

\$~1 & 19 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 22.07.2021*

+ **W.P.(C) 6425/2021 & CM APPL. 20187/2021**

SHUBHAM SHARMA Petitioner

Through: Mr. Anuj Aggarwal, Advocate.

versus

DELHI METRO RAIL CORPORATION LTD Respondent

Through: Mr. V.S.R. Krishna, Advocate.

+ **W.P.(C) 6661/2021 & CM APPL. 20988/2021**

HANSRAJ ARYA AND ORS. Petitioners

Through: Mr. Anuj Aggarwal, Advocate.

versus

DELHI METRO RAIL CORPORATION LTD Respondent

Through: Mr. V.S.R. Krishna, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Court hearing convened via video-conferencing on account of COVID-19]

1. These writ petitions are directed against a common order dated 08.01.2021, passed by the Central Administrative Tribunal (in short 'the Tribunal'), in O.A nos. 2158/2020 and 2206/2020.

1.1. O.A. no. 2158/2020 concerned the petitioners, who applied for the post of maintainer/electrician (post code: RNE-16), while O.A. no. 2206/2020 concerned those petitioners, who applied to be appointed to the post of Assistant CC (post code: CNE-06). For the sake of convenience and

brevity, both the petitioners, in the above-captioned writ petitions, will hereafter be collectively referred as ‘petitioners’, unless the context requires otherwise.

1.2. The petitioners had responded to an advertisement dated 14.12.2019, issued by the respondent, i.e., Delhi Metro Rail Corporation Limited (hereafter referred to as “DMRC”) for the aforementioned posts.

1.3. The petitioners, after participating in the selection process, were provisionally selected for appointment to the aforementioned posts.

1.4. Evidently, DMRC, thereafter, on 22.09.2020, issued a notice, whereby the vacancies *qua* the advertised posts were reduced. This resulted in the petitioners not being appointed to the post for which they had been provisionally selected.

2. The petitioners, being aggrieved, filed separate actions before the Tribunal. These actions, as indicated above, were registered as O.A nos. 2158/2020 and 2206/2020. After pleadings were completed, the Tribunal passed the impugned order.

2.1. *Via* the impugned order, the Tribunal sustained the notice issued by the DMRC, dated 22.09.2020, contained the decision to reduce the advertised of posts. The Tribunal, after perusing the pleadings and hearing the parties, concluded that no fault could be found with the decision taken by the DMRC to reduce the number of vacant posts for the reason that, the situation obtaining, at the point in time, when the advertisement was issued by the DMRC, i.e., on 14.12.2019, had changed substantially, due to intercession of the coronavirus pandemic.

3. It is in this backdrop that the petitioners, being aggrieved, have approached this Court by way of the above-captioned writ petitions.

4. Mr. Anuj Aggarwal, who appears on behalf of the petitioners, submits

that, while the power of the DMRC to reduce posts cannot be questioned, the reason furnished to justify this decision is untenable in law.

4.1. According to Mr. Aggarwal, since the pandemic is a temporary phenomenon, the panel drawn by the DMRC, pursuant to the selection process undertaken by it, should continue to subsist for the period indicated in the advertisement. For this purpose, Mr. Aggarwal has drawn our attention to the relevant portion of the advertisement, which reads as follows:

'2. The validity of the panel shall be two years from the date of its approval.'

4.2. It is, therefore, Mr. Aggarwal's submission that, the panel should continue to subsist for the period indicated therein, as noted above.

4.3. In support of his submission that, reduction of posts should be for a good reason, Mr. Aggarwal has relied upon a judgment of the Supreme Court rendered in ***Dinesh Kumar Kashyap & Ors. v. South East Central Railway & Ors.***¹, (2019) 12 SCC 798.

5. On the other hand, Mr. V.S.R. Krishna, who appears on behalf of the respondent/DMRC, has drawn our attention to the impugned notice, dated 22.09.2020. Based on what is stated therein, Mr. Krishna says that, DMRC was forced to curtail appointments in view of steep fall in revenue.

6. We have heard the learned counsel for the parties and perused the record.

6.1. In our opinion, two aspects arise for consideration:

- (i) First, was the DMRC, right in law, in reducing the advertised posts after the selection process was over?
- (ii) Whether the DMRC, in this particular instance, had good reasons for

¹ In short "***Dinesh Kumar Kashyap*** Case"

reducing the number of posts initially made available for appointment?

7. Insofar as the first issue is concerned, it is, in fact, answered by the judgement of the Supreme Court in ***Dinesh Kumar Kashyap*** Case, which is relied upon by Mr. Aggarwal in support of his argument. For the sake of convenience, the observations made in paragraphs 5 and 6 of the said judgement, are extracted hereafter:

“5. The main issue which arises before us is whether SECR could have ignored the 20 per cent extra panel despite the letter dated 2-7-2008 without giving any cogent reason for the same. **No doubt, it is true, that mere selection does not give any vested right to the selected candidate to be appointed.** At the same time when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the court as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily. **No doubt, it is not incumbent upon the employer to fill all the posts but it must give reasons and satisfy the court that it had some grounds for not appointing the candidates who found place in the replacement panel.** In this behalf we may make reference to the judgment of this Court in *R.S. Mittal v. Union of India*, wherein it was held as follows: (SCC p. 234, para 10)

‘10. ...**It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment.** But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit positions, then, ordinarily, there is no justification to ignore him for appointment. **There has to be a justifiable reason to decline to appoint a person who is on the select panel.** In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government’s approach in this case was wholly unjustified.’

6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter,

they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. **Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post.** When the employer is the State it is bound to act according to Article 14 of the Constitution. **It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State.** It is in the light of these principles that we need to examine the contentions of SECR.”

[Emphasis is ours]

7.1. A close perusal of the aforesaid observations of the Supreme Court would show that it is not incumbent upon the employer to fill all the posts. What it is required to be done by the employer is to give satisfactory reasons for not appointing the candidates, who, in this case, had been provisionally selected. Reasons which are neither whimsical nor arbitrary.

7.2. Therefore, given the foregoing, insofar as the first issue is concerned, it would have to be answered in favour of DMRC.

8. As regards the other aspect, as to whether, in this particular instance, the DMRC had a good and a robust justification for reducing the posts, the answer to the same is found in the impugned notice, dated 22.09.2020. To appreciate this aspect of the matter, it would be appropriate to extract the relevant portion of the said notice:

“ xxx xxx xxx

DMRC had launched an Open Market Recruitment, in terms of Advertisement No. DMRC/HR/Rectt./I/2019, dated: 14.12.2019 (read with Addendum – I, dated: 01.01.2020), for a total of 1493 vacancies, spread across 38 categories of posts (regular and contractual). The Computer Based Tests (CBTs), were held between 17/02/2020 and 26/02/2020 and in keeping with the DMRC’s exacting standards, the Results/Panels came to be notified, w.e.f. 06/04/2020, amidst the nationwide lockdown.

II. The process, however, had to be halted midway and a review undertaken, in view of the telling effect of the pandemic on DMRC's operations and finances. As is well known, DMRC's operations were suspended w.e.f. 22/03/2020 and continued to be so, till 06/09/2020 – for a total of 169 days. Sometime prior to the suspension and even after the re-opening, DMRC's ridership had/have taken a big hit. The situation would take quite some time to stabilise/normalise, as is foreseen.

III. Both the fare and the non-fare box revenues, have been severely impacted, as a result. In addition, DMRC has had to incur extra expenditure, by way of preventive measures to offset the effect of the pandemic. Work processes have been re-defined and reviews across DMRC's work centers/activities, have been undertaken, as required. Cost cutting measures have also been put in place, as a result thereof. This also necessitated a review of the DMRC's ongoing recruitment exercise and the details thereof, is as at Annexure-I.

IV. DMRC fully empathises with the candidates who have been de-panelled/have been affected, as a result of the reduction in the vacancies and appreciate their sentiments in the matter. DMRC has been constrained on account of the compelling circumstances, arising out of the pandemic, in effecting the reduction and hopes to engage with the candidates in the future, on a more pleasant and happy note. To address the various issues that may be engaging the mind of the candidates, FAQs have been prepared, as at Annexure-II.

V.....”

[Emphasis is ours]

9. Having regard to the aforesaid extract from the notice, we are of the opinion that, the DMRC took the decision to reduce number of posts, since there was a steep decline in its revenue, even while it had to incur expenditure to undertake preventive measures in the wake of coronavirus. Given these circumstances, it had to resort to the cost cutting measures which included reducing the number of posts that it had advertised in December 2019.

10. Thus, we are of the opinion that no interference is called for with the impugned order passed by the Tribunal. The above-captioned writ petitions, being without merit, are, thus, dismissed.

11. We may add, before we part with the judgment, that, we had, in fact,

suggested to the petitioners on the previous date *via* Mr. Aggarwal, after confabulating with Mr. Krishna, as to whether they would be agreeable to keeping the panel alive for the next six months purely on compassionate grounds. In other words, in case, if the situation were to change in the next six months and DMRC were to make appointments, it could then operate the existing panel. Although Mr. Krishna had taken instructions, in this behalf, and was agreeable to such a direction being issued, Mr. Aggarwal has rejected the said proposal, albeit, on instructions.

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12. At this stage, Mr. Aggarwal says that the petitioners will accept the offer made by Mr. Krishna, on behalf of the DMRC, pursuant to our suggestion. The existing panel will, thus, operate for the next six months. It is made clear that the existing panel will operate only *qua* new vacancies or vacancies caused on account of death, resignation, dismissal or removal of the incumbent appointee.

13. The writ petitions are closed with the aforesaid observations. The pending applications shall also stand closed. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JULY 22, 2021

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Click here to check corrigendum, if any