Such selections which have not been finalized by 1.11.2013 should be cancelled/abandoned.”

11. Learned counsel invited out attention to the affidavit-in-reply dated 15/11/2014 filed on behalf of the petitioners before the Tribunal justifying the decision to abandon the select list in respect the said exams in which the respondents appeared.

12. Learned counsel for the respondents on the other hand supported the order passed by the Tribunal. He submitted that

the order passed by the Tribunal is a well reasoned order and does not call for any interference by this Court. He invited our attention to the reasoning of the Tribunal.

13. The respondents contended that the action of the petitioners cancelling the selection process which had substantially progressed is arbitrary, discriminatory and has been done without giving the respondents any reasonable opportunity of being heard.

14. The vacancies pertain to 2012 and were notified accordingly. It is the case of the respondents that these vacancies should have been filled by Rules of Recruitment as applicable in the year 2012 and the new policy will not be applicable to the vacancies which are already notified. It is the case of the respondents that the order of merger of posts of Sr.PWS and Junior Engineer does not change the nature of work between the two posts. According to the respondents, the action on the part of the petitioners to withdraw or nullify their efforts of successfully passing the exam for the post of Sr.PWS has caused detriment to the interest of the respondents.

15. We have considered the submissions of the learned counsel. It is not disputed that, pursuant to the advertisement dated 07/02/2013 for filling up the promotional post of Sr.PWS under 25% LDCE the respondents appeared and even passed the written test. The results were declared on 14/08/2013. Just prior to the declaration of the results of the said exam, the decision to merge cadre of Sr.PWS with the cadre of Jr.Engineer with its spread effect was taken on 03/07/2013. Thereafter, by order dated 06/09/2013 it was decided to cancel/abandon the selections for filling up the posts of Sr.PWS, which have not been finalised till then. The issue that arises for consideration is whether the petitioners were justified in abandoning/cancelling the ongoing selection at the stage when the petitioners were declared successful upon passing of the written exams. Before the Tribunal, it was the stand of the petitioners that on demand of both the recognised federations a policy decision for the betterment of the employees was taken by the Railway Board to merge the post of Sr.PWS with the post of Jr. Engineer/P.Way. The said decision was circulated to the Zonal Railways vide railway board letter dated 03/07/2013. The further decision was

taken for filling up the posts of Sr.PWS with Jr. Engineer/P.Way. As a consequence of this policy decision dated 03/07/2013, circular dated 06/09/2013 was issued by the Railway Board directing all the Zonal Railways to cancel the ongoing selection process to the post of Sr.PWS and accordingly. The ongoing selection for the post of Sr.PWS which was notified on 07/02/2013 was cancelled vide letter dated 03/10/2013. Though the respondents were declared successful in the written test, the entire process was not over and further process of verifying the service record etc. as provided by the Railway Board was required to be completed before finalisation of the final panel since selection to the post of Sr.PWS was under process and incomplete. Hence, the entire process was within the ambit of Railway Board Circular dated 06/09/2013 and the said selection had to be cancelled/abolished. The said decision of the Railway Board is a policy decision taken in consultation of both the recognised railway unions. Upon merger of the post of Sr.PWS with the post of Junior Engineer/P.Way the posts of Sr.PWS do not exist in the railways.

16. We find that, the decision of the petitioners to merge the posts is a policy decision. The respondents do not have any indefeasible right to be promoted to the post of Sr.PWS and insist for completion of the selection process only because they have passed the written test. The post of Sr.PWS has been abolished due to the merger with the post of J.E./P.Way. We do not find anything arbitrary or malafide in this policy decision of the petitioners. In this context we may usefully refer to the decision of the Apex Court in the case of ***State of Tripura and others Vs. Nikhil Ranjan Chakraborty and others (supra)***. Para 9 of the said decision of the Apex Court reads thus:

“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 state” 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.”

A profitable reference can also be had to the decision of the Apex Court in the case of *All India SC & ST Employees' Association and another Vs. A. Arthur Jeen and others (supra)*, para 10 reads thus;

“10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash v. Union of India. Para 7 of the said judgment reads thus: (SCC pp.50-51)

“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 decision in State of Haryana v. Subash Chander Marwaha, Neelima Shangla v. State of Haryana or Jatinder Kumar v. State of Punjab.”

17. The Tribunal on the reasoning that after the decision to merge the posts was taken, the result of written test of successful candidates including that of respondents was issued, and therefore as the petitioners have declared the results of the written test after the order of merger, the Tribunal was of the views that this would have the effect of negating the applicability of the merger on the respondents. We do not agree with this reasoning of the Tribunal. Their Lordships of the Apex Court have clearly held that the inclusion in the panel of selected candidates does not confer any indefeasible right even against the existing vacancies. In the present case, when the vacancies itself ceased to exist as a result of the merger, there was no question of directing the petitioners to complete the ongoing selection process and appoint the respondents on the posts which had ceased to exist.

18. It is not the case of the respondents that the decision to merge the two posts is malafide or arbitrary. In consultation with the Union for betterment of employees posts were merged. In fact, the respondents are still eligible to appear in selection for the post of Jr.Engineer after merger.

19. The Tribunal while allowing the OA also took into consideration one more aspect that the Pune Division granted promotion to the post of Sr.PWS later in the year 2014. We find that the final panel to the post of Sr.PWS was declared by the Pune Division on 14/05/2013, which was prior to the merger dated 03/07/2013. In this regard, para 4.1 of the Railway Boards justification regarding cadre restructuring clearly provides that normal vacancy arising out of cadre restructuring shall be filled from the panel approved on or before 01/11/2013 and current as on date. Para 4.2 of the said letter further provides that “such selection which have not been finalised as on 01/11/2013 should be cancelled/abandoned”.

20. In this view of the matter, it cannot be said that the respondents are discriminated in the matter of promotion. We are therefore inclined to interfere with the Tribunal's order.

21. Accordingly, the writ petition is allowed in terms of prayer clause (a). Rule is made absolute with no order as to costs.

(M. S. KARNIK, J.)

(ACTING CHIEF JUSTICE)