

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Harish Tandon

and

The Hon'ble Justice Shampa Dutt (Paul)

**WP.CT 74 of 2022
Union of India & Ors.
Vs.
Raju Ghosh.**

**Mr. Atarup Banerjee,
Mr. Rivu Dutta.**

.....For the Petitioners.

**Mr. Ujjal Roy,
Mr. Arpa Chakraborty,
Mr. Ashoke Chakraborty.**

.....For the Respondent.

Heard on : 17.08.2022

Judgment on : 26.09.2022

Shampa Dutt (Paul), J.:

The petitioners (Union of India and others) have filed this application challenging the order dated 21st March, 2022 passed by the Central Administrative Tribunal, Kolkata in O.A. no. 1676 of 2017 wherein a speaking order dated 20.03.2017 passed by the petitioner authorities was quashed and the matter was remanded to the same authority to issue an appropriate order in the light of RBE prevailing as on the date of notification (14.12.2010) untrammelled by the subsequent notification of 2014 (RBE no. 06 of 2014 dated 10.01.2014). The petitioner's case against the said order of the tribunal is that Railway Board's instruction vide RBE 06/2014, dated 10.01.2014 was issued before the publication of the final panel in respect of Employment Notice No.-0110 dated 14.12.2010. As such, the notification of 2014 is applicable in the respondent's case. It is the further case of the petitioner that merely passing the written examination and qualifying the Physical Efficiency Test does not create any right to have an appointment unless otherwise there is a blatant illegality in the selection process.

The respondents/petitioners case before the Tribunal was that he was an applicant for appointment in Group D post in respect of Employment Notice No.-0110 dated 14.12.2010. He was declared successful in the written test and also Physical Efficiency/Endurance Test. On successful completion of PET the applicant was asked to submit original documents for verification and the same was duly verified by the respondent authorities. The respondent's name was

not in the panel of selected candidates in respect of the panel prepared against notified vacancies of EN No.-0110 dated 14.12.2010. Further case of the respondent is that the Railway Board issued a circular being RBE No. 121 of 2005 regarding procedure for recruitment of Group D staff of Indian Railways. Clause 7.8 of the said circular lays down:

“7.8 medical examination of the candidates who have passed the written examination and PET shall be done before their empanelment. Accordingly only those who have passed the medical examination will be included in the final merit list.”

From the records it is apparent that the respondent cleared both the written test and the PET examination and as such he had a legitimate expectation of being called for the medical examination as per clause 7.8 of the Circular no. 121 of 2005. But the respondent was not called for the medical examination.

The respondent's further case is that on the date of notification of employment Notice No.-0110 dated 14.12.2010, RBE No. 73 of 2008 was applicable.

RBE 73/2008 was a clarification of RBE 121/2005.

Subject: Recruitment of Group ‘D’ staff on Indian Railways – calling of candidates for document verification regarding.

Reference: This office letter of even number dated 18.07.2005 (Bahri's 121/2005,p-117), 29.09.2005 (Bahri's

166/2005,p-184), 01.11.2006 (Bahri's 164/2006,p-198) and 12.03.2007 (Bahri's 37/2007,p-69).

Even where the number of candidates available after document verification exceeds the number of vacancies, the panel finalized by RRC (Railway Recruitment Cell) shall be equal to number of vacancies only. In case, the Railway administration, after giving stipulated joining time to the selected candidates, certifies that certain number of candidates have not turned up within the specified period another panel equal to the number of candidates have not turned up within the specified period another panel equal to the number of candidates finally not turning up for taking appointment will be supplied by RRC. Before calling for replacement in lieu of the candidates finally not turning up for taking appointment, CPO shall personally satisfy himself that the procedure for cancellation of the offer of appointment to the originally empanelled candidates has been strictly followed under no circumstances, the number of candidates covered in the original as well as replacement panels shall exceed the number of the vacancies indented by the Railway.

Replacement panels shall include only such number of reserved/un-reserved candidates as have not turned up as per original panel.

O.A. No. 1703 of 2015 was moved by the respondent and others before the Central Administrative Tribunal on the self same grievance. The Tribunal disposed of the application vide order dated 20.02.2017 wherein the Counsel for the both sides consented to withdraw the said O.A. and liberty was granted

to the applicants/respondents to make a representation to the concerned authority within a period of four weeks and if such representation is preferred within the said period the same be considered as per rules in force and the result based on a reasoned and speaking order be communicated to each of the applicants separately within a time frame.

Vide no. RRC/R/OA/1703/2015(0110) dated 20.03.2017 the Chairperson/RRC/ER passed a reasoned order, on the direction of the Hon'ble CAT's order dated 20.02.2017 and was pleased to hold as follows:

"..... applicant, Raju Ghosh (OBC), Roll No. 52122869, applied for the post of PB-I (Rs. 5200-20200/-) with GP Rs. 1800/- against EN No. 0110 and successfully qualified in the written examination followed by Physical Efficiency Test (PET) in the ratio of 1:3.

The criteria for recruitment in PB-I with GP 1800/- through RRC-ER is that the candidate has to qualify in the written test as per the re....(illegible) standard followed by Physical Efficiency Test as per merit in the ratio 1:3 as well as fitness in prescribed medical category as per merit in the ratio 1:1 of notified vacancy. Merit position is determined as per marks obtained by the candidates in the written examination.

Only qualifying in the written examination and PET does not confer any right for calling the candidates in the medical examination. Candidates are called for medical examination strictly as per merit in the ratio of 1:1 of the total notified vacancy and candidates who come into the zone of consideration as per merit, he/she will be called for medical examination. The last eligible OBC candidate, who was called for medical examination and provisionally

emplanned against EN No. 0110 scored 47.66 marks out of 150, whereas Raju Ghosh, Roll No. 52122869 is 45.78 marks out of 150. So the candidature of Raju Ghosh against EN No. 0110 could not be considered for medical examination.”

The respondent case before the Tribunal in O.A. no. 1676 of 2017 was that inspite of the said speaking order as per direction of the Hon’ble CAT no replacement panel was prepared by the writ petitioners. As 375 vacancies from the original panel was not filled up, the representation was not disposed of in accordance with rules and regulations. It has been submitted before the Ld. Tribunal that in reply to an RTI. It was informed that 137 candidates were absent/unfit in medical examination. It was further stated that **vacancies category as per EN no. 0110 have been notified in EN no. 0112.** It is seen that admittedly the writ petitioners included the vacancies in respect of EN no. 0110 in the notification EN no. 0112, which is clearly against RBE no. 73 of 2008 which clearly states about preparing a replacement panel in respect of number of candidates finally not turning up for taking appointment. This RBE no. 73 of 2008 was clearly applicable in respect of EN no. 0110. It stated about preparing a replacement panel. It is the case of the writ petitioner that the same has been done as per RBE no. 06 of 2014 dated 10.01.2014 which was applicable to EN no. 0110 as RBE no. 06 of 2014 was in force when the final panel in respect of EN 0110 was published. The respondent prayed before the Tribunal in O.A. no. 1676 of 2017 for the following relief(s):

(a) Speaking order no. RRC/ER/OA/1703/2015(010) dated 20.03.2017 issued chairman, RRC cannot be sustained in the eye of law and as such same may be quashed.

(b) An order do issue directing the respondents to call the applicant to appear in the medical test for appointment in Group D Post as she was declared suitable both in the written and PET Test and also to grant her appointment in Group D Post.

The Ld. Tribunal finally disposed of the said O.A. of 2017 vide order dated 21.03.2022 quashing the speaking order dated 20.03.2017 and was pleased to remand the matter to the competent authority to issue an appropriate order in the light of RBE prevailing (RBE 73 of 2008) as on the date of notification untrammelled by a subsequent notification of 2014 (RBE 06 of 2014 dated 10.01.2014).

Hence this writ petition by the Union of India and others.

Appellant/writ petitioner's case

It is the case of the writ petitioners/appellants that selection process against Employment Notification Number herein referred as EN No. 0110 involved written examination, followed by physical efficiency test (PET) and document verification (DV). The marks obtained by the candidates in written examination was the main criteria for selection and physical efficiency test (PET) and document verification(DV) was of qualifying nature. Among the qualified candidates of written examination, candidates were called for PET in

the ratio of 1:3 as per community wise merit, and the directives of Railway Board. Among the PET qualified candidates, candidates were sent for medical examination in the ratio of 1:1 of community wise notified vacancies. After medical examination, candidates who are declared fit in the prescribed category, were empanelled.

It is further stated by the writ petitioners/appellants that the case of the respondent herein was out of zone of consideration for which he was not called for medical examination. That the respondent belongs to OBC community and it was noticed from the record that there was sufficient presence of OBC candidates in the panel of EN no. 0110. It is further case of the writ petitioner that Metro Railway reduced their demand for staff of 24 candidates. Balance 12 candidates who were found to be temporarily medically unfit, they could not be empanelled.

It is further stated that there is no logic for the claim of replacement panel by OBC candidate as more than 27% OBC candidate were empanelled. Besides there was no demand raised from units for replacement panel and Railway Recruitment Cell can not issue replacement panel on its own.

The appellant writ petitioners have relied upon a circular bearing RBE No. 06/2014 No. E (NG)-II/2008/RR-1/33 dated :10.01.2014, issued by Director Estt. (N)-II, Railway Board whereby and where under it has been indicated that :-

“.....it is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in pay Band-1 (Grade Pay Rs. 1800) is now done annually in terms of instructions contained in Board's letter No. E(NG)II/2007/RR-1/58 dated 08/12/2011.....”

It is further stated that when RBE 06/2014 was issued at that time the panel against E.N. NO. 0110 was still under process and the panel was published later on, the recruitment process of EN No. 0110 achieved finality and panel was published on 29th April, 2014 as per directives issued by the Railway Board. Thus the claim of the respondent herein for replacement panel is not tenable one.

It is further stated that the jurisdiction of Railway Recruitment Cell is limited up to empanelment of selected candidates and Railway Recruitment Cell has no jurisdiction over appointment and issue replacement panel unless demand is placed as per rules.

It is further submitted that RBE 06 of 2014 was issued by the Railway Board before date of publication of final panel in respect of EN No. 0110 and the RRC-ER is bound to follow the directive of Railway Board. The petitioners case is that the Ld. Tribunals order under appeal has been passed ignoring all these facts.

It is further submitted by the petitioners that the respondent does not inherit the right to claim for replacement panel, given the fact that the final

panel was published on 29.04.2014, whereas Railway Board vide its circular date 10th January 2014 had clearly instructed to not allow replacement panel and the Railway Board's instruction was laid out much before the publication of final panel. It is applicable in respect of the case of the respondent herein and as such the order under appeal is liable to be set aside. The petitioner has further stated that the final panel of EN NO. 0110 was published strictly as per merit on 29/04/2014. The currency of panel is long over having a life span of two years from the date of publication of the final panel. In terms of RBE 121/2005 (Para-7.11) the life span of the panel expired on 28.04.2016. That, future employment notices i.e. E.N. No. 0112, E.N. No. 0113 & CEN-01/2015, CEN-02/2018 were also published and provisional panel of all employment notifications were also published. Hence at this juncture, it is not possible to prepare replacement panel.

It is further stated that the Railway Recruitment Cell is only restricted to the preparation of panel and the selected candidates to their panel according to their position in the merit list.

In **RBE 73/2008**, it was clearly stated regarding the procedure of replacement panel, which was as follows:-

“Before calling for replacement in-lieu of the candidates finally not turning up for taking appointment, CPO shall personally satisfy himself that the procedure for cancellation of the offer of appointment to the originally empanelled candidates has been strictly followed. Under no circumstances, the number

of candidates covered in the original as well as replacement panels shall exceed the number of the vacancies indented by the Railway.”

Since no demand was raised by indenting units for replacement besides OBC had sufficient representation in panel against EN No. 0110, there is no logic and ground for RRC-ER to issue replacement panel on its own. Moreover much prior to the publication of final panel, the RBE 06/2014 being annexure “P-3” herein was issued by Railway Board and RRC is bound to follow the same.

As such it is stated by the petitioner that the Ld. Tribunal did not adjudicate the dispute in their proper perspective and the said order is liable to be set aside as it has been passed by violating the principle of natural justice.

Thus from the pleadings and other materials on record the following facts have come before this court.

The respondent/petitioner was an applicant in EN-0110 dated 25.02.2011 and clause 7.8 in RBE 121/2005 was applicable.

“7.8 Medical examination of the candidates who have passed the written examination and PET shall be done before their empanelment. Accordingly, only those who have passed the medical examination will be included in the final merit list.”

RBE 73/2008 was a clarification in respect of RBE 121/05 and clause 4 (ii) and (iii) there in is as follows:-

(ii) Even where the number of candidates available after document verification exceeds the number of vacancies, the panel finalized by RRC (Railway Recruitment Cell) shall be equal to number of vacancies only. In case, the Railway Administration, after giving stipulated joining time to the selected candidates, certifies that certain number of candidates have not turned up within the specified period, another panel equal to the number of candidates finally not turning up for taking appointment will be supplied by RRC. Before calling for replacement in lieu of the candidates finally not turning up for taking appointment, CPO shall personally satisfy himself that the procedure for cancellation of the offer of appointment to the originally empanelled candidates has been strictly followed. Under no circumstances, the number of candidates covered in the original as well as replacement panels shall exceed the number of the vacancies indented by the Railway.

(iii) Replacement panels shall include only such number of reserved/un-reserved candidates as have not turned up as per original panel.

Inspite of clearing the written examination and PET the applicant was not called for medical examination as per clause 7.8 of RBE 121/05 and

inspite of clarification of RBE 121/05 by RBE 73/2008, no replacement panel was prepared by the writ petitioners.

Speaking order dated 20.03.2017 passed as per Hon'ble CAT/Calcutta's order dated 20.02.2017 lays down as follows:-

- “(i) The applicant, Raju Ghosh (OBC), Roll No. 52122869, applied for the post of PB-I (Rs. 5200-20200/-) with GP Rs. 1800/- against EN No, 0110 and successfully qualified in the written examination followed by Physical Efficiency Test (PET) in the ratio of 1:1.
- (ii) The criteria for recruitment in PB-I with GP- Rs. 1800/- through RRC-ER is that the candidate has to qualify in the written test as per the re.....(illegible) standard followed by Physical Efficiency Test as per merit in the ratio 1:3 as well as fitness in prescribed medical category as per merit in the ratio 1:1 of notified vacancy. Merit position is determined as per marks obtained by the candidates in the written examination.
- (iii) Only qualifying in the written examination and PET does not confer any right for calling the candidates in the medical examination. Candidates are called for medical examination strictly as per merit in the ratio

of 1:1 of the total notified vacancy and candidates who come into the zone of consideration as per merit, he/she will be called for medical examination. The last eligible OBC candidate, who was called for medical examination and provisionally emplaned against EN No. 0110 scored 47.66 marks out of 150, whereas Raju Ghosh, Roll No. 52122869 is 45.78 marks out of 150.”

So the candidature of Raju Ghosh against EN No. 0110 could not be considered for medical examination.

That vide RBE no. 06/2014 dated 10.01.2014 the writ petitioner authorities clearly laid down as follows:

“It is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in Pay Band-1 (Grade Pay: Rs. 1800) is now done annually in terms of instructions contained in Board’s letter No. E(NG)II/2007/RR-1/58 dated 08/12/2011.”

In the reply by the writ petitioners/opposite parties before the Tribunal it has been categorically stated on affidavit, that RBE No. 73/2008 was issued vide Railway Board letter No. E(NG)-II/96/RR-1/62/Vol.II dated 17.06.2008. But when the panel against EN No. 0110 reached finality and the panel was published on 29.04.2014, the directives of Railway Board was not to process any replacement panel as per RBE No. 06/2014, issued vide

Railway Boards letter No. E(NG)-II-2008/RR-1/33 dated 10.01.2014. The para mentions- "It is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in Pay Band-1 (Grade Pay:Rs. 1800) is now done annually in terms of instructions contained in Board's letter No. E (NG)II/2007/RR-1/58 dated 08.12.2011". In view of the above, replacement panel is not tenable.

Admittedly the writ petitioner did not call the applicant/respondent for the medical examination as per RBE 121/05 clause 7.8 and admittedly no replacement panel was prepared as per RBE 73/08.

RBE 06/14 clearly lays down that no replacement panel are to be given against non joining of selected candidates.

Admittedly RBE 06/14 was not in existence on the date of EN 0110 dated 25.02.11 in which the respondent/petitioner is an applicant.

As such RBE 21/2005 and RBE 73/08 should be applicable in respect of EN 0110 dated 25.02.2011 and not RBE 06/2014.

Case of the respondent is that instead of preparing a replacement panel in respect of vacancies in EN 0110 the said vacancy has been carried forward and declared in EN 0112 against the principle of natural justice.

Ld. Advocate for the writ petitioner has relied upon on the judgment of the Supreme Court in Civil Appeal No. 9746 of 2011 with Civil Appeal No. 9747 of 2011 dated 20.05.2022. *State of Himachal Pradesh and others Vs. Raj Kumar*

and others (Civil Appeal No. 9746 of 2011). The said appeal was heard with *Civil Appeal no. 9747 of 2011 Anurag Sharma and others Vs. the State of Himachal Pradesh and others*. The Supreme Court in the judgment delivered by a three Judge Bench considered several judgments passed by the court wherein a number of decisions of the court have followed the decision in *Y.V. Rangaiah Vs. J. Sreenivasa Rao (1983) 3 SCC 284* and it was further held that far more decision of the court have distinguished it. The court then felt that it needs to examine the issue afresh.

The question before the court was, whether appointments to the public posts that fall vacant prior to the amendment of the rules would be governed by the old rules or the new rules.

The court after examining the principle in the context of the constitutional position of services under the state, and having reviewed the decisions that have followed or distinguished Rangaiah in that perspective, the court has formulated the legal principles that should govern services under the state applying the said principles. The court has held that the broad proposition formulated in *Rangaiah* does not reflect the correct constitutional position. The court then laid down the following principles:-

- (a) The statement in *Y.V. Rangaiah v. J. Sreenivasa Rao* that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the

Union and the States under part XIV of the Constitution. It is hereby overruled.

- (b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

Before going into the findings of the Supreme Court in the said Civil Appeals, the judgment of *Y.V. Rangaiah and others J. Sreenivasa Rao and others*, AIR 1983 SC 852 needs to be included in the discussion.

In Y.V. Rangaiah and Ors. vs. J.Sreenivasa Rao and Ors. (AIR 1983) SC 852, the court held:

“.....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 been 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.....”

In the Civil Appeals being no. 9746 of 2011 and 9747 of 2011, order dated 28.12.2009 of the High Court of Himachal Pradesh in W.P. no. 3028/2008 was challenged before the Three Judge Bench of the Supreme Court. In the judgment under appeal dated 28.12.2009, the High Court accepted (Division Bench) that the vacancies which arose prior to the promulgation of New Rules were to be filled only as per the 1966 Rules and not as per the New Rules. The High Court formulated the issue and proceeded to allow the Writ Petition on the ground that it is covered by the decision of this Court in *Y.V. Rangaiah v. J. Sreenivasa Rao* (supra). The operative portion of the judgment is extracted herein for ready reference:

“The question whether the vacancies occurring before the amendment to the Recruitment and Promotion Rules are to be filled up as per the old Recruitment and Promotion Rules or by way of new Recruitment and Promotion Rules is no more res integra in view of the law laid down by their Lordships of this Court in Y.V. Rangaiah and others versus J.Sreenivasa Rao, (1983) 3 SCC 284.”

The Three Judge Bench of the Supreme Court in the said Civil Appeals (*State of Himachal Pradesh & Ors. vs. Rajkumar & Ors.*) has taken note of the fact that “there are a large number of decisions that have either followed the principle in Rangaiah or have distinguished it”.

The court was of the view that for clarity and certainty, it is necessary for the court to review the subject and restate the principle in simple and clear terms. The court proceeded to first examine the principle laid down in Rangaiah and also proceeded to verify it in the context of the constitutional position.

The Three Judge Bench while deciding the said Civil Appeal vide judgment dated 20th May, 2022, on examining the principle laid down in Rangaiah was of the opinion.

“.....the question that arose in Rangaiah’s case related to the mandatory obligation under the old rules to prepare an approved list of candidates and also the number of persons to be placed in the list as per the vacancies available. It is in this context that the Court observed that the vacancies would be governed by the old rules. This decision is not to be taken to be laying down an invariable principle that vacancies occurring prior to the amendment of the rules are to be governed by old rules. It is important to note that the Court has not identified any vested right of an employee, as has been read into this judgment in certain subsequent cases.....”

The court then proceeded to examine the constitutional position and the status that governs the relationship between an employee and the State. Relying on Article 309/310 of the Constitution and judgments of the court In *Union of India Vs. Tulsiram Patel* (1985) 3 SCC 398, *B.P.Singhal Vs. Union of India* (2010) 6 SCC 331, *Roshan Lal Tandon Vs. Union of India* (1968) 1 SCR

185, considered the constitutional status of a person in employment with the State. The court laid down the propositions emanating from the principles laid down in these precedents (cases) and was of the view that in a recruitment by State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

And finally the Three Judge Bench held that the constitutional status of a person in employment with the State involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. The court further held that Rangaiah's case has not justified its observation by locating such a right on any principle or on the basis of the new rules.

The Three Judge Bench of the court then examined the cases that followed/applied or justified Rangaiah as follows:-

Decisions that followed Y.V. Rangaiah and others Vs. J. Sreenivasa Rao.

(1) P.Ganeshwar Rao Vs. State of Andhra Pradesh (1988) supplementary SCC 740.

The court held:-

“The introduction of the word “arising” in the above clause made it applicable only to those

vacancies which came into existence subsequent to the date of amendment.”

The Three Judge Bench of the Supreme Court was of the opinion that :-

“The Court has not identified any general principle of vested right of a public servant to be considered for vacancies arising prior to the amendment of the rules. Without any analysis, the Court observed that the principle as laid down in Rangaiah is applicable and proceeded with the interpretation of the new rules.”

(2) N.T. Devin Katti Vs. Karnataka Public Service Commission (1990) 3 SCC 157.

The Court in the said case relying upon A.A. Calton Vs. Director of Education and Anr. (1983) 3 SCC 33 and P. Mahendran and Ors. Vs. State of Karnataka (1990) 1 SCC 411 was of the view that:

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or Government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and Government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself

*indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules **are amended retrospectively** during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.”*

The Three Judge Bench was of the view:-

“Candidates who have applied on the basis of such qualifications have a right to be

considered on the basis of the advertisement and such a right cannot be taken away without making a retrospective amendment to rules is the ratio of this case.”

And further held that the issue in the said case is different from the one which was before the Supreme Court.

(3) State of Rajasthan Vs. R.Dayal (1997) 10 SCC 419.

The Court held:-

“This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.”

(4) B.L. Gupta Vs. M.C.D. (1998) 9 SCC 223.

The court held:-

“When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion.”

The Three Judge Bench was of the view that:-

“This is the fourth case which has merely followed Rangaiah without examining the principle.”

(5) Arjun Singh Rathore Vs. B.N. Chaturvedi, (2007) 11 SCC 605.

The Court held:-

“We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein...”

The view of the Three Judge Bench was:-

“We notice that the follow up cases have simply referred to Rangaiah when the Court felt that the selection process must be as per the rules which existed prior to the amendment. None of these cases recognise the existence of any vested right, nor do they referred to Constitutional position or the principle laid down in Roshan Lal Tandon’s case.”

(6) State of Bihar Vs. Mithilesh Kumar (2010) 13 SCC 467.

The Court held:-

“While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been negated by a change in policy after the selection process had begun.”

The Three Judge Bench was of the view:-

“This is a case of selection by way of an advertisement and not promotion of a Government servant from a post held by him. The Court observed that the terms of the advertisement could not have been altered to the prejudice of the respondent on the basis of a decision taken subsequently. There was no occasion for the Court to consider the status of a public servant in the context of rules governing his service.”

(7) Kulwant Singh Vs. Daya Ram, (2015) 3 SCC 177.

The Court held:

“The reference to the aforesaid proposition of law makes it vivid that the decision rendered by the Tribunal in Acchhar Chand case was in accordance with the precedent of this Court and, in fact the Tribunal clearly meant that.”

The court followed the principle in Rangaiah.

(8) Richa Mishra Vs. State of Chhattisgarh (2016)4 SCC 179.

The court held:-

“This is patent legal position which can be discerned from Y.V. Rangaiah v. J. Sreenivasa Rao [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284]....”

The Three Judge Bench was of the view that in the said case:-

“Also applied Rangaiah in the context of the facts and without any reference to the Constitutional position of the employment of a

Government servant and the principle laid down in Roshan Lal Tandon's case."

The analysis of the Three Judge Bench was as follows:-

"Except in the case of P. Ganeshwar Rao, which not only followed Rangaiah but also observed that the new Rules enabled the vacancies to be filled as per the Rules that existed prior to the amendment, all the other judgments adopted the principle in Rangaiah and directed appointments to be made as per the rules that existed when the vacancies arose. These cases do not discuss any source of such a right of a Government employee. There is also no reference to any rule, be it old or new, to enable effectuation of such a right. None of these cases refer to constitutional position of status or the principle laid down in Roshan Lal Tandon's case."

The Supreme Court in the Civil Appeals then proceeded to examine **the decisions that have distinguished Rangaiah's case.**

(1) Union of India Vs. S.S. Uppal (1996) 2 SCC 168.

The court while deciding the said case held:-

"The seniority of an officer appointed into the IAS is determined according to the seniority rules applicable on the date of appointment to the IAS. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time..."

(2) State Bank of India Vs. Kashinath Kher (1996) 8 SCC 762.

The court held :-

“It was held that the vacancies that had arisen prior to making the amendment to the Rules should be filled in accordance with the rules that were in vogue prior to the amendment and vacancies that arose subsequently should be filled according to the amended Rules. That situation does not apply to the factual matrix.”

The Three Judge Bench was of the view:-

“It is interesting to note that the learned Judges assumed that Rangaiah’s case considered a question of “retrospective application of the rule to the vacancies existing prior to the rules”. In fact, Rangaiah does not observe anything like that and we would leave it at this.”

(3) K. Ramulu Vs. S. Suryaprakash Rao (1997) 3 SCC 59.**The court held:-**

“It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent.....Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Directors of Animal Husbandry

Department in accordance with the repealed Rules and to operate the same.”

The Three Judge Bench was of the view:-

“This judgment clearly recognises the principle that a policy decision taken by the Government in public interest would prevail over any claim to fill up the vacancies. Further, when such a decision is taken, the employee has no vested right for being considered for promotion in accordance with repealed rules.”

(4) Rajasthan Public Service Commission Vs. Chanan Ram (1998) 4 SCC 202.

The Court held:-

“A candidate has no vested right to get the process completed and at the most the Government could be required to justify its action on the touchstone of Article 14 of the Constitution. In the facts of the present case it cannot even be suggested that the action of the State of Rajasthan was in any way arbitrary in intercepting the earlier recruitment process pursuant to the first advertisement dated 05-11-1993 Annexure P-1 as the Rules themselves had got amended and the posts earlier advertised had ceased to exist.”

The Three Judge Bench of the Supreme Court was of the view:-

“As is evident from the above, after referring to the decisions in Rangaiah, P. Ganeshwar and other decisions, the Court adopted the principle that the State has a right to stop a recruitment process at any time before the appointment takes place. This is to say that there is no vested right to get the process

completed. This is important for the reason that while it holds that there is no right of an employee, it recognises the obligation of a State to justify its action on the touchstone of the Article 14 of the Constitution.”

(5) G. Venkateshwara Rao Vs. Union of India (1999) 8 SCC 455.

The court in the said case held:-

“We have gone through the judgment (Rangaiah) and in our opinion, the ratio thereof has no application. It was a case dealing with delay in preparing panel for promotional cadre under the then existing rules which were substituted by new rules. The panel was prepared under the new rules. Coming to the second contention as regards restructuring of the cadre, it is quite clear that the restructuring appears to have been made for the efficient working in the Workshop Unit. We, therefore, do not see any substance in this contention.”

The Three Judge Bench in the Supreme Court was of the view relating to the said case as follows:-

“While distinguishing Rangaiah’s principle this Court recognised yet another factor on the basis of which the Government need not fill up the vacancies as per the old rules. The reason mentioned in this case is restructuring the cadre. While upholding the contention that restructuring is undertaken for efficient working of the unit, this Court justified the decision of the Government not to fill up the vacancies as per the principle in Rangaiah.”

(6) Delhi Judicial Services Association Vs. Delhi High Court, (2001) 5 SCC 145.

The Court considering the said case held:-

“The aforesaid decision will have no application to the case in hand inasmuch as in the Delhi Higher Judicial Service there is no requirement of preparation of any panel or list of candidates eligible for promotion by any particular date. Then again, merely because posts were created under Rule 16, it was not obligatory for the appointing authority to fill up those posts immediately...”

The Three Judge Bench held:-

“This decision recognised yet another exception to the application of the principle in Rangaiah case. Court held that even if vacancies were created prior to the amendment of the Rules, there is no obligation upon the authorities to fill those vacancies immediately. The decision made direct inroads into the principle of Rangaiah.”

(7) Shyama Charan Dash Vs. State of Orissa (2003) 4 SCC 218.

The court in the said case held:-

“when resolved to be done away with in the undoubted exercise of its power by the State, as a matter of policy, cannot be legitimately challenged by the appellants merely because due to the enlargement of the horizon of consideration resulting therefrom, the chances of consideration for promotion of Industrial Supervisors become diminished. The reasons, which weighed with the State Government in doing so, are found to be genuine, real and substantive and meant to do substantial justice to all categories or grades of posts equated for purposes of Rule 7 of the Rules.”

The Three Judge Bench of the Supreme Court held:-

“This is again a case where the Court upheld the decision of the Government not to fill up

the vacancies as per the old rules. The decision of the Government was upheld because the Court found that the policy decision is genuine, real and substantive and meant to do substantial justice to all categories or grades of posts equated for the purpose of Rule 7. These decisions demonstrate that this Court never applied the principle in Rangaiah's case when the policy decision of the Government required amendment of rules for a justifiable reason."

(8) State of Punjab Vs. Arun Kumar Aggarwal (2007) 10 SCC 402.

The Court held:-

"We hold that the Government has taken a conscious decision not to fill up the posts under the old 1941 Rules. The impugned order of the High Court is set aside. We may at this stage point out that the problem seems to have been compounded by the inaction/casual approach of the Government detrimental to public interest."

The Three Judge Bench of the Apex Court held:

"This is yet another case where deviating from Rangaiah's principle this Court recognized the decision of the Government not to fill the vacancies arising prior to the amendment as per the old rules for the reason that there is a conscious decision of the Government."

(9) Deepak Agarwal Vs. State of U.P., (2011) 6 SCC 725.

The Court held:-

"We are of the considered opinion that the judgment in Y.V. Rangaiah case would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and

Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

In the present case, there is no statutory duty cast upon the respondents to either prepare a year wise panel of the eligible candidates or of the selected candidates for promotion.”

The court was of the view that the matter before it was covered by the ratio of the judgment of the Supreme Court in Dr. K. Ramulu. The Three Judge Bench was of the view:

“This is a very important case which recognises many points of distinction.

- (a) The Court found that there is no statutory duty cast on the Government to prepare panels as in the case of Rangaiah,*
- (b) a candidate has a right to be considered only as per the existing rules, i.e., “the rule in force”,*
- (c) the rule applicable is the rule in force as on the date of consideration,*

- (d) the principle in Rangaiah has no universal application,
- (e) for reasons germane to its decision, the Government is entitled to take a conscious decision about the filling of the vacancies and the rules applicable. This decision made deep inroads into the principle laid down in Rangaiah's case."

(10) M.I. Kunjukunju Vs. State of Kerala (2015) 11 SCC 440.

The court held:

"In the present case, the Rules have not been framed under the proviso to Article 309 of the Constitution of India. The legislature has framed the 1968 Act in exercise of power conferred under Article 309 of the Constitution of India. Under the 1968 Act, the State Government was empowered to make Rules either prospectively or retrospectively to regulate the recruitment and condition of service of persons appointed to public services and posts in question with the Department of Industry and Commerce of the State of Kerala.

In view of such delegation of power of the legislature to the State under the 1968 Act, the Special Rules framed by the State Government giving retrospective effect from 1-7-1983 cannot be held to be illegal or invalid."

The Three Judge Bench was of the view:

"This is a case where the Government made rules which clearly applied retrospectively to facts that existed before and after the amendment. The Court held that no right subsists for consideration to the vacancies that existed prior to the commencement of the rules."

(11) State of Tripura Vs. Nikhil Ranjan Chakraborty (2017) 3 SCC 646.

The court held:-

“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.”

The Three Judge Bench was of the view:-

“The Court reiterated that there is no rule of absolute application that vacancies must be filled as per the law existing on the date when they arose. The Court held that there is neither an accrued right nor is there a mandate under the rules to fill the vacancies as per the law that existed. The Court recognised the right of the Government to stipulate the vacancies in accordance with rules as amended.”

(12) Union of India Vs. Krishna Kumar (2019) 4 SCC 319.

The court held:-

“In considering the rival submissions, it must, at the outset, be noted that it is well settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284 :] has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time- frame. Hence, it has been held in H.S. Grewal v. Union of India [H.S. Grewal v. Union of India, (1997) 11 SCC 758 : 1998 SCC (L&S) 420] that the creation of an intermediate post would not amount to an interference with the vested right to promotion.....”

The Three Judge Bench was of the view:-

“Apart from holding that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of the law that existed on the date when they arose, this Court also held that the right is to be considered for promotion in accordance with rules as they exist when the exercise is carried out for promotion.”

(13) State of Orissa Vs. Dhirendra Sundar Das, (2019) 6 SCC 270.

The Court held:-

“On the aforesaid grounds, we hold that the judgment of the Division Bench is liable to be set aside since the contesting respondents did not have a vested or fructified right of promotion to OAS Class II posts which had arisen during the recruitment year 2008. The names of the contesting respondents were merely recommended for consideration. In the meanwhile, in 2009 the State had restructured the cadre, and abolished the OAS Class II cadre. The reconstituted cadre viz. the Orissa Revenue Service Group 'B' cadre came in its place. Hence, the direction of the Division Bench to appoint the contesting respondents in the vacancies which had occurred in the abolished cadre, in accordance with the repealed 1978 Rules, was contrary to law, and liable to be set aside.”

The Three Judge Bench held:-

“Following the line adopted in Deepak Agarwal v. State of U.P. (supra) this Court held that the respondents therein do not have a vested and fructified right and therefore held that the appointments need not be made as per the old rules.”

(14) Rajasthan State Sports Council Vs. Uma Dadhich (2019) 4 SCC 316.

The court held:

“The judgment in Y.V. Rangaiah v. J. Sreenivasa Rao dealt with a situation where the rules required that the promotional exercise must be completed within the relevant year. Rangaiah case [Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284], has hence been distinguished in the judgments noted above.”

The Three Judge Bench in respect of the said decision held:-

“The Court considered a large number of decisions that distinguished Rangaiah’s case and held as a matter of principle that rules that exist on the date when the case for promotion was taken up would hold the field. The Court further observed that there is no rule which specifically mandates that the vacancies prior to the amendment must be filled as per the rules that existed and not the new rules. This is a complete reversal of the principle set to have been laid down in Rangaiah’s case.”

(15) D. Raghu Vs. R. Basaveswarudu, (2020) 18 SCC 1.

The Court held:-

“The High Court was in error in holding that it has to be necessarily held that the vacancies which arose prior to the revised Recruitment Rules coming into force has to be filled up under the then existing Rules (the 1979 Rules) relying upon case law including Rangaiah. There was a conscious decision taken to not fill up vacancies based on the restructuring, and what is more, letters dated 28-10-2002 and 14-11-2002 show that promotion to the post of Inspector was to be effected based on the new Recruitment Rules.”

The analysis of the Three Judge Bench of the Supreme Court in respect of a review of the 15 cases that have distinguished *Rangaiah* held that the court has been consistently curbing out exceptions to the brought proposition in *Rangaiah*.

The Three Judge Bench further held:-

“The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah’s case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the

amendment, the State cannot be directed to consider the cases.”

The court further held:-

“Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.”

The court has for further clarification and certainty held:-

(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, “the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules”, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

The respondents before this court has relied upon a ruling cited in **(2019) 12 SCC 798 Dinesh Kumar Kashyap and others vs. South East Central Railway and others**. The facts in the said case is very similar to the case before this court. In **Dinesh Kumar** the court was considering a case in which an advertisement was issued Railways (as in this case) on 15.12.2010 inviting applications for filling up certain posts.

In the case before this court advertisement EN no. 0110 dated 25.02.2011 was issued inviting applications for certain posts. RBE no. 121/05 dated

18.07.2005 was in existence on the date of the advertisement. Clause 7.8 stated:-

“7.8 medical examination of the candidates who have passed the written examination and PET shall be done before their empanelment. Accordingly only those who have passed the medical examination will be included in the final merit list.”

RBE 73/2008 dated 17.06.2008 was issued clarifying RBE 121/2005 and clause 4 (ii) and (iii) of the said notification clearly laid down:-

- (ii) Even where the number of candidates available after document verification exceeds the number of vacancies, the panel finalized by RRC (Railway Recruitment Cell) shall be equal to number of vacancies only. In case, the Railway Administration, after giving stipulated joining time to the selected candidates, certifies that certain number of candidates have not turned up within the specified period, another panel equal to the number of candidates finally not turning up for taking appointment will be supplied by RRC. Before calling for replacement in lieu of the candidates finally not turning up for taking appointment, CPO shall personally satisfy himself that the procedure for cancellation of the offer of appointment to the originally empanelled candidates has been strictly followed. Under no circumstances, the number of

candidates covered in the original as well as replacement panels shall exceed the number of the vacancies indented by the Railway.

- (iii) Replacement panels shall include only such number of reserved/un-reserved candidates as have not turned up as per original panel.

The view of the Supreme Court in ***Dinesh Kumar*** was in respect of the same nature of instructions which were followed by South East Central Railways the respondent therein. Para 2 of the judgment is as follows:-

“ * * *

4. This shall, however, be done with the following proviso:

(i) It has to be brought out clearly in the call letter to the candidate that the purpose of calling 20 per cent candidates over and above the number of vacancies at the time of document verification is primarily to avoid shortfall in the panel and that merely calling a candidate for document verification does not, in any way, entitle him/her to an appointment in the Railways.

(ii) Even where the number of candidates available after document verification exceeds the number of vacancies, the panel finalised by RRC (Railway Recruitment Cell) shall be equal to the number of vacancies only. In case, the Railway Administration after giving stipulated joining time to the selected candidates, certifies that certain number of candidates have not turned up within the specific period, another panel equal to the number of candidates finally not turning up for taking appointment will be supplied by

RRC. Before calling for replacement in lieu of the candidates finally not turning up for taking appointment CPO shall personally satisfy himself that the procedure for cancellation of the offer of appointment to the originally empanelled candidates has been strictly followed. Under no circumstances, the number of candidates covered in the original as well as replacement panels shall exceed the number of vacancies indented by the Railways; and

(iii) Replacement panels shall include only such number of reserved/un-reserved candidates as have not turned up as per original panel.”

Para 3 of the judgment reads as follows:-

“Para 3. *From a reading of the order [Avinash Kumar Kaiwart v. South Eastern Central Railway, 2015 SCC OnLine CAT 1602] passed by CAT it is apparent that the stand taken by SECR before the Tribunal was that the purpose of declaring the result of 20 per cent extra candidates is to ensure that in the eventuality of some of the candidates who are higher up in merit not turning up for document verification or being declared unfit in medical examination the unfilled posts can be filled from the reserved panel. It was the stand of SECR that the purpose of calling 20 per cent candidates was to primarily avoid shortfall in the vacancies filled. It was also submitted that merely calling the candidate for document verification does not give any vested right to the candidate to be appointed. It was further submitted that after 10-1-2014 the system of maintaining replacement panels has been discontinued. According to the Tribunal the appellants had no right to be appointed.”*

RBE 06 of 2014 issued by the Ministry of Railways on 10.01.2014 is the said order/notification which has been applied in the case before this court.

The relevant portion of the said notification reads as follows:-

“It is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in pay Band-1 (Grade Pay Rs. 1800) is now done annually in terms of instructions contained in Board’s letter No. E(NG)II/2007/RR-1/58 dated 08/12/2011.....”

Herein it is seen that by a subsequent notification the authorities directed that no replacement panels are to be given against non-joining of selected candidates, which appears to be totally against the notification which were applicable on the date of the advertisement.

In Dinesh Kumar the court further held:-

“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 position, 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.”

The court further held:-

“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.”

The contention of the respondent SECR before the court was also similar to the stand in the case before this court wherein also it has been contended by the appellants.

“It has been contended that before calling for replacement candidates the CPO was to satisfy himself that the procedure for cancellation of the order of appointment of the original empanelled candidates has been strictly followed. Which was not done, and the appellants could not be appointed.”

The court in Dinesh Kumar considering the contention of the respondent

SECR held:-

“This argument holds no merit. There is no indication in the pleadings that the vacancies were not to be filled up. If an official of Respondent 1 fails to do his duty the

appellants cannot suffer for the same. They are not at fault."

The contention of the respondents SECR before the court was:-

"That after the selection process in question two more selection processes were started in 2012 and 2013. Resultantly, three recruitment cycles were running concurrently and, therefore, the vacancies were filled up in the subsequent selections."

The court held :-

"The rights of the appellants who had appeared in the selection pursuant to the notification of 2010 could not be taken away by the selection processes started much later. They cannot be made to suffer for the delays on the part of SECR."

The court further held:-

"The fact that three simultaneous selection processes were undertaken, itself proves that Respondent 1 wanted to fill up all the posts and did not want any vacancies to be left unfilled. This negates the plea of Respondent 1 that it was not necessary to fill up the vacant posts."

Another submission raised on behalf of SECR is that the appellants have obtained lower marks than the cut-offs prescribed in the selection processes held in the years 2012 and 2013. This amounts to comparing apples to oranges. Every selection process has a different examination with different level of assessment. By no stretch of imagination can comparison be made between the three different selection processes."

Another argument raised is that recruitment policy is an executive decision and the courts should not question the efficacy of such policy. Neither the appellants nor this Court is questioning the efficacy of the policy contained in the letter dated 2-7-2008. All that has been done is to ensure implementation of the policy by Respondent 1, especially when it has failed to give any cogent reason to justify its action of not calling for candidates from the replacement list of extra 20 per cent candidates.”

Finally the Court in Dinesh Kumar allowed the appeals by issuing the following directions:-

“The benefit of this judgment shall only be available to those appellants who had approached CAT;

The appellants shall not be entitled to any back wages;

The appellants shall, for the purpose of seniority and fixation of pay be placed immediately above the first selected candidates of the selection process which commenced in the year 2012 and, immediately below the candidates of the selection list of 2010 in order of seniority;

The appellants shall be entitled to notional benefits from the date of such deemed appointment only for the purposes of fixation of pay and seniority.

Respondent 1 is directed to comply with the judgment and offer appointment to the eligible appellants within a period of three months from today.”

Findings

The Supreme Court in ***Rajkumar and others vs. State of Himachal Pradesh and others*** examined the cases that followed /applied and cases that

distinguished *Rangaiah* and on extensive and exhaustive discussion came to the findings as stated above including the clarification given therein. Though several cases were discussed by the court, the judgment in *Dinesh Kumar Kashyap and others vs. South East Central Railway and others* (2019) 12 SCC 798 was not considered and as such not discussed. The Supreme Court in its (majority) judgment in *Dinesh Kumar* relied upon several cases but not *Rangaiah*. But considered a case which was very similar to the facts in the present case. It also relates to an advertisement for appointment by Railways. The facts and circumstances in the case relating to appointment, the advertisement, the notification, instructions and subsequent notification are exactly the similar as in the case of Dinesh Kumar. Where as the case before the court in *Raj Kumar & Ors. Vs. State of Himachal Pradesh and Ors.* is not similar to the facts and circumstances of the case before this court. The findings of the court in *Raj Kumar & Ors.* are the guidelines laid down in respect of appointments/promotion to vacancies to the extent that:-

- (a) There is no rule of universal application.
- (b) The right to be considered for **promotion** occurs on the date of consideration of the eligible candidates.
- (c) The Government is entitled to take up the conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules.
- (d) The principle in *Rangaiah* need not be applied because post so created as it is not obligatory for the appointing the authority to fill up the post immediately.

(e) When there is no statutory duty cast upon the state to consider appointments to vacancies that existed prior to the amendment the state cannot be directed to consider the cases.”

All these guidelines and principles as laid down by the court in *Raj Kumar and others* are to be followed by courts while deciding cases which involve the said questions. In the present case the questions involved are different and more guided by the decision in *Dinesh Kumar*.

Finally the Tribunal in its judgment under appeal before this court has relied upon a ruling cited in AIR 1972 SC 628. *Ex-Major N.C. Singhal Vs. Director General Armed Forces*. The Court on 17th December 1971 held:-

In the year 1965, Army Instruction No I/S of 1954, was superseded by Army Instruction No. 176 of 1965.

“The appellant submitted that his conditions of service were governed by the Army Instruction No. I/S of 1954 and according to para 13 thereof, the whole of his previous full pay commissioned service for purposes of pay by virtue of para 7 read with para 31 which provided that in case of A.M.C. Reserve Officers recalled to colour service during the emergency, the Army Instruction No. 176 will take effect from October 26, 1962, in the matter of ante-date, for promotion, T.A., leave and pay.”

The court finally held:-

“We think that the appellant's conditions of service were governed by para 13 of Army Instruction No. I/S of 1954 and his previous full pay-commissioned service should be taken in the matter of 'ante-date' for the purpose of his pay. The condition of service

in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative instruction which was given retrospective effect from 26th October, 1962.”

Thus, in view of the said discussion and findings as made above this court finds no reason to interfere with the findings of the Ld. Tribunal under appeal before this court except directing the respondent/appellant authorities to comply with the judgment and order under appeal **within three months** from the date of communication of this order.

Order under appeal is modified to the said extent.

Writ petition is accordingly disposed of.

Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

I agree,

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)