

(2020) 12 DEL CK 0197

In the Delhi High Court

Case No : Civil Writ Petition No. 920, 3683 Of 2020, Civil Miscellaneous No. 13232 Of 2020

Ashok Singh Bhadauria And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 356

Railway Protection Force Rules, 1987 — Rule 45.1A, 57, 69.1, 71.1, 71.3, 99, 99.2, 102

Citation : (2020) 12 DEL CK 0197

Hon'ble Judges : Rajiv Sahai Endlaw, J; Asha Menon, J

Bench : Division Bench

Advocate : Suhail Dutt, D.K. Thakur, Abhishek Kumar, Rituparn Uniyal, Sankalp Goswami, Azhar Alam, Jagjit Singh, Rajan Sabharwal, Raghav Sabharwal

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

1. On 18th November, 2020, after substantially hearing the counsel for the petitioners, the following order was passed:-

1. The two petitions, impugning reversion of the petitioners from the post of Assistant Sub Inspector (ASI) to the post of Head Constable,

in the Railway Protection Force (RPF), are ripe for final hearing.

2. The senior counsel for the petitioners has contended, (i) that the petitioners, between 1980s and 1990s joined the Railway Protection

Special Force (RPSF) as Constables; (ii) that the petitioners, between the years 2001-2002 were promoted as Head Constables; (iii) that the

petitioners, between the years 2006 to 2008 were transferred from RPSF to RPF North Central Zone and as per the then Standing Order,

were put at the bottom of the seniority list of Head Constables; and, (iv) that the petitioners, in the year 2016 were promoted as ASI.

3. The senior counsel for the petitioners states that in the year 2020, after the petitioners had served at the post of ASI for four years, they

were reverted to the post of Head Constables. It is contended that the said action has been taken purportedly pursuant to the order of a

Division Bench of this Court in a petition filed by certain Head Constables of the North Zone challenging the seniority list and which

petition was allowed. It is informed that the different Zones of the Railways have different and not common seniority lists and pursuant to

the challenge to the seniority list in one Zone, the seniority lists in other Zones which have not been challenged, cannot be changed, after

have attained finality. It is contended that the petitioners, on being transferred to the RPF were placed at the bottom of the seniority list of

Head Constables, and the seniority list could not have been changed after 12 years, in 2020. It is further contended that without any

challenge to the seniority list being made, in any case it could not have been altered.

4. Mr. Rajan Sabharwal, Advocate for the respondents has interrupted at this stage and has contended that we had in our order dated 5th

August, 2020, on being informed that 24 matters entailing similar issues were spread over different High Courts, suggested moving the

Supreme Court for consolidation of the matters before one High Court and in pursuance thereto, though an application has been filed in

the Supreme Court but has not been listed till today. Adjournment is sought, to await the orders of the Supreme Court in the application

stated to have been so moved.

5. The senior counsel for the petitioners opposes the adjournment contending that while some High Courts have granted interim stay of

reversion, the petitioners herein stand reverted. It is even otherwise stated that the case of the petitioners is distinct inasmuch as in North

Central Zone to which they belong, there was no challenge to the seniority list and the outcome of a writ petition in respect of another Zone

cannot have application to a seniority list which has gone unchallenged and attained finality.

6. We have enquired from Mr. Rajan Sabharwal, Advocate for the respondents, whether there is a common seniority list or separate

seniority lists for each Zone.

7. Though earlier he stated that there are separate seniority lists for each Zone but now states that he does not know. On enquiry, whether

there was any challenge to the seniority list in the North Central Zone, again the answer is that he does not have instructions.

8. Though we have asked Mr. Jagjit Singh, Advocate, also appearing for the respondents but he also states that further preparation is

required.

9. This way the hearing cannot go on. It is deemed apposite that the senior most personnel of the respondents Indian Railways/RPF, who

knows all the facts pertaining to these petitions and who is able to answer all our questions, participates in the next hearing, whether

physically or virtually.

10. The senior counsel for the petitioners clarifies that the challenge in the other petition pertaining to North Zone was not to the seniority

list of Head Constables but Constables and that the seniority list of Head Constables in North Central Zone was brought out in 2010 and

2012.

11. List on 17th December, 2020.â??

2. Today, on enquiry, Mr. Rajan Sabharwal, Advocate for the respondents informs that the Supreme Court, in the transfer petition has ordered that no

final orders in the petitions pending before the other High Courts, save this Court, be passed. Thus the hearing in the petitions can continue.

3. Mr. Jagjit Singh, counsel for the respondents has today, responding to our queries contained in the order dated 18th November, 2020 reproduced

above, has informed that (i) each zone of Railway Protection Force (RPF) has a separate seniority list, till the post/rank below Inspector; however

from the post/rank of Inspector onwards, there is a All India seniority list; (ii) the movement of personnel from RPF to Railway Protection Special

Force (RSPF) and vice versa was permitted under Standing Order No.70 dated 27th September, 2004 issued by the Government of India, Ministry of

Railways (Railway Board), on the request of the personnel; (iii) though the petitioners in W.P.(C) 920/2020 have pleaded that their movement from

RPSF to RPF was not on own request but he is today carrying documents with him to show that the movement/transfer of the petitioners in W.P.(C)

920/2020 also, from RPSF to RPF, was on own request; (iv) para 17 of Standing Order No.70 inter alia provides that RPSF personnel shall be eligible

for transfer to RPF, after completion of 20 years in RPSF and the guidelines to be followed in cases of inter zonal transfer; (v) the transfer of the

petitioners in both the petitions, from RPSF to RPF, was also an inter zonal transfer; (vi) one of the guidelines laid down in para 17 aforesaid of S.O.

No.70 was/is that, personnel seeking such transfer should be ready to go on bottom seniority in the same rank; (vii) however, the

DIG/Administration, Railway Board, vide communication dated 09th August, 2006, amended para 17 of S.O. No.70 aforesaid to read that the

personnel seeking transfer from RPSF to RPF should be ready to go on bottom seniority of his batch mates in the same rank; (viii) it was in

pursuance to the amendment aforesaid of para 17 of S.O. No.70, that the petitioners in both the petitions, when sought transfer and were granted

transfer, not only from RPSF to RPF but also inter zonal, that their seniority was fixed at the bottom of their batch mates in the rank of Head

Constable in RPF, instead of the petitioners being put at the bottom of the Head Constables in RPF, of whichever batch; (ix) in pursuance to the

fixation of the seniority as aforesaid of the petitioners, in the year 2015, when the question of promotions in RPF, from the rank of Head Constable to

the rank of Assistant Sub Inspector (ASI) arose, the petitioners were considered for promotion; (x) 122 Constables in Northern Zone of RPF filed

W.P.(C) 11293/2016 titled Gurpartap Singh vs. Union of India aggrieved from the seniority list of Constables of RPF circulated vide letter dated 31st

August, 2016, seeking quashing thereof and seeking direction for re-fixation of seniority by placing them above the private respondents therein, in the

revised seniority list; the private respondents therein had been transferred from another division of RPSF to the Northern Division of RPF and on such

transfer, in accordance with amended para 17 of S.O No.70 had been placed in the seniority list of Constables in RPF, immediately below the

Constables in RPF of their batch but above the 122 Constables who had filed the petition and who were from a lower batch; (xi) the Division Bench

of this court, vide judgment dated 31st January, 2019 held:

(a) that Rule 99 of the RPF Rules, 1987, deals with determination of seniority on inter zonal transfer;

(b) Rule 99.2 provides that "seniority of an enrolled member of the force transferred on his own request or on mutual exchange from one zonal

railway to another or the Railway Protection Special Force, and vice versa shall be fixed below that of all the existing confirmed and officiating

enrolled members of the force in the relevant rank of that Railway or RPSF irrespective of the date of confirmation or length of the officiating service

of the transferred members of the force";

(c) therefore, where a member of another force or even RPSF is transferred to the RPF on his own request, his seniority will be fixed below all

members working on that date, irrespective of the date of initial appointment/confirmation or length of service;

(d) where there is a statutory Rule in place, there cannot be any administrative instruction to the contrary;

(e) though para 17 of S.O. No. 70 was in consonance with Rule 99.2 of RPF Rules but the amendment vide letter dated 9th August, 2006 of para 17

of S.O No.70 was inconsistent with Rule 99.2 of the RPF Rules which will prevail;

(xii) consequently, the seniority list impugned in Gurpartap Singh was quashed and the respondents Railways directed to fix the seniority in accordance

with Rule 99.2 of the RPF Rules as explained in the judgment;

(xiii) it was in pursuance to the aforesaid judgment that the seniority list of the year 2015 and in pursuance to which the petitioners were promoted

from the rank of Head Constable to the rank of ASI, was reworked and as per the reworked seniority list of 2019, the petitioners did not have the

seniority for promotion from the rank of Head Constable to the rank of ASI; and,

(xiv) the respondents Railways have thus, only complied with the

judgment of this court in Gurpartap Singh and which judgment has attained finality.

4. Mr. Rajan Sabharwal, Advocate also appearing for the respondents has added that once the amendment vide letter dated 9th August, 2006 of para

17 of the S.O No.70 goes, the effect thereto has to be given and the result of which effect is the action impugned in these petitions.

5. Per contra, the senior counsel for the petitioners has drawn attention to the factual controversy in Gurpartap Singh. It is shown, (i) that the

challenge therein was by Constables in the Northern Zone of RPF and to the seniority list dated 31st August, 2016, of constables in the Northern Zone of RPF and to which seniority list they had immediately objected; (ii) that Rule 102 of the RPF Rules, 1987 provides for representation against seniority to be made within a period of one year from the date of publication of the seniority list; (iii) while the petitioners in Gurpartap Singh had immediately, within the said time of one year, represented against the seniority list, none of the Head Constables in North Central Zone of RPF, to which the petitioners belong, objected to the seniority list of Head Constables of North Central Zone of RPF of the year 2015; (iv) what was quashed in Gurpartap Singh was seniority list of 2016, of Constables in Northern Zone of RPF; (v) Rule 45.1A of the RPF Rules provides for the qualifications, method of recruitment, inter alia for the post of ASI, as that contained in Schedule 6 to the Rules; (vi) Rule 69.1 of the RPF Rules provides that promotion up to the rank of Commandant shall be on the basis of merit having due regard to seniority; (vii) thus, the promotion of the petitioners in both the petitions, from the rank of HCs to the rank of ASI, was not merely on seniority but on merit having due regard to seniority; (viii) attention is invited to Rule 71.1, 71.3 as well as Schedule 6 to the RPF Rules, to contend that test of merit for promotion to the rank of ASI, from HC comprised of written and practical examinations; the petitioners duly participated in the competitive process, for being selected; (ix) attention is also drawn to the fact that the eligibility criterion for the promotion to the rank of ASI, was obtaining 60% in the written examination; (x) in terms of Rule 57 of RPF Rules, the petitioners were on probation for 2 years in the rank of ASI, from the year 2016 to the year 2018 and continued to serve as ASI for another two years, till the year 2020, when they were reverted; (xi) that the seniority list of the year 2015 of Head Constables in North Central Zone of RPF, in pursuance to which the petitioners were promoted, was in fact reiteration of the seniority list of the year 2011-12; (xii) that none in the North Central Zone, to which the petitioners belong, challenged the seniority list of HCs of the year 2011-12 or of the year 2015 in North Central Zone of RPF and in pursuance whereof the petitioners were allowed to participate in the competition/merit test for promotion to ASI; (xiii) thus the seniority of the petitioners as it stood in the year 2011-12, had remained unchallenged for 10 years, when the petitioners were reverted in the year 2020; and, (xiv)

even today, there is no challenge by anyone to the seniority list in pursuance to which the petitioners were promoted.

6. The senior counsel for the petitioners refers to (a) Shiba Shankar Mohapatra vs. State of Orissa 2010 (12) SCC 47 1to contend that belated

challenges to seniority cannot be and should not been entertained; and, (b) H.S. Vankani vs. State of Gujarat 2010 (4) SCC 301 to contend that,

seniority was held to be a civil right which should not be unsettled.

7. A perusal of the counter affidavit filed by the respondents in W.P.(C) 920/2020 indicates that the respondents corrected the seniority list of Head

Constables in North Central Zone of RPF, of the year 2015, in the year 2019-20, in pursuance to the order in Gurpartap Singh (supra). Mr. Jagjit

Singh, counsel for the Railways, in rejoinder has drawn attention to letter dated 18th April, 2019 of the Railway Board, directing all zones to apply the

judgment in Gurpartap Singh. It is argued that the seniority list was corrected and consequently, the petitioners were reverted in pursuance to the

directive contained in the said letter dated 18th April, 2019 of the Railway Board. He has further drawn our attention to prayer paragraph in W.P.(C)

920/2020 to contend that the challenge therein is only to the corrected seniority list dated 09th January, 2020 drawn up by the Railways but which

seniority list is in terms of the judgment in Gurpartap Singh. It is further argued that the petitioners in W.P.(C) 920/2020 have not challenged the order

of their reversion. Though the counsel for the respondents has also drawn attention to Annexure P-3 in W.P.(C) 3683/2020, to contend that there was

no merit test in the promotion of the petitioners to the rank/post of ASI, but we are afraid, the said document does not bear out the said contention.

Lastly, Mr. Jagjit Singh, counsel for the respondents has argued that there was no seniority list of the year 2011-12 and the petitioners also have

nowhere pleaded or placed on record the seniority list, if any, of the year 2011-12 and there is no basis for arguing that the seniority of the petitioners

as reflected in the seniority list of the year 2015 was a reiteration of the seniority list on 2011-12. Mr. Jagjit Singh has also argued that even if there

was no challenge to the seniority list of Head Constables of RPF in the North Central Zone to which the petitioners belong, still, since there was an

administrative error in issuance of the letter dated 9th August, 2006 amending para 17 of S.O No.70, the respondents were entitled to on their own

correct the said error. Mr. Jagjit Singh has also argued that the petitioners have also filed objections against the corrected seniority list dated 9th

January, 2020 and which objections are still pending and the petitions are thus pre mature. It is also contended that if the petitioners are ordered to

continue as Assistant Sub Inspectors, they, at the rank of Inspector, would have achieved the said rank earlier to that achieved by others in other

zones.

8. We have considered the rival contentions.

9. It is evident from the counter affidavits and the argument of the counsels for the respondents, that the actions of the respondents impugned in these

petitions are justified by the respondents, only on the basis of Gurpartap Singh (supra). The respondents appear to have construed the said judgment as

mandating the respondents to rectify all past acts, done on the premise of amendment of para 17 of S.O. No. 70 vide letter dated 9th August, 2006,

and which amendment, in Gurpartap Singh was held to be contrary to statutory Rule 99.2 of the RPF Rules. It is the correctness of this stand of the

respondents, which is to be adjudicated.

10. A perusal of the judgment in Gurpartap Singh does not reveal that the said petition was filed, seeking the relief of striking down of amendment of

para 17 of S.O. No.70 vide letter dated 9th August, 2006 and seeking quashing of the seniority list of the year 2016 of Constables in the RPF as a

consequence thereof. From a reading of the judgment, it transpires that the petition was filed impugning the seniority list only and the amendment of

para 17 of S.O. No.70 came to be considered owing to the same having been cited by the respondents in defence of or to justify the correctness of

the seniority list and on which consideration, it was held to be bad. However the relief granted by the Court was only of striking down the seniority list

under challenge before it and no relief quashing the letter dated 9th August 2006 which amended para 17 aforesaid, was granted. Not only so, in that

writ petition only the Constables of RPF likely to be affected by the challenge therein were impleaded as respondents and there is nothing to show that

any other person, lest the petitioners herein, had any notice of the legality and validity of the letter dated 9th August, 2006 being under challenge in that

petition. All these factors show, the judgment in Gurpartap Singh to be, a judgment in personam and not a judgment in rem. Thus the respondents, on

the basis thereof, could not have reworked the seniority list of Head Constables in RPF, which had not been challenged by anyone and which had attained finality and had also been acted upon. Only if a challenge to the seniority list of the year 2015 of Head Constables in RPF had been made, would the ratio of Gurpartap Singh have been for consideration and in which case the petitioners, likely to be affected therefrom, would have been heard thereon and would have had an opportunity to address on the correctness of Gurpartap Singh. Not only was no challenge to the seniority list of the year 2015 of Head Constables of RPF made by anyone aggrieved therefrom but even the respondents did not give any notice to the petitioners, of their intent to rework the said seniority list and of reversion of the petitioners from the post of ASI to the post of Head Constable. We do not agree with the contention of the counsels for the respondents, that the respondents, notwithstanding there being no challenge to the seniority list, were entitled to, on their own, on detecting a mistake/error therein, rectify the same, affecting the seniority of some, without giving them any notice thereof. The spirit of Rule 102 of the RPF Rules providing for a period of one year only from the date of publication of the seniority list, for representing there against, equally applies to the respondents also. The judgments in Shiba Shankar Mohapatra and H.S. Vankani cited by the senior counsel for the petitioners, laying down that a seniority which has settled, with the passage of time and which is a important civil right, should not be unsettled after long, are apposite in this regard.

11. It is also significant that this Court, in Gurpartap Singh did not issue any general direction to the respondents, to undo all that had been done pursuant to amendment of para 17 of S.O. No.70 vide letter dated 9th August, 2006. The respondents thus are not right in construing Gurpartap Singh as directing them to do what has been impugned in these petitions. Though we have recently in Chaman Giri vs Union of India MANU/DE/2231/2020 held that the Court cannot grant a relief contrary to what has been directed in another judgment but the present case does not fall in that genre. There is nothing in Gurpartap Singh (supra) which prevents us from granting the relief to the petitioners.

12. In fact we have enquired from the counsels, that even if the letter dated 9th August, 2006, in accordance wherewith the seniority of the petitioners

was fixed and in pursuance whereof they were promoted as ASIs, were held to have been struck down, what would the effect thereof be, on the actions done in the past in accordance therewith.

13. Though neither counsel has submitted on this aspect but we find Supreme Court in *Goan Real Estate and Construction Ltd. vs Union of India*

(2010) 5 SCC 388 to have held that, (a) when judicial discretion has been exercised to establish a new norm, the question emerges, whether it would

be applied retrospectively to the past transactions or prospectively to the transactions in future only; (b) it is for the Court to decide, on a balance of all

relevant considerations, whether a decision which unsettles the previous position of law, should be applied retrospectively or not; (c) the court would

look into the justifiable reliance on the previous position by the administration, ability to effectuate the new rule adopted in the overruling case without

doing injustice, whether its operation is likely to burden the administration of justice substantially or would retard the purpose; (d) all these factors are

to be taken into account while determining whether a judgment is prospective or otherwise; (e) the Court would adopt either the retroactive or non-

retroactive effect of a decision, after evaluating the merits and demerits of a particular case by looking to the prior history of the Rule in question, its

purpose and effect and whether retroactive operation will accelerate or retard the object of the judgment; (f) the purpose of the old Rule, the mischief

sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment

has prospective or retrospective operation; and, (g) the Courts do make the law to prevent administrative chaos and to meet ends of justice. Similarly,

in *O.P. Garg vs. State of U.P.* 1991 Suppl. (2) SCC 51, it was held that the proviso, in that case to Rule 8 (ii) of the Uttar Pradesh High Judicial

Service (Amendment) Rules, 1975, though retrospective, could not have taken away the vested rights of the officers who had already become

members of the service. Again, in *B.K. Khanna vs. State of U.P.* 1994 Suppl. (1) SCC 57, the Court held that what was validly done under a Rule

which was subsequently struck down, cannot be undone.

14. We also find a Nine Judges Bench of the Supreme Court, in *S.R Bommai vs. Union of India* (1994) 3 SCC 1 while considering the nature and

effect of action taken by the President pursuant to the proclamation under Article

356 of the Constitution of India, which is not approved by either or both Houses of Parliament, to have held, that though the actions taken would be illegal but the Court should suitably mould the relief. Reference was made to *Mia Mohd. Nawaz Sharif vs. President of Pakistan* PLD (1993) SC 473, where the orders passed, acts done and measures taken in the interregnum between the date of order of dissolution of National Assembly and dismissal of Federal Cabinet and the date when the said order was declared without authority and the National Assembly and the Federal Cabinet restored, were ordered to be given effect to and deemed to have been validly and legally done.

15. Applying the aforesaid principles and tests, we are of the view that all seniorities fixed in accordance with para 17 of S.O No.70 as amended vide letter dated 9th August, 2006 and which had attained finality and remained unchallenged and in accordance with which seniority lists promotions etc. had been granted, if disturbed as a consequence of *Gurpartap Singh*, would result in administrative chaos and is not in public interest. We are also of the view that just like the amendment vide letter dated 9th August, 2006 of para 17 of S.O. No.70 has been held to be bad, being contrary to Rule 99.2 of the RPF Rules, so can Rule 102 supra not be ignored. The two have to be applied harmoniously, not making either otiose or redundant and doing so, the seniority lists though fixed in accordance with amended para 17 supra which has been held to be bad, cannot be disturbed without any challenge thereto being made in accordance with Rule 102.

16. No merit is also found in the contention of the respondents, of the petitioners having not challenged the order of their reversion. Once the Court finds that a wrong has been done to the petitioners, it is the duty of the Court to correct the said wrong and all consequences thereof. Also, once we have decided as hereinabove, the question of relegating the decision on the objections filed by the petitioners to the seniority list dated 9th January, 2020 to the respondents, does not arise.

17. The petitions thus succeed and are allowed. The seniority list dated 9th January, 2020, in so far as affects the petitioners, is set aside and quashed and the seniority of the petitioners as in the seniority list of 2015 is restored and the order/action of reversion of the petitioners from the post/rank of Assistant Sub Inspector to the rank of Head Constable is also set aside and the

respondents are directed to forthwith restore the petitioners to the rank of Assistant Sub Inspector, with all benefits, with effect from the date the petitioners were reverted till the date the petitioners, in compliance with this order, are restored the rank of ASI, with arrears, if any, being paid within four weeks and thereafter with interest @ 8% per annum and the petitioners, for all purposes, be deemed to have been Assistant Sub Inspectors, from the date of promotion in the year 2017 onwards.

18. The petitions are disposed of.