

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/2/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1966 of 2018

a n d

C.M.P.No.15683 of 2018

1. S. Jayakumar
2. L. Paul Pandian
3. P. Balaiah
4. D. Rajeswari Karthippan
5. L. Karthikeyan
6. A. Johnson Jayakumar
7. K. Prabakar
8. P.T.Balasubramaniam
9. D. Arun Kumar
10. V.K.Ramesh
11. B. Gomathi
12. S. Rathinavelu
13. T. Shaju Thomas
14. N. Chidhambaram
15. M. Thiyagarajan
16. K. George Muller
17. A.P.Ajith Ashok
18. N. Palani
19. S. Balachandran
20. Maria Joseph
21. V. Ramesh

Appellants

Vs

1. The 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. The Divisional Security Commissioner
Office of the Railway Protection Force
Chennai Division
NGO Annexure Building 5th Floor
Park Town
Chennai 3.

... Respondents

Prayer:- Appeal filed under Clause 15 of Letters Patent against the order dated 21/6/2018 passed in W.P.No.15018 of 2018.

Prayer in WP.No: Petition filed under Article 226 of the Constitution of India praying to issuance of Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the 1st respondent in Employment notice No.SI/ RPF-02/2018 dated 1.06.2018 quash the same so far as Para No.2.0 and Group A notifying 29 vacancies in south zone alone is concern and further direct the respondents to promote the petitioner as Sub-Inspectors of Railway protection force.

For appellants ... Mr.Father Xavier Arulraj
for Mr.A.Tamilrajan

For respondents ... Mr.M.Vijay Anand
Additional Standing Counsel
for Railways

J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Aggrieved by the dismissal of the writ petition, in W.P.No.15018 of 2018, dated 21/6/2018, appellants/writ petitioners have filed the present writ appeal.

2. Writ Petition has been filed, to quash an order, dated 1/6/2018, by which the Ministry of Railways had invited applications, from eligible male and female candidates, for the recruitment to the post of Sub-Inspectors (SI), in Railway Protection Force (RPF) and Indian Railways and Railway Protection Special Force (RPSF).

3. According to the appellants, Railways ought not to have invited applications notifying 29 vacancies to the post of Assistant Sub-Inspector, in south zone.

4. The appellants/writ petitioners were appointed as Police Constable in Railway Protection Force from 1/12/1998 and they were promoted as a Head Constable on 4/6/2010. It is stated that the appellants participated in the selection process to the post of Assistant Sub-Inspector of Railway Protection Force, based on the Notification, dated 14/6/2011. They were successful and were sent for institutional training for two months. They completed the training and were promoted, on 6/5/2014.

5. It is stated by the appellants that unsuccessful candidates challenged the Notifications dated 16.06.2011 by which the petitioner had been selected and approached the High Court by filing WP.No.18775 of 2011. Petitioners for clubbing the previous vacancies and for selection without participating in the process of selection was also made by a few candidates, Vide order, dated 2/3/2013, writ petition was allowed.

6. On appeal, a Hon'ble Division Bench, remanded the matter to the learned Single Judge. On remand, a learned Single Judge, by an order, dated 23/4/2013, passed the following order, dismissing the writ petition.

"In the light of the above, this Court does not find any justification whatsoever to entertain the prayer in the writ petition. Consequently, the writ petition fails and it is dismissed as devoid of any merit. Because of this vexatious litigation, R.3 to R.23, the selectees under the second Notification could not assume their postings despite having undergone necessary training, therefore, the official respondents are hereby directed to give posting to them as ASI within a period of one week from the date of receipt of a copy of this order. Since the petitioners made false statement and misrepresentation is rampant on their part, this Court imposed costs of Rs.20,000/- payable jointly by the petitioner and out of the said sum, Rs.10,000/- is payable to the railways and the balance to respondent Nos.3 to 23. Connected Miscellaneous Petition stands closed."

7. Writ Appeal against the said order was dismissed. It is stated that the appellants were not given the posts and final promotions were given only in the year 2014, as Assistant Sub-Inspectors. Their services were not regularised immediately and there was a delay of three years. A provisional seniority list of Assistant Sub-Inspectors of 295 persons was prepared. The appellants and others, who are similarly situated, gave a detailed representation, stating that they should be regularised, as Assistant Sub-Inspectors, from the date of completion of initial training, for the promotion to the post of Sub-Inspectors. The said representation was rejected, which has resulted in filing of W.P.No.27243 of 2017, which is pending.

8. It is the grievance of the appellants that the instant Notification, for restructuring group "C" RPF/RPSF, in Proceedings No.PC-III/2016/CRC/2, dated 27/3/2017, the Government of India, Ministry of Railways (Railway Board), have

published the provisional seniority list of Assistant Sub-Inspectors of the Railway Protection Force, on 1/4/2017, for a sanctioned strength of 275, wherein the name of S.Jayakumar/first appellant herein, was included, at S.No.194. The actual strength according to the appellants, as on 1/4/2017, is 135 and 140 posts are vacant.

9. It is the claim of S.Jayakumar/first appellant that his name should be included in the promotion list. The appellants have therefore, challenged the instant Notification, on the ground that if the posts of Sub-Inspectors are filled up by direct recruitment and 25 unreserved posts in southern Railways are filled up, by the Notification, which is under challenge, then the appellants will not become Sub-Inspectors of Police. Therefore on the above facts, the appellants seek to challenge the Notification, dated 1/6/2018, more particularly, paragraph 2 A of the said Notification, which reads as under:-

2.0 Vacancies

The groups of Zonal Railways and RPSF wise summary of vacancies for Sub-Inspectors is furnished below for immediate reference.

Group	Zonal Railway	Male					Female				
		UR	SC	ST	OBC	Total	UR	SC	ST	OBC	Total
A	SR, SWR & SCR	75	9	21	21	126	29	5	9	9	52
B	CR, WR, WCR & SECR	59	24	13	48	144	22		5	18	56
C	ER, ECR, SER & ECOR	149	49	21	68	287	59	18	9	26	112
D	NR, NER, NWR & NCR	96	36	10	31	173	39	14	4	12	69
E	NFR	21	5	1	3	30	8	2	1	1	12
F	RPSF	54	1	3	1	59	-	-	-	-	-
	Total	454	124	69	172	819	157	50	28	66	301

10. A learned Single Judge dismissed the writ petition, stating that the prayer sought for, in the writ petition, is contrary to Rule 45 (i) of the Railway Protection Force Rules, 1987, which mandates that Sub-Inspectors can be recruited only by direct recruitment or through a limited departmental competition examination amongst the eligible enrolled members of

the Force or by taking personnel on deputation in accordance with these Rules. There is no provision, for promotion, to fill up the posts of Inspectors. The learned Single Judge, therefore, held that in view of the expressed provision in Rule 45 (1) of the Rules, that direct recruitment to the Force shall be made at the level of Constables, Sub-Inspectors and Assistant Commandants and all other posts are to be filled in by promotion or through a limited departmental competition, and hence writ petition is not maintainable.

11. Appellants have filed the appeal reiterating the facts stated in the writ petition. According to the appellants, the respondents published the Notification, for Restructuring the Group "C" RPF/RPSF, vide, Proceedings No.PC-III/2016/CRC/2, dated 27/3/2017. Based on the Notification, for restructuring, the second respondent, published the provisional seniority list of Assistant Sub-Inspector of Railway Protection Force over Southern Railway including ICF, as on 1/4/2017, for total sanctioned strength of 275, whereas the first appellant's name is at S.No.194, in the seniority list and actual strength as on 1/4/2017 is 135 posts and the balance of 140 posts are vacant.

12. It is further submitted that on 21/11/2017, the second respondent notified that out of 199 posts, totally 170 posts were filled up, by restructuring process and the second respondent, without considering the appellant's claim, published the promotion list, for 170 candidates, promoting Assistant Sub-Inspectors as Sub-Inspectors of Railway Protection Force.

13. According to the appellants, as on 3/2/2018, the total number of vacancies was 135 and the second respondent, has promoted 59 Sub-Inspector candidates, to the post of Inspectors of Railway Protection Force. Therefore, as on 3/2/2018, totally 199 posts of Sub-Inspectors are vacant and the second respondent initiated the restructuring process, and totally 170 posts of Sub-Inspectors were filled up and as per this calculation, 29 posts are still lying vacant.

14. According to the appellants, after restructuring was finalised, all over India, totally 473 posts of Sub-Inspectors are not filled up and in so far as Southern Railway is concerned, totally 29 posts are kept vacant. As a result, the first respondent, issued a Notification, for direct recruitment, for the posts of Sub-Inspector of Railway Protection Force, as on 1/6/2018. 126 Sub-Inspectors vacancies for male and 52 vacancies for female are available and if these posts are filled up, the appellants' promotion would be affected and their career prospects would be jeopardized.

15. The respondent Railway Protection Force has filed their

counter, wherein it has been stated that promotion under cadre restructuring scheme was done, as per the Railway Board's directions. The promotion quota and recruitment quota are entirely two different entities, which cannot be clubbed together, as the appellants cannot be promoted against the recruitment quota vacancies. There is no violation of rule on any part by the respondents. The claim of the appellants with regard to their seniority is sub-judice and claim for promotion, on the basis of restructuring is totally baseless, as on the date of implementation of cadre restructuring the appellants were not under the zone of consideration.

16. It is further stated that as far as Sub-Inspector cadre is concerned, in Railway Protection Force, the total vacancies are distributed as 50:50 viz., Recruitment:Promotion

17. Appellants have filed W.P.No.17216/2018, with regard to fixation of their seniority, in the rank of Asst.Sub-Inspector, which is still pending in the Court of Law. Mere inclusion of names in the seniority list provisionally published by the Department, figuring the names of the appellants in the list of Asst.Sub-Inspectors will not make them eligible, for promotion as Sub-Inspector, as the same is based on Seniority-cum-suitability, in accordance with the Railway Protection Force Rules.

18. As per Railway Board's Order No.PC-III/2016/CRC/2, dated 27/3/2017, promotion to various ranks, under Cadre restructuring scheme has been done. After Cadre Restructuring, the total post of Sub-Inspectors in Southern Railway as 279. 140 were earmarked for promotion quota and 139 for recruitment quota, in accordance with Rule 45 and as prescribed in Schedule IV of RPF Rules, 1987. Further, as envisaged in Board's letter, regarding Cadre Restructuring, the recruitment vacancies were also taken into account and 189 Assistant Sub-Inspectors, who were found eligible, as per the seniority were promoted as Sub-Inspectors, during Cadre Restructuring, which is over and above 50% of promotional quota.

19. Reply to the grounds raised by the appellants are as follows:-

(i). Promotion under Cadre Restructuring Scheme was done, as per Railway Board's directions and hence, the contention of the appellants is not correct.

(ii). The vacancies notified are for recruitment quota and it is not possible to set aside the same, for promotional quota vacancies. The present notification, issued by Railway Board is for direct recruitment of SIPF, which has no relevance with the appellants claim.

(iii). The promotion quota and recruitment quota are

entirely two different entities, which cannot be clubbed together and hence the appellants being promotees cannot be promoted against recruitment vacancies. There is no violation of rule on any part by the respondents.

20. Heard Mr.Father Xavier Arulraj for Mr.A.Tamilrajan for the appellants and Mr.M.Vijay Anand, Additional Standing Counsel for the railways and perused the materials available on record.

21. Rule 45 (1) of the Railway Protection Rules, reads as under:-

"Direct recruitment to the Force shall be made at the level of Constables, Sub-Inspectors and Assistant Commandants and all other posts shall be filled in by promotion or through a limited departmental competition from amongst the eligible enrolled members of the Force or by taking personnel on deputation in accordance with these rules."

22. In the light of the above, the appellants cannot claim that they should be promoted as Sub-Inspectors, as a matter of right. It is well settled that promotion is not a matter of right much less a fundamental right. Till the appellants' place in the seniority list is settled in the dispute, pending on the file of this Court, they cannot claim that they should be included in the panel and the question of seniority or the date on which their service in the post of Sub-Inspector must be reckoned is not the subject matter in the writ petition. Moreso, inclusion is not mere seniority. But by a process of selection through a limited departmental competition from amongst the eligible enrolled members of the force or by taking personnel on deputation in accordance with the rules. Claim of the appellants is that their services as Assistant Sub-Inspectors should be included from 2011 itself and not from 2014. This is not the subject matter of the present challenge which is to the Notification by which 29 unreserved posts in the post of Sub-Inspector is sought to be filled up by direct recruitment.

23. Vide, proceedings dated 27/3/2017, in PC-III/2016/CRC/2, Ministry of Railways (Railway Board), passed the order and the relevant portions of the order, restructuring two forces, reads as under:-

Sub: Restructuring of Group 'C' RPF/RPSF (Combatised) staff

The Ministry of Railways have had under review cadres of Group 'C' staff of Railway Protection Force (RPF) and Railway Protection Special Force (RPSF) with a view to strengthen and rationalise the staffing pattern in these forces. As a result of the review undertaken on the basis of functional, operational and administrative requirements, it has

been decided with the approval of the President that the Group 'C' Combatised staff of RPF/RPSF should be restructured in accordance with the revised percentages indicated in the enclosed Annexure. While implementing these orders, the following instructions should be carefully and strictly adhered to:

Date of effect

1. The restructuring of the cadres will be with reference to the sanctioned cadre strength as on 1/4/2017. Staff who will be placed in higher grade pay as a result of implementation of these orders will accordingly draw pay in the respective higher cadres w.e.f.1/4/2017. The benefit of restructuring will be restricted to the persons who are working in a particular cadre on the cut-off date i.e., 1/4/2017.

Applicability:

2. These orders will be applicable to the permanent regular cadres and will exclude surplus & supernumerary posts. Those temporary posts that are in operation for at least three years may also be taken into account for the purpose of applying revised percentage. This will be subject to certification that these posts are meant for regular activities which will continue and not for any sporadic adhoc requirements.

2.1. These orders will not be applicable to ex-cadre & work charged posts which will continue to be based on worth of charge.

.....

4.4. All vacancies (including chain/resultant vacancies) arising purely due to this cadre restructuring should be filled up by senior employees who should be given benefit of the promotion w.e.f.1/4/2017 whereas for the normal vacancies existing on 1/4/2017, junior employees should be posted by modified selection procedure but they will get promotion and higher pay only from the date of taking over the posts as per the normal rules. Thus, the special benefit of the promotion w.e.f.1/4/2017 is available only for vacancies arising out of cadre restructuring. For other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply.

4.5 In cases where percentages have been reduced in the lower grade and no additional post becomes available as a result of restructuring, the existing vacancies on 1/4/2017 should be filled up by normal selection procedure.

4.6. Direct recruitment percentages will not be applicable of the additional posts arising out of these restructuring orders as on the date of effect. The direct recruitment percentage will apply for normal vacancies arising on or after the date following the date of effect i.e., 1/4/2017. The direct recruitment quota as existing prior to the date of effect, will continue to be maintained."

24. Proceedings of the Screening Committee, to consider the staff, for promotion, to the rank of Sub-Inspector of Police Force, under Cadre Restructuring Scheme, held on 2/2/2018, reads as under:-

The Screening Committee consisting of the following Officers:-

- | | |
|------------------------------------|------------|
| 1. Shri.S.Louis Amuthan Sr.DSC/MAS | - Chairman |
| 2. Shri.M.F.Mohideen DSC/MDU | - Member |
| 3. Shri.C.Somasekar DSC/TPJ | - Member |

were nominated by CSC/MAS vide Memorandum No.X/P.535/ASIPF/Restru dated 12/12/2017. As per the instructions issued, vide letter mentioned earlier, committee met at CSC/O/Mas on 9/1/2018 and 2/2/2018.

As per CSC/MAS leter No.X/P535/SIPF/CRS/2017 dated 29/12/2017, 189 vacancies with break up of UR-146, SC - 29 and ST-14 are to be considered for promotion to the rank of SIPF. As per para 4.0 of RBE No.28/2017 dated 27/3/2017 (PC-VII/2016/CRC/2), for the purpose of implementation of cadre restructuring orders only scrutiny of records and confidential reports will be done.

Accordingly, the Screening Committee screened APARs of all candidates for five years from 2012 to year 2016-17 which were taken into consideration. Wherever ACR/APARs were not available for the period under review, the ACR/APARs of the preceding year/s is/are taken into account for consideration as per Board's letter No.E(NG) I/93/CR/8 dated 9/1/1997.

As per para 4.0 of RBE No.28/2017 dated 27/3/2017 (PC-VII/2016/CRC/2), the selection Board had scrutinised the service records and confidential reports of staff equal to the number of vacancies proposed to the filled under CRS. Hence only 189

service register and APARs of ASIsPF have been screened. Further Railway Board vide letter No.2014/Sec (E)/PM-3/1 dated 1/1/2018 (para 1.0) has given guidelines that "no jumping of candidates is allowed in the general seniority". Thus, based on the seniority list of ASIPF as on 1/4/2017 published on 21/11/2017, accordingly, first 189 ASIs has been taken into zone of consideration."

25. Facts narrated above would show that 140 posts were ear-marked, for promotion quota, pursuant to the restructuring and the balance have been ear-marked, in accordance with Rule 45 of the Railway Protection Force Rules, 1987, which is by direct recruitment. Total vacancies have been shown, in the proceedings of the Screening Committee, which shows that there are 189 vacancies.

26. The actual grievance of the appellants seem to be their position in the seniority list. The claim of the appellants, as is apparent from the writ petition and the memorandum of grounds is that their services as Assistant Sub-Inspector should be reckoned from the time they completed their Training, i.e., in 2011 and not from 2014. This issue is pending adjudication in W.P.No.27243 of 2017. Appellants are actually challenging their position, in the seniority, by questioning the Notification, on the ground that they are entitled for promotion and those vacant seats cannot be filled up by direct recruitment. The case of the appellants cannot be accepted. The seats notified for recruitment in the impugned Notification would fall, under the quota, which have to be filled up, according to Rule 45 of the said Rules. The seniority list is under challenge. Remedy of the appellants is only to pursue W.P.No.27243 of 2017, which is pending in this Court. Notification, dated 1/6/2018, has been drawn in accordance with proceedings of the Screening Committee, dated 2/2/2018.

27. In view of the above findings, Writ Appeal therefore, fails and the same is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition No.15683 of 2018 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs/pkn

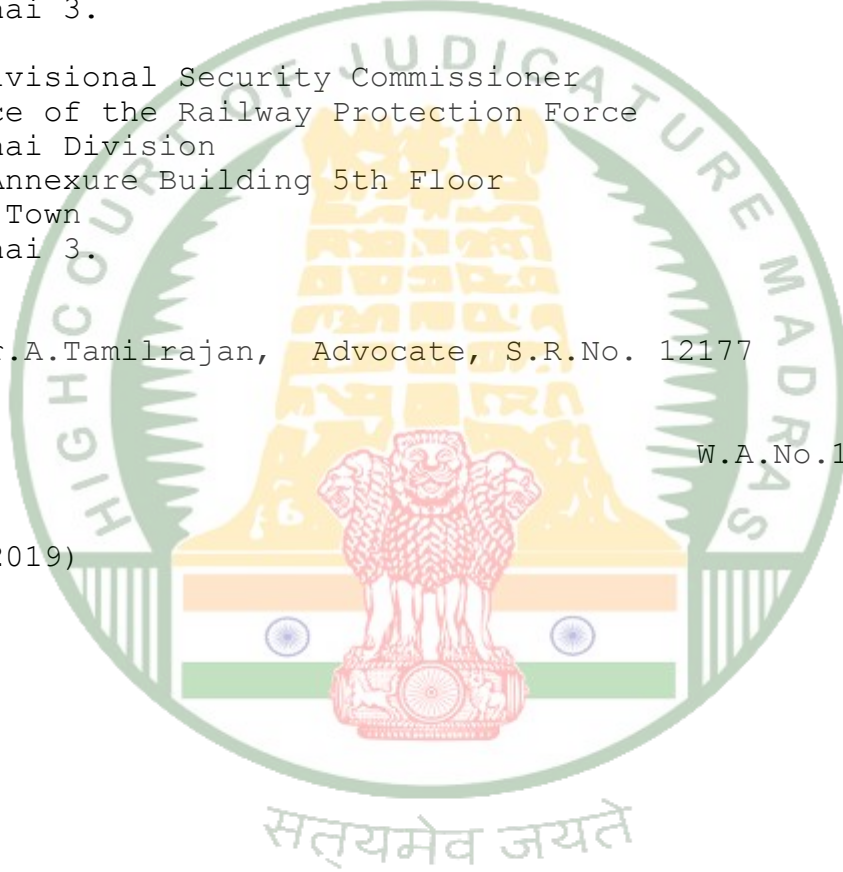
To

1. The Director General, RPF
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+1cc to Mr.A.Tamilrajan, Advocate, S.R.No. 12177

W.A.No.1966 of 2018

CP(CO)
GN(28/02/2019)



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