



W.P.Nos.605 to 607 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.P.Nos.605, 606 and 607 of 2017

P.Kandasamy

... Petitioner in
W.P.No.605/2017

S.Andi

... Petitioner in
W.P.No.606/2017

S.Palaniraj

... Petitioner in
W.P.No.607/2017

Vs.

1. Union of India, rep. by Joint Director,
Pay Commission, Railway Board,
New Delhi.

2. The General Manager, Southern Railway,
Park Town, Chennai-3.

3. The Divisional Personnel Officer,
Southern Railway, Madurai Division,
Madurai 625 016.

4. The Registrar, The Central Administrative Tribunal,
Madras Bench, Chennai-104.

... Respondents



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Prayer in W.A.No.605/2017: Writ Petition filed under Article 226 of Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent made in O.A.No.742/2014 dated 28.07.2016 to quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner as a Senior Permanent Way Supervisor with all consequential service and pecuniary benefits.

Prayer in W.A.No.606/2017: Writ Petition filed under Article 226 of Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent made in O.A.No.745/2014 dated 20.07.2016 to quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner as a Senior Permanent Way Supervisor with all consequential service and pecuniary benefits.

Prayer in W.A.No.607/2017: Writ Petition filed under Article 226 of Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent made in O.A.No.310/00746/2014 dated 16.11.2016 to quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner as a Senior Permanent Way Supervisor with all consequential service and pecuniary benefits.



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In all writ petitions

For petitioner : Mr.L.Chandrakumar
For Respondents : Mr.C.V.Ramachandramurthy
for R1 to R3

COMMON ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

The writ petitions have been filed, challenging the orders passed by the Tribunal, dismissing the claim of the petitioners to quash the impugned proceedings, cancelling the selection process for filling up the post of Senior Permanent Way Supervisor.

2. The facts and circumstances and the issues involved in the writ petitions are one and the same and hence, this Court is passing the common order.

3. According to the petitioners, they are working as Gang Mate in the Engineering Department of Madurai Division, Southern Railway and they had participated in the written examination conducted for selection to the



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post of Senior Permanent Way Supervisor against 50% promotional quota and they have passed the written examination and also deputed for the medical examination, wherein, they were declared as medically fit in Aye-three. In such circumstances, vide letter dated 03.07.2013, the Railway Board has decided to merge the post of Senior Permanent Way Supervisor with Junior Engineer with effect from 03.07.2013, even prior to the amendment of the Indian Railway Establishment Manual (IREM). Subsequently, vide proceedings dated 06.09.2013 and 11.02.2014, the Railway Board had cancelled the entire selection process for filling up the above said post. Therefore, the petitioners had filed original applications individually before the Tribunal to quash the above said proceedings and the same was ended against them, challenging the same, the present writ petitions have been filed.

4. The learned counsel appearing for the petitioners submitted that, in terms of policy decision of the Government, the post of Senior Permanent Way Supervisor was merged with Junior Engineer, however, when already written examination was conducted for filling up the post of Senior



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Permanent Way Supervisor under 50% quto and result was also declared, the merger can be taken only with prospective effect and not with retrospective effect. Further when the petitioners were having legitimate expectation that they had been admitted in the written examination and also passed the examination and hence panel would be released. However, without any reason, in the light of merger of posting, the Department had cancelled the entire selection process for filling up the above said post, which is illegal and arbitrary. He further submitted that the Tribunal did not consider the case of the petitioners that the cancellation of selection of the process would stall the promotion of the petitioners and therefore, their right of promotion would be deprived. Therefore the order passed by the Tribunal is liable to be set aside.

5. The learned counsel appearing for the respondents strongly objected to the contentions of the petitioners and submitted that the selection was cancelled in compliance to the policy decision of the Ministry of Railways and hence the same is in order. He further submitted that the petitioners have no right to claim promotion, but they have only the right to



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be considered for promotion according to the rules; and chances of promotion are not conditions of service and are defeasible. He also submitted that, since the post of Senior Permanent Way Supervisor is merged with the post of Junior Engineer, no post of Senior Permanent Way Supervisor is in existence to appoint the petitioners in the above said post. Therefore, the claim of the petitioners cannot be considered mechanically and hence he seeks for dismissal of the writ petitions.

6. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents 1 to 3. Also, we have perused the materials on record.

7. Admittedly, as per the office letter dated 18.12.2012, the petitioners had appeared for examination for the post of Senior Permanent Way Supervisor and as per the letter dated 17.06.2013, they had been declared as qualified for the above said post; and the medical authorities have also declared them as fit in Aye Three. However, the Railway Board had merged the post of Senior Permanent Way Supervisor with Junior Engineers, vide



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letter dated 03.07.2013, with effect from 03.7.2013 itself and consequent to the same, entire selection process for filling up the above post was declared as not finalised, vide proceedings dated 06.09.2013; and further, the entire selection process was cancelled, vide proceedings dated 11.02.2014.

8. According to the petitioners, the above merger of post with immediate effect of 03.07.2013 is illegal and arbitrary. Further, when the petitioners being admitted for examination and declared as qualified and medical fitness was also declared, such merger of post can only be prospective effect not with an retrospective effect.

9. On going through the records and submissions carefully, it shows that the petitioners had appeared for the written examination to the post of Senior Permanent Way Supervisor and the result was published by the Department vide letter dated 17.06.2013 as " pass". But, no selection process was conducted for the above said post, in view of the order for merging the post of Senior Permanent Way Supervisor with Junior Engineer, vide order dated 03.07.2013. Therefore, the petitioner cannot claim that



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their right for promotion is deprived, in view of merger of post. As rightly pointed out by the learned counsel for the respondents 1 to 3 the petitioners have only right to be considered for promotion according to the rules and the chances for promotion are not conditions of service and are defeasible.

10. In this regard, it may be relevant to rely upon the following decision of the Hon'ble Supreme Court:

1. Ajay Kumar Shukla and others vs. Arvind Rai and others reported in 2021 SCC Online SC 1195:

"36.....Right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right.

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right...."

2. Union of India v. Sangram Keshari Nayak, reported in (2007) 6 SCC 704 :

"11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration."

3. Union of India vs. Manpreet Singh Poonam reported in 2022 SCC



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Online SC 272:

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“14. No officer has a vested right to a promotional post, which is restricted to that of consideration according to law. The law on this aspect is settled by this Court in the case of *Ajay Kumar Shukla vs. Arvind Rai*, 2021 SCC Online SC 1195:

37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K.Ramaswamy, J., in the case of *Director, Lift Irrigation Corporation Ltd., vs. Pravat Kiran Mohanty*, [(1991) 2 SCC 295] in paragraph 4 of the report which is reproduced below:

"4.... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules..."

.....

38. A Constitution Bench in case of *Ajit Singh v. State of Punjab*, [(1999) 7 SCC 209], laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27:



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22The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right...."

11. Therefore, in the light of the above decision, the petitioners have no indefeasible right to seek promotion to the post of Senior Permanent Way Supervisor, since no such post is in existence, in view of the merger of post of Senior Permanent Way Supervisor with Junior Engineer. Therefore, we are of the view that the Tribunal has rightly rejected the claim of the petitioners and hence, it does not warrant any interference by this Court.



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12. Accordingly, the writ petitions in W.P.Nos.605, 606 and 607/2017 are dismissed. No costs.

(D.K.K.J.)

(P.B.B.J.)

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Internet: Yes/No

Index : Yes/No

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To

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