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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.1584 OF 2003

G.H. Pandey & ors.

...Petitioners

Vs.

The Union of India, through  
The General Manager,  
Western Railway & anr.

...Respondents

.....

Ms. Tanu Khatri along with Ms. Harsha Vaid, Advocate for the  
petitioners.

Mr. Suresh Kumar along with Ms. Mohinee Chougule, Advocate  
for the respondents/UOI.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.  
AND M.S.KARNIK, J.**

**DATE : 1<sup>st</sup> FEBRUARY, 2018.**

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

The petitioners by filing this petition under Article  
226 of the Constitution of India challenge the judgment and  
order dated 21/11/2002 passed by the Central Administrative  
Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in  
O.A. No.19 of 1999.

2. Before the Tribunal the petitioners had challenged legality and validity of the result declared by the respondents under Notification/letter dated 25/8/1998. According to the petitioners, procedure adopted by the respondents was illegal and the selection ought to have been conducted in respect of the vacancies which arise in respective years and only those candidates who are eligible in respect of those vacancies arising in that particular year are entitled to be called for selection. The principal contention of learned Counsel for the petitioners was that clubbing of vacancies for many years resulted in ineligible persons appearing for the selection for the earlier year's vacancies though they may not be eligible in that particular year to appear for the selection.

3. The Tribunal by order dated 30/10/2001 was pleased to quash and set aside the selection to the post of Chief Booking Clerks/Chief Luggage Clerks and Chief Goods Clerks and ordered fresh selection to be held in accordance with the rules and the vacancies for each year.

4. The respondent – Union of India filed W.P.No. 23 of 2002 in this Court challenging the order passed by the Tribunal dated 30/10/2001. This Court held that the issue of clubbing of vacancies cannot be decided in the absence of any factual data. It is further held that the respondent has not furnished any details much less factual data or information about the alleged clubbing of vacancies and the resultant prejudice to the petitioner on account of such clubbing. As this issue was not discussed by the Tribunal this Court was pleased to remand the matter back to the Tribunal for a fresh determination.

5. Consequent upon remand by this Court, O.A. came to be heard by the Tribunal. By the impugned order dated 21<sup>st</sup> November, 2002, the Tribunal relying upon the decision of the Hon'ble Supreme Court in the case of **All India SC & ST Employees' Association and another Vs. A. Arthur Jeen and others** reported in **(2001) 6 SCC 380** was of the opinion that as the petitioners had not arrayed any of the employees who have been selected in the aforesaid selection though being aware of

the same, O.A. deserves to be dismissed on this ground.

6. Learned Counsel for the petitioners contends that the Tribunal has erred in dismissing O.A. on the ground of non-joinder of necessary parties. According to learned Counsel for the petitioners, this Court had directed the Tribunal to decide O.A. on the question of clubbing of vacancies. The Tribunal in such circumstances ought to have decided O.A. by giving finding on the issue of clubbing of the vacancies as directed by this Court. She further contends that in the promotion orders issued to those who are selected, it is clearly mentioned that the said selection is subject to the outcome of the O.A. In her submission, it is the selectees who should have approached the Tribunal and got themselves impleaded as they were aware of the pendency of O.A. The selectees having failed to implead themselves as party respondents, the Tribunal therefore was not justified in dismissing O.A. only on the ground of non-joinder of necessary parties.

7. Learned Counsel for the respondents on the other

hand pointed out that the legal position is well settled by the Apex Court in the case of **All India SC & ST Employees' Association** (*supra*). In his submission as the affected selectees have not been impleaded in O.A., the order passed by the Tribunal cannot be said to be erroneous. In his submission, even if this Court has remanded O.A. to the Tribunal to decide specific issue of clubbing of vacancies, the respondents can always raise the contentions which are permissible in law. He submits that the respondents have upon remand raised an objection that the affected persons have not been impleaded as necessary parties. The Tribunal is therefore justified in dismissing O.A. on the ground of not impleading the affected selectees.

8. Heard learned Counsel. We have gone through the order passed by the Tribunal. The Apex Court in the case of **All India SC & ST Employees' Association** (*supra*) has clearly held that while challenging the panel of selected candidates at least some of the successful candidates must be impleaded as respondents. We find that the petitioners were aware who the

selected candidates are despite which they have not been impleaded as party respondents. The petitioners have not even impleaded some of the selected candidates in a representative capacity.

9. In the light of the law laid down by the Apex Court, we do not find any infirmity with the view taken by the Tribunal.

10. The Writ Petition is accordingly dismissed.

11. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)