

(2017) 08 DEL CK 0069

In the Delhi High Court

Case No : 3455 of 2016

ALL INDIA RAILWAY PROTECTION FORCE ASSOCIATION AND
ANOTHER

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

Constitution of India, Article 14 -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions
Railway Protection Force Rules, 1987

Citation : (2017) 08 DEL CK 0069

Hon'ble Judges : Sanjiv Khanna, Navin Chawla Sanjiv Khanna

Bench : DIVISION BENCH

Advocate : Kailash Vasdev, Ekta Mehta, Shreyans Singhvi, Sanjay Jain, Anurag Ahluwalia, Jagjit Singh, Sarfaraz Ahmad, Ruchi Jain, Siddharth Luthra, Gaurav Sarin, Supria Juneja, Saumyarop Sanyak

Judgement

1. All India Railway Protection Force Association and U.S. Jha, have filed the present writ petition for issue of writ for quashing Rules 54.1(c), 76 and 277 of the Railway Protection Force Rules, 1987 to the extent they permit appointment of officers in Railway Protection Force on deputation and subsequent absorption as being ultra vires the Railway Protection Force Act, 1957 and Article 14 of the Constitution. Another prayer made is for quashing/deleting Rule 45 (partly) to the extent it provides for recruitment by taking personnel on deputation in accordance with the Rules. Similar prayer is made for quashing/deleting proviso to Rule 1.3 (partly) to the extent it makes Rules 83 to 86 inapplicable to superior officers and other enrolled members of the force appointed on deputation as such appointment would be ultra vires the Railway Protection Force Act, 1957 and Article 14 of the Constitution. The third prayer is for issuance of writ in the nature of prohibition restraining the authorities from filling up the post of Director General and other posts below the rank of Director General by way of deputation/transfer from any personnel not belonging to the Railway Protection

Force. The fourth and the last prayer is for mandamus directing the authorities to fill up the post of Director General and other posts below the rank of Director General by way of promotion from the officers within the Railway Protection Force.

2. For the sake of convenience, Railway Protection Force Act, 1957 has been referred to as the Act or the Principal Act and the Railway Protection Rules, 1987 have been referred to as the Rules.

3. Railway Protection Force is an armed force of the Union and is governed by the Act, i.e., the Railway Protection Force Act, 1957, which was notified and came into force on 10th September, 1959.

4. By the Railway Protection Force (Amendment) Act, 1985, which received the assent of the President on 6th September, 1985, substantial amendments were made in the Principal Act, i.e., Railway Protection Force Act, 1957. The Railway Protection Force (Amendment) Act, 1985 was thereafter published in the Gazette on 9th September, 1985. For the purpose of present controversy, we need not refer to all amendments made to the Principal Act by the Railway Protection Force (Amendment) Act, 1985 in detail, except reference to Sections 5, 13, 18 and 19 of the Railway Protection Force (Amendment) Act, 1985, which for the sake of convenience are reproduced below:-

"5. In Section 4 of the principal Act.-

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) The Central Government may appoint a person to be the Director-General of the Force and may appoint other persons to be Inspectors-General, Additional Inspectors-General, Deputy Inspectors-General, Assistant Inspectors-General, Senior Commandants, Commandants or Assistant Commandants of the Force."

(b) in sub-section (2), for the expression "Inspector-General", the expression "Director-General" shall be substituted."

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13. After Section 15 of the Principal Act, the following Section shall be inserted, namely:-

"15A. (1) No member of the Force shall, without the previous sanction in writing of the Central Government or of the prescribed authority:-

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class or trade unions, labour unions or political associations; or

(b) be a member of, or be associated in any way with any other society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bonafide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Explanation.- If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final. (2) No member of the Force shall participate in, or address, any meeting or take part in any demonstration organised by anybody of persons for any political purposes or for such other purposes as may be prescribed."

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18. The amendments directed in the Schedule (being amendments of a consequential nature) shall be made in the Principal Act.

19. (1) The Force constituted under the principal Act, as functioning immediately before the commencement of this Act (hereafter in this section referred to as the existing Force,) shall, on such commencement, be deemed to be the Force constituted under the principal Act, as amended by this Act, and every member of the existing Force holding immediately before such commencement an office mentioned in column (1) of the Table below shall, on such commencement, be deemed to have been appointed to the office mentioned in the corresponding entry in column (2) of the said Table.

1 Director-General Director-General

2 Inspector-General-cum-Chief Security Officer Inspector-General

3. Additional Inspector-General-cum-Chief Security Officer Additional Inspector-General

4. Additional Inspector-General Additional Inspector-General

5. Deputy Inspector-General-cum-Chief Security Officer Deputy Inspector-General

6. Deputy Inspector-General Deputy Inspector-General

7 Principal, Training College Principal, Training College

8. Assistant Inspector-General Assistant Inspector-General

9. Deputy Chief Security Officer Senior Commandant Headquarters

10. Senior Security Officer Senior Commandant

11. Security Officer Commandant

12. Staff Officer to Chief Security Officer Commandant-cum-Staff Officer to Chief Security Officer.

13. Security Officer (Small Arms) Commandant (Small Arms)
14. Commandant Commandant
15. Assistant Security Officer Assistant Commandant
16. Personal Assistant to Chief Security Officer Assistant Commandant-cum-Personal Assistant to Chief Security Officer
17. Adjutant Assistant Commandant Adjutant
18. Assistant Commandant Assistant Commandant
19. Principal, Training School Assistant Commandant cum Principal, Training School
20. Vice-Principal, R.P.F. Training College Assistant Commandant-cum-Vice-Principal, R.P.F. Training College
21. Inspector Inspector
22. Sub-Inspector Sub-Inspector
23. Assistant Sub-Inspector Assistant Sub-Inspector
24. Head Rakshak Head Constable
25. Battalion Havildar Major Head Constable
26. Coy. Havildar Major Head Constable
27. Senior Rakshak Naik
28. Rakshak Constable

(2) Notwithstanding anything contained in sub-section (1), any member of the existing Force may, within thirty days from the commencement of this Act, exercise his option by notice in writing to the Director-General- (a) if such member has been on deputation to the existing Force from any other service, to revert to such other service, and (b) in any other case, to retire from service, and an option so exercised shall be final, and a member exercising such option shall be permitted, within thirty days from the date on which he exercises such option to revert to the service from which he had been on deputation or, as the case may be, to retire from service. Explanation.- For the purposes of this section, the expression "member" includes an officer, and the expression "Director-General" shall have the same meaning as in the principal Act, as amended by this Act."

5. The aforesaid Gazette notification dated 9th September, 1985 was published by the Ministry of Law and Justice (Legislative Department).

6. The Ministry of Railways (Railway Board) vide another Gazette notification published on 18th September, 1985 published the Act, i.e., the Railway

Protection Force Act, 1957, purportedly incorporating therein the amendments made by the Railway Protection Force (Amendment) Act, 1985 with effect from 20th September, 1985.

7. It is an accepted and admitted case of the parties that there were two significant errors in the Act published vide Gazette notification dated 18th September, 1985. The first error related to Section 15A with which we are not primarily concerned and, therefore, is not being elucidated in detail. Suffice, it is to notice that a portion of the sentence in clause (b) "is not recognised as a part of the force or" was omitted. However, what is significant and relevant for the purpose of the present litigation is the complete omission to incorporate and include the amendments made vide Section 19 of the Railway Protection Force (Amendment) Act, 1985.

8. Similar error was also made by the Ministry of Railways in the in-house booklet published by them incorporating the complete version of the Act, i.e., the Railway Protection Force Act, 1957 incorporating the amendments notified. We may, at this stage, also record that as per the official respondents the Act published in the Gazette on 18th September, 1985 has been treated as an in-house publication.

9. The errors made came to the notice of the Ministry of Law and Justice in 2006 and the matter was examined. The result was a corrigendum being published in the Gazette on 4th August, 2006 by the Ministry of Law and Justice (Legislative Department). The corrigendum is a short one and states that in Section 15A the words in clause (b) "is not recognised as part of the force or" would be added. The second "correction" was to add sub-sections (4) and (5) to Section 21 of the Act. Sub-sections (4) and (5) as quoted therein are verbatim the entire Section 19 (1) and (2) of the Railway Protection Force (Amendment) Act, 1985 as published in the Gazette on 9th September, 1985.

10. The Ministry of Law and Justice now accepts and admits that this was a mistake as sub-sections (1) and (2) to Section 19 of the Railway Protection Force (Amendment) Act, 1985 were not to be added and enacted as sub-sections (4) and (5) to Section 21 of the Principal Act. This was not stipulated in Section 19 of the Railway Protection Force (Amendment) Act, 1985. Section 19 was required to be incorporated in the Schedule to the Principal Act. This position is correct and cannot be debated. This is also clear from the Gazette notification dated 9th September, 1985. Sections 18 and 19 of the Railway Protection Force (Amendment) Act, 1985, when read coherently and harmoniously, would clearly show the said position. Interestingly, Section 17 of the Railway Protection Force (Amendment) Act, 1985 had also amended Section 21 of the Act and had postulated as under:-

"17. In Section 21 of the principal Act,-

(a) In sub-section (2),-

- (i) in clauses (a), (b) and (c), the words "superior officers and" shall be omitted;
- (ii) for clauses (d) and (e), the following clauses shall be substituted, namely:-
 - (d) prescribing the description and quantity of arms, accoutrements, clothing and other necessary articles to be furnished to the members of the Force;
 - (e) prescribing the places of residence of the member of the Force;
 - (f) institution, management and regulation of any fund for any purpose connected with the administration of the Force;
 - (g) regulating the punishments and prescribing authorities to whom appeal shall be preferred from orders of punishment, or remission of fines, or other punishments and the procedure to be followed for the disposal of such appeals;
 - (h) regulating matters with respect to Force custody under this Act, including the procedure to be followed for taking persons into such custody;
 - (i) regulating matters with respect to disposal of cases relating to offences under this Act and specifying the places in which persons convicted under this Act may be confined;
 - (j) any other matter which has to be, or may be, imposed, or in respect of which rules are required to be made under this Act."

(b) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

11. Sections 17, 18, and 19 of the Railway Protection Force (Amendment) Act, 1985 being three separate provision, it would be incoherent and inarticulate to hold that amendments vide Section 19 were to be added as sub-sections (4) and (5) to Section 21 of the Principal Act. In order to correct the aforesaid position, the Ministry of Law withdrew the corrigendum published in the Gazette on 4th August, 2006, which as noted above, had wrongly added amendments made by Section 19 of the Railway Protection Force (Amendment) Act, 1985 as sub-sections (4) and (5) to Section 21 instead of including it in the Schedule to the Act.

12. In our order dated 31st July, 2017 we had asked the official respondents to elucidate on the procedure to withdraw a gazette notification and whether the "withdrawal" in the present case would be in accordance with law. Though there

appears to be some ambiguity or confusion, to our mind in the facts of the present case, it would not make any difference. The confusion arose because of the corrigendum published in the gazette on 4th August, 2006 had wrongly added the provisions, i.e. Section 19 of the Railway Protection Force (Amendment) Act, 1985, as sub-sections (4) and (5) of Section 21 to the Principal Act. The amendment in terms of Section 19 of the Railway Protection Force (Amendment) Act, 1985 should have been made in the Schedule to the Principal Act. However the said corrigendum has not been withdrawn by a notification in the official gazette.

13. Even if the corrigendum dated 4th August, 2006 is taken into consideration, the effect would be no different. We would observe that there is a contradiction between the gazette notification dated 9th September, 1985 publishing the Railway Protection Force (Amendment) Act, 1985 and the corrigendum dated 4th August, 2006. The enactment, as passed by Parliament which has received the assent of the President, would prevail and is binding. It would be better for the official respondents to take remedial steps as per law, so that there is no ambiguity and doubt and this confusion is set to rest.

14. The next aspect, which requires examination, is the effect of Section 19 of the Railway Protection Force (Amendment) Act, 1985, which statedly forms part of the Schedule. Section 19 of the Railway Protection Force (Amendment) Act, 1985 has been reproduced in paragraph 4 above. Sub-section (1) to Section 19 is a deeming provision. Every member of the Force on the commencement of the Amendment Act holding the post in column 1 is deemed to be appointed to the corresponding post in column 2. Sub-section (2) thereof states that any member of the existing Force shall, within thirty days from the commencement of the said Act, exercise his option by notice in writing to the Director General, to be reverted to the parent service if he is on deputation; or to retire from service. The option so exercised shall be final. The submission of the official and impleaded respondents is that sub-section (2) was a transitory or onetime provision, i.e. an option was to be exercised when the Railway Protection Force (Amendment) Act, 1985 was enforced. It gave the existing employees of the Force the option to retire, or if they were on deputation to return to their parent department/service, in which event sub-section (1) would not be applicable. In other words, the said provision does not stipulate that in future appointments on deputation would not be made in the Railway Protection Force. There is no such specific or implied statement or stipulation. There appears to be merit in the said contention, in view of the language employed and also the fact that the provision is a part of the Schedule.

15. However, counsel for the parties have drawn our attention to a Division Bench judgment of this Court in Writ Petition (Civil) No. 6081/2012, P.S. Rawal and Others versus Union of India and Others, decided on 4th March, 2013 wherein it has been held as under:-

"31. The Court is further of opinion that and the respondents" insistence on

considering names of IPS and other outside officials despite the statutory bar, in terms of Section 19 of the Act, is a clear illegality. Section 19 (2) is cast in imperative terms, and notwithstanding that an existing member of the Railway Protection service may be a deputationist, he has to be repatriated. In other words, the choice of recruiting personnel on deputation is curtailed. The only possible exception is the post of Director General, who has to receive the option of others to repatriate. Implicit in the provision is the idea that the Director General can be a deputationist. Having regard to the terms of the said provision, which now binds the Railway authorities, and which appears to have been overlooked altogether, it is held that the post of ADG in the RPF has to be filled from amongst in-house IG level candidates of the RPF itself, in accordance with the memorandum of 11-06-2010. Consequently, a direction is issued to the respondents to forthwith process the case of the petitioners, and start the process of promotion to the post of ADG, in line with the said memorandum of 11-06-2010. The entire process shall be completed within six weeks and the recommendations forwarded in that regard, to the ACC (Appointments Committee of the Cabinet) thereafter."

We may highlight that the Court while deciding P.S. Rawal & Ors. (supra) did not have the advantage and benefit of examining the Gazette Notification dated 9th September, 1985 notifying the Railway Protection Force (Amendment) Act, 1985 and the effect on the Principal Act i.e. Railway Protection Force Act, 1957. It is apparent that the said judgment was pronounced on the basis that Section 19 of the Railway Protection Force (Amendment) Act, 1985 had postulated an insertion in the form of sub-sections (4) and (5) to Section 21 of the Principal Act.

16. Another contention raised before us, pertains to the Rules i.e. the Railway Protection Force Rules, 1987. Our attention was drawn to the Parliamentary Bulletin of Rajya Sabha dated 4th May, 1988 (Item No.30587) for making deletion and amendment of several clauses including Part-II of Rule 1.3, dealing with appointment on deputation, paragraph (c) of Rule 54.1 etc. Lok Sabha bulletin dated 16th March, 1988 (Item No.2164), which relates to the resolution passed by the House for annulling the Rules, was also relied.

17. In view of the aforesaid pleadings, vide order dated 31st July, 2017, we had called upon the Union of India to file an additional affidavit on their stand and stance on the resolution dated 4th May, 1988 passed by the Rajya Sabha (Item No.30587) and resolution dated 16th March, 1988 of the Lok Sabha (Item No.2164) and whether the Parliament has annulled or modified the Rules i.e. Railway Protection Force Rules, 1987.

18. The official respondents have filed an affidavit stating that the Rules i.e. Railway Protection Force Rules, 1987 have not been modified or amended. The bulletins relied upon relate to the resolution passed by the single House i.e. Rajya Sabha or Lok Sabha. Thereafter, the other house did pass or accept the said resolution. In fact, there have been subsequent amendments to the Rules, which were tabled before the both Houses of Parliament, but no motion for

amendment or modification has been passed by the Rajya Sabha and Lok Sabha. Therefore, the provisions and Rules pertaining to deputation remained unchanged. This shows why the petitioners are aggrieved.

19. There is another aspect, which must be dealt with at this stage. Vide order dated 2nd May, 2016 passed in the present writ petition, a Division Bench of this Court had referred to Section 19 of the Railway Protection Force (Amendment) Act, 1985 and that sub-sections (4) and (5) were inserted after section 21 in the Principal Act i.e. Railway Protection Force Act, 1957. It was accordingly recorded that a person on deputation cannot be appointed as a member of Railway Protection Force after the amendments. It was submitted that the relevant Rules, namely, Rules 45 (partly), 54.1(c), 76 and 277 being contrary to Section 19 of the Railway Protection Force (Amendment) Act, 1985, were ultra vires to the parent statute and bad in law. Recording the above, it was observed that the petitioner had made out a prima facie case for grant of interim order. It was directed that recommendation dated 27th April, 2016 for appointment of Mr. S.K. Bhagat, IPS as Director General would not be given effect to till the next date of hearing. Mr. S.K. Bhagat, however, had taken over the charge as Director General before the interim order was passed as recorded in the order dated 15th March, 2017. The interim order passed on 2nd May, 2016 was, therefore, ineffective.

20. Thereafter, the petitioners had filed C.M. No.22874/2017 stating that Mr. S.K. Bhagat, who was appointed as the Director General, has retired and a new Director General was likely to be appointed by way of deputation.

21. In view of the interim order passed earlier on 2nd May, 2016, this Bench vide order dated 3rd July, 2017 had directed that the recruitment process, if any, could continue, but final appointment order would not be issued till the next date of hearing. The said interim order has continued. The respondents have stated that a new incumbent for the post of Director General has been selected and grave prejudice and harm is being caused in view of the interim stay. They have also filed C.M. No.28396/2017 for vacation of stay. However, we have not issued notice on the application as we had reserved the judgment.

22. We refer the ratio of the decision in P.S. Rawal & Ors. (supra) to a larger Bench for consideration. However, even in P.S. Rawal & Ors. (supra), the Division Bench had concurred and accepted the position that the Director General can be a deputationist. The contention of the petitioner is that the aforesaid observations are mere obiter and not the ratio. This aspect would possibly have to also be examined and finally decided by the larger bench. We would observe that at this stage it would not be proper to stay appointment to the post of Director General, for several reasons. Paragraph 31 of the judgment in the case of P.S. Rawal & Ors. does state that appointment to the post of Director General was a possible exception. Thereafter, the Bench observed that this was implicit in the provision i.e. Section 19 of the Railway Protection Force (Amendment) Act, 1985. Thus, the Division Bench had observed that Director General could be a

deputationist. Thus the contention of the petitioners, prima facie, does not appear to be correct or weighty.

23. In these facts and circumstances, we would hold that the petitioner has not been able to make out a prima facie case to stall appointment of a deputationist at the post of Director General. Leaving the said post vacant would not be in the interest of good administration and could cause irreparable harm and inconvenience. Balance of convenience is thus not in favour of the petitioners, who have prayed for stay of appointment of a deputationist on the said post. In the past also, deputationists have been appointed to the post of Director General. Accordingly, we vacate the stay granted vide order dated 3rd July, 2017. However, we clarify that appointment so made would be subject to the final outcome of the writ petition.

24. The matter will be placed before the Hon''ble the Acting Chief Justice for constitution of a larger Bench to decide whether the ratio expounded in P.S. Rawal & Ors. (supra) that Section 19 of the Railway Protection Force (Amendment) Act, 1985 bars and prohibits a deputationists from being appointed to the said service is correct.

25. Nothing contained in this order would be read as adjudicating or deciding the issue, contesting the right of Indian Police Service Central Association to appear in this litigation.